
(2010) 05 SHI CK 0117
In the High Court Of Himachal Pradesh
Case No : LPA No. 9 of 2008

Union of India (UOI) and Others

APPELLANT

Vs

Hav. Daljit Singh

RESPONDENT

Date of Decision : 03-05-2010

Acts Referred:

Citation : (2010) 05 SHI CK 0117

Hon'ble Judges : Kurian Joseph, C.J;R.B. Misra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Kurian Joseph, C.J.—The Union of India has come up in appeal against the judgment dated 30th July, 2007 in CWP No. 354 of 2002. The Writ Petition was filed praying for direction to promote the Petitioner from Havildar to Naib Subedar. It appears that the promotion was declined on the ground that the Petitioner did not satisfy the requirement as per Annexure R-1 (Circular), dated 10th October, 1997, wherein it is stated that one should have three reports in the rank of Havildar "High Average" and in case of short fall, in the rank of Niak. It is also prescribed that at least three out of last five reports should be "Above Average" with minimum of two in the rank of Dafedar/Havildar and remaining should be not less than "High Average". Grading in the case of the Petitioner was only "Average" in respect of the year 1996 and hence his promotion was denied. Since the low grading had an adverse impact, the learned Single Judge was of the view as held in the decision of the Apex Court in U.P. Jal Nigam and others Vs. Prabhat Chandra Jain and others, that down grading of the entry in the ACR should have been communicated to the Petitioner so as to enable him to make a representation. The learned Assistant Solicitor General of India submits that the decision will not apply in the case of the Army. But, we find that paragraphs 13, 43 & 45 of the Army Order VII of 1995, provides that adverse remarks-weak points etc. should be communicated to the incumbent concerned, so as to afford an opportunity for representation. Since the requirement of three "Above

Average" was prescribed for promotion to the post of Niab Subedar and in case the Petitioner did not have that ranking in view of the consistent ranking of "Above Average" and "High Average" from 1983, in view of the adverse impact on the service prospects of the Petitioner, the entry as "Average" should have been communicated to the Petitioner so that he could have got an opportunity to make a representation. All that apart, it is seen that the Niab Subedar rank has been conferred on the Petitioner after retirement, though as an honorary rank. In case, the Petitioner was required to be honoured by conferment of rank, it could have been honourably done when he was in service. We are also informed that the monitory benefits are only very little. Therefore, what the Appellants did after retirement should have been done before retirement and that alone has been held by the learned Single Judge.

2. Therefore, we do not find any merit in the Appeal and the same is accordingly dismissed. However, a period of one month is granted for complying with the directions of the learned Single Judge.

3. Interim order dated 18th December, 2009, stands vacated.