
(1998) 02 DEL CK 0009
In the Delhi High Court
Case No : CW.No. 2261 of 1994

R.S. Baljit Singh

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 12-02-1998

Acts Referred:

Citation : (1998) 4 AD 541 : (1998) 74 DLT 206

Hon'ble Judges : K. Ramamoorthy, J

Bench : Single Bench

Advocate : Mr. R.M. Bagai, for the Appellant; Mr. Bhupinder Singh, for the Respondent

Judgement

K. Ramamoorthy, J.—The petitioner has challenged the order of discharge dated 22.2.1994 on the ground that the respondent should have passed the order of discharge after taking into consideration the ACRs which have not been considered. The matter was argued before the DB on the 18th of September, 1996 and the Division Bench has passed the following order:-

"Petitioner was enrolled in the Corp of Engineer in the Indian Army belonging to the Bengal Engineer Group as a direct entry Junior Commissioned Officer for a contractual period of five years from 1.7.1990 to 30.6.1994. His case for grant of Regular Junior Commission or extension of two years in service was required to be considered by a Board of Officers to be convened at the Headquarters of Bengal Engineer Group and Centre Roorkee in terms of various instructions issued in that behalf. Through letter dated 8.12.1993 Annexure - A, the Asstt. Record Officer of BEG asked the Assistant Garrison Engineer (Independent) Dalhousie; Cantt. to forward ACRs (in original) for the last three years (including early ACR for the period 1.6.1993 to 31.5.1994) so that requisite steps could be taken for considering the question of grant of Regular Junior Commission/ Extension of two years" Service.

Petitioner's case is that out of last three ACRs till 31.5.1994, two of the last

ACRs for 1.6.1993 to 31.5.1994 and 1.6.1992 to 31.5.1993 were "above average" and the third ACR for 1.6.1992 to 31.5.1992 was "average". If these three ACRs were to be taken in consideration, there was no reason that why the petitioner could not be granted Regular Junior Commission/Extension of two years" service.

Respondents in their counter have stated that ACRs for 1991, 1992, 1993 were taken into consideration. Two reports were "Average". Last ACR for 1994 (1.6.1993 to 31.5.1994) was not available and thus was not taken into consideration.

When in Annexure A it was made clear that the early ACR for the period from 1.6.1993 to 31.5.1994 be also forwarded, no reason is forthcoming that why early ACR for the period 1.6.1993 to 31.5.1994 was not initiated and sent for consideration. Prima facie consideration of the last 3 ACRs would imply that the Respondents were to take into consideration the latest three ACR immediately prior to the date of expiry of the contractual period, which obviously would include ACR for 1.6.1993 to 31.5.1994.

Learned counsel for the respondent wants to have instructions.

Adjourned to 18th October, 1996. dusty to counsel for respondents."

2. The factual position, as noticed by the DB, is not disputed and it was not challenged. On the 18th of October, 1996, the Division Bench passed the following order:-

"Maj.A.K.Vashisht states that Mr.Bhupinder Singh is not well and has not come to the Court. It is also stated by him that pursuant to the order passed on 18.9.1996, the case is being examined by respondent No.2 and the result will communicated to the Court before the next date."

3. Learned counsel for the respondents states that the order was not brought to the notice of the respondents. Mr.Bagai, learned counsel for the petitioner, submits that from the order of the Division Bench passed on the 18th of September, 1996 the factual position is very clear and cannot be challenged by the respondents that while passing the order of discharge, they should have to take into account the extraneous matters. Mr.Bagai relied upon the judgment of Justice J.K.Mehra passed in CW.3005/94 titled as "Shri Surendra Vs. Union of India & Another" dated 24th of May, 1996, which, according to learned counsel for the petitioner, the dictum laid down there would govern this case.

4. Apart from this, the order of discharge is not in accordance with the ACRs and it is liable to be set aside. Accordingly the discharge order dated 22.2.1994 is set aside and the writ petition is allowed.

5. The respondents shall pass appropriate orders for reinstatement of the petitioner on or before the 31st of March, 1998.

6. The petitioner shall also be entitled for back wages and other benefits.