

(2007) 07 DEL CK 0158
In the Delhi High Court
Case No : Writ Petition (C) 4846 of 2007

SGT. A.K. Solanki

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 26-07-2007

Acts Referred:

Citation : (2007) 07 DEL CK 0158

Hon'ble Judges : T.S. Thakur, J;S.N. Aggarwal, J

Bench : Division Bench

Advocate : D.K. Sharma and O.S. Soran, for the Appellant; Sonia Mathur, for the Respondent

Final Decision : Allowed

Judgement

T.S. Thakur, J.—Issue Rule. With consent, the petition has been heard for final disposal.

2. The petitioner was working as an Airmen/ Air Worrier in the cadre of a Sergeant. He has, in the present petitioner, prayed for a writ of certiorari quashing signal dated 6th January, 2007 whereby his request for extension of engagement has been declined. A further writ in the nature of certiorari quashing another signal dated 22nd January, 2007 whereby he has been directed to be discharged from service w.e.f. 31st January, 2008 has also been prayed for. The controversy arises in the following circumstances:

3. Sergeants (Airmen/Air Worriers) serving in the Air Force are, in terms of the prevalent policy, entitled to the grant of extension in their service for a period of six years on satisfaction of the conditions stipulated in the relevant policy. One of the requirements for the grant of extension is that the officer must have passed his promotion examination for promotion to the rank of Junior Warrant Officer. The petitioner has been declined extension in his service on the ground that he had failed to pass the said examination in the permissible three attempts under the scheme. Consequently orders for his discharge from service w.e.f. January,

2008 have been issued, as already noticed earlier. Aggrieved, the petitioner has assailed the denial of extension as also the direction for his discharge from service in the present writ petition.

4. The petitioner's version is that he had attempted on two earlier occasions to pass the JWO promotion examination but failed to do so. The third attempt which the petitioner made in March, 2005 was also not successful not because the petitioner did not meet the benchmark for passing the examination but because he was sick during the period the said examination was held. The petitioner's further case is that he had submitted a representation to the Commanding Officer in July, 2005. A copy whereof has been enclosed with the petition as Annexure P-2, which was recommended by the Commanding Officer to the Higher Authorities for grant of another chance to him, keeping in view the fact that the petitioner was not medically fit when he took the third and the last chance available to him. According to the petitioner, he was, pursuant to the said recommendation, allowed to appear in JWO Promotion examination held during August, 2005 to January, 2006, the result whereof was declared on 14th November, 2005. The petitioner was declared successful in the said examination with 90% marks. Instead of granting an extension in service to the petitioner as per the prevalent policy, the respondents have canceled his result in terms of a cancellation order dated 28th April, 2006 on the ground that he had exceeded the number of attempts permissible under the Rules. The petitioner's case in the above backdrop is that the cancellation of his result and consequent denial of promotion to him on the ground of his not having passed the promotion examination as also the proposed discharge from service are all illegal hence liable to be quashed.

5. On behalf of the respondents, Ms. Mathur has placed on record certain documents relevant to the issue before us and strenuously argued that the petitioner having already exhausted three attempts before the introduction of the new scheme of examination, was not entitled to appear for the fourth attempt. She submitted that the petitioner's appearance for the fourth attempt under the new scheme of examination was by mis-representation and concealment of the true fact regarding his having already exhausted three attempts. She further argued that, if the petitioner's result for the fourth attempt was excluded from consideration, he was not eligible for the grant of any extension inasmuch as passing of the examination in three attempts was a condition precedent for any such consideration.

6. We have given our careful consideration to the submission made at the bar and perused the record. The material facts do not appear to be in serious dispute. It is not in dispute that the petitioner would be entitled to grant of extension in his engagement, if he had passed the JWO Promotion examination within three attempts admissible under Rules. It is also not in dispute that the petitioner had indeed made three attempts for passing the said examination while the old scheme was prevalent and failed in all the three attempts. The

petitioner's case, however, is that the third and the last attempt made under the old scheme was, in fact, no attempt inasmuch as the petitioner was not medically fit to give his best in the said attempt. In support of that submission, the petitioner has placed heavy reliance upon the recommendation of his Commanding Officer which is to the following effect:

Remarks By Commanding Officer

1. The SNCO is a sincere and hard working individual.
2. My considered opinion is that he deserves to be given another chance to clear the promotion exam. This is specially so, as he was not fully fit medically to undertake the commitment last time.
3. The request of the SNCO is strongly recommended for favorable disposal.

Sd/-

(Sanjay Chaudhri)

Wing Commander

Commanding Officer

Date : 22 Jul 05 HQWAC(U), AF

7. It is also not in dispute that the petitioner was allowed to appear in the examination by the respondents treating him eligible for the same and even his result was declared. The result of the examination as evident from a Personal Occurrence Report dated 20th December, 2005 shows that the petitioner was declared successful with 90% marks in the examination which incidentally happens to be one of the highest percentage secured by any other candidate. According to the petitioner, the attempt made by him was fully authorized as the same having been permitted by the respondents pursuant to the recommendation made by the Commanding Officer extracted above. The respondents, however, assert that the fourth attempt was on account of suppression of the true facts by the petitioner inasmuch as the petitioner had not disclosed that he had earlier made three attempts. They rely upon the application form of the petitioner in which the petitioner has declared that he has not made any earlier attempt. The petitioner has offered an Explanation to this discrepancy and filed an additional affidavit. According to the petitioner, since the scheme under which the examination was being held had been replaced by a new scheme, the remark that the petitioner had not made any attempt simply meant that he had not made any attempt under the new scheme of examination. That Explanation cannot be said to be wholly unacceptable. There is no dispute that the scheme of examination had, indeed, undergone a change. The scheme under which the petitioner was allowed three chances was replaced by a new scheme under which the petitioner was appearing for the first time. The petitioner's understanding that the column in the application form requires a declaration whether the attempt in question is the petitioner's first attempt in

the new scheme, cannot be said to be wholly misplaced. There was a possibility of a bonafide mistake on the part of the petitioner in not making any mention about the earlier attempts. The application form did not, admittedly, require him to declare the attempts under the old scheme. It is, in that view, difficult for us to throw out the petition on the ground that the petitioner had suppressed the facts and thereby managed to take the examination.

8. Superadded to the above, is the fact that the petitioner has produced before us the recommendations made by the Commanding Officer under whom he has served. The recommendation also supports the petitioner's version that the third attempt made by him under the earlier scheme was no attempt because he was sick during the period he appeared in the examination. The respondents have not produced the relevant record to show as to how the recommendation by the Commanding Officer was processed or dealt with. There is nothing to show that the recommendation was turned down and the petitioner's request for promotion to appear in the fourth attempt rejected under intimation to him. He was, Therefore, entitled to assume that his appearance in the examination was, pursuant to the request made by him for an additional attempt and the recommendation made in his favor by the Commanding Officer.

9. It is also noteworthy that the petitioner's version regarding the earlier three chances taken by him was looked into by the Commanding Officer and a recommendation made for giving him another chance. According to the petitioner, he was a victim of bias of the earlier Warrant Officer who conducted the examination. He had intentionally made sure that the petitioner did not pass the examination. The Commanding Officer was satisfied about the mischief played by the said officer. The petitioner had been working under the command and personal supervision of the Commanding Officer, who had assessed his performance over the past five years to be excellent. The petitioner's case was, in that view, recommended to the higher authorities for grant of yet another chance to him. The recommendation made by the Commanding Officer on 5th April, 2005 in this connection reads:

Remarks By Commanding Officer

1. Interviewed the SNCO. As per SNCO's statement, all the three chances of his GEB Examinations were conducted by the same WO who was biased and intentionally did not make him pass/clear.

2. SNCO has been working directly under my command and personal supervision and his performance in all fields is excellent. His assessment in the last five years is excellent.

3. Recommended and forwarded for due justice to the SNCO.

Sd/-

(D V Verma)

Gp Capt

Commanding Officer

Date : 05 April 05 HQWAC(U), AF

10. The above recommendation was strongly supported by the Command Education Officer, Head Quarter, WAC 1AF. The recommendation made by Group Captain A. Nanvaty may also be extracted at this stage:

Remarks by Commanding Education Officer

The case is strongly recommended for the check of the veracity of the points put forward by the airman. In case there is an element of truth, the airman may be allowed to appear in GEB with different set of examiners specially in the light of the remarks by the Commanding Officer.

Sd/-

(A Nanavaty)

GP Capt

C Edn O

Date : HQ WAC 1AF

11. We may also at this stage refer to the assessment of the petitioner's work and performance by his Commanding Officer recorded as late as on 17th April, 2006. Sh. N. Pant, Adjutant of WAC (U) recorded the following remarks regarding the petitioner's work and conduct. The remarks reads as under:

The specialist Officer is to record his opinion, in narrative form, highlighting suitability of airmen/NCs(E) for performance of duties specific to his trade, including on medical grounds.

The SNCO is very positive, hard working, reliable and efficient. He is an asset to the organization.

Sd/- Date : 17 APR 2006 Signature of Specialist Officer Unit : HQ WAC (U)
Name : N Pant Rank : Wg Cdr Designation : Adjutant

12. In the light of the above remarks which describe the petitioner's performance all through to be excellent, it is difficult for us to hold that the examination taken by the petitioner which he has passed with flying colours could be ignored and the petitioner denied what was legitimately due to him on that account. If the petitioner is an excellent officer, positive, hard working, reliable and efficient and if he is, in the opinion of his superiors, an asset for the organization and is strongly recommended for extension of his engagement, there is no reason why the examination already taken by him, in which he has passed, should have been canceled and the benefit of extended service denied to him.

13. The argument that the petitioner was entitled to only three chances under the scheme to pass the examination and that the fourth chance taken by him was unauthorized, has not impressed us. We say so because on the recommendations of the officers of respondents themselves, the third attempt made under the old scheme was not a real or effective attempt inasmuch as the petitioner was not medically fit for the attempt undertaken by him. So also the allegation made by the petitioner that the examiner was biased has not been repelled by anyone in the hierarchy. If that be so, the grant of permission to appear in the fourth attempt in which the petitioner eventually proved successful cannot be said to be a result of any misrepresentation so as to disentitle the petitioner to the benefit thereof.

14. In the result, this petition succeeds and is hereby allowed. The impugned orders whereby the petitioner's JWO promotion examination was canceled, extension in his service declined and his discharge from service sanctioned, shall stand quashed. Since the only ground on which the petitioner's claim for extension in service was rejected is no longer available to the respondents, the petitioner shall be entitled to consideration for grant of extension in service in accordance with the norms and the policy on the subject treating the JWO Promotion examination to have been validly passed by him.

15. We make it clear that this order shall not affect the validity of the petitioner's transfer and posting to Nalia where he has been sent. As a matter of fact, learned Counsel for the petitioner makes a statement before us to the effect that the petitioner is, in the changed circumstances, ready and willing to join at Nalia, the new place of posting. He shall accordingly do so by 20th August, 2007.

16. No costs.