
(2014) 11 AP CK 0001
In the Andhra Pradesh High Court
Case No : Writ Appeal No. 131 of 2006

The Union of India

APPELLANT

Vs

Jagdish Singh Jadaun

RESPONDENT

Date of Decision : 06-11-2014

Acts Referred:

Citation : (2014) 11 AP CK 0001

Hon'ble Judges : L.N. Reddy, J;Challa Kodanda Ram, J

Bench : Division Bench

Advocate : B. Narayana Reddy, Asst. Sol. Gen, Advocate for the Appellant; T.L. Kantha Rao, Advocate for the Respondent

Judgement

L. Narasimha Reddy, J.—The respondents in W.P. No. 7881 of 2001 filed this Writ Appeal challenging the order dated 09.12.2005 rendered by the learned Single Judge in the Writ Petition.

2. The respondent herein joined the Indian Army as a Soldier in the year 1992. Over the period, he earned promotions and became Junior Commissioned Officer. Process for Special Commissioned Officer was initiated in the year 2000. The respondent appeared in the examination conducted by the Service Selection Board and was qualified therein. He was recommended for training in the SCO-6th batch. That was to be preceded by medical examination by the nearest Medical Hospital.

3. The respondent appeared before the Military Hospital, Secunderabad, on 29.03.2000. The Medical Board declared that he is unfit, on account of high frequency hearing loss in the left ear and severe mixed hearing loss in the right ear. The respondent preferred an appeal on 29.03.2000 against the opinion expressed by the Medical Board. He was sent to the Command Hospital (Southern Command), Pune, on 15.07.2000. Through letter dated 22.08.2000, the respondent was declared medically fit by the Appellate Medical Board.

4. On the basis of the certificate issued by the Appellate Medical Board, the

respondent approached the concerned authority through representation dated 07.11.2000. The second appellant herein addressed a communication dated 30.08.2000 to the effect that the respondent can be inducted into SCO-7th course, which would commence in November, 2000. The respondent was required to furnish certain undertaking in this behalf and the same was complied with. Thereafter, the second appellant issued communication dated 14.11.2000 informing the respondent that he cannot be inducted into SCO-7th course, since he was selected for the SCO-6th batch. Feeling aggrieved by the same, the respondent filed the Writ Petition.

5. The respondent pleaded that once he was declared as medically fit by the Appellate Medical Board, he was entitled to be inducted into the Special Commission and the second appellant has taken contradictory stand in the context of imparting training. The writ petition was opposed by the appellants. They did not dispute the facts that were borne out by the record. However, it was pleaded that once the respondent was selected for the SCO-6th batch, and that several contradictions would arise if such a migration takes place. The learned Single Judge allowed the Writ Petition through the judgment under appeal.

6. Heard Sri B. Narayana Reddy, learned Assistant Solicitor General of India for the appellants and Sri T.L. Kantha Rao, learned counsel for the respondent.

7. This is an unfortunate case where the respondent was selected for the Special Commission, but he was denied the entry into it on the basis of a medical certificate, which in turn was found to be not correct. He virtually became the victim of the indifference exhibited by the Military Hospital, Secunderabad, and the delay that intervened between such a certification and the one made by the Appellate Medical Board. When the respondent approached the second appellant after obtaining certificate from the Appellate Medical Board, he was informed that he can be inducted into the SCO-7th course. The second appellant did not stick to his version when the occasion to induct the candidates into the SCO-7th course has arisen. He informed the respondent that since he was selected for the SCO-6th course, he cannot be inducted into SCO-7th course. The delay in this regard was not attributable to the respondent. The rights that accrued to him on account of his having been selected were trampled by the second appellant, who took inconsistent stands.

8. Had it been a civilian appointment, this Court would not have hesitated to dismiss the appeal straightaway and direct the employer to induct the employee into service with all consequential benefits. In the instant case, however, the employment is into the military establishment. The Special Commissioned Officers constitute an important category. Imparting of initial training is essential and one cannot expect the induction into the Commission, without any training. The military establishment felt it difficult to induct the respondent into commission, when it was found that his selection was in a previous batch.

9. Though there would have been some possibility for inducting the respondent

in the next batch, the time that has intervened ever since then i.e., 13 years, makes it impossible for us to undertake such an exercise. On the one hand, we cannot induct the respondent into Commissioned Service at this length of time, and on the other hand, we cannot deprive him the benefit of his selection. A balancing act needs to be done in the case. Here itself, we make it clear that the reliefs in such matters cannot be granted or assessed with mathematical precision. Somewhere, the balance has to be struck.

10. It is brought to our notice that the batchmates of the respondent have reached the stage of Lt. Colonel , crossing the stages of Lt. Captain, Captain and Major. Various uncertainties in the service and the fact that the respondent has not been subjected to any training, need to be taken into account. Another fact is that the respondent has since retired from service on 31.12.2012. For one reason or the other, he did not undergo training, which is essential and important and that there are several hurdles to be crossed by a Commissioned Officer to reach a particular rank. We are of the view that the appellants can be required to treat the respondent as having retired from service as Captain, even while denying him any past benefits. Such notional induction into the Commissioned Service can be restricted only to the extent of permitting him to draw the pension and to avail other retirement benefits.

11. Hence, we dispose of the Writ Appeal upholding the view expressed by the learned Single Judge as to the entitlement of the respondent to be inducted into SCO, but directing that he shall be deemed to have retired as Captain in the Indian Army w.e.f. 01.01.2015. The pension, which the respondent is drawing, shall be upgraded w.e.f. 01.01.2015. There shall be no order as to costs.

12. The miscellaneous petitions filed in this writ appeal shall also stand disposed of.