



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Judgment reserved on : 04 October 2024**
Judgment pronounced on : 07 October 2024

+ **CONT.CAS(C) 586/2000**

MOHINDER SINGH RANDHAWA (GIANI)Petitioner
Through: **Mr. Mohan Kumar, Ms. Rashmi Singh and Ms. Neetu Singh, Advocates.**

versus

S. PADMANABHANRespondent
Through: **Ms. Abha Malhotra, Sr. CGC with Ms. Amrita Sony, Advocates.**

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

JUDGEMENT

1. The petitioner is seeking initiation of contempt proceedings against the respondent under Sections 11 & 12 of the Contempt of Courts Act, 1971, for willful disobedience of the directions dated 08.12.1999, passed by this Court in C.W. 563/1981.
2. Shorn off unnecessary details, the petitioner was working as a religious teacher (Granthi), which is equivalent to the post of *Naib Subedar* in the Indian Army, and he was discharged from service by the order dated 18.03.1980, which was successfully assailed by way of the above writ and the said order of discharge was set aside/quashed. While setting aside the impugned order of discharge from service, it was directed that the petitioner would be entitled to all the consequential reliefs.



3. It is urged by the learned counsel for the petitioner that the pay and emoluments of the petitioner have not been provided in accordance with his rank. It is urged that since he rendered 36 years of service, he was entitled to be considered for promotion to the post of *Subedar*, and subsequently to the post of *Subedar Major*. However, he has not been granted the corresponding benefits, including the pay and emoluments resulting from notional promotions to the aforementioned posts.

4. *Per contra*, learned counsel for the respondent alluded to certain orders passed by this Court, and contended that all consequential financial benefits have already been computed and released to the petitioner, who retired upon reaching the age of superannuation in July, 2001.

ANALYSIS & DECISION:

5. Having heard the learned counsel for the parties and upon perusal of the record, it appears that the impugned order dated 08.12.1999 was assailed in LPA 44/2001, which came up for hearing before the Division Bench of this Court on 08.01.2002, and the court passed an order, thereby refusing to condone the delay in filing the appeal and accordingly the appeal was dismissed. However, the following statement of learned counsel for the respondent was recorded: -

“Learned counsel for the respondent, on instructions, says that the respondent shall not claim the promotion or appointment to the post which he was already holding before the discharge”

6. It appears that CM 245/2002 was filed for clarification and the



Division Bench of this Court *vide* order 18.03.2002 passed the following direction: -

“While dismissing the appeal on January 8, 2002 we had clarified that the respondent shall not claim promotion or appointment to the post which he was holding at the time of his discharge. The clarification does not, however, bar the appellant from claiming time scale.

With the aforesaid clarification, the application disposed of.”

7. Unfortunate as it may appear, the case remained pending for a very long time and eventually a learned Single Judge of this Court *vide* order dated 25.01.2019, passed the following order:-

“REVIEW PET. 355/2015 with C.M. Nos. 852/2014, 853/2014, 3697/2015

None has appeared for the petitioner despite the matter proceeding for nearly half an hour. I have heard learned counsel for the respondent/ review applicant and proceed to dispose of the same.

The respondent is seeking review of the order dated 24.02.2012. A perusal of the said order shows that this Court had proceeded on the basis that while allowing the petitioner's writ petition and setting aside his dismissal from service, the learned Single Judge had held that the petitioner was entitled to all consequential benefits. The aspect considered in the order dated 24.02.2012, was primarily the aspect of grant of promotion to the petitioner. On that date, it was represented that a request had been forwarded to the integrated HQ of the MoD (Army), (DGMF Pers) on 21.12.2002 to examine the petitioner's case for grant of time-scale promotion and to intimate the decision. This Court proceeded on the basis that the petitioner was entitled to time-scale promotion from the post of Naib Subedar to Subedar, and from Subedar to Subedar Major.

The stand taken by the respondent that the said promotion could not be granted since the petitioner's record had been weeded out was also held to be not a valid justification. In this background, the following direction was issued by this Court on 24.02.2012.

"The respondent is granted one last opportunity to comply with the aforesaid judgment of the



*Court in letter and spirit and to grant promotion to the petitioner in a time bound manner from the post of Naib Subedar to Subedar and from Subedar to Subedar Major from the date his peers have been granted. In case such promotions are not granted and the aforesaid judgment is not implemented in letter and spirit, the Officer-in-Charge (Records) of the Ahmednagar shall remain personally present in Court for initiation of contempt proceedings.
Adjourned to 27.04.2012.
Dasti."*

The first submission advanced by learned counsel for the respondent/review applicant is that against the decision rendered by learned Single Judge in the writ petition, the respondent had preferred a Letters Patent Appeal. In the said Letters Patent Appeal, on 08.01.2002, the Court had passed the following order.

"CM No. 135/2001 .

We do not find any ground to condone the delay in filing the appeal.

Accordingly, the application is dismissed.

LPA No 44/2001

In view of the fact that the delay has not been condoned in filing the appeal, the appeal also does not survive and the same is hereby dismissed.

Learned counsel for the respondent, on instructions, says that the respondent shall not claim the promotion or appointment to the post which he was already holding before the discharge."

Thus, the Letters Patent Appeal was dismissed on account of the delay in filing the same, not being condoned. However, the statement of the counsel for the respondent was recorded, on instructions, that the which, he was holding before the discharge.

It is thus, firstly, pointed out that the petitioner was not entitled to press the contempt petition to claim promotion as a consequential benefit in the light of his own statement made before the Division Bench on 08.01.2002. The Division Bench has further clarified the order on 18.03.2002 to mean that the statement made by the petitioner herein did not



relate to his claim for time bound promotion or time-scale promotion.

The further submission of learned counsel for the respondent is that the petitioner was already holding the rank of Naib Subedar and the next higher post is that of Subedar/ Risaldar. However, promotions to the post of Subedar/ Risaldar and onwards are not time bound promotions and they are based on selection upon evaluation of the merit of the candidates falling in the zone of consideration.

In this regard, attention of the Court is drawn to the instructions dated 18.01.1993 issued by the Army Headquarters to all the commands, which lays down the criteria for promotion of JCOs/NCOs. The said criteria, inter alia, relates to promotions to the rank of Subedar/ Risaldar.

Thus, the submission of learned counsel for the respondent/ review applicant is that the promotion to the post of Subedar/ Risaldar is merit based. Attention is also drawn to the criteria for promotion laid down by the Army Headquarters vide instructions dated 10.10.1997, wherein in relation to promotions to the rank of Subedar/ Risaldar, the following criteria was laid down.

"For Promotion to the rank of Ris/Sub.

- (a) Last three Reports will be considered out of which at least two should be in the rank of Nb Sub and one may be in the rank of Hav, in case of shortfall.
- (b) All these three reports should not be less than 'High Average'.
- (c) The individual should be recommended for promotion in all the three Reports. "

Learned counsel has further drawn the attention of the Court to the Judgment of the Supreme Court in Union of India & Ors. v. Colonel Ran Singh Dudee, (2018) 8 SCC 53. The Supreme Court in this decision has held that grant of consequential benefits does not entail the grant of promotion to the post for which selection is merit based. The Supreme Court observed in this decision in paragraph 24 as follows:

"24. The first question that arises is regarding the significance of the expression "consequential benefits" as used in the Order dated 20-11-2013. The matter which was directly in issue and under consideration was the correctness and



*validity of General Court Martial proceedings. While annulling the findings and effect of such General Court Martial proceedings, the idea was to confer those benefits which the officer stood denied directly as a result of pendency of such proceedings. Such benefits would therefore be those which are easily quantifiable, namely, those in the nature of loss of salary, emoluments and other benefits. But the expression cannot be construed to mean that even promotions which are strictly on the basis of comparative merit and selection must also stand conferred upon the officer. It is true that as a result of pendency of the General Court Martial proceedings the respondent was kept out of service for nearly nine years and as such his profile would show inadequacy to a certain extent. On the other hand, the Department was also denied of proper assessment of the profile of the respondent for those years. The correct approach in the matter is the one which was considered by this Court in *K.D. Gupta v. Union of India* [*K.D. Gupta v. Union of India*, 1989 Supp (I) SCC 416 : 1989 SCC (L&S) 448] as under: (SCC pp 420-21, para 8)*

"8. The respondents have maintained that the petitioner has not served in the appropriate grades for the requisite period and has not possessed the necessary experience and training and consequential assessment of ability which are a precondition for promotion. The defence services have their own peculiarities and special requirements. The considerations which apply to other government servants in the matter of promotion cannot as a matter of course be applied to defence personnel of the petitioner's category and rank. Requisite experience, consequent exposure and appropriate review are indispensable for according promotion and the petitioner, therefore, cannot be given promotions as claimed by him on the basis that his batchmates have earned such promotions. Individual capacity and special qualities on the basis of assessment have to be found but in the



case of the petitioner these are not available. We find force in the stand of the respondents and do not accept the petitioner's contention that he can be granted promotion to the higher ranks as claimed by him by adopting the promotions obtained by his batchmates as the measure."

Having heard learned counsel for the respondent/review applicant, I am of the considered view that the order dated 24.02.2012 deserves to be reviewed and recalled. The reasons for the same are the following:

i) Firstly, the order passed by the Division Bench in the aforesaid Letters Patent Appeal was not brought to the notice of the Court when the order dated 24.02.2012 came to be passed.

ii) It was represented to the Court that the promotion from the post of Naib Subedar to Subedar and from Subedar to Subedar Major are time scale promotions which does not appear to be the case and, consequently, such promotions could not fall within the meaning of "consequential benefits" in the light of the judgment of the Supreme Court in Colonel Ran Singh Dudee (supra).

Counsel for the respondent has also submitted that the petitioner had made all the payments before initiation of the contempt proceedings. This is an aspect which has to be dealt with by the Court while hearing the contempt petition.

For the aforesaid reasons, the order dated 24.02.2012 is recalled. List the contempt petition before the Bench as per Roster on 18.02.2019."

8. It is borne out from the record that a Review Petition No. 110/2019 was filed, which came to be decided by a learned Single Judge of this Court on 15.03.2019 and the following order was passed:-

"This Review Petition has been preferred by the petitioner to seek Review of the order dated 25.01.2019. The order dated 25.01.2019 itself had been passed in the Review Petition preferred by the respondent i.e. Review Petition No. 355/2015. The order dated 25.01.2019 shows that none appeared for the petitioner on that day despite the proceedings taking place for over half an hour.



I may observe that the order was dictated in the Court itself, which itself consumed considerable time.

The submission of learned counsel for the petitioner is that he was held up in a traffic jam and, therefore, could not appear on 25.01.2019.

Vide order dated 25.01.2019, the Review Petition preferred by the respondent was allowed and the order dated 24.02.2012 was recalled. The contempt petition was directed to be listed before the Roster Bench on 18.02.2019. Thus, the effect of the order dated 25.01.2019 is to restore the contempt petition. It would be for the Court as per Roster to hear and dispose of the contempt petition on its merits after taking into consideration all the submissions of the respondent and the petitioner, as placed on record, including in the Review Petition 355/2015, its reply filed by the petitioner to the said Review Petition.

For the aforesaid, I am not inclined to pass any further orders in the present Review Petition. The same is, accordingly, disposed of.”

9. In the said backdrop, on the learned counsel for the respondent making a submission that nothing remains in the present contempt proceedings, the learned counsel for the petitioner relied on the Army Instructions Nos. 204-2012, which provided that the case of religious teachers/Padres in the regular Army was to be treated on a different footing for promotion, and *vide* Clause (2) of the Instructions, it was provided that promotion would be made based on selection on an All India Basis of Seniority-cum-fitness. It further provided that all previous service rendered before combatisation would be considered for seniority and promotion. It was vehemently urged that the respondent have concealed the aforesaid Army Instructions, and the matter was never referred to the Central Government for consideration of the notional promotion of the petitioner to the posts of *Subedar* and *Subedar Major*. The learned counsel for the petitioner submitted that



the petitioner is merely seeking notional promotion from March 1993, when his junior was promoted to the post of *Subedar*, and from March 1995, when his junior was promoted to the post of *Subedar* Major.

10. It is evident that the petitioner was irreparably prejudiced due to the long pendency of the matter in this Court from 1981 until 1999. However, since the issue of promotion was given up on a statement made by the learned counsel for the petitioner on 08.01.2002, no further relief can be granted to the petitioner.

11. Moreover, the aforesaid Army Instructions issued on 13.09.1958 have since been superseded by the promotion criteria outlined in the cadre review dated 28.07.1984, and subsequent amendments to the Army instructions. The plea raised after nearly 20 years, seeking reliance on the outdated circular of Army Instruction dated 13.09.1958, does not provide any grounds for considering consequential benefits based on notional promotion.

12. In conclusion, there appears to be no willful, deliberate or contumacious disobedience on the part of the respondent in complying with the directions of this Court. The consequential financial benefits have already been granted to the petitioner *sans* any consequential benefits on claim of notional promotion. Therefore, there are no grounds for holding the respondent guilty of contempt of directions of this Court.

13. The present contempt petition is dismissed.

DHARMESH SHARMA, J.

OCTOBER 07, 2024/pkv