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Delhi High Court

Case No: C.W.P. No. 1349 of 2001

Ex/Hav Clk Bhagirath Jat		APPELLANT
	Vs	
The Chief of Army Staff and Others		RESPONDENT

Date of Decision: Nov. 13, 2002

Acts Referred:

- Army Act, 1950 - Section 48

Citation: (2003) 1 SLJ 84

Hon'ble Judges: Jiwan Dass Kapoor, J; B.A. Khan, J

Bench: Division Bench

Advocate: C.P. Singh, for the Appellant; Tamali Wad, for the Respondent

Final Decision: Allowed

Judgement

J.D. Kapoor, J.
This petition arises out of alleged non-compliance of the review order dated 25.04.2000 passed by this Court in CW 4240/98 filed by the petitioner. The petitioner filed aforesaid writ petition on account of his having been ignored for promotion to the rank of Naib Subedar presumably on the ground that his ACR for the year 1991 was adverse and affected his promotion. This Court while allowing the petition gave the following directions vide order dated 25.4.2000:

"In view of the above review being allowed today the petitioner''s case for promotion to the next higher rank of Naib Subedar will be considered in accordance with law and fact that the petitioner''s supersession is based on the ACR of 1991 will not come in the way of the respondents to give relief to the petitioner. The petitioner''s superannuation in the interregnum will also not come in the way of petitioner''s promotion, if found fit. The consideration of the petitioner''s case without considering the impugned ACR of 1991 be done afresh within 4 weeks from today in accordance with this reviewed judgment.

The review petition thus is disposed of."

2. Despite directions of this Court that petitioner''s case for promotion to the rank of Naib Subedar will be considered in accordance with law and that the petitioner''s ACR will not come in the way for giving relief to the petitioner and his superannuation in the interregnum will also not come in his way if found fit for promotion, the petitioners adopted a different posture by emphasising time and again that petitioner''s "average" grading awarded by the reviewing officer for 1991 remained intact and Therefore lacked the criteria for promotion to the rank of Naib Subedar and further that since the learned single Judge in the previous petition thought it fit not to go into the merits and passed the order dated 25.4.2000 for expunge of remarks from his ACR from 1991, this aspect of the case was neither gone into nor dealt with.

3. Apart from this the respondents have also tried to paint the petitioner black by pointing out that he has been awarded 4 reprimands during his service for 20 years for having been found guilty for various offences and some time in the year 1996-97 he was found guilty of intoxication and offence u/s 48 of the Army Act was registered and on 11.3.95 he was also found guilty of indiscipline and incurred repeated disciplinary aberrations. It is also their case that petitioner had crossed the age limit for continuation in service as Naib Subedar on 10.2.96.

4. We are pained to observe that the respondents were only directed to reconsider the petitioner for promotion to the rank of Naib Subedar by ignoring the ACR of 1991 and also the superannuation in the interregnum period and instead they had resorted to diversionary tactics by raising host of new issues. Their stand that the learned single Judge did not go into the merits of the case while passing the order dated 24.4.2000 in the light of the impingement of the remarks of 1991, the aspects of reprimands, punishment etc. were neither gone into nor dealt with is wholly misconceived and is a product of confused state of mind. Once this court grave the direction to the respondents to reconsider the case of the petitioner for promotion to the next higher rank of Naib Subedar in accordance with law and the ACR of 1991 will not come in his way while considering this promotion, it settled the dispute raised by him in his writ petition once for all because Respondents had failed to take any Appeal against this or to have it set aside. There was no other option open to the respondents than to comply with the order dated 25.4.2000 and to accord consideration for promotion to petitioner irrespective of the impugned ACR of 1991, which they had admittedly failed to do.

5. Considering all this, we find that the grievance of the petitioner was wholly justified. This petition is accordingly allowed with the grant of alternative prayer by way of mandamus. Directions are given to the respondents to assemble a promotion Board within the period of six weeks from the receipt of this order and consider the case of the petitioner to the ran of Naib Subedar in terms of order dated 25.4.2000 without taking into account the ACR of 1991 and without considering the superannuation in the interregnum period as obstacle. If he is found fit and selected, his case for consequential benefits shall

be considered within four months thereafter, and appropriate orders passed thereon under relevant law/rules.