

Major K. D. Gupta

Vs

Union of India and Another

Writ Petition No. 5302 of 1980

(D. A. Desai, O. Chinnappa Reddy JJ)

10.08.1983

JUDGMENT

CHINNAPPA REDDY, J. -

1. The petitioner, Major K. D. Gupta argued his case in person. As usual with parties, who argue their cases themselves, he was so full of his facts and grievances, big and small, that we experienced, for quite a while, difficulty in getting a picture of the case in its proper frame. The pleadings and documents filed in the case were no more helpful on account of their imperspicuous prolixity. We do not propose to refer to the narrative of facts as contained in the petition or as mentioned to us in the oral submission by the petitioner. We expressly refrain from referring to the several insinuations and personal allegations made by the petitioner against various officers, as we realised that even if some of the allegations and insinuations may have some basis, they cannot be taken serious notice of as there is considerable likelihood of the petitioner having indulged in exaggerated surmises, labouring as he does under a deep sense of grievance. We propose to confine ourselves to a narrative of the facts essential for a proper appreciation and decision of the case.

2. The Petitioner, K. D. Gupta was granted a permanent commission in the Indian Army in 1958 and was appointed as Second Lieutenant. He was successively promoted as Lieutenant, Captain and Major. In December, 1974, he was selected for promotion to the rank of Acting Lieutenant Colonel and he was in fact so promoted with effect from February 27, 1975. On March 22, 1976, the petitioner was directed by the Brigade, Commander to report to the Officer Commanding, Military Hospital, Kirkee for psychiatric examination and report. On March 23, 1976, he was examined by Lt. Col. A. Mukherjee, specialist in psychiatry and on March 26, 1976, he was examined by Surgeon Commodore T. B. D'netto, Consultant (Psychiatry) to the Indian Navy. As a result of the examination by the specialists, his medical classification was downgraded on August 13, 1976 from SHAPE-S. (fit for all duties) to SHAPE-S. 3-T. 24 (fit for routine duties under supervision in areas where hospital with psychiatric facilities exists nearby; not fit for duties at high altitudes. By an 'Attachment Order' dated May 14, 1976, he was transferred from 4/3 Gorkha Rifles to Headquarters 54, Infantry Division against the post of Commander NCC Group HQ Bellary in the rank of an Acting Lieutenant Colonel. He returned from leave on August 14, 1976 and was attached to HQ 54 Infantry Division till November 16, 1976. By an order dated November 16, 1976, the petitioner who was described in the order as an Acting Lieutenant Colonel was posted as "GLO (Maj/Capt) 152, GL Sec Type C Vice-Capt. I. K. Bedi". Apparently the post to which the petitioner was transferred by the order dated November 16, 1976 was a post which could be held by an officer of the rank of a Major or a Captain and it was in fact at the time held by an officer who was of the rank of a Captain. Though there is no order specifically reducing the rank of the petitioner from that of an Acting Lieutenant Colonel to that of a Major, the posting order dated November 16, 1976 was

treated as such by the Brigadier incharge and all other Army authorities and the petitioner was instructed by the Brigadier not to wear the badges of the rank of Lieutenant Colonel. It is this reduction in rank that is primarily challenged in this writ petition. We will however narrate a few more facts to make the story up-to-date. Subsequently, by a special Army Order dated December 10, 1970, the petitioner's medical classification was upgraded to SHAPE-S 2-T. 24 and thereafter, on a second medical review on September 2, 1977 to SHAPE-S. 1 (fit for all duties). After the upgradation to S. 1, the authorities decided to give the petitioner a 'Special Review' for the grant of the rank of Acting Lieutenant Colonel and by a letter dated October 31, 1977 directed the Brigadier Commander to initiate the special report and submit the same to the Headquarters within 20 days of initiation. In was in this letter that the petitioner was given an inking for the first time that his reversion from the post of Acting Lieutenant Colonel to Major was on medical grounds. As desired, the Brigadier Commander submitted the special report in which after expressing his appreciation of the work of the petitioner, he recommended him for promotion to Lieutenant Colonel. However, the Army Headquarters by their letters dated October 12, 1978 and November 27, 1978 directed that the petitioner should be sent to Military Hospital, Pune on sick transfer for examination by Consultant (Psychiatry). The reason suggested for the fresh medical examination was that at the time when the petitioner was upgraded to S. 1 category, an earlier episode of 1963 had not been taken into account. After medical examination, the petitioner was this time permanently downgraded to S. 2. According to the petitioner, this was done entirely without any basis and that even the clinical reports would reveal that the petitioner was perfectly fit. We do not desire to go into these claims of the petitioner since we are satisfied on the material placed before us that even the very reduction of the Petitioner's rank in 1976 from Acting Lieutenant Colonel to Major was bad.

3. Shri Abdul Khader, learned counsel for the respondents explained to us that the petitioner had been reverted from the rank of Acting Lieutenant Colonel to Major for three reasons :

- (i) Reduction in rank had to follow as a matter of course on placement of the petitioner in a lower medical category;
- (ii) After the latest medical examination in 1978, he was not eligible to be considered for promotion for one year; his earlier reduction in rank was, therefore, justified; and
- (iii) He performed no duty for six months from March 22, 1976 when he was admitted in the hospital and under the rules, he stood automatically reduced in rank.

4. We find no substance in any of the reasons mentioned by Shri Abdul Khader. Shri Khader was unable to draw our attention to any rule, order or circular which prescribed that reduction in rank should inevitably follow on placement of an officer in a lower medical category. In fact it was conceded by Shri Khader that an officer whose medical classification is downgraded, will not be reduced in rank on that account, but will continue to hold the same rank as before. We are, therefore, unable to understand why the petitioner had to be reduced in rank because subsequent to his promotion, his medical classification was downgraded. The second reason given by Shri Khader that the petitioner would not be eligible to be promoted for a year after the latest medical examination and, therefore, his earlier reduction in rank was justified, is only to be stated as rejected. When the petitioner was promoted, he satisfied all the requirements including that of medical categorisation, if any. We find it impossible to agree with the proposition that since he would be ineligible to be promoted today, he could not have been promoted yesterday when he satisfied all the requirements. The reason really pressed before us was the third reason, namely, that the petitioner had not performed any duty for six months and, therefore, he had to be reduced in

rank in accordance with paragraph 5 of Special Army Instruction No. 1 dated January 9, 1974. We do not propose to examine the question whether Special Army Instruction No. 1 authorises a reduction in rank for failure to rejoin duties for more than six months since that appears to be the case of the petitioner also. In paragraph 25 of the writ petition the petitioner has stated :

It is submitted that under the Act or Rules or Army instructions there is no provision for downgrading the promotionary selection grade or reverting an officer on medical grounds. Except that reversion may only occur in case where an officer holding an acting rank due to sickness does not rejoin duty beyond a period of six months or is posted before the expiry of the said period of six months to an appointment carrying a lower rank as per Special Army Instruction Number 1 dated January 9, 1974, wherein it is provided as under : .....

Proceeding on the basis that an officer holding an acting rank may be reverted for absence from duty for a period of six months on account of sickness etc., we will now examine whether the particular Army Instruction was attracted to the case of the petitioner. He was admitted into the hospital on March 22, 1976 and was in the hospital up to June 2, 1976. He was on sick leave for eight weeks from June 3, 1976 to August 8, 1976. He was again in the hospital for re-categorisation from August 3 to August 13, 1976. He reported back for duty on August 14, 1976. In the counter-affidavit filed on behalf of the respondents it was stated :

Since 4/3 Gorkha Rifles which is an active battalion could not be left without a Commanding Officer for such a long period, it was necessary to adjust the petitioner in some other appointment so that a new Commanding Officer could be posted in his place. Consequently the petitioner was held on strength of another Lt. Col's. appointment viz. Commander NCC Group Headquarters Bellary, but he was attached with Headquarters 54 Infantry Division so that he could have psychiatric treatment at Military Hospital, Secunderabad where the facility existed. The appointment of commander NCC Group Headquarters, Bellary was specifically kept vacant so that the petitioner could be held against the said appointment for the duration of his attachment with Headquarters 54 Infantry Division. It is emphasised that the officer never physically reported to NCC Group Headquarters Bellary and performed duties as its Commander. The posting order was issued merely to meet the audit requirement that all officers on attachment have to be held against certain appointment sanctioned by the Government. The officer's contention that he was posted to NCC Group Headquarters Bellary in the rank of Lieutenant Colonel is thus not correct as he was not in a position to resume any kind of military duties and he was not in a fit state to perform any duty in view of his ailment. He was attached with Headquarters 54 Infantry Division to help him to avail of proper medical treatment ...

Therefore, according to the statements in the counter-affidavit the petitioner was posted and attached to Headquarters 54 Infantry Division against the post of Commander NCC Group Headquarters, Bellary. He was allowed to remain at Secunderabad in order to have the facility of treatment at Military Hospital, Secunderabad. It should be noted that the rank assigned to him at that stage was the rank of Acting Lieutenant Colonel. We are unable to understand how the 'attachment' of the petitioner to the Headquarters Division could possibly be treated as absence from duty as sought to be done to attract the Army Instructions. That the petitioner never went to Bellary is irrelevant since he was attached and posted to Headquarters Division though against the post of Commander NCC Groups Headquarters Bellary. Having been posted at Secunderabad Headquarters, he could not possibly proceed to Bellary without being ordered to do so. It may be that he was posted at Secunderabad to facilitate medical treatment, but it is nobody's case that he was ever

absent from duty. We fail to see how the posting to the Headquarters Division can be treated as absence from duty.

5. As stated by us earlier, we find no substance in any one of the three reasons mentioned by Shri Abdul Khader on behalf of the respondents for the reversion of the petitioner from the rank of Acting Lieutenant Colonel to Major. The reversion or reduction in rank cannot be justified and it is accordingly quashed. The petitioner is directed to be restored to the rank of Acting Lieutenant Colonel with effect from the date he was reverted and stripped of the badges indicating his rank. As a result of the restoration of the rank of the Acting Lieutenant Colonel to the petitioner, other consequences, such as, consideration of the petitioner's further claims to advancement, pay, arrears of pay, etc., will have to be considered by the authorities and it is directed that these claims may be considered and disposed of within a period of six months from today. The petitioner will submit all his claims to the appropriate authorities within a period of one month from today. The petitioner will get the costs of the writ petition from the respondents.

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