

*** Reportable**
HIGH COURT OF DELHI AT NEW DELHI

+ WP (C) No. 3068/2003

% Reserved on : May 23, 2008
Pronounced on : July 04, 2008

Ex-Captain Gulab Singh Rana Petitioners
! through : Petitioner in person

VERSUS

\$ Union of India Respondent
! through : Ms. Maneesha Dhir, Adv.

CORAM :-

*** THE HON'BLE MR. JUSTICE A.K.SIKRI**
THE HON'BLE MR. JUSTICE J.M. MALIK

- (1) Whether reporters of local paper may be allowed to see the judgment?
- (2) To be referred to the reporter or not?
- (3) Whether the judgment should be reported in the Digest ?

A.K. SIKRI, J.

1.The petitioner is aggrieved by order No. 12(2)/99-D(MS) dated 31.10.2001 vide which his services have been terminated by the Central Government in

exercise of powers conferred by Section 19 of the Army Act 1950 read with Rule 15 of the Army Rules, 1954. This order reads as under:-

**“No. 12(2)/99-D(MS)
Government of India
Ministry of Defence
New Delhi, dated 31st October 2001**

After considering the performance regarding inefficiency of IC-40157 Captain G S Rana, AD Arty, his reply No. 40157H/14/A dated 20th December 1999 to the Central Government Order No. 12(2)/99-D(MS) dated 06th December 1999 served on him and the recommendation of the Chief of the Army Staff in the matter, the Central Government in exercise of the powers conferred by Section 19 of the Army Act 1950 read with Rule 15 of the Army Rule 1954 hereby order that the said IC-40157 Captain G S Rana, AD Arty shall be removed from service with such terminal benefits as admissible under the rules.

(By order and in the name of the President)

sd/

(Gurdial Singh)

Deputy Secretary to the Government
of India

To

The Chief of the Army Staff (in quadruplicate):- For communication to the officer through the staff channels with the necessary administrative instructions for

further action in accordance with the existing procedure.”

2. Petitioner has prayed for quashing of the aforesaid order. He has also asked for various other consequential as well as additional reliefs. The necessary facts, shorn of avoidable details, are recapitulated in the first instance.

3. A perusal of the petition unfolds these averments:

The petitioner started his career with the Indian Air Force as Airman in the year 1974. After serving there for little over three years, he was selected for Commission into the Army and from 1.1.1978 to 31.12.1980 underwent Officer's Training at Indian Military Academy, Dehradun. After passing out the said Academy, he was given permanent regular commission in the Army in the rank of 2nd Lieutenant on 19.12.1981. From 1.1.1982 to 13.6.1984 he was posted in 129 Air Defence Regiment at Srinagar (J &K) which is a field area posting. During this period, he also did Young Officer's Course of Air Defence Artillery in the year 1982 and Platoon Weapon Officer's Course in the year 1984. From 14.6.1984 to

21.9.1988 he was posted in Gurdaspur, where he took part in Operation Blue Star and Operation Trident. With effect from 1.11.1984 he was promoted as acting Captain.

4. It is further averred that during his service in the Army he kept on improving his credentials by undertaking various courses, details whereof are as under:

Date		Course
1.4.1986 28.6.1986	to	Advance Gunnery Officer's Course
27.10.1986 20.12.1986	to	Basic Missiles Officer's Course
29.12.1986 24.1.1987	to	Electronic Warfare Officer's Course
5.10.1987 24.12.1987	to	Kvadrat/Strela Officer's Course
5.12.1988 4.3.1989	to	Junior Command (All Arms) Course
3.12.1989 13.1.1990	to	Western Command Pre-Staff Course

5. During this period, he was posted to different places namely filed area as well as peace area. On 10.7.1990 he was appointed Battery Second-in-Command. This

appointment was upgraded from Captain to Major by Army Head Quarter on 31.10.1991. He officiated as Battery Commander seven times between 8.10.1990 to 27.5.1992. Vide orders dated 16.7.1993 with effect from 19.12.1992 he was granted substantive Major's rank. However, vide notification dated 17.3.1994, the Substantive Major's rank granted to him was cancelled which was published in Gazette 'Corrigendum' No. 306. The petitioner was not happy with this cancellation and perceived it as illegal notification. He accordingly submitted first application for pre mature retirement on 20.5.1994. This application was returned by the Army Head Quarter vide its letter dated 20.6.1994 asking petitioner to give specific reasons. Pursuant thereto, second application for pre mature retirement dated 23.8.1994 was submitted by him. Giving his reasons for seeking pre mature retirement, the petitioner also mentioned that he had neither been given 'Local Rank' even after doing the duties seven times, in service interest, of the higher appointment of Battery Commander in High Altitude Area nor was he given

any substantive promotion by time scale to the rank of Major. On 17.1995 the Army Headquarters asked the petitioner to substantiate the grievance and application for pre mature retirement was kept pending till grievance of the petitioner is settled. The petitioner, under these circumstances, submitted a statutory complaint dated 23.8.1995 substantiating the reasons/grievance given by him in his application for pre mature retirement dated 23.8.1994. The petitioner, however, states that statutory complaint was not finalized.

6.The petitioner thereafter also preferred statutory complaint dated 30.3.1998 against non grant of Local, Acting and Substantive rank of Major but the same was rejected by the Ministry of Defence vide its order dated 16.9.1999. This was followed by show cause notice dated 6.12.1999 under Section 19 of the Army Act, inter alia, stating that after considering the performance regarding inefficiency of the petitioner and the recommendations of Chief of Army Staff in the matter, the Central Government was of the considered view that he should not be retained in service due to

his inefficiency. He was asked to submit papers either for retirement or resignation. He was also given opportunity to make his submissions, if any, within 15 days of receipt of the said show cause notice. The petitioner submitted his reply dated 20.12.1999. Thereafter, he also sent letter dated 7.1.2000 requesting Complaints Advisory Board to put up application for pre mature retirement dated 23.8.1994 to the Central Government for decision. His request for pre mature retirement was ultimately turned down by the Government of India vide letter dated 6.9.2001. Thereafter, petitioner submitted his third application dated 9.10.2001 for pre mature retirement. However, request in this application was not considered and instead on the basis of show cause notice issued to the petitioner on 6.12.1999 under Section 19 of the Army Act, orders dated 31.10.2001 were passed ordering the petitioner's removal from service. Pursuant to this order, the petitioner was removed from service on 28.11.2001. Representation given by the petitioner was turned down on 6.3.2002. The petitioner submitted fresh representation dated 10.6.2002

through the Department of Administrative Reforms & Public Grievances and as no action was taken on this representation, present writ petition was filed in May, 2003.

7. Apart from challenging the removal order, the petitioner has asked for grant of local rank of Major during the period from 8.10.1990 to 31.12.1990, acting rank of Major w.e.f. 31.10.1991 to 18.12.1992 and substantive rank of Major w.e.f. 19.12.1992. In the alternative, it is prayed that the petitioner be allowed to avail his entitled thirty days balance of annual leave for the 2001 from 27.11.2001 to 26.12.2001 as requested by him when he was in service to enable him to complete twenty years of commissioned service thereby making him eligible for time scale promotion to the rank of Lieutenant Colonel and then retire the petitioner from service in the rank of Lieutenant Colonel with consequential benefits. Petitioner has also asked for quashing of Reprimand awarded to him on 17.2.1998.

8. Having given this factual background, we may now

proceed to discuss the submissions of the parties and our conclusion on each relief sought by the petitioner herein.

- i) The petitioner had made statutory complaint dated 30.3.1998 to the Central Government against non-grant of local rank, acting rank and substantive rank of Major. This representation was considered by the Ministry of Defence, Government of India, but rejected vide order dated 16.9.1999. The first relief which the petitioner claims in these circumstances is that the aforesaid order be quashed and he be given these ranks.

A. LOCAL RANK:

His plea was that he has not been granted Local Rank to the appointment held by him, though he was posted in service interest during his High Altitude Area tenure in 326 Light Air Defence Regiment (Composite) between 8.10.1990 to 5.10.1991 from time to time. Submission of the petitioner was that out of this period, from

8.10.1990 to 31.12.1990 he was Battery Commander. This is about 12 weeks' period, which, *inter alia*, is more than 10 weeks. However, his request to give the Local Rank was rejected vide order dated 16.9.1999 on the ground that "an officer cannot be granted Acting Rank and pay and allowance of higher rank in case the absence of permanent incumbent is less than 10 weeks. In the instant case, the officer has never officiated for the period exceeding 10 weeks". His submission was that this was a wrong factual basis on which his request was rejected. The submission of the respondents, on the other hand, is that the grant of Local Rank is discretionary as per Para 82 of the Regulations for the Army (Revised Edition), 1987 read with Army Order 139/74. It is granted in very exceptional cases. Local Rank is personal to an individual and is not granted automatically to incumbent of an appointment. Therefore, no right as such is

available to the petitioner to claim the Local Rank. Relevant Para 2 of Army Order 139/74, to which reference is made in this behalf, is as under:-

“2. Local rank is granted in very exceptional cases. It will not be granted in cases where it involves an unauthorized revision of the rank considered adequate for an appointment by Army HQ and promulgated in a war/interim/peace establishment.”

It may be that the grant of Local Rank is discretionary and is granted in exceptional cases. However, it is not the case of the respondent that the petitioner's case was considered in the light of the aforesaid Army Order and rejected. On the contrary, the request of the petitioner to grant Local Rank was shot down on the ground that he was not even eligible to be considered, namely, he had not officiated for the period exceeding 10 weeks. Thus, on this ground alone, at the outset his case was not considered for Acting Rank in the light of Army Order 139/74. During arguments it could not be disputed

that the petitioner had, in fact, worked for more than 10 weeks as Battery Commander, i.e., from 8.10.1990 to 31.12.1990. It constitutes more than 10 weeks' period. His case was rejected on the wrong premise. The Supreme Court has held, in no uncertain terms, in the case of Mohinder Singh Gill v. Chief Election Commissioner, **AIR 1978 SC 851**, that the respondent can justify the order only on the reasons contained therein. We are, therefore, of the opinion that case of the petitioner needs to be considered, on merits, for the grant of Local Rank.

B) ACTING RANK:

The plea of the petitioner was that he should have been granted rank pay of Acting Major from 31.10.1991 to 18.12.1992 when he held the appointment of Battery Second-in-Command, tenable by Major in Light Air Defence Regiment. This request of the petitioner was turned down vide order dated 16.9.1999 giving the following reasons:-

“6. An officer is granted acting rank by the CO depending upon the availability of vacancy and when he is fully satisfied with his work and not by merely completing requisite period for eligibility for acting rank. More importantly, however, the officer was put on adverse report by the IO in report ending 1/91. The officer was subsequently put on review report and therefore, in accordance with the provision contained in para 85 of SAO 3/S/89 and SAI 1/7/84, he was debarred from grant of acting rank carrying higher responsibilities. The question of publishing his Acting promotion in the Gazette, therefore, does not arise.”

It is clear from the above that the reasons given are: (i) Acting Rank is given depending upon the availability of vacancy and when the Commanding Officer is fully satisfied with the officer's work. The petitioner was put on adverse report by the IO in the report ending 1/91.

(ii) He was subsequently put on review report and therefore, was debarred from grant of Acting Rank carrying higher responsibilities.

It is not in dispute that the petitioner had worked in the rank of Major from 31.12.1991 to 18.12.1992. The communication dated 31.10.1991 is enclosed by the petitioner as per which, 1423 appointments held by the Captains have been upgraded to the rank of Major as per the details given in Appendix A attached to the said letter. It included the appointment of the petitioner as well. Thus, he was upgraded to the rank of Major vide the said letter. Other documents to this effect are also enclosed about which there is no dispute. In fact, the respondents have not disputed and aforesaid period during which the petitioner was given the duties of the rank of Major. Therefore, the entire controversy is as to whether the petitioner could be denied the acting rank as the Commanding Officer was not fully satisfied with his work, which is because of the purported reason that he was put on adverse remarks by the IO in his report ending 1/1991 and subsequently on review

report. It was submitted by the petitioner that Army Headquarters had removed the petitioner from review report on 9.8.1995. This communication was sent by the Army Headquarters to Headquarters Northern Command (MS) c/o 56 APO in which it was stated:-

“1. Reference your letter No.10501/3/MS 4 dated 14 Jul 95 addressed to HQ 16 Corps (MS) and copy of this Branch.

2. It is confirmed that IC – 40157H Capt. GS Rana has been removed from Review Report.”

It was the contention of the petitioner that when orders dated 16.9.1999 were passed denying the benefit of acting rank to the petitioner on the ground that he was on review report, error was committed in making the decision on that basis because of the reason that the aforesaid communication was put up to the higher authorities. He submitted that it was again confirmed. However, vide letter dated 3.7.2001 sent from Military Secretary Branch, MS: ADA (MS-17),

Army Headquarters to 129 AD Regiment c/o
56 APO, following communication was sent:-

“1. Ref your letter No.
406101/GSR/44/A dt 31 May 2001.

2. MS-4C2 has confirmed that placing or removing an offr on adverse report is the prerogative of his immediate CO vide Para 79 of SAO 3/S/89. Therefore the offr cannot be on adverse report as contended by him unless he has been intimated the same by his CO.”

On the basis of this communication, the petitioner contended that the Army Headquarters admitted that the petitioner could not be on adverse report as he had not been intimated about the same by his Commanding Officer. The petitioner had laid much stress on this document on the basis of which he contended that putting the petitioner on adverse report, without intimation, was clearly invalid as accepted by the Army Headquarters itself. This plea of the petitioner, based on the aforesaid, is not subsequently refuted by the learned counsel for the respondent at the time of arguments.

It is, thus, clear that after this communication, case of the petitioner for grant of acting rank needed a fresh look inasmuch as, vide orders dated 16.9.1999, the petitioner was denied the acting rank because of the said adverse report. We are, therefore, of the opinion that the case of the petitioner needs to be reconsidered for grant of acting rank as well for the period from 31.10.1991 to 18.12.1992.

C) Substantive Rank of Major:

The petitioner claims substantive rank of Major on the basis of entry published in the Gazette Notification No.734 of 1993. It is not in dispute that as per the said notification, many officers are given permanent commission from Captain to Major and name of the petitioner finds mention therein. Army List Part II was also revised including the name of the petitioner in the category of Majors holding permanent commissions. Relying upon the said entry in the notification

the petitioner contends that Section 142(2) of the Army Act clearly stipulates that notification is to be treated as invalid authority and **evidence** for all purpose and therefore, it has to be held that the petitioner was granted substantive rank of Major with effect from 19.12.1992. He submitted that Para 65 of the Defence Service Regulations (DSR), as existed on that date, provided for substantive promotion by time-scale up to and including the rank of Major. Certain eligibility conditions are stipulated for promotion to the rank of Major which include completion of specific number of reckonable commissioned service, subject to being found fit in all respects for such promotion and after qualifying prescribed examinations/courses. His submission was that all these conditions were fulfilled by the petitioner because of which he was given the said promotion.

The respondents have not denied the aforesaid notification and preparation of Army

List on that basis, including the name of the petitioner to the substantive rank of Major. The entire explanation of the respondent is that name of the petitioner appeared in the said notification by mistake, which mistake was corrected by issuing amendment. In this behalf, explanation is that error took place due to oversight. Thus, the controversy on this aspect revolves around the fact that the notification issued was erroneous, which was ultimately corrected vide Corrigendum No.306 dated 16.4.1994. Answer to this would depend upon the question as to whether the petitioner was eligible for promotion to the substantive rank of Major. It is because of this reason that though the petitioner contends that he was eligible, the respondents pleaded otherwise.

The argument of the respondents, in this behalf, is that as per Para 85 of SAO 3/S/89 read with Para 65 of DSR 1987, an officer would be eligible for substantive promotion to

the rank of Major on completion of 11 years of reckonable commissioned service subject to being fit in all respects for such promotion and upon qualifying prescribed examinations/ courses. The petitioner was commissioned on 19.12.1981 and therefore, it is not disputed that as on 19.12.1992 he completed 11 years of service. However, what is contended is that he had to be fit in all respects. But in the case of the petitioner it was found that he was adversely reported upon in the CR for the period September 1989 to November 1989 and was placed on four successive Review Report for the periods July 1990 to January 1991, August 1991 to February 1992, February 1992 to February 1993 and May 1994 to November 1994. It is further argued that as per the policy, cases of officers who are on adverse or review report are pended till the officers is removed from Adverse/Review Report and he earns a positive recommendation for promotion and

for retention in service in the Review Report. Here again, the sole ground for denying the substantive rank is that the petitioner was on review report. We have already indicated above that vide communication dated 9.8.1995, reiterated on 3.7.2001, the petitioner had been removed from review report. In so far as other conditions of eligibility are concerned, namely, minimum qualifying service and qualifying in the prescribed courses/examinations, it is not at all the case of the respondents that the petitioner did not fulfill those eligibility conditions. The respondents have not at all explained as to whether the name of the petitioner was included in the notification granting substantive rank of Major after the recommendations of the Promotion Committee. The respondents are silent about it. Normally, it has to be inferred that the Promotion Committee would have recommended his case inasmuch as, without

such recommendation notification would not be issued. Furthermore, vide corrigendum dated 17.3.1994 the name of the petitioner was removed from the list of those who were given promotion from Captain to the rank of Major. The petitioner had contended that it could not have been done without even issuing show cause notice to the petitioner. Be as it may, since the petitioner was removed from adverse reports, we are of the view that the case of the petitioner is to be considered by the Review Departmental Promotion Committee. If it is found that there are no adverse/review reports, the petitioner is entitled to promotion to the rank of Major with effect from 19.12.1992.

D. Req. Termination:

We may recapitulate, in brief, that the petitioner was given show cause notice dated 28.8.1997 proposing his discharge under Section 19 of the Army Act read with Rule 15 of the Army Rules. We may note that

whenever there is a proposal to discharge an army official under these provisions, opportunity is given to him to seek retirement/resignation. These provisions for discharge are invoked on the ground of inefficiency on the part of the petitioner. The petitioner had not given reply to the said show cause notice and instead he referred to his complaint submitted vide letter dated 23.8.1994 in which he asked for premature retirement. It was, however, found that the aforesaid complaint was returned to him vide letter dated 6.2.1995 and he was advised to submit a fresh application de-linking his request for premature retirement and other issues raised by him. He had not re-submitted his application. Instead, he had submitted separate statutory complaint dated 30.3.1998 for grant of substantive promotion to the rank of major and its rank pay. The case of the petitioner was accordingly processed further on the ground that there

was no resignation from him. However, the Ministry sought information about the outcome of the statutory complaint dated 30.3.1998. As noted above, this was rejected on 16.9.1999 whereafter the case of the petitioner for discharge under Section 19 was again processed. We may also note at this stage that there were subsequent applications given by the petitioner for voluntary retirement/resignation but they were also treated as conditional. Ultimately decision was taken to terminate his services and order dated 31.10.2001. Though after show cause notice dated 28.8.1997, an order of discharge ultimately came to be passed in October 2001, this much time took place because of the reasons stated above in brief. We had perused the relevant file as well which was handed over to us by the respondents. Following two aspects are discernible from the record:

a) The note for discharge was initiated alleging ground of inefficiency primarily keeping in view the fact that the petitioner had not been granted the acting/substantive rank of Major due to being on adverse/review CRs and was also not recommended for promotion. At the same time, details of his weak points as well as weaknesses displayed during the last 10 years were also stated. Fact remains that the non-grant of acting/substantive rank of Major and adverse report were the prime forces which led the initiation of this action. In respect of these, we have already concluded that the petitioner was taken off adverse/review CRs as per the communications shown by him and we have opined that his case for local/acting/substantive rank as Major needs to be reconsidered. On this basis his case for action under Section 19 of

Army Act will also have to be considered afresh. This can be done after the exercise regarding local/acting/substantive rank is redone and outcome thereof is known.

b) At the same time we also find that the petitioner had submitted his resignation from service time and again and his intention was that he should be relieved from service.

9. In these circumstances, without interfering with the orders dated 31.10.2001, at this stage, we are of the view that after the exercise qua local/acting/substantive rank is done by the respondents, case of the petitioner shall be considered under Section 19 of the Army Act read with Rule 15 of the Army Rules. If no change is found in its decision regarding local/acting/substantive rank, it would be permissible for the respondents to stick to its decision dated 31.10.2001. However, if the petitioner is found entitled to acting/substantive rank of Major, the

decision will have to be taken afresh by the respondents as to whether on that basis they would still like to proceed under Section 19 of the Army Act read with Rule 15 of the Army Rules. At that stage, the petitioner shall be given option to seek voluntary retirement/resignation from service. Entire exercise in this behalf shall be done within four months from today.

10. With these directions, this writ petition is disposed of.

11. No costs.

**A.K. SIKRI
(JUDGE)**

**J.M. MALIK
(JUDGE)**

**July 04, 2008
Jk/hp**