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Court : Delhi

Decided On : May-24-1996

Reported in : 62(1996)DLT583; 1996(37)DRJ621

Judge : J.K. Mehra, J.

Appeal No. : Civil Writ Appeal No. 3005 of 1994

Appellant : Surendra

Respondent : Union of India

Advocate for Pet/Ap. : R.M. Bagai and; Jyoti Singh, Advs

Judgement :

J.K. Mehra, J.

(1) This is a Writ Petition brought by the petitioner, who had joined Indian Army on a short service Junior commission for five years subject to further extension regularization later on.

(2) In this case the only arguments advanced by Mr. Bagai are that the petitioner is the only one who was not regularised nor was his term extended out of a total number of 145 persons who were considered for regularisation while 144 were regularised. This was inspire of the fact that while having him discharged from army, he was given excellent report and was described as a person of outstanding

merit and for the years 1988, 1991 and 1992, he was rated as above average, high average and outstanding respectively while he was rated average for 1989 and 1990. The Department was directed to produce the criteria fixed for regularisation and also the ACRs of all the 145 persons that reveals that ACRs up to 1991 alone were considered and out of that the criteria fixed was that a candidate should have at least two high average reports out of the last three years. It is pointed out by counsel for the respondents that Acr for the year 1992 was not available when the Board took the matter for consideration. Accordingly,theychoose 1989,1990 and 1991 reports for assessing the suitability of the candidiates. The reports for the year 1988 were not taken into consideration nor were the reports of 1992 taken into consideration for the reasons that all the reports were not available to the Board. It is not disputed that the candidate/ petitioner had been rated above average, high average and outstanding for the years 1988, 1991 and 1992 and he was rated as average in 1989 and 1990. If all reports for the year 1992 had been available, then he would have qualified and would have been regularised as he had been rated high average or above even according to the criterion fixed by the Board. In the reports for the year 1988 also he had been rated high average, but unfortunately that year has not been taken into consideration. Mr. Bagai has relied upon the case of U.P.Jal Nigam & Ors. v. Prabhat Chandra Jain & Ors. reported as JT1996(1) S. C. 64 in support of his contention that if average report goes to prove the disqualification then that should have been communicated to him but this was not communicated nor was this being treated as disqualification or an adverse report. If that is the case, I am surprised to note that though average report is no disqualification but while considering the cases of these candidates for regularisation this has been treated as a disqualification and the petitioner has suffered prejudice and the petitioner is the only one out of the total 145 who suffered such prejudice notwithstanding the fact that the discharge certificate rates him as outstanding. It was not a case where jobs available were less than 145 so that a strict selection criterion could be fixed. There was no such thing. The criteria fixed appears to be arbitrary particularly in view of the fact that the Board was considering only the eligibility of the persons for confirmation/ rcgularisation. It was not scrutinising the candidates with a view to select only a few out of the total for promotion where it could have

been argued that the Board constituted had to pick up only a few of those. In view of the fact that neither the Department nor the Board had anywhere laid down that average report is a disqualification I think that by itself could not constitute such a disqualification for a person to be thrown out of the force and not being considered for regularisation. Fixing such norms would be clearly arbitrary and contrary to the rules of natural justice because average reports have never been communicated to the candidate and he had no opportunity to represent against those with a view to improve his prospects or to have his point of view placed before the authorities who were assessing his work. If the performance for five years is reckoned or the last three years out of five years is taken into consideration, the petitioner even according to criterion adopted would have been selected. In this connection, a reference be made to the case of Rajpal v. State of Haryana, : (1996)7SCC381 , wherein the Hon'ble Supreme Court was pleased to hold as under:-

'IN view of the order passed by this Court in Special Leave Petition (C) Nos.3099-3100/85 & batch, the persons similarly situated were admittedly taken into service and their services have been regularised. Under these circumstances, since the appellant, who is the only person left out in the field, also stands in the same position, we think, on this special circumstance, he is also entitled to the same relief.'

(3) The ratio of the above decision would be applicable to the facts of the present case. In the light of the above discussion, Writ Petition is allowed. Rule Nisi is made absolute. The petitioner is directed to be regularised with continuity of service, but without the benefit of back wages.