

(1993) 11 DEL CK 0043

In the Delhi High Court

Case No : Civil Writ Petition No. 3587 of 1991

S.K. Moulik

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 18-11-1993

Acts Referred:

Citation : (1993) 49 DLT 581

Hon'ble Judges : J.K. Mehra, J

Bench : Single Bench

Advocate : U.N. Bachawat, Randhir Jain, S.S. Mishra and Madan Lokur, for the Appellant;

Judgement

J.K. Mehra, J.

(1) This petition arises out of the rejection of 6th representation of the petitioner against his fixation of the seniority in service.

(2) The facts, in brief, leading to the filing of this writ petition are as under:-

(3) The petitioner joined the Army in Short Service Regular Commission on 13/01/1955. Since he had fulfilled certain criteria of serving in Civil Hospital etc. before joining Army, he was given six months ante-date of seniority for that and he was given seniority with effect from 13/07/1956. Such conditions contained in Army Instructions issued in the year 1962 bearing No. 191/62. In December 1962 the conditions with regard to such officers getting Permanent Commission were issued vide letter of the Government of India dated 21/07/1955 which, inter alia provided. :-

(A) All such officers will be allowed two chances for consideration for PRC. (b) The first chance will be available after the completion of two years of Ssrc service but before completion of the initial contractual period of 3 years. (c) Officers, who are not selected for Prc, in first attempt or who have not availed themselves of the first chance-vide para (b) above, will be allowed a second chance for

consideration after 5 years of service.

It was pointed out that the Commission granted in 1957 was continued up to 5/02/1964 by the authorities giving extensions to the petitioner. The petitioner never took the test during this period.

(4) On 1/03/1964, the petitioner applied for and was granted Emergency Commission when he relinquished Short Service Regular Commission. Such Emergency Commission was granted in terms of the Army Instructions dated 15/05/1962. On 1/05/1965 further Army Instructions bearing No. 152/65 were issued with regard to ante-date of seniority of Emergency Commissioned Officers getting Permanent Commission. My attention is drawn to para 2 of the said instructions which reads as under :-

2. Readjustment of antedate seniority Any antedate granted to them while holding an Emergency or Reserve Commission will be readjusted under Ai 191/62 if selected for PRC. Officers with previous service in the Amc if selected for PRC will also be subjected to one year's cut of seniority as per existing rules and as applicable in the case of Ssrc Officers. Officers selected for Prc in the second chance vide Clause (b) above will have their seniority for pay and promotion reduced by one year.

(5) Subsequent to that the authorities issued another letter dated 22/04/1966 superseding the aforesaid provision. The said letter, inter alia, provided that non-regular officers were to be given, in future, two chances for taking the departmental examination for Permanent Commission. They could take such examinations "at any time after completion of two years service and before completion of five years service. This very letter further provided a Rule with regard to the adjustment of seniority in certain cases which reads as under :-

I am, however, to add that seniority of an Amc officer granted Permanent Commission hereafter in his "Second Chance" or under an "Ad Hoc Scheme" will be adjusted in such a way that he does not become senior, for the purpose of pay and promotion, to an officer with equivalent or longer reckonable commissioned service, who has been subjected to a cut in seniority at the time of grant of Permanent Commission under the old orders.

(6) The petitioner who appeared for the examination only after getting Emergency Commission and had not appeared for examination while he was enjoying the Short Service Regular Commission cleared the examination and was selected for Permanent Commission on 30/04/1966. He was informed of his selection as well as his fixation of his antedate of seniority in accordance with the aforesaid Instructions and Instructions bearing No. A1 191 of 1962. The petitioner duly gave his consent to such fixation of seniority. The certificate given by the petitioner reads as under :- CERTIFICATE

INo M 30591 Major S.K. Moulik. here declare that the provision of Ministry of defense, office of the Dg Afms letter No18855/DGAFMS/DC-IA dated 8 August 66

has been fully understood by me and that I am willing to accept a Pc in the AMC under the terms and conditions stipulated therein.

(7) Following such acceptance by the petitioner Gazette Notification fixing seniority of the petitioner with effect from 2/06/1957 was issued. The petitioner notwithstanding his unconditional certificate of acceptance made repeated representations against such fixation of seniority but his representations were rejected. The 5th representation was rejected in May 1972. On 3/01/1991 the petitioner made yet another representation stating that since the persons who were placed senior to him by virtue of the aforesaid rule regarding antedate seniority had all retired and that there was no one left in service who was granted that seniority above the petitioner, his original seniority should be restored and he should be placed above Maj. Gen. R.S. Bhola, Maj. Gen. P.K. Chakraborty, Avm R.K. Dutta and Sug Ram B.K. Rakshit. I have not been shown any authority or rule or provision whereunder the antedate of seniority fixed on the retirement of the persons who were placed above the petitioner under the aforesaid rule.

(8) The main contention of the petitioner is that all those persons who "had lost one year seniority on getting Permanent Commission were placed above the petitioner while adjusting the seniority because when petitioner appeared for the examination for Permanent Commission the Rule had under-gone a change and he did not suffer such loss of seniority except to the extent set out in the instructions contained hereinabove. The Counsel for the petitioner has tried to make a lot out of the use of the expression "seniority was adjusted". He contends that the expression "seniority was fixed" had not been used and the term "adjusted" was used only to indicate the case that the petitioner was to suffer in the fixation of his seniority so long as those persons referred to above continued to be in service and once all such persons had retired the petitioner should have been granted the seniority as he was originally entitled to.

(9) The contentions of the petitioner have been opposed by the learned Counsel for the respondent on various grounds including the following:-

"THE delay in approaching the Court for redressal of his grievances."

(10) It is pointed out that the petitioner made several representations and the 5th representation was made in the year 1970 which was also rejected and thereafter be neither challenged nor protested against any such orders regarding adjustment of seniority. On 3/01/1991 the petitioner had sent 6th representation. I have already observed that no rule or authority has been shown to me in support of such a contention.

(11) The petitioner has rebutted this argument of delay and has relied upon Joginder Nath and Others Vs. Union of India (UOI) and Others, . According to Counsel for the petitioner the main grievance arose only on the retirement of the last person on account of whom petitioner's seniority had to be adjusted in denying him the full antedate of seniority. In view of my observations

hereinabove I am unable to accept this contention. I find that the petitioner has no case because petitioner had accepted the adjustment of seniority in terms of the Rules and the conditions by signing that certificate and after rejection of his 5th representation having accepted that position right up to 1991 he cannot now take that hypertechnical plea that "adjustment" does not amount to "fixation" of seniority and that the seniority should be deemed to have been adjusted only so long as persons who were given seniority above the petitioner were in service. I am unable to accept this in the absence of any such stipulation, in the conditions subject whereunto the petitioner's seniority was adjusted and which adjustment was accepted by the petitioner with full awareness of the implication of signing such acceptance certificate. In my opinion, the term "adjustment" did not convey any meaning that the seniority fixed/adjusted could be disturbed on any particular contingency happening since no such stipulation was provided in the instructions whereunder the petitioner's seniority was fixed and accepted by him of his own free will. The contention that such seniority can come for a review or readjustment on the retirement of certain individuals cannot be accepted. As the petitioner's plea had earlier been considered and rejected repeatedly and he never challenged any such order before any Court. The authorities while rejecting his pleas/representations did not provide for any reconsideration or readjustment or re-fixation of the seniority of the petitioner on the happening of any event as has been urged before me by the petitioner today.

(12) I find no merit in this writ petition. The same is dismissed. In the circumstances of the case, the parties shall bear their own costs.