

**(1993) 10 GAU CK 0003****Gauhati High Court****Case No:** Writ Appeal No. 97 of 1993

Union of India

APPELLANT

Vs

Major Keshav Chander Singh

RESPONDENT

**Date of Decision:** Oct. 13, 1993**Citation:** (1994) 1 GLJ 252**Hon'ble Judges:** R.K.Manisana Singh, J and M.Sharma, J**Bench:** Division Bench**Advocate:** D.N.Choudhary, A.Roy, A.H.Saikia, Advocates appearing for Parties**Judgement**

R.K. Manisana, J.

This is an appeal from the judgment of the learned Single Judge made on 11.5.93 in Civil Rule No 610 of 19 J2. The matter relates to substantive promotion by time scale of the writ petitioner Maj Keshav Chander Singh to the rank of Lt. Col. Some time in the year 1973, the petitioner was found involved in a case of moral turpitude and, therefore, a departmental proceeding was drawn up against him. He was punished including forfeiture of 4 years service. The petitioner was promoted as Major some time in February 1983. His case for substantive promotion by time scale to the rank of Lt. Col. was considered by the Selection Board in the year 1991. But he was not selected for promotion only on the ground that he could not be recommended under para 4 (a) of the criteria and guidelines for grant of substantive rank of Lt. Col. by the time scale ("Guidelines" for short), as the disciplinary case in 1973 involved moral turpitude. The petitioner, therefore, filed the writ petition for his redressal. Learned Single Judge held that consideration of disciplinary case if 1973 was unjust and improper and allowed the petition declaring that the petitioner shall be deemed to be in the rank of Lt. Col. from May 1991 and shall get all the benefits as provided under the Regulations. Hence this appeal by the Union Government.

2. The only question which arises for consideration is whether the petitioner would be disqualified for promotion in view of para 4 (a) of the Guidelines.

3. Para 4 (a) of the "Guidelines" runs as follows :

"The gravity and nature of the offence will be examined and promotion will not be recommended if the disciplinary case involved moral turpitude gross negligence, act of cowardice or unofficer like behaviour."

under para 4 (a), promotion will not be recommended if the disciplinary case involved moral turpitude. Although he was involved in moral turpitude case for which he was punished in the year 1973, he was given substantive promotion by time scale to the rank of Major. Under Rule 65 of the Defence Services Regulations for the Army ("Regulations" for short), provides :

"Substantive promotion by timescale upto and including the rank of Major, Irrespective of availability of vacancies, substantive promotion upto and including the rank of Major, for officers of all arms and services will be by time scale.

Officers will be eligible for substantive promotion after the completion of periods of reckonable commissioned service as given below, subject to their being found fit in all respects for such promotion and after qualifying in prescribed examinations/courses :"

A reading of the regulation 65 shows that substantive promotion by time scale as Major is not automatic. The officer must be found fit in all respects or such promotion after qualifying in the prescribed examinations or courses In Baikuntha Nath vs. Chief Medical Officer, AIR 1992 SC 1020, a three Judge Bench of the Supreme Court has, while dealing with compulsory retirement, held that if a Government servant is promoted to a higher post notwithstanding adverse remarks, such adverse remarks lose their sting. In Brij Mohan vs. State of Punjab, AIR 1987 SC 948, the Supreme Court has, while considering a case for compulsory retirement, held that the adverse entries of recent past of 5 to 10 years should be considered in forming the requisite opinion to retire a Government employee in public interest. It would be unreasonable and unjust to consider adverse entries of remote past. If the entries for a period of more than 10 years past are taken into account it would be an act of digging out past to get some material to make an order against the employee. In that case Supreme Court considered the records of service for the last 10 years prior to the date on which he was prematurely retired,

4. The question then is, Whether the above principle shall be extended to the present case? The confidential remarks are assessment of work performance, conduct or character of an officer by his superiors. Therefore, we are of the opinion that the same consideration must apply in such a case. Therefore the involvement in a case of moral turpitude in the year 1973 is considered after 18 years it would be an act of digging out of past to get some material to disqualify the petitioner from promotion, in the light of observations made by the Supreme Court. On the facts and in the circumstances of the case, the learned Single Judge has, in our opinion, rightly allowed the petition.

Accordingly the appeal is dismissed.