

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

+ WP (C) No.6255 of 2007 & CM No.11710 of 2007

% Date of decision: 09.09.2008

LIEUTENANT COLONEL BADRI DATT ...PETITIONER
Through: Ms. Rekha Palli, Advocate with
Petitioner in person.

Versus

UNION OF INDIA & ORS. ...RESPONDENTS
Through: Ms. Jyoti Singh &
Mr. Ankur Chhibber, Advocates
with Lt. Col. S. George.

CORAM:
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. | Whether the Reporters of local papers
may be allowed to see the judgment? | No |
| 2. | To be referred to Reporter or not? | No |
| 3. | Whether the judgment should be
reported in the Digest? | No |

SANJAY KISHAN KAUL, J. (Oral)

1. Rule DB.
2. The petitioner is an officer of Indian Army who was in the post of Captain when he was posted as an Administrative Officer in the Supply Depot, Bareilly from 27.3.1990 to 17.3.1992. In the course of performance of his duties, the petitioner was required to sign the claims of medical and TA/DA bills of civilian employees and forward the

same to the Controller of Defence Accounts (CDA), Meerut.

3. The petitioner was transferred from Bareilly to Ahmedabad in March 1992. Subsequently it was detected that there were a number of bogus medical bills submitted through Mr. M.C. Gupta, which were forged/manipulated. The bills forwarded by the petitioner included six bogus bills amounting to a total value of Rs.1,78,435.00. The petitioner was, thus, alleged to have connived in the forwarding of the bogus bills. It may be noticed that as per the petitioner he had never signed the bogus bills and claims that his signatures have been forged subsequently.
4. The financial ramifications apparently were much larger than the role alleged to have been played by the petitioner as a number of such cases came to light and thus, the matter was referred to the Central Bureau of Investigation (CBI) for inquiry. The CBI has filed the charge sheet and the role of the petitioner is of signing on the memos forwarding the six bills.
5. The petitioner came to be considered by the Promotion Board in February, 1999 for the rank of Lieutenant Colonel but his result was not declared as he was placed under a DV ban on 11.3.1999 and his result was withheld.
6. The unfortunate part is that fourteen (14) years have passed since the incident was detected and about seven

(7) years have passed since the charge sheet was filed. In fact, since sanction for prosecution was given the petitioner was placed under a DV ban even prior to the filing of the charge sheet. It is submitted that only two of the five prosecution witnesses have been examined.

7. The prolonged investigation and trial has resulted in a situation where the petitioner continues to be under a DV ban. The petitioner claims that his case is a fit one where DV ban should be lifted in terms of the policy of the respondents.
8. The petitioner had made various representations and the statutory complaint dated 30.1.2003 has been dealt with in terms of an order dated 20.7.2005 rejecting the plea of the petitioner for lifting of the DV ban. The order notes that the imposition of DV ban does not disentitle or debar an officer for consideration of promotion but the ban is lifted on finalization of a case against the delinquent officer. Since the charge sheet had been filed by the CBI against the petitioner and the trial was still pending, the request of the petitioner for earning the next promotion had no force.
9. It is pointed out by learned counsel for the petitioner that the representation of the petitioner dated 30.1.2003 has apparently been considered as per the policy existing on that date and not as per the policy existing on the date of the order. This is so since there was an amendment to

the policy in this behalf. The relevant portion of the policy is reproduced hereinunder:

“5. For imposition of Provisional DV Ban each case is examined by the AG's Branch (DV Dte) on its merits. Provisional DV Ban is imposed in the under mentioned specific cases:-

(a) SPE/CBI Cases (Type 'C') When the competent authority accords approval for prosecution of the affected personnel (officers only) by the CBI in civil court, the officer is put under Provisional DV Ban type 'C'. When the CBI recommends departmental action, the officer will be put under Provisional DV Ban type 'D'/'A'/'T', as the case may be, after the competent authority has taken cognizance of the offence and directs appropriate action against the officer.

(b) Prosecution by a Civil/Criminal Court (Type 'C') When cognizance of an offence is taken by a Criminal/Civil Court after a charge sheet is filed or the case is delivered to a Criminal/Civil Court by the competent authority under the provisions of Army Act Section 125 read with Criminal Courts and Courts Martial (Adjustment of Jurisdiction) Rules, 1978 for prosecution in a Court of Law of decision to accord sanction for criminal prosecution has been taken by the competent authority provision DV Ban type 'C' will be imposed on the officer.”

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“Provided that when the Criminal Case pertains to a non-cognizable offence, or period of three years has elapsed from the date of imposition of DV Ban and the prosecution continues to remain inconclusive, the Adjutant General may direct non imposition or discontinuance, as the case may be of the DV Ban Type 'C'.”

10. The aforesaid policy was amended on 5.1.2004 by incorporating the proviso aforesaid, which has been mentioned in bold.
11. The submission of the learned counsel for the petitioner, thus, is that while the statutory complaint was being

considered, the aforesaid amendment had already come into being while the reasoning of the order dated 20.7.2005 shows that the decision is based on the unamended policy.

12. The aforesaid fact also finds support from the counter affidavit filed by the respondents where in para 16 it is stated as under:

“16. In reply to para 16, it is submitted that the contents of the Policy Letters have been misread by the Petitioner. The three years period for lifting of DV ban was in respect of relatively minor cases which are non cognizable offences. The petitioner is facing charges for fraudulent drawl of over Rs.3,00,00,000/- towards false medical claims in 1999 along with his co-conspirators for which the Central Government has given prosecution sanction to the CBI and the case is pending in the Competent Court. Since it was a major case involving fraud, the ban was not lifted. Moreover, the Petitioner on his own assumed the rank of Lt. Col with the help of local authorities without obtaining necessary vigilance clearance from the prescribed authority. Since, assumption of rank of Lt. Col was ab-initio unauthorized, the same was withdrawn and the earlier Part II order was cancelled by the local authorities. Therefore, there is no element of harassment as all action taken by the Respondents were in line with the declared Policy of the Government.”

13. In our considered view there is force in the contention of the learned counsel for the petitioner and it cannot even be seriously disputed by learned counsel for the respondents that the consideration of the statutory complaint dated 30.1.2003 of the petitioner was obviously under the unamended policy. This may have possibly occurred on account of the fact that on the date of the statutory complaint that was the policy in force

though the policy stood amended by the time the order was passed on 20.7.2005. In our considered view the statutory complaint of the petitioner was required to be considered as per the amended policy.

14. The amended policy makes it clear that the DV ban “may” be lifted in either of the two conditions, i.e.: (i) it pertains to a non-cognizable offence; (ii) period of three (3) years has elapsed from the date of imposition of DV ban and the prosecution continues to remain inconclusive. These two phrases are separated by the word “or”. Thus, it is abundantly clear that in either of the eventualities the Adjutant General “may” direct non-imposition or discontinuance of the DV ban. The case of the petitioner falls in the second category.
15. In view of the aforesaid it is in the fitness of things that the case of the petitioner be re-examined and a fresh order be passed in terms of the aforesaid parameters especially keeping in mind the hardship of the petitioner referred to aforesaid. The order dated 20.7.2005 accordingly stands quashed.
16. The second grievance made by learned counsel for the petitioner is that the petitioner was being treated as a Lieutenant Colonel from January 2005 to June 2007 but vide letter dated 7.6.2007 the petitioner has been directed to remove his rank of Lieutenant Colonel. The basic issue is that the petitioner is not being given the

benefit of AV Singh Committee Report of a time-scale promotion on account of DV ban.

17. Since we have already directed re-consideration as aforesaid, this issue would also be examined by the concerned authority in terms of the policy of the respondents.
18. Needless to say that on both the aforesaid aspects a reasoned order should be passed and the needful be done within a maximum period of three (3) months from today.
19. The petition is allowed in the aforesaid terms leaving the parties to bear their own costs.

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20. In view of the disposal of the writ petition, the application does not survive for consideration and is, thus, disposed of.

SANJAY KISHAN KAUL, J.

SEPTEMBER 09, 2008
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MOOL CHAND GARG, J.