

COURT No.1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA 270/2018

Sub Maj Clk (SD) Ashok Kumar Verma ... Applicant
Versus
Union of India and Ors. ... Respondents

For Applicant : Mr. Virender Singh Kadian, Advocate
For Respondents : Mr. Avdhesh Kumar Singh, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN C.P.MOHANTY, MEMBER (A)

ORDER

Invoking the jurisdiction of this Tribunal under Section 14 of The Armed Forces Tribunal Act, 2007, the instant OA has been filed praying for the following reliefs :-

(a) Quash and set aside the impugned letter No JC-641908/LN/Legal Cell dated 01.12.2017. and/Or,

(b) Direct respondents to grant Honorary Commission of Lieutenant and Captain to the applicant on Republic Day 2016 and Independence Day 2016 respectively after considering his service rendered in OP PARAKRAM and OP VIJAY. And/or

(c) Direct the respondents to pay due arrears of pay and consequential/terminal benefit including re-fixing his pension accordingly with interest @12% p.a. And/or

(d) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case along with cost against the respondents.

2. The brief facts of the case are that the applicant was enrolled in the Army Service Corps (ASC) Corps on 24.03.1987 and was

discharged from service with effect from 31.12.2016 in the rank of Subedar Major (Sub Maj) on completion of service in accordance with Army Rule 13(3)(I)(i)(a). The applicant was considered for honorary commission on two occasions while he was still in service and he was not granted honorary commission on both occasions.

3. Learned counsel for the applicant submits that before discharge from service, the applicant was due to grant of honorary rank for two chances i.e on Republic Day and Independence Day 2016; however the applicant was not granted the Honorary Commission of Lieutenant and Captain.

4. The learned counsel further submits that the authorities did not include the Field Service, Counter Insurgency Operation and Operation Vijay Star in his master sheet (Annexure A3) and the applicant intimated to Record Office vide letter No 4417/Hony/ST-12 dated 16.07.2015 for rectification the records (Annexure A4). The Records replied to the applicant that the casualties will be included after information is received from the concerned unit. However the applicant is unaware about the inclusion or otherwise of his observations.

5. Learned Counsel further submits that Record office replied to the Legal Notice sent by the applicant dated 16.10.2017 (Annexure A-6) that Logistic Installation (Static) of 80 Coy ASC (Supply) neither moved out from its location nor did the unit participate in

OP PARAKRAM and therefore no casualty to this effect has been published. However the Sheet Roll containing the personal data downloaded from intranet shows the service by the applicant as OP PARAKRAM.

6. Learned counsel argues that although the applicant's unit 80 Coy ASC (Supply) did not move out for OP PARAKRAM, only the applicant alongwith 15 personnel were mobilised with 520 ASC Bn for OP Parakram to Lalgah Jatan (Rajasthan) and entry to this effect was reflected in the part II Order in service documents and same uploaded in Army Intranet (Annexure A-8).

7. Learned counsel also submits that 556 ASC Bn, i.e. the present unit vide letter No 4417/Hony/ST-12 dated 16.07.2015 stated that applicant was on posted strength of 522 ASC Bn and was attached with HQ 15 Corps (ST) for further deployment in logistics echelons and has proven to have actively participated in OP VIJAY. 522 ASC Bn replied that no documents are held on record as proof of deployment of the applicant in OP VIJAY and OP VIJAY STAR and further added that it has been published wrongly whereas entry and exit Part II Order for field service and award of OP VIJAY Medal and OP VIJAY STAR Medal are published based on the supporting documents and it seems that 522 ASC Bn replied without proper verification.

8. In response learned counsel for the respondents submits that the applicant was considered for Honorary commission on Republic Day 2016 and Independence Day 2016. The recommendations in respect of the applicant were processed reflecting his entire service profile, medals and ACR gradings of the last five years. However as there were limited vacancies allotted to each Corps/Regiment, the final selection is based on inter se merit and the applicant was not selected on both occasions due to his comparatively low merit. The learned counsel further submits that eligibility alone does not entitle an individual to be conferred honorary commission which is essentially based on vacancies and the merit of the applicant.

9. Learned counsel further submits that certain observations/discrepancies noticed regarding applicant's service in "OP PARAKRAM" and "OP VIJAY" while preparing master sheet were observed and the same were rectified in consultation with concerned section of ASC Records and unit of the applicant where he had served. The complete career profile of the applicant was considered for awards of honorary commission and the final Master-cum-Check sheet was forwarded to the applicant and the applicant had himself signed his career profile and forwarded the same to ASC Records (South) alongwith separate amendment paper regarding non-inclusion of service in OP PARAKRAM and OP VIJAY STAR. On scrutiny it is found that the entries of OP PARAKRAM and

OP VIJAY STAR were recorded in Sheet Roll but the authority i.e Part II Order No entered in the Sheet Roll were neither pertaining to the applicant nor the casualty pertaining to deployment in OP PARAKRAM and OP VIJAY STAR.

10. The learned counsel further argues that the 522 ASC Bn intimated that no documents are available with them to substantiate the fact that the applicant was actually deployed in Kargil and that 'OP VIJAY STAR' has been wrongly notified. Besides, 80 Coy ASC (Supply) also intimated that being Logistic Installation (Static) the unit had neither moved out from its location nor participated in 'OP PARAKRAM'. The occurrences were also verified from Part II Order and it was revealed that the relevant Part II Order did not pertain to the applicant and hence the service of the applicant in OP PARAKRAM and OP VIJAY STAR were not validated for the grant of Honorary Commission.

11. We have heard learned counsel for the parties and perused the records relevant to the case as submitted by both the parties.

Based on a careful examinations of the documents it is observed by us that the applicant has been conferred the Honorary rank of Lieutenant on Republic Day 2017 after his retirement from service on 31.12.2016 as per Gazette Notification No B/43432/RD12/AG/CW-2 and therefore the grievance of the applicant is that he was entitled to the honorary rank of Lieutenant

while still in service as per his service profile and therefore resultantly he would have been entitled to consequential benefits of pay and pension of the Honorary Commission.

12. At the outset, from the merit list of JCOs prepared for Republic Day (RD)-2016, we have observed that the applicant was considered in 'Two Chance Category', wherein the marks of the applicant were 39 as against the cut off marks of 49 of the last JCO selected for the Honorary Commission and resultantly he stood a Serial No 3000 whereas the last JCO selected was at Serial No 2891 in merit list. This brings us to a single conclusion that the applicant was 108 merit positions below the last selected JCO in the merit list. Subsequently the applicant was considered in the 'Last Chance' category for Honorary Commission for Independence Day (ID)-2016 wherein the marks earned by the applicant were 41 as against the minimum cut off mark of 45 scored by the candidate who was placed at Ser No 2592 in the merit list as opposed to the applicant who was placed at Ser No 2639; thus there being 46 candidates above the merit position of the applicant who were also not selected for award of the Honorary Commission. The applicant has been awarded 14 marks for operation service in the list prepared for Republic Day 2016 and 15 marks for his consideration for Honorary Commission on Independence Day 2016. Thus the

controversy is only with respect to award of marks for the operational service as averred by the applicant.

13. On a careful examination of the master sheet for grant of Honorary Commission for RD-2016, the details of service of applicant in various operational areas have been signed by him and we have noted following operational service of the applicant as relevant to case under consideration and in controversy :-

(a) OP VIJAY. From 01.05.1999 – 31.01.2000 under 522 ASC Battalion under HQ 15 Corps deployed in Logistic Section at Kargil under category of “Counter Insurgency/Highly Active Field Area”

(b) OP PARAKRAM. From 02.01.2002 – 17.02.2003 with 80 Company ASC (Supply) in OP PARAKRAM in Rajasthan; categorised as Field Area under Active Hostilities.

(c) OP VIJAY STAR. Award of Stars, Medals and Clasps dated 31.01.2000 vide 522 ASC Bn Part II Order dated 30.07.2010.

14. Consequently the clarification to this effect have been sought by ASC Records (South) vide their letter dated 31.07.2015 from 522 ASC Bn where the applicant had served to validate the operational service as claimed by the applicant.

15. Consequently, as response to above communication, ASC Records (South) have sought confirmation of the service of the

applicant from various HQs and units where he has served. We have also taken note of 522 ASC Bn Part II Order published on 30.07.2010 with respect to award of service medal for OP VIJAY STAR for period 01.05.1999 to 31.01.2000 and similar Part II Order No 0/098/2004 indicating the entry of applicant into OP VIJAY from 01.05.1999 to 31.01.2000. We don't find any reason indicated to justify the belated publication of the document of service four years later and award of medal about 10 years later and more over there being no documentary evidence of service of the applicant in OP VIJAY STAR in Kargil Sector anywhere placed on record we are unable to grant the benefit to the applicant. We are inclined to rely upon the communications of ASC Records for the purpose of authentication of service information and records provided by the applicant though his declaration. The respondents have acted to obtain information from the units and the formations where the applicant has served for the period as indicated so that accuracy is ensured and candidate has no unfair advantage or disadvantage during his consideration for Honorary Commission.

16. We have no reason to disregard the signal of 522 ASC Bn dated 05.01.2016 which had stated that there is no record to establish that the applicant was indeed deployed in Kargil for this eligibility for 'OP VIJAY STAR' and similarly the letter of 80 Coy ASC (Supply) dated 08.09.2015 which has confirmed from it's

records that being the Logistics Installation (Static), it had not moved out of its location and therefore did not participate in OP PARAKRAM. In fact, the unit further confirms that the Part II Orders submitted by the applicant do not even pertain to him and are of one RL Meena and PK Yadav. In the absence of any concrete evidence in support of the claim of the applicant that he participated in the above mentioned operations we are unable to grant credit to him for his unconfirmed and unsubstantiated claims to have participated in the said operation. In fact it is pertinent to note that 522 ASC Bn has taken action to cancel the Part II Order regarding the deployment of applicant in OP VIJAY STAR. That apart, there is no official record of movement of the applicant with 15 men as averred by him in his OA. Thus, we find it essential to place our reliance on response of ASC Records (outh) dated 01.12.2017 to Legal Notice-cum- Representation of the applicant wherein Para 6,7 and 8 are reproduced as under :-

“6. Para 3 (b). It is intimated that you have served with 80 Coy ASC (Sup) for the period from 02 Jan 2002 to 18 Feb 2003. 80 Coy ASC (Sup) vide their letter No 105/ST 12 dt 08 Sep 2015 has intimated that the unit being Lgs Instin (Static) has not moved out from its location and not participated in 'OP PARAKRAM' and no casualty i.e. DO Part II Order to this effect has been published by the unit. Hence the said period of service was included in the Recommendation Form as service in OP PARAKRAM, after getting confirmation from the unit.

7. PARA 3 (c). It is intimated that as per existing instructions, OP VIJAY Star is awarded to the persons actually deployed in Kargil battle Zone 'OP VIJAY'. 522 ASC Bn vide their AWAN message No 5867/HQ/Hony/ST-12 dt 05 Jan 2016 has intimated to this office that

no documents of JC-641908H sub Maj/CSD Ashok Kumar Verma actually deployed in Kargil is available with them and 'OP VIJAY' STAR has been wrongly notified. Hence the OP VIJAY Star was not included in your Recommendation Form while forwarding to CW-2, IHQ of MoD (Army) through HQ Eastern Command.


8. PARA 3 (d). As per existing instructions, a cut-off date for consideration of service period in concessional area has been laid down. You have been considered for grant of Horny Commission on the occasion of Independence Day 2016 for which the laid down cut-off date was upto 10 May 2016. Accordingly, your service from 09 Jul 2015 to 10 May 2016 was included as service in Counter Insurgency in Modified/Peace Areas while forwarding to CW-2, IHQ of MoD (Army) through HQ Eastern Command."

17. In light of above consideration, we find that the Original Application is devoid of any merit and is accordingly dismissed.

18. No order as to costs.

19. Pending miscellaneous application, if any, stands disposed of.

Pronounced in the open Court on this 13th day of September, 2024.


JUSTICE RAJENDRA MENON)
CHAIRPERSON


(LT GEN C.P. MOHANTY)
MEMBER (A)

Akc