

Ex-Major N. C. Singhal

Vs

Director General Armed Forces Medical Services, New Delhi and Another

Civil Appeal No. 1404 of 1971

(C.A. Vaidialingam, K.K. Mathew JJ)

17.12.1971

JUDGMENT

MATHEW, J. -

1. This appeal, by special leave, is directed against a judgment of the Delhi High Court, passed in appeal from the order of a learned Single Judge of that Court partially allowing a writ petition filed by the appellant.

2. The appellant, while holding medical licentiate qualification, was taken in the Army Medical Service as an Emergency Commissioned Officer in the rank of Lieutenant on December 14, 1943. He functioned as commissioned officer for a period of three years, ten months and 26 days, and was relieved on November 10, 1947. He was again taken as a Short Service Commissioned Officer on June 1, 1950, and served in that capacity for a period of 3 years, 5 months and 17 days, and he was relieved on November 17, 1953. Thus, the total period of his full commissioned service, both as Emergency and as Short Service Commissioned Officer, came to 7 years 4 months and 13 days. In the year 1954, it was decided to form a reserve of medical officers to be called 'A.M.C. Reserve' and Army Instruction No. I/S dated May 27, 1954, was issued by the Government of India for that purpose. According to the instruction, the A.M.C. Reserve was divided into four Classes, 'A', 'B', 'C' and 'X' Reserve Officers. Class 'C' comprised specialist officers liable to report for colour service within 60 days. The appellant was recruited in the Class 'C' service of specialists. Paragraph (13) of the Army Instruction provided that officers of the A.M.C. Reserve Service, when called for training or colour service were to receive the same pay and allowances as laid down for regular officers of the A.M.C. of the corresponding rank in the New Pay Code for the duration of training or colour service. It further provided that for the released Emergency Commissioned and Short Service Commissioned Officers appointed to the Reserve, the previous full pay commissioned service would count for pay. On August 1, 1958, the appellant was granted a Reserve Commission in Class 'C' in the rank of Substantive Major under the terms and conditions of the Army Instruction. Thereafter, the appellant was called to colour service, which, for all practical purposes, means wholetime active service, and he reported for duty on January 22, 1963, and served from that date as a specialist in ophthalmology. As a reserve candidate, before being recalled to colour service, he had remained on training for a total period of one month. Adding the period of one month, the appellant had to his credit, "full pay commissioned service" of 7 years, 5 months and 13 days on the date of his reporting for colour service.

3. In the year 1965, Army Instruction I/S of 1954, was superseded by Army Instruction 176. That provided for the terms and conditions of service of the regular reserve of Medical Officers.

4. Paragraphs 7, 8 and 9 of Army Instruction 176 concerning antedate of commission read as follows :

"7. Previous Commissioned Service. - Full pay commissioned as a medical officer in the A.M.C. will count for pay and promotion on appointment to reserve commission provided the candidate was in possession of a medical qualification recognised for grant of commission as a Lieut. in the A.M.C. This service also count for pay and towards qualifying service limits for substantive promotion. However, in all cases periods of service forfeited by sentence of court martial or by summary award under Section 84 of the Army Act (Act XLVI of 1950) will be deducted from the total service reckonable for pay/promotion as the case may be. In case the service in A.M.C. was rendered while holding licentiate qualifications, the previous commissioned service less than two years will count, for pay and promotion.

Previous service in a non-medical corps or in the IMD will not count for pay and promotion.

Ante-date of commission - On recall or colour service or employment with officer's consent, ante-date in addition to the entitlement under para 7 above will be admissible for purposes of pay and substantive promotion as under :

(a) A candidate who has held an approved wholetime appointment in a recognised civil hospital for a period of not less than six months will be eligible for an ante-date of six months. No ante-date will be permissible for hospital appointment which forms part of compulsory internship for the basic or post-graduate qualification.

(b) A candidate will be eligible for grant of an ante-date not exceeding six months, if at the time of selection he/she is in possession of a post graduate diploma in any branch of medical science recognised by the Indian Medical Council provided that the candidate had to attend a course of instruction in a recognised institution for at least nine months to qualify for such diploma.

(c) A candidate will be eligible for grant of an ante-date not exceeding 12 months in respect of higher qualifications. This will normally be granted for qualifications such as MD, MS or equivalent qualification obtained by examination from recognised Universities/colleges and recognised as such by the Indian Medical Council.

(d) In the case of candidate who is eligible for ante-date under more than one of the preceding sub-paragraphs the maximum period of ante-date will be limited to 18 months.

(e) The eligibility of each candidate for the grant of ante-date will be decided by the DG, AFMS.

Note - The post - graduate diploma obtained by taking examinations during "Called up Service" will entitle an officer for ante-date for such qualifications.

9. In the case of Class `C' Reserve Officers, if an individual is entitled to more than six years' reckonable service under paras 7 and 8 above, the date of grant of the rank of major at the time of entry will be ante-dated to the extent of the total period of

ante-date less 6 years."

Para 31 which provides for supersession of Army Instruction I/S of 1954 reads :

"31. This Instruction supersedes AI I/S/54. In case of A.M.C. (Reserve) Officers recalled and who had joined colour service during present emergency, this AI will take effect from October 26, 1962, in matter of ante-date, promotion, T.A., leave and pay."

5. The appellant's case in the writ petition was that entitled to reckon his total previous full pay commissioned service for "ante-date" with out any deduction for fixing his pay and rank and that the respondents should be directed to do so. The learned Single Judge directed the respondents to give the petitioner the benefit of ante-date of 6 years, 11 months and 13 days for the purpose of pay and 11 months for the purpose of promotion. The appellant filed a Letters Patent appeal to a Division Bench of the Court. The Bench dismissed the appeal. The Division Bench held that para 13 of the Army Instruction I/S of 1954 which provided that full pay commissioned service will count for pay has been superseded by pars 7 read with para 31 of Army Instruction 176 of 1965. The Court said that the appellant had only medical licentiate qualification during the period he served as an Emergency Commissioned and Short Service Commissioned Officer, and according to para 7 of the Army Instruction No. 176 of 1965, the previous commissioned service, less than two years, alone would count for pay and promotion. The Court further held that as permitted by para 8 of that instruction, a period of 18 months should be added to appellant's reckonable service for pay due to his subsequently acquiring higher qualifications and taking a post-graduate diploma in ophthalmology. Thus, according to the Court, the appellant was entitled to the benefit of para 8 of the Army Instruction 176, but then, there was to be deduction of two years from his previous full pay commissioned service for purposes of pay by virtue of para 7 read with para 31 which provided that in case of A.M.C. Reserve Officers recalled to colour service during the emergency, the Army Instruction 176 will take effect from October 26, 1962, in the matter of ante-date, for promotion, T.A., leave and pay.

6. The appellant submitted that his conditions of service were governed by the Army Instruction I/S of 1954 and according to para 13 thereof, the whole of his previous full pay commissioned service must count for pay, and that Army Instruction No. 176 which came into force with retrospective effect from October 26, 1962, in the case of A.M.C. Reserve Officers called to colour service during emergency in the matter of ante-date, for promotion, T.A., leave and pay, cannot affect his condition of service which were governed in this behalf by para 13 of Army Instruction I/S of 1954.

7. We think that the appellant's conditions of service were governed by para 13 of Army Instruction I/S of 1954 and his previous full pay commissioned service should be taken in the matter of 'ante-date' for the purpose of his pay. The condition of service in this regard was not liable to be altered or modified to the prejudice of the appellant by a subsequent administrative instruction which was given retrospective effect from October 26, 1962.

8. The full pay commissioned service of the appellant before enlistment as Class 'C' Officers of the A.M.C. Reserve, including the period of training, was 7 years, 5 months and 13 days. In our view the appellant was entitled to the benefit of 'ante-date' of this period for the purpose of his pay. The High Court has allowed the appellant the benefit of ante-date of 18 months allowed under para 8 of Army Instruction 176 of 1965. We see no reason to deprive the appellant of that period of national service due to his acquiring subsequently a higher qualification and taking a diploma in post

graduate, ophthalmology. The appellant is, therefore, entitled to 8 years, 11 months and 13 days in the matter of "ante-date" for the purpose of his pay.

9. It may be noted that there was no provision before Army Instruction 176 was issued, for ante-dating the date of the grant of the rank of Major at the time of entry as Class `C' Officer in the A.M.C. Reserve. Rule 10 of the Army Instruction I/S of 1954 provided :

#10. (a) Officers will be appointed and promoted as under : (i) Class `A' & `B' reserve officers :Lieutenant .. On entry.Captain .. On completion of 3 years in the reserve or on completion of one year's full pay commissioned service.Major .. On completion of 8 years' full pay commissioned service.Lt. Col .. On completion of 18 1/2 years' full pay commissioned service.Note. - In the case of released EC/SSRC officers previousfull pay commissioned service will be taken into account infixing the rank on entry, and for seniority for pay and promotionto higher ranks :(ii) Class `C' reserve officers :Major .. On entry.Lt. Col .. On completion of 10 1/2 year's full pay commissioned service as a Major.(iii) Class `X' reserve officers. An officer will NOT beappointed to this reserve in a rank higher that that which he holdsor was granted on retirement.(b) Acting ranks.##

Whilst called to colour service officers will be entitled to hold higher acting ranks in accordance with the rules in force for regular officers."

So far promotion to the rank of Lieutenant Colonel, a Class `C' officer had to complete 10 1/2 years of full pay commissioned service as a Major. The service had to be as a major. Admittedly, the appellant has not served as a Major before he joined as Class `C' Officer of the A.M.C. Reserve. So far as the date of the grant of the rank of Major was concerned, it could be ante-dated to the extent of the above period less than six years as provided by para 9 of the Army Instruction 176 as held by the High Court. We make it clear that the appellant's claim to further promotion, if any, after Army Instruction 176 came into operation, will be governed by that Instruction.

10. We allow the appeal to the extent indicated and dismiss it in other respects. We make no order as to costs.

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