
(2004) 08 DEL CK 0068

In the Delhi High Court

Case No : Writ Petition (C) 772 of 2003

R.S. Rawat, Havaladar Clerk

APPELLANT

Vs

The D.D.G., defense Security Corps and Others

RESPONDENT

Date of Decision : 11-08-2004

Acts Referred:

Army Rules, 1954 — Rule 13(3)

Citation : (2004) 113 DLT 349

Hon'ble Judges : Gita Mittal, J;Dr. M.K. Sharma, J

Bench : Division Bench

Advocate : Sanjay M. Tripathi, for the Appellant; B.K. Berera, for the Respondent

Final Decision : Dismissed

Judgement

Mukundakam Sharma, J

1. This writ petition is filed by the petitioner praying for quashing of the order of the respondent No.2 dated 1.5.2002 whereby the request for further extension of service of the petitioner was rejected. The other relief which is claimed in this writ petition is that respondent No.2 should be directed to grant further extension of service to the petitioner.

2. The petitioner was initially enrolled in the Kumaon Regiment on 29.6.1978 and after about 20 years of service, the petitioner was discharged at his own request on compassionate grounds under Army Rules 13(3) Item III(iv) effective from 1.1.1998. He was drawing service pension for the service rendered with Kumaon Regiment. The petitioner was re-enrolled into defense Security Corps on 31.3.1998 for an initial term of engagement of 5 years. The petitioner completed the aforesaid period of engagement of years. In December 2001, the petitioner submitted his willingness certificate for extension of service for another period of 5 years. The said request of the petitioner was, however, rejected by the respondents and he was not granted extension and, the refor, the present writ petition is filed in this Court seeking for the aforesaid relief.

3. It was submitted before us by the counsel appearing for the petitioner in support of the writ petition that when the petitioner was willing for extension of service and he was also satisfying the minimum criteria required for such extension, the respondents could not have denied the benefit of extension of service to the petitioner. It was also submitted that although grant of such extension of service is a discretionary power of the respondents but the aforesaid discretion is not unfettered and unqualified.

4. It was also the further contention that when the petitioner submitted his willingness he did not earn any disqualification during the period of his service on extension and, Therefore, ordinarily an order should have been passed extending the service of the petitioner and having not done so, the respondents acted with highhandedness and, Therefore, the writ petition should be allowed by directing the respondent No.2 to grant extension of service to the petitioner.

5. Counsel appearing for the respondents, however, has drawn our attention to the statement made in the counter affidavit wherein an indication has been given regarding the conduct and the nature of service rendered by the petitioner during the initial period of his service of five years given on extension. It is pointed out by the counsel for the respondents that the petitioner earned three red ink entries during the initial five year term of the engagement.

6. Our attention was also drawn to the fact that the respondent No.2 has not recommended the extension of the petitioner for the reasons recorded in his capacity as Officiating Officer Commanding, wherein the following nothings appear:

""(a)A case of low medical category for two ailments, i.e. S1H1A1P2 (Permt.)E1 on account of Pulmonary Tuberculosis and S3(T-24) on account of Alcohol Dependence Syndrome (ICD-303). As per the opinion of Medical Board the individual has to work under supervision.

(b) Lethargic, inefficient and not conducive to mi1 service due to medical as well as attitudinal reasons.

(c)The individual lacks proper discipline. Has incurred one red ink entry on 11 Dec. 2001 under AA Sec. 63 "VIOLATION OF GOOD ORDER AND MILITARY DISCIPLINE" for improperly keeping a woman in his quarter being a widower an act prejudicial to good order and military discipline.

(i). Action on two more cases of indiscipline is also pending due to his Hospital Admission.

(d) Individual holding the post of Hav Clk of 83 DSCP1 since 26th April 2001. But in the past 309 days, he has physically served only for 126 days. The rest of the period has been spent in Hospital, leave or sick leave. As per records held, this had been his trend in the past unit also where he could not even complete the mandatory period for initiation of ACR. The trend is likely to continue in future also. Hence the individual is apparently more or less a liability to the unit as well

the Organization."''

7. The aforesaid reasons for not recommending is also annexed as Annexure-R-1 to the counter affidavit. It was also brought to our notice that petitioner's wife Smt. Hema Rawat had died on 11.9.2001 due to consumption of poison and not because of Pulmonar Tuberculosis, as claimed by the petitioner, which is established from a bare perusal of the death certificate and the intimation received from forensic department annexed as Annexure-R-4 to the counter affidavit.

8. We have considered the records in the light of the submissions of the counsel appearing for the parties. The reasons for not recommending the extension of service in respect of the petitioner have been set out. The aforesaid reasons and the grounds cannot be said to be arbitrary or whimsical or unreasonable. The records also disclose that DDG, DSC is the competent authority for grant of extension of service and also to disapprove extension of service. Respondent No.2 is merely a recommending authority. Once respondent No.2 sends his recommendations, the said recommendations are to be endorsed by two more recommending authorities before DDG, DSC takes a decision in the matter. In the present case, the respondent No.2 did not recommend the case of the petitioner for further extension giving the reasons for not recommending his case. Two recommending authorities endorsed the aforesaid recommendations. Even thereafter DDG, DSC applied his mind and thereafter he disapproved the extension of service the petitioner.

9. The service of the petitioner was not extended on the ground that the petitioner was not satisfying the overall standard prescribed. The said decision was taken after considering the entire service profile of the petitioner for the five years of initial appointment. It is clear that the competent authority has taken the decision after considering all the relevant factors including the reasons which have been set out hereinabove. The power exercised is discretionary and if it is found that the sai power is exercised bonafide, there should be no interference with such bonafide exercise of power. After considering all the materials on record, we are satisfied that no ground is made out in the writ petition. The same is found to be without merit and is dismissed.