

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

% *Judgment Reserved on : January 14, 2015*
Judgment Pronounced on : January 19, 2015

+ **W.P.(C) 1369/2012**

RIS JOGINDER SINGH Petitioner
Represented by: Mr.Anil Srivastava, Advocate with
Mr.Amit Kumar Sachan, Advocate

versus

UOI AND ORS Respondents
Represented by: Mr.Ankur Chhibber, Advocate for R-
1 to R-3
Mr.H.S.Tiwari, Advocate for R-4

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

1. The writ petitioner impugns an order dated November 09, 2011 passed by the Armed Forces Tribunal dismissing Original Application No. 52 of 2010 .

2. The grievance of the writ petitioner before the Tribunal was of not being granted extension of service as a Risaldar and another Risaldar Sukhraj Singh being granted the extension in service on the ground he had served in an operation area 'Meghdoot'.

3. The factual matrix pertaining to the case of the petitioner is not in dispute and may be succinctly stated by noting that the petitioner was

enrolled in The President's Bodyguard (PBG) on August 16, 1980. After successfully completing basic military and trade training, the petitioner was posted to the PBG. He earned promotion to the rank of Dfr (PA) w.e.f. March 0, 1990 and was granted substantive rank of Dfr w.e.f. April 01, 1994. The petitioner having not passed the promotion cadre exam was not promoted to the rank of Naib Risaldar (Nb Ris) when a vacancy arose on May 01, 1996 and was thus superseded. At that time the petitioner was posted on ERE with Armament & Electronics (A&E) Regiment, Armoured Corps Centre & School (ACC&S), Ahmadnagar.

4. On October 13, 1996, the petitioner made a representation directly to the Minister of Defence against his superior officer pertaining to his supersession bypassing the prescribed channels. For this, he was awarded 'Severe Reprimand' (**Red ink entry**) by Col. H.S.Dhaliwal, CO, A&E Regt, ACC&S, Ahmadnagar on May 13, 1997.

5. After the petitioner passed the promotional exam for being promoted as a Naib Risaldar, the petitioner was promoted to the rank of Naib Risaldar on June 01, 1998.

6. With effect from August 01, 2000 it became mandatory that a Junior Leader Proficiency Test be cleared to earn eligibility for being promoted to the rank of Risaldar. Appearing several times at the Junior Leader Proficiency Test and failing repeatedly, the petitioner who became due for promotion on December 01, 2004 was not promoted. Relevant would it be to note that at that time the equitation practical test used to be conducted as a part of the Junior Leader Proficiency Test.

7. It appears that the petitioner had been failing at the equitation practical test, which persons junior to him were clearing and hence were being promoted.

8. The petitioner made a representation to the effect that clearing the equitation practical test was not mandatory and thus he ought to have been declared successful at the Junior Leader Proficiency Test.

9. The representation of the petitioner was considered by the Competent Authority and it surfaced that no formal approval had been obtained either from the Army Headquarters or the Ministry of Defence for clearance of the equitation practical test as a sine qua non to be declared successful at the Junior Leader Proficiency Test and thus on February 01, 2006 an order was passed promoting the petitioner to the rank of Risaldar with retrospective effect being December 01, 2004; the date on which the petitioner became eligible for being promoted to the rank of Risaldar. He was granted ante-dated seniority.

10. The specific grievance of the writ petitioner is that due to he not being promoted in the year 2004 along with his batch mates, he was discriminated against because when the Selection Boards met on April 10, 2005 and November 30, 2006 his case was not considered for promotion as he had not actually worked as a Risaldar; and as a matter of fact when the Board met on April 10, 2005, he had not even been promoted as a Risaldar, which promotion was earned de facto when order dated February 01, 2006 was passed but de jure with a retrospective date being December 01, 2004.

11. The second grievance raised by the petitioner was that he had been wrongly denied promotion to the rank of Risaldar Major and his junior i.e. Risaldar Sukh Raj Singh had been promoted to the rank of Risaldar Major.

12. The third grievance raised by the petitioner is in respect of the ACR for the period of 2006-07 on the ground of inconsistency.

13. Concerning the grievance raised by the petitioner of Risaldar Sukraj Singh being promoted as a Risaldar Major, we find that the petitioner did raise the issue before the Tribunal, but did not implead Risaldar Major Sukhraj Singh as a respondent, whose presence before the Tribunal was essential because if claim of the petitioner succeeded, Risaldar Sukhraj Singh being promoted as a Risaldar Major would have faced reversion. Notwithstanding Risaldar Major Sukhraj Singh being impleaded as respondent No.4 in the instant writ petition, learned counsel for the petitioner gives up the said relief prayed for.

14. Concerning petitioner's grievance that there was inconsistency in his ACR for the period 2006-07, the Tribunal has returned a finding of fact in paragraph 25 of the impugned decision to the effect that comparison of ACR grading for the year in question matched the past gradings, and being findings of fact we would not be interfering therewith in the absence of there being any material shown to us, which has not been shown, warranting the said finding of fact to be re-gone into.

15. Learned counsel appearing on behalf of respondents No.1 to 3 has submitted that grant of extension is governed by HQ of Ministry of Defence (Army) letter dated September 21, 1998 which states that

Arms/Service will lay down specific standards in this regard of physical fitness related to job content for extension of service/age limit by two years in respect of PBOR. As PBG is an arm by itself, the specific standards have been spelt out in IHQ of Ministry of Defence (Army) letter dated April 12, 2007 which require a candidate to undergo an equitation test for which the candidate is required to be present and completion of refresher for the training year.

16. The record would evince that in spite of verbal and written orders, the petitioner did not appear/present himself for the test he was declared failed in Extension Board held on April 15, 2007. The record would further evince that since the petitioner had represented to the authorities, he was granted a Special Screening Test for grant of extension and was informed to appear for the test. It was also informed to him that if he did not report it will be assumed that he is unwilling for 2 years extension in service. The petitioner admittedly did not report for the said test and thus was not considered for grant of extension.

17. As regards the non consideration of the petitioner in the Extension Board of 2005, it is trite that being not as a matter of fact promoted as a Risaldar when the Board met on April 10, 2005, the Board could not consider his extension on said date.

18. Regarding non consideration of the petitioner for grant of extension in November 2006 Board, the record would evince that the said Board met to specifically consider the case of Risaldar Kalyan Singh as a special case since he was moving as a JCO to Siachen Glacier (OP Meghdoot) on attachment with 5/9 GR and was due to retire before he could join back the

regiment. It is not a case, as pleaded by the petitioner that Risaldar Gian Singh was given any concession because of having served in the Siachen Glacier.

19. There is justification in the action of the department because the department was sending Risaldar Kalyan Singh to the Siachen Glacier and thus he would have been deprived the right to be considered by the extension board as he would not be joining back the regiment. His being a special case does not warrant any similar benefit being extended to the petitioner. We further find that Risaldar Kalyan Singh is not junior to the petitioner inasmuch as, as of November, 2006 he had served for 27 years and 3 months and the petitioner for 26 years and 3 months.

20. Moreover, it is not a case where the petitioner has not been afforded a chance for being considered to be granted an extension inasmuch as, as noted above he was informed twice to clear the equitation test, which was required to be cleared by him in terms of the Ministry of Defence's letter dated April 12, 2007 for being promoted as a Risaldar Major. The petitioner did not even make an attempt to take the test.

21. There is thus no merit in the writ petition which is dismissed in limine, but without any order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

JANUARY 19, 2015/mamta