
(2001) 04 DEL CK 0016

In the Delhi High Court

Case No : Letters Patent Appeal No. 185 of 1999

Union of India and another

APPELLANT

Vs

Captain S.S. Gurayya

RESPONDENT

Date of Decision : 27-04-2001

Acts Referred:

Citation : (2001) 4 AD 619 : (2001) 92 DLT 638 : (2001) 59 DRJ 385

Hon'ble Judges : Om Prakash Dwivedi, J;A.D. Singh, J

Bench : Division Bench

Advocate : Ms. Rekha Palli, for the Appellant; In-Person, for the Respondent

Judgement

Anil Dev Singh, J.—This is a Letters Patent Appeal directed against the order of the learned Single Judge dated May 27,1998. The facts lie in a narrow compass.

2. The respondent was Inspector in the Customs and Central Excise Department of the Government of India, Ministry of Finance, with effect from April 19,1955. While the respondent was serving in the Customs and Excise Department, he was appointed as a 2nd Lieutenant in the Regular Reserve of Officers Class "A" Service in the Artillery Regiment with effect from July 22, 1960. The appointment of respondent was notified in the Government of India Gazette dated January 21,1961. The appointment lasted till April 26,1963. Subsequently, on October 13,1963 the respondent was appointed as an Emergency Commissioned Officer in the rank of a Captain. He served in that capacity till his demobilisation from the Army on March 31,1968. On June 3, 1968 the respondent was appointed as an Administrative officer in the National Cadet Corps (for short"NCC"). In the NCC, the services of the respondent as an Emergency Commissioned Officer in the rank of Captain with effect from October 13,1963 to March 31, 1968 were taken into consideration for the purposes of seniority, promotion and pay. The respondent however, represented that his service as Regular Reserve of Officers Class "A" should also be counted with effect from July 22,1960 to April 26,1963 for the purposes of promotion and seniority in the NCC. The Group Headquarters, NCC, vide its letter dated June 1, 1978 acceded to the request of the respondent.

Subsequently, however, on September 7, 1978, the decision contained in letter dated June 1, 1978 was revoked and it was intimated to the respondent that as the period during which he remained in the Regular Reserve of Officers service was unpaid, the said period could not be regarded for the purposes of seniority and promotion. The respondent dissatisfied with the cancellation order, filed Writ Petition being CWP No.1384 of 1979. The learned Single Judge allowed the writ petition of the respondent on May 27, 1998 and directed the appellant to count the period of his Regular Reserve of Officers Service for the purposes of seniority in the NCC. The appellant, Union of India, being aggrieved by the order of the learned Single Judge, has filed the instant Letters Patent Appeal.

3. We have heard learned counsel for the parties. The grievance of the appellant is that the learned Single Judge was not right in counting the Regular Reserve of Officers Service for the purpose of seniority in the NCC. The learned counsel appearing for the appellant submitted that Rule 26(3) of the National Cadet Corps Rules, 1948 (for short the "Rules") on which the learned Single Judge relied for allowing the writ petition, does not help the respondent. On the other hand, the learned Single Judge relied for allowing the writ petition, does not help the respondent. On the other hand, the learned counsel appearing for the respondent submitted that the period during which the respondent remained in the Regular Reserve of Officers Service is required to be counted for the purpose of his seniority in the NCC.

4. In order to consider the submissions of the learned counsel for the parties, it is necessary to refer to proviso to Rule 26(3) of the Rules. Proviso to Rule 26(3) reads as follows:

"XX XX XX 5. Provided that period of service rendered by an officer of the Senior Division as commissioned officer in the Armed Forces, Territorial Army and Jammu & Kashmir Cadet Corps or National Cadet Corps (Senior Division) shall count towards his seniority and promotion.

XX XX XX"

5. From the reading of the Rule, it is clear that the "service rendered" as a Commissioned Officer in the Armed Forces, Territorial Army and Jammu & Kashmir Cadet Corps or National Cadet Corps (Senior Division) is to be counted towards seniority and promotion of an officer serving in the Senior Division of the NCC. It is not denied by the learned counsel for the respondent that the respondent was never called to discharge any duty as an officer in the Regular Reserve of Officers. It was merely a placement without taking any work from the officer. The expression "service rendered" in the proviso means service actually rendered. When the respondent in reality has not discharged any service as an officer in the Regular Reserve of Officers, he cannot ask the appellant to give him the benefit of proviso to Rule 26(3) of the Rules.

6. According to Rule 3C of the Rules (1925) framed under the Indian Reserve Forces Act, 1888, a reservist is subject to military law only when called out the

annual trade test. It is not the claim of the respondent that he was called for service physically as an officer in the Regular Reserve of Officers. It needs to be noted that when the respondent was appointed as 2nd Lieutenant in Regular Reserve of Officers Class "A" Service, he was serving as a Customs Officer. His lien was never transferred to the Regular Reserve of Officers Service. In the circumstances, Therefore, the learned Single Judge was not right in directing the appellant to count the period of service of the respondent in the Regular Reserve of Officers Service for purposes of his seniority in the NCC.

7. Accordingly, the appeal succeeds and the same is allowed. The order dated May 27, 1998 of the learned Single Judge is set aside.

8. The appeal stands disposed of.