

(1996) 08 PAT CK 0064
In the Patna High Court
Case No : C.W.J.C. No. 1320 of 1984

Shri S.P. Gorowara

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 01-08-1996

Acts Referred:

Citation : (1997) 1 PLJR 441

Hon'ble Judges : A.K. Ganguly, J

Bench : Single Bench

Advocate : S.N. Jha, for the Appellant; S.N. Pathak, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Ganguly, J.—This writ petition has been tiled by the Petitioner with a prayer for issuance of a direction upon the Respondents for setting aside the Annexure-12. By the said annexure a communication was sent to the Petitioner from the Army Headquarters, Delhi to the effect that on examination of the case of the Petitioner his prayer for grant of antedating his seniority on account of technical qualification cannot be granted.

2. From a perusal of the order, it appears that the Petitioner claims to have acquired Graduateship of the British Institute of Radio Engineers prior to 1959 and he was to pass in two more papers before claiming for antedating seniority and promotion under Army Instruction 126/51. By the said order the Petitioner was also informed that his case has been referred for consideration to M.E.S. Branch on merits and in the light of examples cited by the Petitioner about other officers.

3. Further prayer in the petition is for issuance of a direction upon the Respondents to treat the Petitioner to have obtained qualification of Graduateship prior to 1959. Further direction has been prayed for quashing Annexure-13 which says that the case of the Petitioner is not parallel to the case of 2nd Lt. V.E. Joseph.

4. The facts of the case in short are as follows:

When the writ petition was filed the Petitioner was posted as Deputy Inspector General (Wireless-Tech) Bihar Police, Patna on deputation from the Border Security Force. Thereafter the Petitioner retired on 31st May, 1988 and he was granted extension till 8th May, 1989. The service background of the Petitioner is that he joined in 1949 in Indian Army in the corps of Signal as Signaller Radio Mechanic. Thereafter, in the year 1954 he passed Graduateship of the British Institute of Radio Engineers. The Petitioner was thereafter transferred to the Reserve Establishment of the said Corps as a Lance Naik. The Petitioner was then posted in various places and on 21st January, 1963 he was selected for Emergency Commission and was sent for military training to Madras by Emergency Commission First Batch. In the said training there were two types of candidates. One was the Technical Graduates who are actually treated as Second Lieutenant while Non-Engineering Graduates were taken in as Gentleman Cadets. The Petitioner's claim is that he was treated as Second Lieutenant and not as a Gentleman Cadet. The Petitioner's further claim is that from 21st January, 1963 to 29th June, 1963, he should be treated as Second Lieutenant during the training. In the year, 1965 the Petitioner asked for two year antedating of his seniority and promotion and other consequential benefits in terms of Army Instruction 126 of 1951.

5. The Petitioner's prayer for antedating of his seniority for two years was recommended by the Commanding Officer of the Petitioner for ante-dating promotion for one and half years. Thereafter, the Petitioner was asked to obtain a clear certificate from British Institute of Radio Engineers showing that the Petitioner had appeared and passed in the two additional subjects, namely, Principles and Application of Electrical Engineering and Maths-II. The Petitioner's contention is that since he was selected and given Graduate Membership which was a stage higher than passing the Graduate Examination, the question of the Petitioner's passing the said two subjects did not arise.

6. The further grievance of the Petitioner is that one Second Lt. V.E. Joseph was given two years antedating of seniority and the consequential benefits. Joseph passed Engineering examination after getting commission from the Army. Therefore, claiming that preferential treatment should be given to the Petitioner similar to the one given to Mr. V.E. Joseph, he made a representation.

7. After representation of the Petitioner came a reply dated 23rd June, 1981 to the effect that the Petitioner cannot be given the benefit of antedating of seniority as he has not cleared the two subjects referred to above. The said communication is at Annexure-12 and has been impugned in this writ petition. The other impugned Annexure-13 is to the effect that the case of the Petitioner is not similar with the case of Second Lt. V.E. Joseph.

8. In the counter affidavit filed by one Major N.B. Pathak who described himself as an Officer Commanding, Station Workshop, Danapur Cant., it has been stated

that the Petitioner like many Ors. was entitled to improve his professional competence by passing various examinations but that by itself does not entitle him to claim the benefit of antedating of seniority. It has been further stated that on the date of his commission the Petitioner did not possess the requisite academic qualification of a technical graduate. This requirement of Technical graduate is of utmost importance for the purpose of granting the benefit of antedating seniority in terms of Army Instruction No. 126/51 read with Army Instruction 182/62. It is further stated that as a result of obtaining the degree from the Engineering Institute of India, in November, 1963 he becomes entitled to be treated as Technical graduate, but this qualification was not possessed by the Petitioner at the time of inception for training by the officers of the Training School for grant of commission on 30th June, 1983. In the counter affidavit it has been made clear that the Petitioner was brought under Army Instruction dated 11th May, 1963 and at that time he was not a Technical Graduate, and he was brought under Army Instruction only because he had the technical background at that time. He was sent for training in January, 1963, and at the time of applying of the Army Instruction dated 11th May, 1963 the Petitioner had acquired the prescribed qualification in terms of Army Instruction 126/51. In the counter affidavit it has been controverted, and this Court thinks quite rightly, that the conversion of the case of the Petitioner was shown not on the basis of his having passed graduateship examination of the British Institute in 1955, but because of the fact that the Petitioner acquired Engineering degree from the Engineering Institute of India in November, 1963.

9. It has been made clear by the Respondents that the Petitioner's passing of the examination from British Institute in 1954 was not an adequate qualification for antedating his seniority. It has been stated that the Petitioner has not passed in the two additional subjects namely, Principles and Application of Electrical Engineering and Maths-II which are the subjects required to be passed by him.

10. This Court finds substance in the case made out by the Respondents in the counter affidavit to the effect that the Army Instruction No. 126/51 being amended by Army Instruction No. 183/62 correctly lays down the position that the officer who passed Graduateship examination by British Institute prior to November, 1959 should clear the two additional subjects, as aforesaid, and produce certificate from the British Engineering Institute of London to that effect. It is not in dispute that the Petitioner did not pass the aforesaid two additional subjects and did not produce the said certificate, and as such, under the requirements of Army Instruction the Petitioner is not entitled to get the benefit of two years antedating of seniority.

11. In connection with the case of Second Lieutenant V.E. Joseph it has been stated by the Respondents that the said V.E. Joseph was applicant for the 7th Technical Graduates Course which commenced on 7.6.1954 and he had the requisite qualification namely B.Sc. (Physics). This qualification entitled him to training as a technical Graduate and the same is not applicable in the case of the

Petitioner.

12. On a consideration of the case made out in the writ petition as well as in the counter affidavit, this Court is of the view that the Petitioner has not made out a case for being granted the benefit of antedating of seniority and the reasons furnished by the Respondents in the counter affidavit are cogent and tenable.

13. Apart from that, this Court is of the view that in matters of promotion to technical posts where obtaining of technical qualification is a requirement, this Court should be very slow and cautious in interfering with the decision of determining seniority. Unless the decision is grossly unfair or vitiated by bias or errors apparent on the face of the records, this Court should leave it to the discretion of the respective authority as the Court lacks the expertise to evaluate the decision taken. It is not the case of the Petitioner that the Respondents out of any grudge has denied him promotion. The stand of the Respondents is that the benefit of antedating promotion cannot be given to the Petitioner on the ground of lack of qualification which is based on sound reason and there is no illegality or irregularity in the stand taken by the Respondents. This Court is of the view that no irregularity or illegality has been committed so far as the case of the Petitioner is concerned.

14. This case thus does not call for any interference. This writ petition is, therefore, dismissed being devoid of merits. There will be no order as to costs.