
(2002) 07 DEL CK 0050
In the Delhi High Court
Case No : CWP No. 4054 of 2001

Sh. Omveer Singh Panwar	Vs	APPELLANT
Union of India (UOI) and Others		RESPONDENT

Date of Decision : 25-07-2002

Acts Referred:

Citation : (2002) 07 DEL CK 0050

Hon'ble Judges : S.B. Sinha, C.J;A.K. Sikri, J

Bench : Division Bench

Advocate : Rakesh Kumar, for the Appellant; Kirit Javli and Navin Chawla, for the Respondent

Judgement

A.K. Sikri, J.—The petitioner is aggrieved by the action of the respondents in denying him the appointment to the post of "Soldier Clerk" in the Army which petitioner describes as illegal, arbitrary and discriminatory. It is so because according to him, after having undergone the selection process, he was declared successful therein. He has, Therefore, filed the present writ petition, inter alia, praying that the letter dated 23rd March, 2001 vide which he was denied the appointment be quashed and mandamus be issued to the respondents to issue him an appointment letter for the post of "Soldier Clerk" forthwith and he be sent for training for incorporating him in the permanent cadre corps in the strength of the Indian Army.

2. The facts, as disclosed by the petitioner in the writ petition claiming the aforesaid relied, make the following reading:

3. The petitioner on 8th November, 2000 visited the office of the respondent No. 3 and came to know that a rally selection for 153 posts of general duty, nursing clerks and soldier clerks is about to take place on 13th November, 2000 for Delhi, Gurgaon and Faridabad zone. The eligibility conditions prescribed by the office of the respondent No. 3 were that the candidate should be high school level. The petitioner got his name entered in the rally register at the office of the

respondent No. 3. He was asked to report on 13th November, 2000 in the selection grounds for the aforesaid tests. The petitioner had opted for the post of Soldier Clerk.

4. The number of vacancies for the aforesaid post were 24. It is also stated in the petition that according to the practice followed at the selection grounds on 13th November, 2000, the petitioner was asked to line up Along with the other candidates with his original documents regarding his education for the purpose of verifying the original documents. This verification is undertaken before a candidate is made to appear in the written test to short list the candidates who fulfill the eligibility criteria. The documents of the petitioner were verified by the competent authority at his turn and he was found eligible for undergoing the aforesaid tests. The original Date of Birth Certificate of the petitioner was marked with the seal of I.R.O., meaning thereby that the petitioner was eligible to be sent for the said tests. Thereafter, the short listed candidates were made to undergo physical test, which included 1600 meter race, pit jumping, crossing of beams etc. The petitioner duly qualified in the physical test. The documents of the petitioner were once again verified according to the practice prevalent in the Selection Board. As he was declared successful in the physical test, he was asked to appear for the medical examination conducted on 14th November, 2000. He cleared that as well. Thereafter, he appeared for written examination Along with short listed candidates on 26th November, 2000. The result of the written examination was declared on 11th December, 2000 wherein 24 candidates were declared successful out of 153 short listed candidates. The petitioner's name was also found placed in the said list. He was accordingly asked to come on 17th December, 2000 with the original educational qualification documents. After seeing and verifying the original documents, the competent officer asked the petitioner to deposit the photocopies of the documents with the office of the respondent No. 3 for the purpose of getting them verified from the Board/University which had issued the certificates and the petitioner was asked to report on 22nd December, 2000 for checking the position of the verification of documents. The practice which is followed by the Recruitment Board is that as soon as the report from the concerned Board/University is received by the office of the respondent No. 3 and the documents are found genuine, the candidate is issued traveling warrants to report to the appointed training centre.

5. Thereafter, the petitioner made personal visits to the office of the respondent No. 3 after 3-4 days periodically to verify as to whether his verification had been done. The verification report on the documents of the petitioner was received by the office of the respondent No. 3 in the third week of January, 2001. The petitioner was informed on 25th January, 2001 that the report regarding verification of his documents had been received and he was once again directed to undergo the medical examination for the purpose of sending him to the training centre. He was cleared in the medical examination once again whereupon he was asked to report on 29th January, 2001 at 8 AM in the office of the respondent No. 3 Along with his bag and baggage for collecting travel

documents/railway warrants for going to Ahmednagar, Maharashtra. The petitioner reached the office of the respondent No. 3 at 8 AM on 29th January, 2001 for this purpose. His training papers, rahdari certificate and railway warrants were prepared along with other candidates. However, at about 5 PM on that date he was informed that he could not be recruited in the Army as Soldier Clerk since he was not eligible for the aforesaid post. No reasons were assigned.

6. The petitioner further states in the writ petition that he thereafter made number of personal visits to the office of the respondent No. 3 and sought to know the reason why he was not sent for training. NO satisfactory reply was given and rather he was threatened of dire consequences. He thereafter even sent letter dated 21st March, 2001 wherein he demanded the reason for not sending him to the training centre despite his having been selected in accordance with procedure and practice.

7. In reply the petitioner received letter dated 23rd March, 2001 whereby for the first time he was communicated that he was not eligible for the post of Soldier Clerk as he had cleared his Mathematic subject in 10th Class examination with the help of three grace marks. He was also asked to collect his original certificates from the office of the respondent No. 3.

8. The petitioner tried to meet the senior officials and asked for judicial enquiry and further requested that he be sent to training centre for undergoing training. However, all his attempts went in vain and in these circumstances, he filed the instant writ petition on 9th July, 2001.

9. At this stage, we may reproduce the relevant text of letter dated 23rd March, 2001 as per which the petitioner was informed that he was not eligible for the post of Soldier Clerk. Para 2 of this letter reads as under:

"Regarding your aforesaid letter, we have already intimated to you that you are not eligible for the post of "soldier clerk" because you have passed Mathematics examination in 10th class with a grace mark. For the post of "soldier clerk" a candidate should have passed Mathematics and English examination without grace marks. Therefore, your candidature has been cancelled."

10. The reason given by the respondents in treating the petitioner as ineligible for the post is that he had passed mathematics examination of 10th class with grace marks. It is this reason which is challenged by the petitioner in this writ petition and his submission is that he cannot be rendered ineligible on the aforesaid ground.

11. Starting point, while drawing the aforesaid controversy, would be the advertisement which was issued for recruitment to the post of Soldier Clerk. The English translation of this advertisement prescribes for educational qualifications as metric pass with English and Math subjects. There is no dispute about the fact that the petitioner possesses the metriculation certificate and he had studied at metriculation level, both English and March subjects. Normally, when a person

has successfully passed his matriculation whether he passed with grace marks or not, may not be a relevant factor. Grant of grace marks by a particular Board from where a student passes the said examination would be governed as per the rules of the said Board and if rules/regulations permit so, grace marks would be given and ultimately the student would be treated as having passed the matriculation examination.

12. Still this aspect was specifically adverted to by the respondents authorities and a clarification was issued way back in the year 1996. By circular letter dated 19th January, 1996 issued on behalf of Adjutant General, it was stated as under:

"The issue of accepting candidates who possess minimum laid down educational standards but failed in the special subjects has been re-examined and decided that with immediate effect it would be mandatory for a candidate seeking enrolment in Army to have the requisite laid down educational standards along with also having passed in the special subjects laid down for specific trade/cat/ Any candidate although has passed the laid down educational standards but failed in the special subject will not be considered eligible for enrolment in that category/trade in Army."

13. Thus, in the aforesaid letter, what was stated that it was incumbent upon the candidate to have passed the special subjects as well as which included Mathematics. Whether it was necessary to pass this subject with grace marks was the subject matter of controversy thereafter on which the recruiting office of the Army sought further clarifications. This aspect was clarified by the same branch vide letter dated 13th June, 1996 clarifying that candidates who had passed their matriculation examination with grace marks were eligible for enrolment provided that they had requisite subjects in their matriculation as laid down in SAO 4/S/71. These subjects, as noted above, are English and Mathematics.

14. When the petitioner applied for the aforesaid post in response to the advertisement in question and produced the certificates regarding his educational qualifications etc. as well, the respondents, prima facie, felt satisfied with the educational qualifications of the petitioner and he was allowed to undergo the selection process. He passed the physical test, medical examination, written examination and again physical test, in that order and was successful. The respondent No. 3 at that relevant time was in possession of aforesaid clarification dated 13th June, 1996 as per which passing a particular subject even with grace marks would make a candidate eligible for enrolment. The petitioner had passed the Mathematics after getting 3 grace marks. The respondents, in these circumstances, could act on the aforesaid clarification dated 13th June, 1996 and send the petitioner for training. However, in spite of a clear mandate given in letters dated 19th January and 13th June, 1996 the Adjutant General's branch was asked to give the following clarification:

"A candidate for enrolment into Sol Clk Cat is required to have passed metric

with English and Maths. Vide your letter No. A/62531/Rtg 5(OR(A) dt. 19 Jan 96 the candidate should have passed in both these subjects i.e. English and Maths to be eligible for enrolment. However, a doubt has arisen as to whether a candidate who has passed since these subjects with grace marks are eligible for such enrolment in terms of your letter No. 62531/Rtg 5 (OR(A) dt 13 Jan 96 photocopies of above letters are enclosed for ready ref.

An early clarification is requested."

15. Vide reply dated 26th May, 2000 the respondent No. 3 was informed that the clarification dated 13th June, 1996 still holds good. Para 2 of this letter states:

"It is intimated that this HQ letter No. 62531/Rtg 5 (OR(A) dated 13 Jun 96 still holds good. As such a candidate who has passed metric with mandatory subjects specified for the category either with grace marks or otherwise, is eligible for enrolment."

16. This should have satisfied the respondent No. 3. Still, for the reasons best known to him, the respondent No. 3 continued to correspond with Adjutant General's branch and further exchange of letters followed. In one of its letters dated 6th February, 2001 specific query in the following manner was raised and an answer was elicited from the Adjutant General's branch:

"A case has now come up for enrolment into Clk Cat, wherein a candidate has produced a metric pass certificate with the subjects English, Maths, Science etc. as specified for the Clk category. However, on scrutiny of his mark sheet it is observed that the candidate had obtained 30 marks in Maths (pass marks being 33) and declared pass with grace marks (photocopy encl.). It does not mention that individual has failed in the Math subject.

In view of the above please clarify whether he said candidate is eligible for enrolment or not to avoid any legal complication at a later stage."

17. This time, curiously, the Adjutant General's branch took a turn around and stated that the petitioner was eligible only for the post of Soldier GD/Soldier Tradesmen. Vide his reply dated 6th February, 2001 it appears that this matter was thereafter taken up at Headquarter level and ultimately the Adjutant General's branch on the basis of clarification given by the Headquarter, issued circular dated 8th June, 2001 stating that earlier dated 13th June, 1996 should be treated as cancelled. This two line letter reads as under:

"Ref this HQ letter of even number dated 09 Aug 2000.

Considering the clarification given vide this HQ letter quoted above, this HQ letter No. 62531/Rtg 5 (OR)(A) dt 13 Jun 96 may please be treated as cancelled."

18. the admitted position which emerges, from the aforementioned sequence of events, can be summarised in the following manner:

The initial stand of the respondents as per letter dated 19th January, 1996 was

that a candidate having passed the metriculation examination should pass in the special subjects. In this letter, it was nowhere stated as to whether that these special subjects must be cleared without the aid of grace marks. Thereafter, vide letter dated 13th June, 1996 it was amply clarified that a candidate who passed the requisite subject even with grace marks would be eligible for enrolment. In view thereof, there was no need to ask for any clarification when the candidature of the petitioner was considered for the post of Soldier Clerk. In fact initially no such clarification was even sought and the petitioner went through the entire selection process and was declared successful. Only when the time for the petitioner to send him for the training came, that the respondent No. 3 started seeking clarification. Even initial clarification was that the petitioner is eligible. Thereafter, for the reasons best known to the respondents, came out with the plea that the petitioner would not be eligible. Interestingly, this change of mind was not the "clarification" of the position contained in letters dated 19th January and 13th June, 1996. In fact the respondents knew too well the implication of letter dated 13th June, 1996. It is for this reason that vide letter dated 8th June, 2001 the Headquarter has withdrawn its earlier letter dated 13th June, 1996. Thus, the decision is taken now to the effect that the essential that the essential subjects should be passed without the grace marks. However, when the petitioner applied and was selected for the post of Soldier clerk, the decision of the respondents which held the field was contained in its circular letter dated 13th June, 1996 as per which a candidate having passed the metriculation examination with grace marks also was eligible for enrolment. If this decision is now withdrawn on 8th June, 2001 and the effect of that is that the respondents would treat only those candidates who passed the requisite subjects without grace marks, such a decision cannot be applied retrospectively in the case of the petitioner who would be governed by the earlier decision dated 13th June, 1996. The petitioner, Therefore, could not be denied appointment to the post of the Soldier Clerk.

19. The law on this subject is well settled and the issue is no more rest integra. It is title law that even a statute or statutory rule is prospective unless it is expressly or by necessary implication given the retrospective effect. In so far administrative decision is concerned, which is the case here, it cannot be retrospective, more so, when it acts to the prejudice of a person in whose favor a right has already accrued. This principle stands settled in catena of decisions rendered by the Supreme Court. Without referring to all these decisions, purpose would be served by mentioning the judgment of the Supreme Court in the case of P. Mahendran v. State of Karnataka reported in : (1990)ILLJ337SC wherein it was observed:

"It is well-settled rule of construction that every statute or statutory rule is prospective unless it is expressly or by necessary implication made to have retrospective effect.

The court observed that:

"Since the amending Rules were not retrospective, it could not adversely affect the right of those candidates who were qualified for selection and appointment on the date they applied for the post, moreover as the process of selection had already commenced when the amending Rules came into force, the amended Rules could not affect the existing rights of those candidates who were being considered for selection as they possessed the requisite qualifications prescribed by the Rules before its amendment."

20. The aforesaid judgment has also been followed by the Supreme Court in the case of Gopal Krushna Rath v. MA.A.A. Baig (dead) Lrs. and Ors. reported in 1998 (7) SLR 515.

21. The facts of this case are more or less similar to the instant case which would be clear from the following observations made in this case:

"5. It is an accepted position that on the date of advertisement and on the last date prescribed for the receipt of applications, the qualification prescribed by the University Grants Commission was 10 years" experience of teaching and/or research. Therefore, the advertisement also prescribed the same qualification. The appellant possessed that qualification. Even on the date when the Syndicate prepared an assessment chart, the position was the same. It was only thereafter, on 19.9.1991, that the new qualification regarding 10 years" teaching experience at the postgraduate level came into effect.

6. When the selection process has actually commenced and the last date for inviting applications is over, any subsequent change in the requirements regarding qualifications by the University Grants Commission will not affect the process of selection which has already commenced..."

22. This writ petition, Therefore, succeeds. The impugned decision of the respondents treating the petitioner as ineligible by its decision contained in letter dated 23rd March, 2001 is hereby quashed. Rule is made absolute. Direction is issued to the respondents to treat the petitioner as duly selected for the post of Soldier Clerk and send him forthwith for training for incorporating him in the permanent cadre corps strength of Indian Army. Although the petitioner shall not be entitled to any salary and allowances etc. for the intervening period, his seniority should be fixed taking into consideration his position in the merit list in the batch in which he was selected by properly placing him in the aforesaid batch and treating him as appointed with effect from the date other candidates who were successful in the aforesaid selection, in which the petitioner participated, were appointed. The said period shall be counted for seniority, notional fixation of pay and all other purposes except that the petitioner shall not be entitled to actual arrears of any for this period.

23. The petitioner shall also be entitled to cost quantified at Rs. 5,000/-.