

C.S.Gill Vs. Uoi and Another

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Court : Armed forces Tribunal AFT Principal Bench New Delhi

Decided On : Sep-01-2010

Judge : A.K. Mathur, Chairperson & the Honourable Lt.Gen. M.L.Naidu, Administrative Member

Appeal No. : T.A.No.29 of 2010 [Arising out of WP(C)No. 8039 of 2002 of Delhi High Court]

Appellant : C.S.Gill

Respondent : Uoi and Another

Judgement :

1. This Writ Petition has been transferred from Delhi High Court.
2. Petitioner by this petition prayed for issuing an order or direction to the respondent to promote the petitioner to the rank of Brigadier as his course mates have been promoted to the said rank from the date his batchmates junior to him has been so promoted with all consequential benefits with damages.
3. Petitioner was commissioned in Indian Army into the Corps of Engineers in the rank of Second Lieutenant in the year 1972. He was promoted in the rank of Captain in 1976 and obtained First Honours Degree in Mechanical Engineering in 1979. He was promoted in the rank of Major in the year 1984. During the year 1987-88, the petitioner was posted as Garrison Engineer at Nagrota in the State of Jammu and Kashmir. During that, Garrison Audit was carried out when his

predecessor Major SK Dutta was the Engineer and in audit it was found there was an embezzlement of sum of Rs.22.49 lakhs and involvement of Major SK Dutta and Col. SC Gulati. This serious matter was brought by the petitioner to the notice of higher authorities. He also reported to CWE Col PC Verma to investigate and take necessary steps. This was not liked and appreciated by the higher authorities and on 28.2.1990, he received the posting order as Staff Officer in Grade II at Engineering Branch HQ Eastern Command at Calcutta. Petitioner joined on that post and made a complaint directly to Chief of Army Staff. However, on 10.7.1990, petitioner was posted as Staff Officer (Steel) Engineering Branch, HQ Eastern Command whereas he should have been posted as Staff Officer, Grade II by the Army HQ. Another order was issued directing attachment of the petitioner to 235 Inland Water Transport(IWT) Company located at Alambazar, Calcutta and was not assigned any duties. It is alleged that when petitioner was residing at Alambazar, Calcutta and his family was residing at Fort William Calcutta since the date of his posting to Calcutta in April, 1990. Both the locations being in the same station, there was no requirement under law for the petitioner to seek any formal leave as and when the petitioner wanted to visit his family on the weekends or on holidays and it was in the knowledge of the Commanding Officer. On 20.11.1990, the petitioner was called by the CO for hearing of charge against him arising out of his having questioned the validity of his posting order dated 10.7.1990 and for his having written directly to the Chief of Army Staff on 5.7.1990. The Court of Inquiry was held and petitioner received a chargesheet after five months wherein it was alleged that petitioner had been absent without leave on certain occasions and after recording the summary of evidence, the petitioner was served a chargesheet dated 18.11.1991 and on 23.12.1991, order convening the General Court Martial on the aforesaid chargesheet was issued. The petitioner faced the court martial trial and ultimately he was found guilty and he was dismissed from service. Thereafter, petitioner moved a writ petition before Calcutta High Court which was dismissed by Single Judge on 3.7.1997. On 8.7.1997, petitioner filed an appeal before the Division Bench and ultimately he succeeded before the Division Bench and Army authorities filed a SLP before the Supreme Court on 12.5.1999 which was heard and finally dismissed by the Apex Court on 24.4.2000. Thereafter, petitioner was reinstated. Now the main grievance of the petitioner in the petition is

that since the petitioner has been reinstated and monetary benefits has been given to him, but he has not been given promotion which he would have been given to him to the post of Brigadier as his batchmates have been promoted. Therefore, he has filed this petition seeking directions that he should be promoted to the post of Brigadier along with the persons of his batchmates.

4. The petition was contested by the respondent that petitioner has been retired from service on 30.4.2003. The respondent in their detailed reply denied all the allegations and submitted that the petitioner was considered for promotion for the first time in 1991 on the basis of the ACR of 1989-90 but he was not empanelled for promotion by the Selection Board based on overall profile and comparative merit and accordingly he was not promoted and in the mean time he had become a subject to disciplinary case and DV Ban had been imposed. Therefore, the result could not be declared as per the policy and result was declared subsequently in August, 2000, after DV Ban was revoked. For the year 1992-94 he was subject to disciplinary action and after that his ACR were regularized and again considered but was not recommended by Selection Committee.

5. It is also pointed out that he was considered for a period from 2000-01 and not empanelled by Selection Board. It is submitted that petitioner was twice considered on the basis of profile and merit, but he could not make it.

6. Learned counsel for the petitioner submitted that it is not fault of the petitioner that his ACRs were not written during the relevant period, therefore, he cannot be penalized and made to suffer. Learned counsel invited our attention to AIR 1989 SC 1393 K.D.Gupta, Lt. Col. Vs. Union of India. In this case order was passed in contempt petition by the petitioner Lt. Col. K.D. Gupta and in that Lordships held that petitioner was entitled to reconsideration of his claim for promotion on the basis of his medical categorization continuing S-1 and directed:

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. After the Courts decision, the respondents considered his case and informed to the petitioner that your case was considered on three occasions and rejected

based on overall performance and comparative merit without taking your medical category into consideration as per the laid down procedure.

7. Infact in writ petition by the petitioner, stand taken by the respondent was that because of his low medical category, he was not entitled to promotion and the authorities never took the stand that because of low medical category, the chances of promotion were prejudiced. Therefore, the Lordship held that the respondent cant be allowed to change the stand and accordingly directed to consider the case of promotion. But in present case, this is not the case. In the present case, petitioner order of court martial was set aside by the Honble Supreme Court, therefore, petitioner was required to be considered on the ACR available. But after reinstatement also his ACRs were considered and he could not make it because lack of merit. Therefore, he could not be promoted to the post of Brigadier.

8. After going through the record and hearing the petitioner and counsel at length, we are satisfied that no illegality has been committed by respondents. The case of petitioner was considered on the basis of available ACRs in objective manner. On the basis of available ACRs if petitioner is not found suitable by Selection Committee then no fault could be found. Consequently, we do not find any merit in this case and same is accordingly dismissed. No order as to costs.

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