

(2002) 02 DEL CK 0090

In the Delhi High Court

Case No : LPA 250 of 1999

Union of India (UOI) and 109 GL Section Type "B", Adampur
(Jalandhar)

APPELLANT

Vs

Gurdeep Singh

RESPONDENT

Date of Decision : 14-02-2002

Acts Referred:

Citation : (2002) 02 DEL CK 0090

Hon'ble Judges : Madan B. Lokur, J;A.D. Singh, J

Bench : Division Bench

Advocate : Rekha Palli, for the Appellant; Major K. Ramesh, for the Respondent

Final Decision : Dismissed

Judgement

Anil Dev Singh, J.—The respondent was working as general duty havaldar clerk in 109 GL Section, Type "B". In 1988 he applied for Commission in the Special List in Quarter Master Cade. The Officer Commanding of the unit recorded Part II Order dated 8th May, 1987 which is to the following effect:-

Recipient FCI region Recipient Railway Goods heed in Consuming FCI Region
Quantity Intended dispatching Depot in the FCI Procuring Region Tender Rate
on Net Weight Basis (Per QT)*

1 2 3 4 5

2. A similar Part II order for the period May 9, 1987 to May 20, 1988 was recorded on 20th May, 1988 by a different Commanding Officer. As result of the recording of Part II orders, the respondent was recommended for undertaking an Orientation Course for JCOs/NCOs. Before the respondent could join the Orientation Course, an order was passed by the Army Headquarters on 14th March, 1990 to the effect that he shall not report for Orientation Training till further orders. It appears that this order was passed on the basis that the respondent did not have the knowledge or experience in Quarter Master related appointment. The respondent being aggrieved by the order, filed a writ petition in

this court.

3. The learned single Judge found that the basis on which the order was passed was wholly untenable inasmuch as the respondent had the requisite experience in the post of Quarter Master. We find that two different officers had recorded Part II orders indicating that the respondents had satisfactorily carried out the duties of Quarter Master from 2nd May, 1985 to 20th May, 1988. As is apparent from the Part II orders, the respondent worked as Quarter Master Havaladar and was made in charge of General Store Clothing and Equipments/Ration Magazine/Ammunition during the aforesaid period.

4. We are told that a court of inquiry was held with regard to the recording of Part II orders. In connection with the court of inquiry, Lt. Col. Deepinder Singh Officer Commanding Troops, wrote a letter dated 25th September, 1994 to the Additional Director General of Rtg/Service Entry, Adjutant General Branch, Army HQ. In the letter, it was pointed out that the officer served with 109 GL Section Type "B" from April 1985 to May 1988. It was also pointed out 109 GL Section was an independent store holding unit and its accounts are open to audit. The unit was said to be holding the following type of stores:-

- (i) 1 x Jonga.
- (ii) 1 x Motor Cycle.
- (iii) 1 x Trailer.
- (iv) Arms.
- (v) Ammunition.
- (vi) FOL Stores.
- (vii) Clothing Stores.

5. It was also stated that the respondent was required to discharge the duties of Quarter Master inasmuch as he was to look after MT Arms and ammunition, FOL stores, clothing stores and other allied duties of "Q" nature. He was also responsible for collection of FOL and organising its further issuance to the vehicles. It was further pointed out that respondent organized the completion of vehicle car diaries, log books and mileage cards. In addition to these he assisted the Officer Commanding in preparing the unit for the following-

- (i) Annual Arms Inspections.
- (ii) CME inspections of vehicle.
- (iii) MAFS inspections.
- (iv) Annual Adm inspections.
- (v) Condemnation boards.

- (vi) Quarterly inspection of vehicles.
- (vii) Down gradation of vehicles and arranging collections of new vehicles from CVD.
- (viii) Preparing demands for clothing.
- (ix) Preparing demands for ammunition.
- (x) Collection of clothing from Ordinance depots.
- (xi) Collection of ammunition from Ammunition depots.
- (xii) Depositing empty fired cases with Ammunition depots.
- (xiii) Issuing of clothing to unit personnel.

6. This letter is part of the writ record. In para 14 of the writ petition it is stated as follows:-

14. That the petitioner is aware that on receipt of this non-statutory complaint, the respondents woke up so far as the representation of the petitioner was concerned. It was then that they wrote a letter dated 13.9.94. to HQ Western Command at Chandimandir to find out as to what was the outcome of the Court of Inquiry ordered in the matter to decide the non-statutory complaint filed by the petitioner. Copy of this letter is at Annexure P-13. Through a letter dated 25.9.94, the CO of the petitioner gave details of the case and accordingly recommended that the petitioner deserved to be granted relief. Copy of the same is at Annexure P-14. The petitioner learnt through letter dated 23.12.94 written by Addl. D.O. to the Unit of the petitioner that ADG(Recording) had recommended the rejection of the complaint of the petitioner, besides taking action against him. Copy of this letter is at Annexure P-15. This was totally illegal and arbitrary action on the part of the respondents....."

7. It is significant to note that the contents of letter dated 25th September, 1994 were not denied in the counter affidavit filed by the appellant. It cannot be denied that the unit was having the aforementioned stores. If the unit was having the aforementioned stores somebody must be looking after them. It is apparent from the letter dated 25th September, 1994 that the respondent was looking after the stores. The factual aspect of the matter cannot be denied by the appellant. Therefore, the respondent was wrongly denied the benefit of the Orientation course.

8. Our attention has been drawn to the case of Havaladar Clerk Jagdev Singh. Havaladar Jagdev Singh who belonged to Unit No. 1 Jakli Regiment was also recommended for undertaking the Orientation Course. Like the respondent he was also prevented from joining the course. Jagdev Singh represented against the action of the Army Headquarters. His representation was rejected. Thereafter, Jagdev Singh filed a writ petition before the Mumbai High Court. In that writ petition it was held that Jagdev Singh was looking after the post of

Quarter Master. On that basis a direction was issued for giving him an opportunity to undertake the Orientation course. The appellant did not file an SLP against the order of the Mumbai High Court and accepted the fact that Jagdev Singh was entitled to undertake Orientation Course. We are told that while Jagdev Singh was placed at second position in the select list, the respondent was placed at first position in that list. It is significant that Jagdev Singh has since been granted permanent commission. We do not find any difference between the case of the respondent and Havaladar Jagdev Singh. The learned single Judge was entirely right in accepting the writ petition of the respondent and issuing a direction to the appellant to give admission to the respondent in the training course against 1989 quota.

9. We also find that Major General D.P. Singh, Commandant, Indian Military Training Team, on 14th June, 1994, after the court of Inquiry was over, strongly recommended the review of the case of the respondent for grant of a permanent commission as the respondent had already made the grade and was detailed for the Orientation course. The recommendation of Major General D.P. Singh reads as follows:-

"1. I agree with the recommendations of the Officer Commanding Troops, Headquarters Indian Military Training Team.

2. I strongly recommend the review of the case of No. 6649601 X Hav/Clk (GD/SD) Gurdeep Singh of this Team for grant of PC(SL), as the NCO had already made the grade and was subsequently detailed for "Orientation Course" at Officers Training Academy, Madras, vide Army HQ letter No. B/51732/2/Rtg Service Entry/338/QM dated 05 Mar 90. I further recommend that selection be made without affecting his original seniority."

10. Since the appellant proceeded on a wrong premise and denied the respondent an opportunity to undertake the Orientation Course, the learned single Judge rightly intervened in the matter. Accordingly the appeal fails and is hereby dismissed.