

Ex Sub Hari Ram Versus Union of India and Others

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Court : Armed forces Tribunal AFT Regional Bench Jaipur

Decided On : Jul-13-2010

Judge : Bhanwaroo Khan (J) & the Honourable Lt Gen Susheel Gupta (a)

Appeal No. : TRANSFER APPLICATION NO. 21 OF 2010 IN S.B. CIVIL WRIT PETITION NO.2219 OF 1995

Advocate for Pet/Ap. : Mr. B.L.Avasthy

Judgement :

(PER HONBLE Lt Gen SUSHEEL GUPTA):

1. The applicant, Ex Subedar Hari Ram had filed a writ petition in the High Court of Judicature for Rajasthan at Jaipur praying for grant of promotion to the rank of Subedar Major w.e.f. 1.10.1991 with all consequential benefits. The writ petition was transferred to this Tribunal under Sec.34 of the Armed Forces Tribunals Act, 2007 and the same has been registered as Transfer Application No. 21 of 2010.

2. Brief facts of the case are, that the applicant was enrolled in the Territorial Army (for short T.A) on 27.11.1969, promoted to the rank of Naib Subedar on 16.7.1975 and then promoted to the rank of Subedar w.e.f. 18.2.1983. The applicant had continued to serve in the Unit in various ranks in operational areas with the Battalion and was hopeful that he would be promoted to the rank of Subedar Major w.e.f. 1.10.1991 when the vacancy occurred. However he retired on 13.9.1994 in the rank of Subedar after completion of 25 years of service.

3. Recommendation for promotion to the rank of Subedar Major was forwarded by the then Commanding Officer, Col G.K.Goyal considering over-all performance, qualifications and seniority of the applicant. However, in July, 1991, Col Goyal was relieved of his appointment by Col L.S.Rathore, who did not recommend the applicant for promotion to the rank of Subedar Major. In February, 1991, Lt Col S.S.Shekhawat joined the Unit as Second-in-Command and some incidents took place in the Unit wherein allegations and counter allegations were raised between 2nd-in-command and the applicant. Consequent to the out-come of an enquiry, it was felt by the then Commanding Officer Col L.S.Rathore, that the applicant could not be promoted to the rank of Subedar Major due to his involvement in a disciplinary case. As such, a new promotee, Subedar Ratanlal was posted by the Grenadier Regimental Centre from outside to take over the charge as Subedar Major of 123 Inf Bn(TA) when the vacancy fell on 1.10.1991.

4. The applicant was aggrieved by not being promoted and accordingly, he put up an application to the concerned authorities praying for redressal of his grievance. He also filed a writ petition No. 5335 of 1992-Hari Ram v. Union of India and others, before Honble High Court, which was decided vide judgment dated 22.4.1994. In the said judgment, the Honble High Court directed the non-applicants to reconsider the case of the applicant in the light of the recommendation of promotion made by the then Commanding Officer Col G.K.Goyal and to decide the case fairly after considering his service record and eligibility. If the applicant was found eligible, then he was to be promoted from the date when the vacancy occurred. This action was to be completed within six months from the date of the judgment. However, before any decision could be taken by the appropriate authorities, consequent to the judgment given by the Honble High Court, the applicant had retired w.e.f. 13.9.1994. Consequent to the directions of the Honble High Court, the then Additional Director General TA Army H.Qs. New Delhi, Maj Gen Gurdeep Singh in a letter conveyed that the case of promotion of Subedar Hari Ram of 123 Inf Bn (TA) had been carefully considered. In view of the involvement of the Junior Commissioned Officer in a disciplinary case, recommendation of Col G.K.Goyal for his discharge/dis-embodiment and non- recommendation of the JCO for promotion by Col L.S.Rathore, the then Commanding Officer, Subedar Hari Ram was not fit for promotion to the rank of

Subedar Major.

5. In the written submissions, the applicant has clearly stated that he fulfilled all the conditions for promotion to the rank of Subedar Major of 123 Inf Bn(TA) but was denied promotion due to malafide intention by the then Commanding Officer Col L.S.Rathore and then 2nd in-command Lt Col S.S.Shekhawat, who both belong to Rajput community. It was only after February, 1991 when Lt Col S.S.Shekhawat joined as 2nd-incommand of 123 Inf Bn(TA) that the problem started with the applicant. Since the applicant did not belong to Rajput community, the 2nd-in-command wished to withhold the pending promotion of the applicant to the rank of Subedar Major. On many occasions, thereafter the 2nd-in-command humiliated the applicant with a view to bring him down in the eyes of the Commanding Officer Col G.K.Goyal. The applicant filed a complaint on 18.5.1991 against Lt Col S.S.Shekhawat, the 2nd-incommand. When no action was taken upon his application dated 18.5.1991 and also on verbal request and on feeling aggrieved against the action of Lt Col S.S.Shekhawat, the applicant made a representation on 2.7.1991 to the Commanding Officer with copies to other higher authorities of the Army, in which, he gave out the entire story of injustice, exploitation, harassment, atrocities, corruption, favoritism, disgraceful use of powers. After making the complaint, the applicant was called for personal interview before the Commanding Officer, wherein, he was forced to give in writing that he did not wish to proceed with the application further and that matter may be treated as closed. The applicant was also forced to give an application asking for disembodiment and voluntary discharge from service. However, voluntary discharge was not sanctioned by the appropriate authorities as there was no valid ground to ask for discharge from service. Due to these instances, the applicant was not promoted to the rank of Subedar Major and continued to serve till he was retired on 13.9.1994. The applicant was not satisfied with the order dated 19.12.1994 passed by Maj Gen Gurdeep Singh, Additional Director General(TA) denying him promotion to the rank of Subedar Major and hence filed a writ petition in the Rajasthan High Court.

6. The non-applicants, in their reply, whilst agreeing to the basic facts of the case, have clarified that the Subedar Major of a Battalion is an Institution of the Unit, custodian of the Units Security, Morale of Troops and main feed-back channel

between Commanding Officer and Troops for monitoring pulse of the Battalion. Because of the importance of the appointment, it is essential that a Subedar Major is appointed only after confirmation of the Commanding Officer. No doubt that previous Commanding Officer Col G.K.Goyal had forwarded the recommendation favouring the applicant for promotion to the rank of Subedar Major of the Battalion, however, due to existing circumstances, the same had been withdrawn. Also, the new Commanding Officer Col L.S.Rathore, when asked to forward the recommendation for promotion of the applicant to the rank of Subedar Major, did not opt for promoting the applicant, instead asked for posting of a Subedar Major from regular Army from the approved panel. Consequent to happenings in the Battalion, the applicant had submitted an application seeking discharge from TA services on 9.7.1991 to Col G.K.Goyal, the then Commanding Officer. The discharge application was signed by the applicant voluntarily at his own will in the presence of two independent witnesses. The application duly recommended by the Commanding Officer was forwarded to TA Groups H.Qs Southern Command, Pune for sanction. Since the vacancy of Subedar Major occurred after applicant had put in an application for voluntary discharge, the Grenadiers Regimental Centre issued posting orders of Hari Ram to take over the charge of Subedar Major of 123 Inf Bn(TA).

7. The non-applicants have further stated that the provisioning of man power to 123 Inf Bn (TA) is controlled by Records the Grenadiers. There being only one post of Subedar Major in a TA Battalion, an undertaking from Records was required that they will not post any Subedar Major to the Battalion from the Regular Army before proposing the name of a JCO from TA for permanent staff and also that the JCO should have been approved for promotion by a Departmental Promotion Committee to the rank of Subedar Major. The papers that were forwarded by Col G.K.Goyal had been returned since the above pre-conditions had not been met. Merely a recommendation for promotion by the Commanding Officer does not vest a right for promotion. Further, the intimation regarding dis-embodiment of the Battalion was received on 12.9.1991 and since the vacancy of Subedar Major occurred after disembodiment i.e. on 1.10.1991, the Records correctly posted a Subedar Major from out-side the Battalion since no promotion of any one within the Unit had been approved. This was more so as

when the Commanding Officer Col L.S.Rathore was asked to forward his recommendation for promotion of the applicant, he did not do so and preferred to have a Subedar Major from Regular Army posted to the Battalion.

8. The non-applicants have also submitted that the applicant was never promoted to the rank of Subedar Major nor any letter or order issued by the Additional Director General, TA to promote the applicant to the rank of Subedar Major, therefore, the question of withholding the promotion of the applicant does not arise.

9. As regards the incident with Lt Col S.S.Shekhawat, the non-applicants have stated that the officer joined 123 Inf Bn(TA) on 16.2.1991 as 2nd-in-Command and in this appointment, he had no role to play in the selection and promotion of the Subedar Major. It has also been submitted that court of enquiry was held during 1992 to enquire into the circumstances, under which, the allegations were made against Lt Col S.S.Shekhawat, the then 2nd in-Command for castism. The facts were enquired and all the allegations regarding castism were found to be baseless. The court of enquiry finally found the applicant Ex Sub Hariram blame-worthy for false statement and accordingly, he was severally reprimanded, which was confirmed by the General Officer Commanding 12 Corps.

10. As per the non-applicants, the applicant had posted a complaint on 2.7.1991 to the higher authorities of the Army against Lt Col S.S.Shekhawat violating the laid down channel of correspondence as per Regulations for Army Para 364 and TA Rule 73. The complaint was processed and investigated personally by Col G.K.Goyal, the then Commanding Officer who found the entire allegations baseless. Accordingly, the applicant vide his certificate dated 6.7.1991 had expressed his desire to the Commanding Officer not to process the complaint any further and to treat the matter as closed. Col G.K. Goyal forwarded the certificate to all concerned and informed the authorities in the chain that the applicant had been personally interviewed by him and granted full redressal on his complaint. The applicant was also warned to follow correct channel of reporting of complaint as given in para 364 of the Regulations for Army. If the applicant was forced to render the certificate under pressure from Lt Col S.S.Shekhawat, he could well

have complained to the Commanding Officer or Higher Authorities in terms of Sec. 26 of the Army Act. Since the applicant did not do so, clearly proves that the said certificate was given voluntarily by him at his own will.

11. The Additional Director General(TA) Maj Gen Gurdeep Singh vide his letter dated 19.12.1994 has also conveyed the following facts :-

(a) Although Col G.K.Goyal had forwarded the recommendations for promotion of Ex Sub Hariram to Records Grenadiers, the Records who was aware of the change in Command of the Unit approached the new Commanding Officer, Col L.S.Rathore to give his recommendation on this appointment. There were some allegations existing against Subedar Hari Ram and a Staff Court of Enquiry had been ordered by H.Q.61 Sub Area to enquire into these matters. On finalization of the enquiry, the Commander, 61 Sub- Area had directed to initiate disciplinary action against Subedar Hari Ram. Also, Col G.K.Goyal had stated in his letter dated 8.7.91 that he had already recommended the case for discharge/dis-embodiment of Subedar Hari Ram, who was found involved in mal practice/corruption. The new Commanding Officer Col L.S.Rathore, on assuming his appointment on 9.7.1991 had come to know about these developments and opted for regular Army Subedar Major for 123 Inf Bn (TA).

(b) The name of Subedar Hari Ram was recommended by Col G.K.Goyal for the appointment of Subedar Major when Subedar Hari Ram was not even approved for promotion to that rank. As per the existing procedure, the Junior Commissioned Officer should have been first recommended for promotion as Subedar Major and then for appointment to the permanent staff.

(c) Selection and appointment of Junior Commissioned Officer on the permanent staff is at the discretion of the Commanding Officer and it is quite reasonable that the new Commanding Officer Col L.S. Rathore opted for a Regular Army Subedar Major of the Unit as the integrity of Subedar Hari Ram was doubtful.

12. During the course of arguments, Mr. B.L.Avasthy, learned counsel for the applicant again emphasized the issue that the applicant was fully qualified in all respects for being promoted as Subedar Major of 123 Inf Bn (TA). He had served

throughout with distinction and had been recommended duly by the Commanding Officer for promotion. He was also senior most person available in the Battalion for the purpose of promotion to the rank of Subedar Major when the vacancy occurred on 1.10.1991. He further averred that the applicant had been denied promotion only because of the malafide intention and caste based policy of the then Commanding Officer Col L.S.Rathore and the then 2nd-in-Command Lt Col S.S.Shekhawat.

13. Col Veerendra Mohan, Officer-in-charge (Legal) appearing on behalf of the non-applicants has emphasized the issue that promotions in the Army are based on a well defined existing policy. In the instant case, no policy has been violated. As regards malafide intention, in the Army, there is a hierarchical structure, wherein wrong done at any level is suitably corrected at the next higher level. In the instant case, it comes out clearly that the applicant was not found fit for promotion to the rank of Subedar Major on many counts. Thus, he was not promoted to the rank of Subedar Major.

14. We have gone through the records and examined the various policies on the subject and heard the parties.

15. Whilst, it is evident that the applicant met all conditions for consideration for promotion to the next rank of Subedar Major, however, he had not been put through a Departmental Promotion Committee and his promotion had not been approved. Merely a recommendation by the then Commanding Officer, Col G.K.Goyal does not vest the right for promotion to the applicant. Later on, he too withdrew his recommendation for promotion of the applicant. Further, the events that took place in the Battalion implicated Ex Sub Hari Ram in disciplinary cases, which were amply proved as he was punished with the award of Severe Reprimand. Under such circumstances, the then Commanding Officer Col L.S. Rathore did not feel it right to pursue and recommend the case of the applicant for promotion to the rank of Subedar Major.

16. In view of the above discussions, the instant Transfer Application is dismissed with no order as to costs.