

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

O.A. No. 559 of 2010

Naik (TS) Devraj

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Mr. P.K. Aggarwal, Advocate.

For respondents: Mr. Anil Gautam, Advocate.

CORAM:

HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.

HON'BLE LT. GEN. S.S.DHILLON, MEMBER.

J U D G M E N T

30.05.2012

S.S.Dhillon, Member:

1. Petitioner by this petition seeks setting aside of the impugned order of Army HQ dated 21st May 2009 whereby Respondents have supposedly complied with the Hon'ble Delhi High Court order of 21st January 2008. The Petitioner seeks consequential extensions, promotions and benefits.

2. The Petitioner was enrolled in the Indian Army on 8th May 1979 as a driver in the Army Service Corps for an initial period of 17 years. The Petitioner was posted on 10th December 1988 to Branch Recruiting Office Belgaum. On 21st May 1989 while serving at Belgaum, he was sent on duty to the Zonal Recruiting Office Belgaum for collection of question papers. The Petitioner reached Bangalore on 22nd August 1989 and after collection of the sealed box containing the question papers, started back for Belgaum on the same day and reached his Unit on 23rd August 1989 and handed over the sealed box containing the question papers to the authorities. Subsequently

the authorities realised that there had been a leakage of the question papers and Court of Inquiry (COI) was convened in October 1989 to investigate the circumstances which led to the leakage of these question papers. In February 1990, the investigation was handed over to the CBI which recorded statements of various persons including the Petitioner. In their report, the CBI blamed various people and also put some blame on the Petitioner for leakage of the question papers. On the basis of this CBI reported the Army authorities issued the Petitioner a show cause notice on 23rd May 1991 which he replied on 27th May 1999. The authorities were not convinced by his reply and dismissed him from service on 30th June 1991.

3. Since the CBI had chargesheeted the Petitioner and other persons before the Court of Additional Chief Metropolitan Magistrate, Bangalore, the Petitioner filed a revision petition in 2001 against the charge sheet in the High Court of Karnataka under Section 397 read with Section 401 of CrPC. The Hon'ble High Court of Karnataka quashed the charge sheet in 2001 vide their judgment dated 6th June 2001, holding that there was no material to show that the Petitioner was in any way connected with the alleged leakage of the question papers.

4. The Petitioner also filed Writ Petition (C) No. 2338 of 1992 in the Hon'ble High Court of Delhi seeking reinstatement and other consequential benefits. This writ was decided by the Hon'ble Delhi High Court in his favour on 21st January 2008, wherein they declared that the said dismissal order was non est and directed the Respondents to reinstate the Petitioner with all consequential benefits. Subsequently the Hon'ble Delhi High Court passed a

clarificatory order on its earlier judgment on 27th February 2008. Meanwhile since the Respondents had failed to implement the judgment of the Hon'ble Delhi High Court within four months, the Petitioner filed a Contempt Case No. 116 of 2009 before the Hon'ble Delhi High Court, after which the Respondents passed the impugned order dated 21st May 2009 supposedly complying with the orders of the Hon'ble Delhi High Court. Vide impugned order dated 21st May 2009, the Petitioner was only given the rank of Naik (Time Scale) by the Army citing Army HQ letter dated 10th October 1984, whereby supposedly this was the only promotion that he was entitled to. Learned counsel for the Petitioner argued that the authorities had passed this speaking order of 21st May 2009 without following Army Regulations 114, 163 and 164. The Hon'ble Delhi High Court dismissed the Contempt Case on 6th April 2010 after which the Petitioner filed an SLP in the Hon'ble Supreme Court in July 2010 which was disposed of on 20th August 2010 whereby the Petitioner was asked to approach the appropriate forum for relief. Hence this present petition.

5. The main contention of the Petitioner is that the Petitioner has not been granted the rank of Subedar, despite the fact that his earlier dismissal has been declared non est by the Hon'ble Delhi High Court. His batchmates had been granted the rank of Subedar and if he had been in continuous service and permitted to sit in the promotion examination and get his due extensions he also would have retired alongwith his batch mates as a Subedar. Learned counsel contended that the non-passing of the cadre test should not have come in the way of his promotion and extensions.

6. Respondents have filed a detailed reply including the additional affidavit wherein they have initially clarified that the Petitioner was enrolled in the Army on 8th March 1978 and not on 8th March 1979 as stated by the Petitioner. He was dismissed from service on 30th June 1991 under Section 20 of the Army Act read with Army Rule 17.

7. Contrary to the statement of the Petitioner, a Court of Inquiry was held by Recruiting Zone Bangalore to investigate into the alleged leakage of question papers. This inquiry was over and above the inquiry conducted by the CBI. The Petitioner was held blameworthy by the CBI, and as stated by him a show cause notice was issued on him on 23rd May 1991. Not satisfied with the Petitioner's reply of 27th May 1991, the Petitioner was dismissed from service on 30th June 1991.

8. The Hon'ble Delhi High Court order dated 21st January 2008 was referred to the Integrated HQ of MoD for compliance and Government sanction was accorded on 27th May 2009 in which the following consequential benefits were given in favour of the Petitioner:

- (a) deemed to be reinstated in service with effect from 30th June 1991.
- (b) promoted to the rank of Time Scale Naik with effect from 1st April 1994.
- (c) deemed to be discharged from service with effect from 31st March 1995.

Accordingly a Part-II order to this effect was published and a sum of Rs.89,408/- on account of arrears of pay and allowances for the period 30th June 1991 to 31st March 1995 was given to the Petitioner and PPO dated 23rd July 2009 was issued by the Defence Pension Disbursing Order, Narnual for

making necessary pension payment to the Petitioner. This order of 21st May 2009 granting the Petitioner his arrears of pay and allowances, as well as pension, was considered as sufficient and adequate compliance of the directions given by the Hon'ble Delhi High Court. This view that the order of the Hon'ble Delhi High Court has been complied with has also been upheld by the Hon'ble Delhi High Court itself on 6th April 2010 whereby they dismissed the contempt petition of the Petitioner. Para 6 of the order, which is relevant reads as under:

"6. Considering the fact that the Petitioner was given necessary promotion to the rank of Naik (Time Scale) with pensionary benefits, I consider that no contempt was made out. The Petitioner was governed by service conditions of the Army and in view of the rules and regulations, the Petitioner could not have been granted regular promotion of Naik and that is why he was granted promotion as Naik (Time Scale)."

9. Therefore, the Hon'ble Delhi High Court itself has accepted the fact that the Petitioner could not have granted regular promotion to Naik and that is why he was granted promotion as Naik (Time Scale).

10. Paras 114, 163 and 164 of the Regulations for Army are not applicable in the context of the Petitioner, since they refer to other categories of Army personnel other than the Petitioner and, therefore, are not relevant in this case. The Petitioner was enrolled with terms of engagement for 17 years in colour service and 2 years in reserve service with the Army. At the time of his dismissal, the Petitioner had already completed 13 years and 4 months of service with the Army and, therefore, he was permitted to serve the remaining

3 years and 8 months before he was notionally retired. Therefore he was required to serve till 31st March 1995 which the Respondents have ensured.

11. Learned counsel for the Respondents argued that the final order of the learned Single Judge of the Delhi High Court cannot be challenged before the AFT. It was also argued that promotion to various ranks in the Army are subject to various eligibility criteria i.e. seniority, eligibility, course/cadre, ACRs, disciplinary and medical criteria. Hypothetically, it cannot be assumed that he would have achieved the above promotions and service limits as the probabilities are vast and varied. In any case, none of the judgments cited by the Petitioner support the case of the Petitioner that he was automatically entitled to promotion, even though he did not meet the requisite criteria for promotion.

12. Vide AFT order dated 13th October 2010, we had directed the Respondents to file the policy pertaining to the promotion to the rank of Naik and to categorically state whether the Petitioner was required to pass any cadre course or test for obtaining promotion to this rank. In response, the Respondents have filed a detailed reply wherein they have enclosed the relevant Record Office Instruction No. 3/75/dated 7th March 1995 and 10/85/dated 20th August 1985, which was the policy relevant at that point of time and governed the promotion to Naik as regards the Petitioner. The policy states that for promotion to Naik a promotion cadre for Naik is required to be passed. The Petitioner had passed the promotion cadre for Lance Naik on 17th January 1983. However he had not undergone the promotion cadre of Naik till he was discharged in 1991. The passing of promotion cadre for Naik

is mandatory for promotion to Naik. The Petitioner was thus lacking promotion cadre for Naik and was accordingly granted time scale promotion of Naik and was notionally discharged from service on completion of his terms of engagement. The Petitioner had argued that two individuals i.e. Sepoy MT Sadanand Ghosh and Sepoy MT Ram Jiwan Yadav, who were junior to him have been promoted since they were permitted to appear in the Naik promotion cadre before him, although he was senior to them. Detailment on such cadre is at the discretion of the Commanding Officer and the Commanding Officer has erred in not detailing him for this cadre. Learned counsel for the Respondents urged that appearing or not appearing for the promotion cadre was an issue that preceded the dismissal of the Petitioner by almost 3 to 4 years, in that Sepoy MT Sadanand Ghosh had passed his cadre on 7th July 1986 and Sepoy MT Ram Jiwan Yadav had passed his cadre on 1st August 1988. At this point of time the Petitioner was present in Unit and had not agitated his detailment at all. Therefore he had accepted this situation, which as earlier stated, was far before his dismissal from service in June 1991.

13. We have heard learned counsel for the parties at length and perused the original record. The Records Office Instructions clearly stipulated that a promotion cadre is required to be passed by the Petitioner before he can be given the rank of Naik. Also the decision of the Hon'ble Delhi High Court in the dismissal of the contempt petition categorically accepts the fact that the Petitioner could not be promoted to the rank of Naik in accordance with the Rules and was accordingly given the rank of Naik (TS).

14. Keeping in view the above, we do not find any substance in the petition and accordingly it is dismissed. No costs.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
May 30, 2012
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