

Ex Naib Subedar Katar Singh

Vs

Union of India and Others

Civil Appeal No. 240 of 1982

(K. Jagannatha Shetty, A. M. Ahmadi JJ)

26.09.1989

JUDGMENT

AHMADI J. –

1. This appeal by special leave is directed against the summary rejection of the appellant's Writ Petition No. 579 of 1988 by a Division Bench of High Court of Delhi. The facts leading to this appeal briefly stated are that the appellant who joined the Army in 1957, rose to the rank of Naib Subedar by 1975. The next promotional post in the hierarchy was that of Risaldar/Subedar. The appellant's contention is that on July 30, 1979, the Screening Board met and selected candidates considered fit for promotion to the next higher post. Pursuant to the said selection five Junior Commissioner Officers who were junior to the appellant were promoted to the next higher post on December 30, 1979. The case of the appellant is that even though he fulfilled the criteria laid down for promotion he was wrongly denied promotion to the next higher post. In order to appreciate this contention it is necessary to set out the relevant criteria for promotion. The same read as under :

"For promotion to the rank of Ris/Sub

(i) Three out of the last five reports rendered on an individual should be 'High Average' out of which at least two should be on regimental duty or as an Instructor in an Army School of Instruction, in the rank or Nb Ris/Nb Sub.

(ii) No report should be less than 'Average' in the last three reports.

(iii) Should have been recommended for promotion in the last three reports."

The extracts from the confidential reports of the appellant have been produced by both sides from 1974 to 1979. However, as the extract of 1979 was written after the Screening Board met, we have though it proper to ignore the same from consideration. To verify the correctness of the entries in the extracts produced on record we also called for the original confidential reports and perused the same. On a perusal of these confidential reports from 1974 to 1978 i.e. the last five years immediately preceding the date on which the Screening Board considered the case of the appellant and others, we find that the grading in the years 1976 and 1977 is 'average'. The grading in the year 1974 is 'B' which according to the appellant means 'high average' while according to the respondent it is merely equal to average. We will deal with this controversy later on. The grading in 1975 is 'above average' which is not less than high average. The grading in 1978 is of 'high average'. Therefore, if the grading in 1974 which is shown to be 'B' is taken to be high average and not merely average the appellant would satisfy the requirement of three out of the last five reports

showing high average. So far as grading 'B' is concerned, the appellant places reliance on the extract at page 171 and the note appearing at the foot of paragraph 3(a) of the criteria for promotion of JCOs and NCOs, Annexure X at p. 245. That note reads as under :

"The grading 'B' up to the year 1976/77 will be considered equivalent to 'High Average'."

It was contended by the learned counsel for the respondent that this note has relevance to paragraph 3(a) only which deals with promotion to the rank of 'Def/Hav' and has nothing to do with the promotion of 'Nb/Ris/Nb sub' to the next higher post of Risaldar/Subedar. We think this objection is well founded. There is no note found at the foot of paragraph 3(c) with which we are concerned similar to the one found at the foot of paragraph 3(a) and paragraph 3(b). Reliance was placed on the extracts of 1974 produced on pages 162 to 165 and 171 of the paper book in support of the contention that the grading 'B' means high average. We did not find any such note in the original CR of that year. In the copy of the extract (Annexure I) Produced with the supplementary affidavit the words 'equal to average' appear after the letter 'B'. This does not seem consistent with the entries at pages 162 to 165 and 171 relied on by the appellant. Averments made by Major Daag in the counter based on these extracts cannot take the matter further. In view of the above state of the extracts we preferred to peruse the original CR for the year 1974 wherein we did not find any such endorsement suffixed to the grading 'B'. We have carefully considered the written submissions placed before us by the counsel for the appellant, but we are afraid we cannot accept the contentions made by him. In the CR forms the grading 'B' is shown to the average. If it were not so the notes at the foot of paragraphs 3(a) and 3(b) were unnecessary. It seems clear to us that grading 'B' is equivalent to average and not high average as contended on behalf of the appellant. The appellant, therefore, did not satisfy the first criterion of high average grading in three out of the last five reports. That being so, the Selection Board was justified in refusing to enter the name of the appellant in the list of Naib Subedars found fit for promotion as Subedars.

2. The other grievance made by counsel for the appellant relates to the medical fitness of the appellant. It was found that the appellant at the relevant time was placed in medical category 'C'. Insofar as this grievance is concerned it was sought to be put at rest by this Court's interim order dated December 11, 1981 which reads as under :

"Having heard Shri R. S. Mangai and the Attorney General of India we were informed by Attorney General that apart from anything else the petitioner has lost his health and cannot come up to the military standard for the post to which on promotion he is expected to go. The learned counsel for the petitioner has no objection to the petitioner appearing before the Medical Officer attached to the Military meant for this work whose name would be given to this Court by next Wednesday, December 16, 1981. If the name is given by that date it should be conveyed to the petitioner. The petitioner should also be given the date on which he has to appear before that Medical Officer. The report of the Medical Officer shall be submitted to this Court. The medical examination shall be confined to the physical fitness of the petitioner qua the post of Subedar only. The report shall be submitted within 15 days after he appears before the Medical Officer."

Pursuant to this order the appellant appeared before the Military Medical Officer. The report of the Medical Officer placed him in category 'C'. It is, therefore, obvious that even the subsequent medical examination of the appellant did not come to his rescue. Counsel for the appellant tried to

contend that the appellant ought to have been examined by a Medical Board and not a Medical Officer. We cannot countenance such a submission for the simple reason that the court's order in terms stated that he should be examined by a Medical Officer and not by the Medical Board. We, therefore, do not see any merit in this contention also.

3. These were the only two submissions made on behalf of the appellant against the impugned order. As we do not see any merit in both the contentions we dismiss this appeal but in the circumstances of the case make no order as to costs.

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