

Chhatar Pal Vs. Union of India

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Court : Delhi

Decided On : Sep-03-1997

Reported in : 1997VIAD(Delhi)311; 1997(43)DRJ467

Judge : Usha Mehra, J.

Acts : Army Regulation, 1961

Appeal No. : Civil Writ Appeal No. 891 of 1996

Appellant : Chhatar Pal

Respondent : Union of India

Judgement :

Usha Mehra, J.

(1) RULE.

(2) Since the point involved was very short, therefore, petition was taken up for arguments. Heard and disposed.

(3) Petitioner joined Rajputana Rifles Regiment on 23rd August, 1984. On account of his domestic problem he requested his discharge from service on 4th January, 1990. His request was acceded. He was discharged on 4th January, 1990. At the time of his discharge his over all assessment was recorded as 'Good'. Somewhere

in January, 1993 he sought for re-enrolment because his domestic problem got solved. His request for re-enrolment was acceded to by the respondent. Respondent re-enrolled the petitioner in the Army (defense Security Corps) on 27th February, 1993. However, on 29th September, 1993 respondent served the petitioner with a show cause notice as to why he be not prematurely discharged from the service, inter alia, on the ground that his military character was originally assessed as 'Good' at the time of his discharge from service on 4th January, 1990 and not as 'Very Good' which was the requirement for re-enrolment. He was thus not eligible for applying for re-enrolment. According to respondent for re-enrolment the assessment should have been 'Very Good'. Petitioner submitted reply to the show cause notice intimating that when he applied for re-enrolment his military character had already been assessed as 'Very Good', therefore, he fulfilled all the conditions of re-enrolment. His request was not acceded, hence the present petition.

(4) The point involved is whether the grading of 'Very Good' obtained by the petitioner before he applied for re-enrolment was to be taken into consideration or the original grading record at time of his discharge? Military character of the petitioner was originally assessed as 'Good' at the time of his discharge on 4th January, 1990. This is an Admitted fact. It is also a fact on record that petitioner applied for re-enrolment in February, 1993. It is a fact on record that re-assessment of his military character took place in November, 1992 thereby upgrading his military character to be 'Very Good'. According to petitioner the competent military superior authority re-assessed his military character and upgraded the same to be 'Very Good' in November, 1992 i.e., much before he applied for re-enrolment. This the competent authority did by virtue of power conferred under Para 170(d) of the Army Regulations. The Military Superior Authority under the Regulations particularly para 170 has been given the discretionary power to upgrade the military character or the grading of the Army official. Under the said para 170 of the Regulation it is the downgrading which is not permissible except for every strong reasons and that too the same cannot be lowered beyond one grade. The upgrading of the character of the petitioner to be 'Very Good' was done by the Competent Authority in terms of para 170(d) of the Regulations on 20th November, 1992, i.e., much prior to his applying for re-

enrolment which he did on 27th February, 1993. Para 170 of the Regulation is reproduced as under :-

'PARA-170.Assessment of Character - (a) (i) On discharge the of Unit/records will enter on the discharge certificate the man's military character while serving with the colours. The entry will be exemplary, very good, good, fair, indifferent bad or very bad as the case may be. (d) The character of an ex-serviceman may be re-assessed at any time by an officer superior in command to the officer who originally assessed his character. The Officer-in-charge Records will be deemed to be a superior authority for the purpose.'

(5) RE-ENROLMENT after discharge is permissible under para 142 of the said Regulations which is reproduced as under :- Para-142. Re-Enrolment After Discharge.

(6) An ex-serviceman is permitted to enrol in accordance with the following conditions provided his military character has been assessed 'good' or above:- (a) He must declare his previous service at the time of his second and subsequent engagement, and definitely state whether he wishes to count his previous colour service towards the completion of the total combined colour and reserve service and towards pension or gratuity, good service pay and for increments of pay. If he elects to count his previous colour service towards the completion of the total combined colour and reserve service on regular engagement for which re-enrolled, the benefit of former service for pension and gratuity will be allowed in accordance with the provisions of Rule 126 Pension Regulations for the Army Part I. No relaxation to this rule will be permitted. (b) If he does not elect to count his previous colour service towards the completion of combined colour and reserve service for which re-enrolled, nor for pension or gratuity, he will for purposes of transfer to the reserve, discharge, pay, pension and gratuity, be treated as a fresh enrolment without involving any reference to his previous engagement. (c) If he elects to count his previous colour service towards the completion of combined colour and reserve service for which he re-enrolled, and provided any gratuity received on discharge is refunded in not more than thirty six monthly installments from his pay, he will be governed by the following conditions:- (i) If he had

completed, on his former engagement, the period of colour service in which re-enrolled, he will, if permitted to remain with the colours, forthwith be required to extend his colour service for either one or two years, at the discretion of his Co. (ii) On completion of this extended period of colour service, he will be liable to be transferred to the reserve in accordance with the terms of his re-enrolment. (iii) If transferred to the reserve, he will be discharged there from on completion of his total period of combined colour and reserve service, except that in cases where a refund of gratuity already drawn is involved, he will be permitted to extend his colour service for a period not exceeding three years to enable him to refund the gratuity without hardship. (iv) Any service in the reserve under a former engagement will be ignored.

(7) Reading of para 142 quoted above shows that re-enrolment after discharge is permissible provided the military character of the applicant has been assessed as 'Good'. In the case in hand admittedly at the time of discharge of the petitioner his military character was assessed as 'Good'. Hence, he was eligible to apply for re-enrolment. On the other hand counsel for the respondent contended that this para of the regulation has been modified. Now the Government of India, Ministry of defense has issued revised standard for re-employment dated 13th December, 1985. According to this requirement the character has to be 'Very Good'.

(8) At the first instance it must be mentioned that Annexure-I dated 13th December, 1985 deals with the revised standard for the re-enrolment for Dsc personnel. Even if it is applicable to the petitioner still the petitioner could not be declared ineligible when he applied for re-enrolment. When the petitioner applied for re-enrolment his character had already been by the competent authority to be 'Very Good' instead of 'Good'. This power to upgrade the military character vested with the competent authority under para 170 as already reproduced above. Once the competent authority re-assessed the military character of the petitioner to be 'Very Good' in November, 1992 there was no question of his being not eligible. He applied in February, 1993 for re-enrolment by which time his military character had already been re-assessed by the higher authority to be 'Very Good'. Even the Circular relied by respondent Annexure-III dated 4th June, 1977 does not help the respondent. In the circular apprehension had been expressed that after a military

personnel retires, with the aim of helping him a lenient assessment is done to help an ex-serviceman to seek civil employment, but for re-employment in Dsc the character so assessed is not realistic. thereforee, it was ordered that while considering for re-enrolment the official will see whether at the time of his discharge he was having 'Good' or above. In the case in hand the petitioner's military character at the time of his discharge was 'Good'. Hence as per this circular of June, 1977 petitioner was eligible. His superior upgraded him to be 'Very Good' and that was done before he applied for re-enrolment. thereforee, on the basis of these two letters relied by the respondent it cannot be said that petitioner was not eligible when he applied for re-enrolment. The circulars cited by the respondent rather helps petitioner. As pointed out above circular dated 4th June, 1977 Annexure-III clearly indicates that while considering the report for the purpose of re-enrolment it has to be seen what was his character at the time of his discharge? Was it 'Good' or above? Further in para 4 it was made clear that the aim was to ensure that Ex-serviceman whose character on assessment is strictly in terms of para 171 of the Regulations for the Army, 1962 falls below 'Good'. Will not be enrolled in DSC. The military character of the petitioner at the time of his discharge was not below 'Good'. It was 'Good', thereforee, it cannot be said that he was not eligible to be considered for re-enrolment. His upgradation of Military character as per para 170 of the Regulations thereby reassessing it to be 'Very Good' made him eligible as per letter dated 13th December, 1985.

(9) The relevant extract of circular dated 4th June, 1977 are reproduced as under:-

'3. With the above in view, sub-para (g) of the pre-verification report form, forwarded to you vide our letter under reference will be amended as under:- (i) Was his character at the time of discharge 'Good' or above.'

(10) As per Circular of June, 1977 the requirement was military character to be 'Good' at the time of his 'Discharge'. But in the revised standard of re-employment this requirement of knowing military character at the time of 'Discharge' is missing. According to revised standard of re-employment issued on 13th December, 1985 the requirement is 'Very Good' but the condition that it should be at the time of discharge is not there. The revised standard of re-employment dated 13th

December, 1985 reads as under:-

'I am directed to refer to this Ministry's letter No.6570/3/GS/DSC-2/1441-C/D (GS-IV) dated 8th May, 1970 regarding terms and conditions of service for re-enrolment and superannuation in respect of Dsc personnel and to say that henceforth only those personnel who fulfill the following service requirements will be eligible for re-enrolment to DSC:- (a) Character should be 'Very Good'.

(11) Comparison of these two circulars clearly show that the requirement of Military Character at the time of discharge no longer hold good. The standard for re-employment was changed to be 'Very Good' when he applied for re-employment. In the case in hand the petitioner when applied for re-enrolment in February, 1993 was having military character to be 'Very Good'. thereforee, to my mind he fulfilled the criteria of eligibility. He was eligible for re-enrolment as per the requirement of the respondent.

(12) For the reasons stated above the impugned order cannot be sustained. The same is accordingly set-aside. Directions are given to the respondent to reinstate the petitioner with all consequential benefits accruing thereon.

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