

Nb Ris Ravinder Kumar Singh Vs. Union of India and ors.

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Court : Delhi

Decided On : Apr-25-2013

Judge : S.Ravindra Bhat

Appellant : Nb Ris Ravinder Kumar Singh

Respondent : Union of India and ors.

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on:

14. 03.2013 Pronounced on:

25. 04.2013 + W.P.(C) 6311/2012 NB RIS RAVINDER KUMAR SINGH
Petitioner Through : Sh. S.S. Pandey, Advocate. versus UNION OF INDIA AND
ORS. Respondents Through : Sh. Saqib, Advocate. CORAM: HON'BLE MR.
JUSTICE S. RAVINDRA BHAT HON'BLE MR. JUSTICE SUDERSHAN KUMAR
MISRA MR. JUSTICE S. RAVINDRA BHAT % 1. The petitioner is aggrieved by
various orders of the respondents by which, even though he ranked first in the
merit in the recruitment process for the civilian post of Godown Overseer at the
Equine Breeding Stud (EBS), Babugarh, the third respondent, Director General
Remount Veterinary Services, denied appointment to him. He is also aggrieved by
the cancellation of the No Objection Certificate (NOC) issued by the first two
respondents on the one hand and his premature discharge from the army without
processing his case for appointment to the said post of Godown Overseer
(hereafter the civilian post).

2. The admitted facts are that the petitioner joined the Remount Veterinary Corps of the Indian Army, which is part of the Army and W.P.(C) 6311/2012 Page 1 thus under the control of the first two respondents, on 10.11.1986; he served there for more than 24 years. The third respondent published a notice calling for application to the civilian post at EBS Babugarh, sometime in March-April 2011. The petitioner applied for the post. As a serving military personnel, he had to obtain an NOC from the Indian Army. His application for this purpose was granted and NOC was issued on 21.04.2011. His application for the post was accepted and he was called to participate in the recruitment process. He appeared in the written test on 20.07.2011; he was called for interview on 27.07.2011. Before the declaration of results, apparently on 28.07.2011, the six-member Selection Board, which considered the various applications, drew a final merit list of candidates in terms of which the petitioner secured the maximum marks, i.e. 82.70. This is clear from the files produced in the present case by the third respondent during the course of the proceedings. At the time of consideration and preparation of the merit list, the NOC issued to the petitioner was followed and was taken into consideration. Significantly and for no apparent reason, on the same date (i.e. on 28.07.2011), an order was issued withdrawing/cancelling the NOC issued to the petitioner on 21.04.2011. The results for the recruitment process of Godown Overseer were not declared for quite some time. When the petitioner became aware of the cancellation of the NOC which was essential for his discharge from the army, and a precondition for his joining the third respondent he addressed representations seeking its restoration. The petitioners representation in this regard, dated 18.08.2011, pertinently stated that: W.P.(C) 6311/2012 Pag

2. I, the above named NCO applied for the post of Godown Overseer at EBS Babugarh have appeared in the examination for the same at EBS Babugarh from 27 to 29 Jul 2011.

3. I hereby give an undertaking that if selected for the post of Godown Overseer at EBS, Babugarh, I will put up my papers for premature discharge from the service forthwith. My promotion for the rank of Nb/Ris is due during the month of Nov 2011. If selected for the post of Godown Overseer I will forgo my promotion as well.

3. The respondents, by a communication dated 08.09.2011, withdrew the cancellation order dated 28.07.2011 and restored the NOC issued to the petitioner. In the meanwhile, the petitioner was promoted to the rank of Nb./ Ris, with effect from 01.11.2011. In the circumstances, on 11.06.2012, the respondents again issued an order cancelling the NOC granted to the petitioner, stating that since there was an alteration of circumstances, and the Petitioners tenure stood extended in the service by two years, the NOC and discharge were no longer permissible. In the communication dated 11.06.2012, the respondents stated that the petitioner had willingly accepted the promotion and consequently the NOC had to be withdrawn. The inter se communications between the respondents issued on 11.06.2012, inter alia, stated as follows: "3. The NCO was issued with NOC in terms of ibid AO but as he was promoted to the rank of Nb/Ris wef 01 Nov 2011 and willingly opted for two yrs extn of service, the JCO will now due for discharge in the rank wef 30 Nov 2014. The ibid NOC, therefore, is no longer valid due to change in terms of conditions consequent to his W.P.(C) 6311/2012 Page 3 promotion and is hereby cancelled.

4. More so, on perusal of individuals undertaking at the time of his application for NOC it is seen that he had given undertaking that in case of his selection to the post of godown overseer at EBS, Babugarh, he will put up his papers for premature discharge. Since he was promoted before getting selected and no intimation of his selection or otherwise is available as on date, the conditions proposed by the application are now null and void.

4. The petitioner approached this Court by filing W.P.(C) 4325/2012, aggrieved by the withdrawal of his NOC. The writ petition was dismissed on 23.07.2012; the Court was disinclined to interfere on the basis of its opinion that the promotion, to which the petitioner acquiesced, altered the circumstances and that in view of the existing policy, since the tenure stood extended, he could not claim the NOC and discharge from the army as a matter of right. The petitioner thereafter appears to have sought recourse to the Right to Information Act (RTI) with three applications. In response to all these, especially the letter dated 13.08.2012, it was stated that the result for the selection process in respect of the post of Godown Overseer has not yet been finalized. On 19.08.2012, the petitioner represented to the

respondents, stating that in terms of AO 78/79, he could seek discharge in the event of selection to civil job and that this aspect had not been considered earlier. He also outlined the circumstances which compelled him to seek premature retirement. The relevant portions of his representation dated 19.08.2012 are extracted as follows: W.P.(C) 6311/2012 Pag

3. Considering all the circumstances explained above I had taken No Objection Certificate to apply for a civil job as Godown Overseer in EBS, Babugarh, which would have brought some stability and would have facilitate to look after my family problems. However, the same was subsequently withdrawn on the ground that I had given my willingness to continue in service after my promotion to the rank of Nb. Ris.

4. In terms of para 4 of AO 78/79, I am entitled to seek discharge in the event of selection in a civil job. Hence, the case may be taken up to ascertain whether I was within the merit list for said post and in event of my name figuring in the merit list, I may be permitted to seek premature retirement before the expiry of my terms of engagement or service limit as I am in my last year of prescribed service limit.

5. I hope that you will be kind enough to consider my request favourably and sympathetically and allow me to premature discharge from service.

6. For this act of kindness my family and I will be ever grateful to you, sir.

5. Close on the heels of his representation, the petitioner moved an application, C.M. No.11714/2012, in the disposed of writ petition, W.P.(C) 4325/2012, seeking modification of the previous order to the extent that the dismissal of the writ petition should not come in the way of the respondents considering his representations. This application was disposed of and the modification sought was granted by the order dated 13.09.2012, in the following terms:

2. As per pleadings in C.M. No. 11714/2012, with reference to Army Order 78/1979, it is brought to our notice that independent of the cause pleaded in the writ W.P.(C) 6311/2012 Page 5 petition, another right is available to the petitioner to seek discharge through an alternative route which would be akin to a distinct

cause of action. It is prayed that it may be clarified that the order dated July 23, 2012 dismissing the writ petition would not come in the way of the petitioner seeking discharge as per the Army Order 78/1979.

3. We dispose of the application observing that since the right pleaded in the writ petition was rested not on Army Order 78/1979 and thus this Court did not have an occasion to consider the right of the petitioner with respect to the Army Order in question, if the petitioner were to make a representation to the respondents with reference to Army Order 78/1979 seeking a right to be discharged the same would be considered and decided by the competent authority.

4. Needful would be done within three days of receipt of the representation.

6. After the disposal of the application, the petitioner addressed a representation to the army authorities for grant of premature retirement to enable him to take appointment in the civil post of Godown Overseer, on 14.09.2012. He also applied to the third respondent on 19.09.2012, requesting that an offer of appointment may be issued to enable him to join the post since, admittedly, he stood first in the merit list. Acting in terms of the request, the respondents issued a letter dated 21.09.2012 approving the petitioners discharge on compassionate grounds; the representation to the army authorities had mentioned that the petitioner applied for the civilian post having regard to his family circumstances and invalidity of his mother who was suffering from certain illnesses. It also W.P.(C) 6311/2012 Page 6 disclosed that the previous sequence of events which led to the issuance of NOC, its cancellation, non-declaration of result and his being promoted, the writ petition filed before this Court, its dismissal and later clarification by order dated 13.09.2012. On 21.09.2012, the petitioners application for premature discharge was approved and the discharge order was issued. It is in these circumstances that he approached the Court seeking the reliefs claimed.

7. During the pendency of these proceedings, the petitioner moved an application for impleadment of one Sh. Sanjay Kumar as sixth respondent since, according to his knowledge, the said individual had been issued with an appointment letter. The application (C.M. 17433/2012) was allowed on 17.10.2012. In the accompanying application, C.M. No. 16865/2012, the Court had directed that the appointment of

the third party would be subject to the final outcome of these proceedings.

8. It is argued on behalf of the petitioner that the action of the respondents cumulatively is indefensible and mala fide. Learned counsel submitted that no reason was given at any stage why the NOC issued on 21.04.2011 was cancelled on the day the results of the selection process were finalized, i.e. 28.07.2011. On that date, the selection board had assessed the petitioner to be the most meritorious candidate. As on that date, the NOC was valid. The NOC was, however, cancelled and till date, the respondents have not furnished any reason. It is submitted that even subsequently, on 08.09.2011, the NOC was restored, which meant that the respondents were dutybound to process the appointment and issue the letter to him. W.P.(C) 6311/2012 Page 7 Obviously, on account of complicity and mala fides of some of the officers of the respondents, who wished that the petitioners candidature be kept out of the way and someone close to them was in fact appointed, the entire set of circumstances was manipulated. It was argued that when on 01.11.2011, the petitioner accepted his promotion, he was completely in the dark that he stood first in the merit list. Learned counsel highlighted that the representation of 18.08.2011 had categorically stated that in the event of a promotion, the petitioner would be willing to forego it if a premature discharge were granted to enable him to join the appointment in the civil post.

9. Learned counsel submitted that the later restoration of the NOC and its subsequent cancellation on 11.06.2012, were again without any justifiable reason. It was submitted that the application for NOC/discharge made subsequently on 19.08.2012 also recited the very same facts, i.e. family circumstances and the petitioners desire to get the appointment to the civilian post. These found favour and the premature discharge was sanctioned on 21.09.2012. Yet, the third respondent, for reasons which cannot but be termed as mala fide, obdurately stuck to its position that the cancellation and subsequent restoration of NOC and his premature discharge was of no avail. Learned counsel submitted that whether the petitioner was promoted or not, the fact remained that he was not aware; nor was there any effort on the part of the respondents to make him aware; that he was entitled to be considered and appointed on account of his ranking in the merit list. In these circumstances, the fact that he accepted the promotion on 01.11.2011

cannot be a bar for his insisting that he W.P.(C) 6311/2012 Page 8 ought to be appointed to the civilian post. It was submitted that this is apparent from the letter dated 18.08.2011 where he stated clearly that he would forego his promotion if the NOC and discharge were given. Consequently, the NOC was issued on 08.09.2011. The action of the first two respondents in cancelling it on 11.06.2012 and that of the other respondents in rejecting the petitioners candidature, are arbitrary and illegal.

10. Learned counsel submitted that the reasons cited by the army authorities, i.e. the provisions of Army Order 814/1973, are without justification and baseless. Learned counsel relied upon a subsequent order, i.e. Army Order 78/1979, especially para 5 which prescribed the service for retirement/discharge for the purpose of taking-up public employment. It was submitted that in the case of the petitioner, it was 24 years service which he had in fact completed. Furthermore, argued the petitioner, without prejudice to this submission, the respondents could not bind him to the fact that promotion was given with effect from 01.11.2011. Relying upon the queries under the RTI Act made in July-August 2012, learned counsel submitted that as of November 2011, there was no final word that the results had been finalized to enable the petitioner to make an informed choice. In these circumstances, no principle of estoppel or waiver could apply to bind him to the extended tenure. Even otherwise, the respondents acceptance of the premature retirement application completely altered the circumstances. The third respondent was under a duty to consider that the subsequent developments perfectly entitled the petitioner to appointment to the post for which he was selected. It was argued that W.P.(C) 6311/2012 Page 9 the collective action of the respondents has resulted in a piquant situation where the petitioner has fallen between two stools, i.e. neither has he been appointed to the civilian post (which was the primary reason for his seeking discharge), nor has his employment in the Army continued. The reason for his seeking discharge was in order to secure civil appointment. The discharge has been granted and at the same time, civil appointment has been denied even though he is first in the order of merit.

11. All the respondents have filed a common affidavit through Lt. Col. Saumya Brata Panja. It is urged on their behalf that the Petitioner was not entitled to the

NOC issued on 21st April 2011 since he was not in the last year of service before getting discharge from service. As a result, that No Objection Certificate was cancelled by letter dated 28th July 2011. The respondents also submit that the petitioner had furnished an undertaking that if he were selected for the post of Godown Overseer at Equine Breeding Stud, Babugarh, he will put up his papers for premature discharge forthwith. The petitioner had further stated that he is due for promotion to the rank of Naib Risaldar during the month of November 2011 and if he is selected for Godown Overseer at Equine Breeding Stud, Babugarh, he will forego his promotion to the rank of Naib Risaldar as well. It was stated that based upon that undertaking and declaration (of the petitioner), the validity of the No Objection Certificate was restored and the decision communicated to Equine Breeding Stud, Babugarh by Signal No. Q3166 dated 08th September 2011. In this background of circumstances, the Petitioners promotion order to the rank of Naib Risaldar w.e.f. W.P.(C) 6311/2012 Pag

01. t Nov. 2011 was issued by Signal No. Q-3116 dated 30th Oct. 2011.

12. The respondents contended that according to the assumption certificate forwarded on 03rd November 2011, the petitioner assumed the rank of Naib Risaldar on 01st November 2011. It was submitted that upon his assuming the rank of Naib Risaldar, the terms and conditions of service applicable to the petitioner underwent a change in terms of Para 163 of Regulations for the Army Revised Edition (1987). This meant that the petitioner had opted for extension of his service by two years willingly through the assumption certificate. On promotion to the rank of Naib Risaldar and consequent to the change in terms and conditions of service, the validity of No Objection Certificate which was restored, automatically stood cancelled mainly due to change of terms and conditions applicable to the rank of Naib Risaldar to which the petitioner was promoted. Consequently, the respondents contended that the cancellation of the NOC by order of 11th Jun 2012 was justified and valid.

13. The respondents do not deny that the petitioner filed a writ petition before this court, which was initially dismissed, and that subsequently he sought and was granted modification of that order, to enable him to represent on the basis of an

Army Order of 1979. It is urged that the Board of Officers which was later convened on 14th August 2012 to look into the merit of the case and assess the eligibility of the petitioner afresh found the petitioner ineligible due to the altered circumstances. It was, however, not denied that premature discharge was granted to the petitioner by order of 21st September 2012, pursuant to the later order of the Court. W.P.(C) 6311/2012 Pag

14. The respondents argued that on 09th October 2012 a Board of Officers for selection to the post of Godown Overseer at Equine Breeding Stud, Babugarh, found the petitioner herein ineligible for consideration due to cancellation of the No-Objection Certificate by the fourth respondent by letter dated 28th July 2011 during the recruitment process. As a result, the petitioner was not found eligible. It was further argued that during the same time when selection process was being carried out, the petitioner was promoted to Junior Commissioned Officer rank on 01st November 2011 and since he willingly opted for the post, which entailed two years extension of service, the No Objection Certificate, was no longer valid due to such change in terms of conditions and was thus cancelled. It is contended that in these circumstances, the offer of appointment was made to the sixth respondent, Sanjay Kumar S/o Shri Radhe Shyam Sharma.

15. The respondents argued that there is nothing arbitrary or unreasonable in their action in cancelling the no objection certificate. It was submitted that even though the petitioner had initially stated that he was willing to forgo promotion, in order to secure appointment to the civilian post, he actually opted for the higher post. Resultantly, there was a change in his retirement age; he became ineligible to be considered for appointment in terms of the existing instructions which stated that only those with a years service left before their due date of retirement/release could be furnished with no objection certificate. The cancellation of the no objection certificate meant that his candidature to the civilian post had to be rejected. It was argued W.P.(C) 6311/2012 Page 12 lastly that the Army authorities cannot now be blamed or held to have acted unreasonably because of their subsequent acceptance of the petitioners application for premature release, on 21-9-2012. It was submitted that no relief should be granted to the petitioner.

16. At the heart of the controversy, as may be seen from the above discussion, is whether the Petitioners claim to the post was, at any stage, meritless and whether his subsequent promotion in November 2011 disqualified him to apply and consequently be considered for the civilian post of Godown overseer.

17. The undisputed facts are that when the petitioner applied for the civilian post, he was eligible to do so. The respondents gave a noobjection certificate, presumably on the understanding that by the time the process of recruitment ended and if the petitioner were offered appointment, he would be left with less than one years service. That understanding or interpretation is reasonable and fair, because insistence that even on the date of application the incumbent should have less than one years service is arbitrary, as it is well known that the process of selection for appointments, particularly public appointments, spans over several months, and in cases, even a couple of years. Therefore, the issuance of the no objection certificate to enable the petitioner to apply to the post, in April, 2011 was reasonable, and in consonance with the rule. What followed thereafter is curious. On the day the interview marks were compiled, i.e. 28th July, 2011, and the petitioner was declared to be the first or the most meritorious candidate by the selection board (comprising of over five officers of the Army), the respondents chose to withdraw the no W.P.(C) 6311/2012 Page 13 objection certificate issued in April, 2011. The petitioner was in a quandary. Significantly, the results of the selection process were not announced that day they were not announced even a year later till August 2012. Since this cancellation jeopardized his candidature, the petitioner represented to the authorities, who restored the no objection certificate, on 08-09-2011. At this stage, the status quo was restored. There was, therefore, no question of the petitioner being considered ineligible. If one keeps in mind the background that the results of the selection process had not been declared (and no reason has been given for this delay, in the affidavits filed in court), the petitioners offer to forgo his promotion, in order to secure the civilian employment, made in his letter of 18th August, 2011, becomes significant. When he was offered promotion, the petitioner was completely in the dark about the fact that he stood first in the merit list, in the selection, and his appointment was a certainty. Undoubtedly, he reported for his posting in the promotional post. Yet, the fact remained that he was not given the due opportunity which he had sought, of

forgoing it, because the respondents deliberately did not declare the results. The rest of the facts followed an uncanny pre-arranged sequence. Even up to June, 2012, the selection results were not declared; on 11 th June, 2012, the petitioners no objection certificate was cancelled; his candidature was cancelled. His request for forgoing promotion, and need for discharge, with the civilian post as a way out, was demonstrated by his application for discharge, which was found genuine and accepted with alacrity, on 21st September, 2012 by the Army. He stood released from the Force, only to be subsequently informed that his candidature W.P.(C) 6311/2012 Page 14 could not be restored because he was no longer eligible, as his No Objection Certificate had been cancelled on 11th June, 2012.

18. Army Order 78 of 1979, which has been heavily relied on by the respondents to justify their action in saying that the petitioner was ineligible, reads inter alia, as follows: ADJUTANT GENERALS BRANCH O-78/79 Application for Civil Appointments-JCOs/OR Category of JCOs/OR Eligible to Apply for Civil Appointments 1. JCOs/OR serving on regular engagement can, if they so desire, apply for civil appointments in Govt. undertakings/organisations and public or private sector under the following circumstances:(a) Within one year of the date of retirement which includes the period of leave pending retirement. (b) When placed in such a permanent low medical category as is unacceptable for further retention; within one year of completion of specified service. Those who have already completed the specified service, from the date of announcement of medical board proceedings to them. (c) When placed in such a permanent low medical category which prevents detailing a person on promotion cadre/ course or debars him from further promotion in the Army, subject to the exigencies of service. Procedure for Submission of Applications 2. The applications to the prospective employers will be routed through respective Os IC Records, duly recommended W.P.(C) 6311/2012 Page 15 by OsC Units.

3. The applications for personnel will be forwarded to the civil authorities, provided the manpower situation in that Regt/Corps is satisfactory. A reference to this Headquarters for the purpose is not necessary. Where it is intended to retain a JCO/or under Rule 10, he will be accordingly informed by the concerned OIC Records. No objection certificate, where applicable, will be duly completed by Os

IC Records.

4. Personnel who are selected for civil appointments before the expiry of their full terms of engagement or service limit, may, if they so desire, be allowed to proceed on discharge/retirement in order to enable them to join their new appointments during the last year of their colour service or retiring/prescribed service limits. The reasons for discharge to be entered in the discharge Certificate in such cases will be: At his own request having been permitted to take up civil appointment. Service Limits 5. The service limits for retirement/discharge for the above purpose will be as under: On Pre 25 Terms of On Post 25 Jan Jan 65 Engagement 65 Under SA 9/S/65 but who did not opt for revised terms and conditions of service vide Govt. of India letter No. A/10099/Policy/ AG/PS 2(c)/2085/S/D/A W.P.(C) 6311/2012 Terms of Engagement Under SAI 9/S/65 XXXX modified vide Govt. of India letter No. A/110099/Policy/A G/PS 2(c)/2085/S/D/AG dated 16 Dec 76 and have opted new terms and conditions of Page 16 G dated 16 Dec 76 and SAI 1/S/76. On completion of 32 years service or 50 years of age or 4 years tenure, whichever is earlier. (a) Ris/Sub 32 years of Maj service or on completion of 5 years tenure in the rank, whichever is earlier. (b) Ris/Sub 28 years On completion of 28 years service or 50 years of age whichever is earlier (c) Nb 24 years On completion Ris/Sub of 24 years of service or 50 years of age whichever is earlier. (d) Dfv/Hav 21 years or period of terms of engagement (e) L Div/Nk 20 years or W.P.(C) 6311/2012 service under SAI 1/S/76. On completion of 32 years service or attaining the age of 52 years or 4 years tenure, whichever is earlier. On completion of 28 years service or attaining age of 50 years. On completion of 24 years of service for those found unsuitable for retention and 26 years of service for those found suitable for retention or 50 years of age whichever is earlier. On completion On completion of of 22 years of 22 years of service service. for those found unsuitable for retention and 24 years of service for those found suitable for retention. On completion On completion of Page 17 period of of 20 years of 20 years of service terms of service. for those found engagement unsuitable for retention and 22 years for those found suitable for retention or 47 years of age whichever is earlier. (f) Total period On completion 15 years of service Sowar/Sepoy of colour of colour service or attainment of 40 service for for which years of age in which engaged. respect of personnel enrolled. belonging to trades

as given in Annexure A and 18 years of service or 46 years of age in respect of personnel belonging to trades as given in Annexure B to SAI 1/S/76. These limits are equally applicable to the category of clerks also. AO 814/73 is hereby cancelled.

19. As a plain reading of the above circular would reveal, it deals with the eligibility of certain category of army personnel wishing to seek discharge from the Force, and seek civilian employment. In this context, there is a twin criteria: one, the personnel applying should do so Within one year of the date of retirement which includes the period of leave pending retirement [Para 1 (a)]. The second one, W.P.(C) 6311/2012 Page 18 relevant for the present purpose, is Para 5, which sets the service periods, after which personnel holding various ranks can apply for such release. There is no dispute that the petitioner fulfilled the criteria. As discussed previously, Para 1 (a) quoted above- has to be construed reasonably, especially in the context of public employment, where the selection process could take several months, if not years. To insist that the candidate wait for one year or less before retirement, even though the appointment itself might mature at a time when the incumbent is left with less than a year to retire, under these circumstances, would defeat the purpose of enabling the individual the chance of securing a civilian or public appointment of his choice. That the respondents construed this condition reasonably and in the manner indicated by the court, is evident from the first no objection certificate issued to the petitioner in April, 2011, which was later restored on 08-09-2011. The Army has no explanation why the certificate was cancelled on the very day the results for the post were compiled by the third respondent. It is also significant that though the post advertised in this case is a civilian post, the employer is the Army itself. The lack of any explanation on this aspect, as well as the lack of explanation why the results were not declared even a year later- in September 2012, when the petitioner sought replies to his queries under RTI in this regard, is extremely significant. Though the Court cannot return a finding of mala fides on the part of any particular officer, it is self-evident that this delay and the series of events helped some other candidate or candidates. In any case, there is no explanation at all on these two aspects which renders the W.P.(C) 6311/2012 Page 19 cancellation of the certificate, the delay in announcing the results, and cancellation of the petitioners candidature itself

arbitrary.

20. This Court also finds meritless the respondents contention that once the petitioner willingly accepted the promotion it amounted to a waiver of his candidature for the civil post under consideration. Waiver means abandonment of a right. For there to be a valid waiver, it is essential that there be an intentional and voluntary relinquishment of a known right or such conduct as warrants the inference of the relinquishment of such right. There can be no waiver unless the person purportedly waiving is aware about his right (which is being waived) and with full knowledge of such right, he intentionally abandons it. (Ref.: *Provash Chandra Dalui and Anr. v. Biswanath Banerjee and Anr.*, AIR 198.SC 1834. *Motilal Padampat Sugar Mills Co. Ltd. v. State of Uttar Pradesh and Ors.*, AIR 197.SC 621). Here in this case, the results of the selection process for the civil post, in which the petitioner ranked first, were not announced until August 2012. Thus, he cannot be said to have had any knowledge about his entitlement (upon standing first in the selection process) to the civil post. Consequently, his acceptance of the promotion cannot amount to waiver of his claim to the civilian post, to which he had been selected, but not appointed. Moreover, the lack of knowledge on part of the petitioner was due to the non-declaration of the results. He cannot be the sufferer due to this. Furthermore, the entire sequence of facts has resulted in a Kafkaesque situation whereby the petitioner is without employment, even after being promoted (an event which resulted in the impugned cancellation of his candidature) and at the W.P.(C) 6311/2012 Page 20 same time not being appointed to the civilian post, despite being the most meritorious. This is clearly a result of the untenable and arbitrary interpretation placed by the respondents on AO 78/1979 and their assumption that he waived his right to be considered for the civilian post because he accepted the promotional post in November 2011.

21. Sh. Sanjay Kumar, the sixth respondent, was impleaded by application (C.M. 17433/2012) on 17.10.2012. In C.M. No. 16865/2012, the Court had directed that his appointment would be subject to the final outcome of these proceedings. Having regard to the overall conspectus of circumstances, the court is of opinion that his appointment could have been sustained only upon rejection of the petitioners candidature, which has been held illegal by this Court. In the

circumstances, the writ petition is entitled to succeed. The respondents are directed to process the petitioners candidature for appointment to the civilian post of Godown Overseer at the Equine Breeding Stud (EBS), Babugarh, and issue the appointment letter within six weeks. The writ petition is allowed in the above terms. No costs. S. RAVINDRA BHAT (JUDGE) SUDERSHAN KUMAR MISRA (JUDGE)
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