

Sher Singh Versus Union of India and Others

Sher Singh Versus Union of India and Others

SooperKanoon Citation : sooperkanoon.com/1117311

Court : Armed forces Tribunal AFT Regional Bench Jaipur

Decided On : Feb-08-2010

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

Appeal No. : TRANSFER APPLICATION NO.233 OF 2009 IN S.B. CIVIL WRIT PETITION NO.2153 OF 2009

Judgement :

BY THE TRIBUNAL (PER Lt Gen SUSHEEL GUPTA):

The applicant Subedar Sher Singh filed a writ petition before Honble Rajasthan High Court on 21.2.2009 in the matter of denial of promotion to the rank of Subedar Major after having being approved by the Departmental Promotion Committee (for short the DPC) held on 24.11.2007 and illegal retirement of the petitioner from service without any notice on 31.1.2009. The matter was transferred to this Tribunal on 13.11.2009.

2. The applicant was enrolled in the Army on 31.1.1979 in the Regiment of Rajputana Rifles, from where, he was retired from service on 31.1.2009 in the rank of Subedar on completion of his terms of engagement.

3. While serving in his Battalion 14 Rajputana Rifles, the applicant came in the promotion zone from Subedar to Subedar Major, a DPC was held on 24.11.2007 and he was approved by the said DPC . His promotion order to the rank of Subedar Major of 14 Rajputana Rifles was issued on 8.9.2008 for physical

assumption with seniority to the rank of Subedar Major w.e.f. 1.12.2008.

4. Subsequently, on issuance of promotion order of the applicant, retirement order in the rank of Subedar, which was issued on 27.12.2007 was cancelled on 6.10.2008 thereby giving an indication that the applicant was to be promoted certainly to the next higher rank. Further on retirement of the then serving Subedar Major Surendra Singh Rathore of 14 Rajputana Rifles on 30.11.2008, he physically assumed the charge and responsibility of the duties of Subedar Major of the Battalion. However, when he was to put on the Badges of rank of Subedar Major w.e.f. 1.12.2008, he was directed that promotion orders have been kept pending and his promotion be kept in abeyance. No further communication was made to the applicant and he continued performing his duties of officiating Subedar Major till his retirement on 31.1.2009.

5. The applicant apprehended that reason for withholding his promotion order could possibly be, because of a statutory complaint filed by one Subedar Sahansarpal Singh of 14 Rajputana Rifles, who also had been approved in the same DPC for promotion. Since the applicant could not get any satisfactory answer about withholding of his promotion, he submitted an application addressed to the Officer-in-charge (Records) on 5.1.2009. Since no reply to the application was received, he served a legal notice for Demand of Justice on 20.1.2009 but without having received any reply to the notice, the applicant was retired on 31.1.2009. The non-applicants replied to the legal notice on 31.1.2009 and applicant was intimated that his promotion to the rank of Subedar Major has been denied as the DPC which considered him had been declared null and void, since it was found to be in contravention to the existing policy on the subject as per direction of the Chief of the Army Staff.

6. The applicant was of the opinion that the entire episode of his DPC proceedings being declared null and void was because of the statutory complaint filed by Subedar Sahansarpal Singh, which should not have been admitted in the first instance. Apparently, Sahansarpal Singh was keen on becoming Subedar Major of the Battalion and, therefore, he filed a statutory complaint. The applicant also felt that this was a mischievous act in connivance with an Ex Commanding Officer of

the Unit, due to Regional Affinity as both belong to Uttar Pradesh.

7. The applicant after retirement submitted a petition to the Chief of the Army Staff regarding denial of promotion to the rank of Subedar Major, despite having being approved by the DPC. In the petition, he also complained about denial of chances for grant of honorary Commission and for denial of re-settlement Courses This petition has not yet been replied to by the Chief of Army Staff.

8. The applicant, therefore, prayed by this application that the order of retirement be set aside and he be promoted to the rank of Subedar Major after being reinstated in service.

9. The non-applicants in their reply have stated that the Annual DPC of the Regiment was held on 24.11.2007 for approval of Subedars to the rank of Subedar Majors. The DPC was held to fill up the vacancies occurring in the Regiment between 1.1.2008 to 31.12.2008. The Subedars to be considered were as per Regimental seniority Caste-wise. Only substantive Subedars (Jat) promoted on or before 1.6.2003 were included in the DPC under the policy issued by the Integrated HQ of MOD (Army) letters No. B/33513/AG/PS-2(c) dated 10.10.1997 and B/33513/AG/PS-2(c) dated 6.5.2002. Only two subedars of Jat Caste Subedar Shri Ram and Subedar Sahansarpal Singh of 14 Rajputana Rifles were approved in the DPC as per cut of list of marks obtained based on service profile and also come up in the seniority. It may be pertinent to mention that the applicant was not considered in this DPC as he was from a junior batch then that being considered. Despite the fact that two subedars from 14 Rajputana Rifles were approved, another DPC was also held for Subedar Major of 14 Rajputana Rifles on the pretext that these two would have got adjusted on Extra Regimental Employment (for short ERE) vacancies prior to the occurring of vacancy of Subedar Major of 14 Rajputana Rifles. Thus, additional panel of Subedar (Jat) i.e. next Batch of substantive Subedar promoted on or before 1.6.2004 from 14 Rajputana Rifles was drawn for the post of Battalion Subedar Major along with main DPC and the applicant was approved based on merit point.

10. Since as per the procedure, the retirement orders are issued 12 months prior to retirement. The applicants retirement order was issued on 27.12.2007.

However, on issuing his promotion order for the rank of Subedar Major, the retirement order was cancelled. In the mean time, Subedar Sahansar Pal Singh of 14 Rajputana Rifles who was senior to the applicant approved in the Regimental main DPC and earmarked for ERE posting, lodged a statutory complaint for his claim for appointment as Battalion Subedar Major. On receipt of the statutory complaint by the IHQ MoD (Army) directions were issued on 23.9.2008 to withhold the posting-cum-promotion order in respect of the complainant till final decision on the statutory complaint preferred for the appointment of Battalion Subedar Major by Subedar Sahansarpal Singh was dealt with. The applicant submitted a petition on 5.1.2009 to the non-applicants for early promotion to the rank of Subedar Major, which was further followed by Legal Notice for Demand of Justice served on 20.1.2009. Civil Writ Petition No.984/2009 was also filed by the applicant before the Honble Rajasthan High Court, Jaipur Bench. The Honble High Court disposed of the petition at the time of admission with direction to the non-applicants to decide his petition within a period of two days. The orders of the Chief of the Army Staff arrived on the statutory petition submitted by Sahansarpal Singh on 22.1.2009, which was connected with the promotion of the applicant. As per direction of the Chief of the Army Staff, Subedar Major Shri Ram of 14 Rajputana Rifles was to be reverted back to Subedar Major of the Battalion, Subedar Sahansarpal Singh to move on ERE, a separate DPC to be held to fill up ERE vacancy created by the reversion of Subedar Major Shri Ram. Supplementary Unit Level DPC, approving Subedar Sher Singh to be declared null and void since it has been held in contravention of the existing policy. Consequent to these directions, the applicant was discharged from service on 31.1.2009 on completion of his terms and conditions of the service.

11. As regards grant of honorary commission to the applicant, JCO is granted two chances for grant of honorary commission. The applicant was due for first chance on 15.1.2008 and second chance on 26.1.2009. However since the applicant had been approved by the DPC held on 24.11.2007, the honorary commission papers were not initiated. Subsequently, the honorary commission papers were dispatched again on 18.1.2009, which were returned by IHQ MoD (Army) as they were unable to process them at this belated stage. The case of the applicant has again been forwarded for consideration as a special case.

12. We heard learned counsel for the parties and perused the relevant records of the case.

13. During the course of argument, learned counsel for the applicant Mr. S.B.Singh argued that since DPC was presided over by Lt Gen of the Indian Army, the DPC was held with great care and there is no reason why the same should have been set aside. Also, that the supplementary DPC approving Subedar Sher Singh for appointment as Subedar Major of 14 Rajputana Rifles has been held within the parameters of existing Rules and Regulations. As regards the decision taken on the statutory complaint filed by Subedar Sahansarpal Singh, learned counsel for the applicant brought out that Officer-in-charge Records, is the custodian of all documents and is responsible for ensuring correct promotions and postings. In his recommendation, it has been clearly stated that the complaint lodged by subedar Sahansarpal Singh is totally baseless, fabricated and misleading the authorities. It lacks substance which merits out-right rejection by the competent authorities. With such a recommendation, it is not right for the Chief of the Army Staff to declare the DPC as null and void. Thus, requesting for reinstating the applicant and promoting him, which was his due.

14. Learned counsel for the applicant relied upon a decision of Delhi High Court in the case of Shyam Kumar v. Union of India and others reported in 1981(2) AISLJ 337, wherein, it has been observed that the Chief of the Army Staff cannot adversely change the gradation approved by a Selection Board for promotions. In this case too, the applicant had been approved by the DPC but was rejected for promotion by the order of the Chief of the Army Staff, against a settled law.

15. Mr. Sanjay Pareek, learned counsel for the non-applicants brought out that the DPC which considered Subedar Sher Singh(applicant) for promotion on the Battalion Panel of 14 Rajputana Rifles was declared null and void as it was in contravention to Para 8 of Appendix C of IHQ MoD dated 10.10.1997. Since DPC had been declared null and void, the applicant could not be promoted. Para 8 of Appendix C is as follows :-

Out of those Risaldars/Subedars who qualify for consideration by DPC, a select panel equivalent to the number of anticipated vacancies will be drawn based on

the points scored by the candidates in accordance with the procedure laid down vide paragraphs 2 to 6 of this Appendix to short-list the candidates. Raisaldars/Subedars who form part of such select panel will only be entitled to promotion. The promotions of candidates out of this panel will be made strictly on the basis of the original seniority of the candidates included in this select panel unless the DPC if at all recommends, an out of tern promotion on exceptionally justifiable grounds. However, for Armd Corps, Mech Infantry and Infantry Battalion/Regt Sub Maj, senior most Subedar of that particular Unit will be promoted irrespective of his overall seniority.

It clearly states that in the Infantry Battalion, senior-most Subedar of that particular Unit, who has been approved in the DPC will be promoted as the Unit Subedar Major irrespective of his overall seniority. It was under this Clause that the Chief of the Army Staff, while disposing of the statutory complaint of Sahansarpal Singh, had directed that Subedar Shri Ram who was the senior most Subedar approved from 14 Rajputana Rifles be promoted as Subedar Major of that particular Battalion.

16. The Rules regarding Battalion Subedar Major of Infantry and Mechanised Infantry Battalion have clearly been laid down in Para 15 of the afore-mentioned Appendix C, which reads as under :-

Battalion Subedar Major Infantry and Mechanised Infantry :- Where no Subedar of a Battalion having a vacancy for a Sub Maj during the life of a particular DPC comes up in the Regimental Panel, a separate Panel be drawn by considering Subs of concerned Unit and approving for panel the first Subedar who scores equal/more marks than the minimum marks obtained by Subedar placed last in the Regimental Panel. Where the slot is to be filled by a particular class in a fixed class Regt. only Subedars of that class will be considered for such a selection. The Subedar so selected will be promoted only against the concerned Battalion vacancy and shall not be eligible for promotion on ERE/outside the Unit.

It is evident from reading of Para 15 quoted above, that a separate DPC for the Battalion Subedar Major can be convened only where no Subedar of a Battalion having vacancies for Subedar Major during the life of a particular DPC comes up

in the Regimental panel. In this case, since two Subedars had been approved from 14 Rajputana Rifles there was no question of holding Battalion DPC separately. Subedar Sher Singh is junior than those who were considered in the Regimental DPC held on 24.11.2007 and therefore, would not ordinarily have been considered for promotion during this DPC. His being considered was certainly against Para 15 of the said Rules. Thus, the DPC had been rightly declared null and void by the Chief of the Army Staff.

17. As regards the direction of the Chief of the Army Staff that a supplementary DPC be held to fill up the vacancy created by reversion of Subedar Shri Ram, the DPC was to be held only of substantive Subedars of seniority on or before 1.6.2003 as per the original DPC. The applicant would still not figure in the same as he is of a lower seniority.

18. The case of Shyam Kumar (supra) primarily deals with the fact that once an individual has been selected on merit by a Selection Board, his selection cannot be denied by the Chief of the Army Staff. In the present case, the question of selection of the applicant on merit, is not the question. The Chief of the Army Staff has declared the supplementary unit level DPC and panel containing Subedar Sher Singh null and void since it has been held in contravention to existing policy. Thus, the case is different and does not fall under the category of the judgment referred to.

19. As regards the grant of honorary commission, it is a fact that the applicant has been denied the opportunity of being considered for grant of honorary commission twice during his service as he is entitled to. His name has been withdrawn from being considered for grant of honorary commission as he had been approved in the DPC. However, since, he has not got promoted, he deserves his two chances for consideration for honorary commission. It is, thus, imperative that he be given chances now for grant of honorary commission.

20. In view of the above discussion, the present petition filed by the applicant is dismissed in so far as for giving benefit of reinstatement and for grant of promotion to the post of Subedar Major is concerned. However, the applicant may be suitably considered for grant of honorary commission as per Rules.

