

Lt. Col. K. D. Gupta

Vs

Petitioner Union of India and Others

Civil Miscellaneous Petition No. 20065 of 1987

(Rangath Misra, M. N. Vankatachaliah JJ)

31.03.1989

JUDGMENT

RANGANATH MISRA, J. :-

1. Petitioner, a Lt. Colonel in the Indian Army, has filed this application for taking contempt proceeding against the respondents on the allegation that the directions contained in the judgement of this Court, dated April 20, 1988, in Civil Appeal No. 1702 of 1987 have not been complied with. This Court in the civil appeal found that the petitioner was entitled to a reconsideration of his claim for promotion on the basis of his medical categorisation continuing as S-I and directed : (SCC p. 354, para 12)

The appeal is allowed in part and to the extent that the appellant's medical category shall be taken as being continued to be Shape I from 1977 and on that basis his promotional entitlement shall be finalised by the respondents within three months hence.

2. After this Court's decision, by a letter dated June 17, 1988, the respondents informed the petitioner to the following effect :

In this connection, I have been directed to inform you that your case has been re-examined in the light of the judgement of the Supreme Court of India dated April 20, 1988.

It may kindly be recalled that acting rank of Lt. Col. was granted to you with your original seniority based on the earlier directions of the Hon'ble Court. Substantive rank of Lt. Col. was also granted to you along with your batchmates. Consequent to the Supreme Court's judgement dated August 10, 1983, your case for promotion to the rank of A/Colonel was considered on three occasions viz, July 1986, April 1987, November 1987 and rejected on all the three occasions based on your overall performance and merit of your batch. Your medical category was not taken into consideration as per the laid down procedure. Therefore, upgradation of your medical category from Shape-2 to Shape-1 by the Supreme Court vide their orders dated April 20, 1988, does not warrant reconsideration of your case for promotion because your medical category had not affected your case for promotion to the rank of A/Colonel on any occasion. You failed to make the grade for promotion not on the basis of your medical category but on the basis of your overall performance and merit of your batch.....

3. Upon notice in this miscellaneous proceeding a counter-affidavit was filed on behalf of the respondents stating that the petition was misconceived and he was not entitled to any relief as claimed. It was stated that the promotional entitlements of the petitioner had been finalised as per

the directions of this Court after re-examining the petitioner's case for promotion within the specified time and as there was no failure to comply with the directions, no contempt had been committed. The counter-affidavit proceeded to state :

As per the selection procedure explained in the preceding paragraphs, the medical category of Lt. Col. K. D. Gupta was not taken into cognizance. On receipt of the directions of the Supreme Court dated April 20, 1988, Lt. Col. Gupta's case for promotion was re-examined. Since the Hon'ble Court had given no such directions to the effect that the case of Lt. Col. Gupta shall be placed before the Selection Board and has only directed that the petitioner's promotional entitlements be finalised in view of his continued medical category in Shape-I since 1977, his case was re-examined and finalised and the same was intimated to him vide our letter dated June 17, 1988.

4. The record of consideration for promotion of the petitioner at the various stages by the Board was directed to be produced before the court. In a further affidavit on behalf of the respondents, Col. Bharucha stated that :

By letter dated May 26, 1988, the Military Secretary observed as under :

The officer was considered by No. 3 Selection Board for promotion to the acting rank of Colonel and awarded the following :

- (a) 'R' (Unfit) in July 1986 with ACR 84/85.
- (b) 'R' (Unfit) in April 1987 with ACR 6/85 to 2/86.
- (c) 'R' (Unfit) in November 1987 with ACR 6/86 to 5/87.

The officer has been finally superseded for promotion to the rank of acting Colonel based on his overall profile and his medical category was not taken into account during the above three considerations. However, the officer has been granted the substantive rank of Lt. Colonel w. e. f. August 1, 1979 vide Gazette Notification No. 1774/87 dated September 19, 1987.

Therefore, no further action is required by the department in pursuance of the judgement of this Hon'ble Court dated April 20, 1988.

I state that the petitioner had addressed a semi-official letter dated May 2, 1988 to the Chief of Army staff in this regard. The Chief of Army Staff called for the details of the case of the petitioner and the same were placed before the Chief of Army Staff on June 3, 1988. The Chief of Army Staff after considering the note put up to him, directed the office to intimate the petitioner accordingly. By letter dated June 17, 1983 the office has informed the petitioner, a copy of which is enclosed herewith. It is, therefore humbly submitted that the case of the petitioner was considered after the judgment of this Hon'ble Court dated April 20, 1988 by the Military Secretary of this rank of Lt. General and it was found that is not necessary to send him for Selection as he was already found unfit without reference to his medical certificate Shape-II.

5. On January 24, 1989 this Court made the following order :

After carefully considering matter, we direct the respondents to reconsider the case of

the appellant for promotion on the basis that his medical category continues to be Shape 1 from 1977. The medical category will be taken into account if the rules for promotion so require, otherwise not. The consideration of promotion will be completed within four weeks from today.....

We have been informed that the petitioner's case was considered on the basis of record and he was not found fit for any promotion.

6. It is relevant to notice at this stage that the petitioner had come before this Court on an earlier occasion by filing Writ Petition No. 5302 of 1980 which was disposed of on August 10, 1983. This Court in its judgment indicated :

(SCC pp. 155-56, paras 3 and 4)

Shri Abdul Khader, learned counsel for the respondents explained to us that the petitioner had been reverted from the rank of Acting Lt. 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.

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 requirement. 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 authorise 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.

7. The counter-affidavit filed in the writ petition and the submissions of counsel advanced at the hearing thereof clearly indicate that the medical category of the petitioner was connected with his entitlement to promotion. In fact the civil appeal itself the petitioner's claim for promotion to higher ranks keeping the promotions accorded to his batchmates in view, was challenged on the basis of the

petitioner's lower medical category. In the affidavits filed in the civil appeal the respondents never took the stand that entitlement to promotion as claimed by the petitioner had nothing to do with the state of his health-physical and mental. If that stand had been adopted, this Court would certainly have gone into that question before directing the petitioner's case to be re-examined by a Special Board of Psychiatrists, on the basis of whose report, the petitioner was allowed to be continued in Shape-I from 197 without any break. It is not disputed that the petitioner had in the second round of the litigation mainly pressed for his promotion by contending that his medical categorisation was vitiated. Counsel for the respondents at on stage during the hearing of the appeal advanced the contention that the claim for promotion was not, in any manner, connected with the medical category of the petitioner. That is why this Court in its judgment stated :

(SCC p. 354, paras 10 and 11)

.... On the basis of material available on the which had been partly dealt with by this Court on the earlier occasion while disposing of the writ petition, and what we have now found on the basis of the result of examination by the Committee of Experts the appellant has become entitled to limited relief. Though there was no order reducing him from the rank of acting Lt. Colonel to Major, he was treated to have been so reduced. Then followed the frequent psychiatric examinations without any real justification. These have constituted the foundation of the appellant's grievance. His recategorisation as Shape-II in 1978, in these circumstances, was without justification. He is, therefore, entitled to a reconsideration of his claim for promotion on the basis of his medical categorisation continuing as Shape-I.

The appellant, inter alia, has asked for entitlements to promotion in view of promotions earned by his batchmates. We do not think that would be a safe guide but we do hope and trust that the respondents should consider his case for promotion with an open mind on the basis of his continuity in Shape-I.

The judgment of this Court did clearly proceed on the footing that the lower medical categorisation prejudiced petitioner in the matter of obtaining appropriate promotions. For the first time, the respondents have taken the stand in the contempt proceeding that the lower categorisation has nothing to do with the refusal to accord promotion to the petitioner. In the circumstances indicated above, the plea now advanced cannot be accepted. In fact, Mr. Ramaswamy, Additional Solicitor General, appearing for the respondents being cognizant of this situation stated to us during the hearing of this application that the petitioner has justification to feel aggrieved.

8. The respondents have maintained that the petitioner has not served in the appropriate grades for the requisite period and has not possessed the necessary experience and training and consequential assessment of ability which are a precondition for promotion. The defence services have their own peculiarities and special requirements. The considerations which apply to other government servants in the matter of promotion cannot as a matter of course be applied to defence personnel of the petitioner's category and rank. Requisite experience, consequent exposure and appropriate review are indispensable for according promotion and the petitioner, therefore, cannot be given promotions as claimed by him on the basis that his batchmates have earned such promotions. Individual capacity and special qualities on the basis of assessment have to be found but in the case of the petitioner these are not available. We find force in the stand of the respondents and do not accept the petitioner's contention that he can be granted promotion to the higher ranks as claimed by him by adopting the promotions obtained by his batchmates as the measure.

9. In the appellate judgment, this Court said :

He has also indicated in paragraph 8 of that petition that he is prepared to be released from service after his promotional entitlements are finalised and is given his dues on such basis as may be determined. The appellant has claimed compensation which we see no basis to grant.

The petitioner also us in course of the hearing of this case that even if he is not accorded promotions as claimed by him, he should suitably be compensated and thereafter he should be released from the Army on the basis of voluntary retirement. The respondents have also indicated that his retirement is being processed separately.

10. The question for consideration now as to how the petitioner has to be compensated and what should be its measure. The petitioner has, of course, advanced all claims by contending that he has suffered physical and mental torture, loss of reputation and of social acceptance and financial loss. What promotions the petitioner would otherwise have earned would be a matter of speculation and cannot be ascertained at this stage for lack of appropriate decisive criteria. His grievance that he suffered in dignity and humiliation as a result of being looked down upon by his batchmates, friends and relatives has perhaps been sufficiently met by the appellate judgment which has declared that his lower medical categorisation was unjustified and the petitioner continued to be Shape-I without break from 1977.

11. The defence personnel have peculiar incidence of service. Life's course does not run smoothly for everyone. In the present proceeding which is for contempt, we do not think that we can award compensation under every head of claim. Some of factors relevant for such purpose are the duration of time for which the petitioner was subjected to various medical checks and hospitalisation, and the consequent suffering which he underwent, the loss of promotional prospects and the facts that he would now be obliged to request to be released from service prematurely. We are of the view that a total compensation of Rs. four lakhs would meet the ends of justice. This would obviously mean that the petitioner would not be entitled to any other claim on these heads but we make it clear that he would be entitled to all other service benefits which an officer of the Lt. Colonel's rank, which the petitioner admittedly holds, would be entitled to. This judgment should serve the petitioner in vindication of his stand and to dispel clouds cast on his physical and mental health by the purported lower medical characterisation (sic categorisation) and obviously in the event of his being considered on the basis of his service records and the judgment of his Court.

12. We direct that the amount of Rs. four lakhs be paid to the petitioner within two months and the petitioner may be released from the defence service in accordance with any decision that may be taken on his request for such release.

13. The contempt proceeding is disposed of with these directions and no order as to costs.

</html