
(2012) 01 DEL CK 0319
In the Delhi High Court
Case No : WP (C) No. 424 of 2012

Sh. Kishan Pal Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 23-01-2012

Acts Referred:

Citation : (2012) 01 DEL CK 0319

Hon'ble Judges : J.R. Midha, J;Anil Kumar, J

Bench : Division Bench

Advocate : Deepakshi Jain, for the Appellant; Utkarsh Sharma, Advocate for Mr. B.V. Niren, Advocate for Respondent Nos. 1 to 4, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The petitioner, is a constable G.D. and has sought quashing by the respondents of the adverse entries made in the ACRs of the petitioner for the year 2002 and has also sought quashing of communication dated 2nd May, 2008 and list "C" of 2007. The petitioner has also sought directions to the respondents to draw a fresh seniority list without considering his adverse entry of the ACR of 2002 and to include his name in the list "C" of 2007 onwards and to award him ACP as per the rules and his seniority.

2. The petitioner contended that a major punishment was imposed on him by the Summary Force Court by order dated 20th March, 1998, sentencing him to 70 days of rigorous imprisonment in forced custody w.e.f. 20th March, 1998 to 28th May, 1998. On account of this punishment, adverse entries were made in his ACR for 2002.

3. The petitioner contended that the said adverse entry made in the ACR of 2002 was not communicated to him and he was not given an opportunity to explain himself or make a representation against the same. However, the petitioner on his own had written various letters to clarify his stand regarding the adverse entries in his ACR of 2002 since he became aware of the same. However,

according to the petitioner his representations have not been taken into consideration by the respondents.

4. The petitioner contended that subsequently he received a letter dated 2nd May, 2008 stating that his name could not be considered for the List "C" of 2008 due to the adverse entries in his ACR for the year 2002. In July and August, 2010 the name of the petitioner was again missing from the seniority in the "C" list. The petitioner thereafter sent a notice dated 2nd August, 2011 to which a reply dated 18th November, 2011 was received, disclosing that the petitioner was suspended for the period of 57 days with effect from 22nd January, 1998 to 19th March, 1998 while he was posted with the 25th Battalion and was awarded 70 days of rigorous imprisonment in force custody with effect from 23rd March, 1998 upto 28th May, 1998. It was further stipulated that regarding the ACR of 2002, since the petitioner had not represented against the same, it was viewed as an acceptance of the grading given to him, which is why he was graded as Below Average. It was also specified that the adverse remark was communicated to the petitioner by the 25th Battalion letter No. 2003 dated 18th March, 2003.

5. A prohibition was also imposed on the petitioner for five years to be eligible for the next promotion on account of the major penalty and, therefore, the name of the petitioner could not be included in the "C" list. It was also disclosed that after the completion of the punishment tenure the name of the petitioner had been placed at Srl.No.1 in the "C" list of 2009 and his overall seniority was fixed at 224.

6. The learned counsel for the petitioner has approached this Court in its writ jurisdiction for seeking to quash the adverse entry in the ACR of 2002 which was communicated to him on 18th March, 2003. Firstly the learned counsel for the petitioner is unable to show any cogent or sufficient reason for challenging the adverse entry made in the ACR of 2002 by filing the petition in 2012.

7. The learned counsel for the petitioner has relied on W.P(C) No. 18820/2006 decided on 11th January, 2007 titled as "Ex. Sepoy Bishan Lal v. Union of India & Ors" to contend that delay per se may not be a ground for rejecting the writ petition. The petitioner in the instant case had claimed disability pension as the same had not been paid to him though the petitioner was subjected to medical examination and was subsequently discharged under Rule 13(b) of the Army Rules. It was observed that the petitioner had been corresponding with the respondents and he had also filed appeals before the competent authority. The learned counsel has also referred to the observation of this Court in Ex.Sepoy Bishan Lal (supra) holding that even if the cause of action had arisen more than 15 to 20 years back but the same was revived by subsequent rejection of the claim of the petitioner by the competent authority especially as the claim of the petitioner was a recurring cause of action.

8. The learned counsel for the respondent who appears on advance notice has contended that the writ petition is liable to be dismissed on account of delay and

latches as the claim of the petitioner is stale. The learned counsel for the respondents have further contended that the precedent of Ex.Sepoy Bishan Lal (supra) relied on by the petitioner is distinguishable as it pertains to the claim of the disability pension which has a recurring cause of action in contradistinction to the claim of the petitioner in the present matter who is seeking to expunge the adverse remarks made in his ACR of 2002. The learned counsel for the respondent has contended that expunging of the adverse comment made in the ACR of 2002 after more than 9 years could not be construed as a recurring cause of action and, therefore, the ratio of Ex.Sepoy Bishan Lal (supra) is not applicable to the facts and circumstances of the case of the petitioner.

9. This Court has heard the learned counsel for the parties in detail. This is not disputed that the claim of the petitioner is not regarding his pension as the petitioner is still employed in the service. The petitioner is seeking the expunging of the adverse remarks made in his ACR of 2002, on account of the petitioner being awarded a major punishment of 70 days rigorous imprisonment in force custody with effect from 23rd March, 1998 to 28th May, 1998. The learned counsel for the petitioner is unable to give any satisfactory answer as to how this can be a recurring cause of action as has been sought to be alleged by the learned counsel.

10. The principles underlying continuing wrongs and recurring/successive wrongs are completely distinctive and connote the applicability of entirely different set of principles. A "continuing wrong" refers to a single wrongful act which causes a continuing injury whereas "recurring/successive wrongs" are those which occur periodically, each wrong giving rise to a distinct and separate cause of action. However, if the wrongful act causes injury which is complete, then there is no continuing wrong, even though the damage resulting from the act may be continuing.

11. It is no more *res integra* that a belated service related claim is liable to be rejected on the ground of delay and latches (where remedy is sought by filing a writ petition) or limitation alone (where remedy is sought by an application to a Tribunal). Exception to the said rule is only in relation to a continuing wrong.

12. There is another exception that if the grievance is in respect of any order or administrative decision which relates to or affects several others also, and if the reopening of the issue would affect the settled rights of third parties then the claim will not be entertained even if it is a continuing wrong though in the case of petitioner it is not even a case of continuing wrong.

13. In the case of *M.R. Gupta Vs. Union of India and others*, it was held as under:-

7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing

wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.

14. It has been held in a number of cases by the Supreme Court as also this Court that stale claims should not be entertained by the Courts and failure to make out grounds to condone the delay in seeking remedy in law is sufficient in itself to oust the petitioner. In this connection, reference can be made to the following precedents:

(i) Rajalakshmiah v. State of Mysore, AIR 1967 SC 993

(ii) Jagdish Narain Maltiar Vs. The State of Bihar and Others,

(iii) C.B.S.E. Vs. B.R. Uppal and Others,

(iv) Savitri Sahni Vs. Lt. Governor, NCT of Delhi and Others,

15. In Shiv Dass Vs. Union of India (UOI) and Others, the Supreme Court had held at page 277 in para 8 as under:

8. ? The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third-party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction.

16. The learned counsel for the petitioner has not even averred any reason for the inordinate delay in the entire writ petition seeking the expunging of the adverse remarks in the ACR of 2002 on account of punishment awarded to the petitioner. Even if the petitioner is entitled for the relief claimed by him, the granting of the same shall impact a number of other persons who have already

been promoted whereas the petitioner had not been put in the list "C" till 2009 when his overall seniority was fixed at 224 due to the prohibition imposed by way of the major punishment. The learned counsel for the petitioner has been unable to contend any cogent grounds that would show that the petitioner was entitled for the fixing of his seniority in the "C" list prior to 2009 inspite of the major punishment imposed on him, in the facts and circumstances.

17. In the totality of facts and circumstances and for the foregoing reasons there are no grounds to interfere with the decision of the respondents as the petitioner has failed to make out any illegality, irregularity or any such perversity or any jurisdictional error which shall require any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The writ petition is, therefore, dismissed.