

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Decision : 14th January, 2008

+ WP(C) No.4894/2007 and CM No. 14689/2007

Naib Subedar Gurmeet Singh Petitioner

Versus

Union of India and Others ... Respondents

Advocates who appeared in this case :

For the petitioner : Major K.Ramesh, Advocate

For the respondents : Mr.Suresh Kait with Mr.Yogesh Verma,
Advocates

CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI

HON'BLE MR. JUSTICE J.M. MALIK

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

A.K. SIKRI, J. (ORAL)

1. The petitioner in this petition was enrolled in the Indian Army as a Sepoy – Sapper on 24.05.1980. He was promoted as Naik while working in that capacity. He had committed an offence

of "absent without leave" for six days and was given 'severe reprimand' on 10.10.1985. The petitioner, however, got further promotions from time to time and in the year 2004 he was working as Naib Subedar. The case of the petitioner for extension was considered and vide letter dated 30.04.2004 screening board granted extension of two years of service from 23.05.2006 to 23.05.2008. However, before that the respondent amended the aforesaid policy vide circular dated 22.11.2005 and clarified therein that even in those cases where the official was convicted or given red entry in a lower rank than JCO, same would act as bar and the official would not be entitled to extension. In view of this policy the order dated 30.04.2004 passed in case of the petitioner which was to take effect on 24.05.2006 was revoked vide orders dated 19.04.2006. Challenging this order petitioner filed writ petition 9263/2006 inter alia submitting that this policy could not have been given retrospective effect. The writ petition came up for hearing along with other connected petition raising same issue and came to be dismissed by the Division Bench of this court vide judgment dated 31.05.2007 whereby the aforesaid policy dated 22.11.2005 was upheld. Before that the petitioner's filed a writ petition. In the said writ petition petitioner was granted stay of

the revocation order dated 19.04.2006 and therefore he continued in service even after 24.05.2006 on a strength of earlier extension granted to him vide orders dated 30.04.2004. However, any action could be taken on the basis of this judgment, the respondents once again revised their policy after reviewing the same vide communication circular dated 13.06.2007.

2. The respondents have the policy for giving such extensions which is contained in policy letter no. B/33098/AG/PS 2(C) dt. 21.09.1998 which has been amended from time to time. In the policy letter dated 21.09.1998 as it originally stood, procedure and criteria for screening of the officers in the Army for extension is laid down. It enumerates certain offences and stipulates that if an officer is convicted of any of those offences then he would be debarred from extension. The respondents themselves clarified their policy dated 21.09.1998 by issuing letter dated 13.06.2007.

The relevant paras of this letter read as under :-

“2. As per the existing policy, a JCO who has been convicted any time during his entire service for an offence under AA Sec 39(a), (b) and AA Sec 45 is permanently debarred for two years extn of service. The same was clarified vide letter of even No dated 22nd Nov 2005. The aspect has been reviewed and details are explained in succeeding paragraphs.

3. As per the revised policy, JCOs who are convicted under these offences during service as JCOs only will be

debarred for extn. Thus any conviction in the lower rank under the above mentioned offences will not debar an extn in the rank of the JCO provided other requisite criteria are met. In view of this change note under Ser No 8 (a), (b) and Ser No. 14 of Annexure to Appendix 'A' of the letter dt. 21 Sep 98 is amended as under :-

For :	Ser 8 (a)	Sec 39 (a) -	Absence without leave (for JCOs only)
	Ser 8(b)	Sec 39 (b) -	Overstayal of leave (for JCOs only)
	Ser 14	Sec 45 -	Unbecoming conduct (for JCOs only)
Read:	Ser 8(a)	Sec 39 (a) -	Absence without leave (offence committed during service at JCO)
	Ser 8(b)	Sec 39 (b) -	Overstayal of leave (offence committed during service at JCO)
	Ser 14	Sec 45 -	Unbecoming conduct (offence committed during service at JCO)

4. The revised policy will be effective from the date of issue of this letter. It is also clarified that no past cases will be reopened. You are requested to disseminate the revised policy down to the unit level."

3. As far as petitioner is concerned he was issued letter dated 21.06.2007, on the basis of judgment dated 31.05.2007 to hand over the charge by 28.06.2007 and complete other formalities by 09.07.2007 for further submission to record offence. It is clear that even after the judgment of 31.05.2007, the petitioner was not discharged from service and was continuing in service when

circular dated 13.06.2007 reviewing the policy was issued and as per which punishment imposed in a lower rank and not as JCO was not to be considered or as a bar for granting extension. This according to the petitioner has revised fresh life into his case, as in his case he was given red entry / severe reprimand on 10.10.1985 as a Naik, it is not to be taken into consideration.

4. Once this is the objective of the clarification given and the provision is of beneficial nature interpretation to para no. 4 would relate to only those cases where the discharge order has already come into the effect and the official is eased out from the service. It would not apply to cases where the discharge order is merely passed which is to take effect from a future date and that date happens to be after 13.06.2007. It is a matter of common knowledge that such discharge orders are generally passed in advance so that the necessary formalities for computation of pension and other retirement benefits are completed in time and the incumbent is given those benefits on the date of retirement that would not mean that the discharge order became effective on the date when it was issued.

5. We have to consider as to whether the petitioner's case falls into category of 'past cases'. No doubt it by quick of fate that

petitioner has continued in service in as much as. Had it case been considered in terms of policy dated 22.11.2005, which has been upheld by this court, the petitioner would have deemed to be in service on 24.05.2007. Fact remains that in terms of earlier policy dated 21.09.1998 when there was no such clarification like circular dated 22.11.2005, petitioner was granted extension vide orders dated 30.04.2004 and he could get the advantage of these orders in the aforesaid writ petition by virtue of the stay orders granted by this court. A reading of circular dated 22.11.2005 makes it clear that the respondents at that time took the view that even if red entry has taken place in the rank of JCO or other rank, the same has to act as a bar for further extension. However, respondents realise this harshness of such a provision themselves and therefore soon thereafter issue another clarification circular dated 13.06.2007 after reviewing the position and making it more humane which appeals to reason as well. When entire matter is viewed from this angle and the petitioner was still in service and is granted benefit of extension from 24.05.2006 to 23.05.2008, we are of the opinion that he should be allowed to complete his tenure and it should not be snatched in the middle. More particularly when the respondents have

themselves taken the view that such a glut of red entry in other rank is not to come in the way of grant of extension. We therefore allow this writ petition and make the review absolute and direct the respondents to allow the petitioner to continue in service till 23.05.2008.

6. The petitioner is due for promotion as Subedar w.e.f. February 2007. The case of the petitioner shall accordingly be considered appropriately within a period of two months in accordance with rules. Needless to mention if petitioner earns this promotion his case for further extension shall also be considered accordingly.

A.K.SIKRI, J.

J.M. MALIK, J.

January 14, 2008
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