GAHC010186482019

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/5832/2019

C/362491H WARRANT OFFICER (CLERK) KISHORE CHAND
S/O BIDHI CHAND, P/R/O VILL-BHARIN, P.O.-ROPA, DIST-HAMIRPUR, HIMACHAL PRADESH, P/W/A NO.3 WORKSHOP ASSAM RIFLES, JORHAT, C/O 99 APO, PIN-932303

VERSUS

THE UNION OF INDIA AND 2 ORS.
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF HOME AFFAIRS, NEW DELHI-110011

2:THE DIRECTOR GENERAL
ASSAM RIFLES
SHILLONG-798011

3:THE COMMANDANT
NO. 3 WORKSHOP
ASSAM RIFLES
JORHAT
C/O 99 APO
PIN-93230

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

JUDGMENT & ORDER

Advocates for the petitioners : Shri B. Pathak, Advocate

Advocates for respondents : Shri S.S. Roy, learned C.G.C.

Date of hearing : 22.04.2024

Date of judgment : 22.04.2024

The rejection of the application of the petitioner for his promotion by the Assam Rifles is the subject matter of dispute raised in this petition filed under Article 226 of the Constitution of India.

2. The facts projected in this petition are that in the year 1995, the petitioner was enrolled as Lance Naik / Writer in the Assam Rifles and was accordingly posted and thereafter had served in various places of postings. In September, 2005, the petitioner while undergoing the Battle Physical Efficiency Test held in Shillong had suffered an injury. Subsequently, in the year 2014, when the time came for consideration of the promotion of the petitioner, since he was categorized to low medical category and pursuant to a representation for such consideration, vide order dated 03.05.2018, a Court of Inquiry (C.O.I) was convened to examine the petition. The aforesaid Court of Inquiry had accordingly given an opinion on 30.05.2018 recording the below mentioned

finding:

(a) The injury was sustained by No C/362491H WO/CIK Kishore Chand during qtly BPET test held at ARASU, Shillong.

(b) The injury sustained was beyond his control and indl should not be held responsible for the same.

(c) The individual was on Govt *bona fide* duty and so the injury sustained by the indl is attributable to Assam Rifles service.

The Commandant vide order dated 06.06.2018 had also concurred with the aforesaid finding. The petitioner accordingly submitted further representation dated 12.03.2019 to consider his case for promotion as all his contemporaries were promoted in the meantime. However, vide the impugned communication dated 08.11.2019, the Deputy Commandant had rejected the representation of the petitioner on the ground that the injury sustained by the petitioner was during a training and not during Active Government duty. For ready reference, the observations in the impugned order is extracted herein below:

"*3. However, it is seen that No C/362491H WO/CIK Kishore Chand of your org has been injured during QE BPET held at HQ DGAR and not on Active Government duty.*"

3. I have heard Shri B. Pathak, learned counsel for the petitioner whereas the respondents are represented by Shri S.S. Roy, learned C.G.C.

4. Shri Pathak, the learned counsel for the petitioner has submitted that denial of promotion on the grounds cited in the impugned communication dated 08.04.2019 is absolutely unfair and unreasonable. He submits that the training in which the petitioner had sustained the injuries were not the induction training but the routine training which is conducted periodically and there could be no

difference in sustaining injuries during such training and during Active Government Duty. He submits that such training is a part of the Active Government Duty and therefore, the grounds of rejection is liable to be interfered with.

5. By drawing the attention of this Court to the stand of the respondents put on record by way of affidavit, Shri Pathak, the learned counsel has submitted that reading of the same would reveal that two grounds of defence have been projected. The first ground is that the injury was sustained in a training and not on Active Government Duty and secondly, the findings of the Court of Inquiry was a vague one, which is not acceptable. It is submitted that neither of the defence is sustainable.

6. In support of his submissions, the learned counsel for the petitioner has relied upon the decision of the Hon'ble Supreme Court in the case of ***Union of India & Anr. Vs. Surendra Pandey*** reported in ***(2015) 13 SCC 625.*** Specific reference has been made to paragraphs 10, 11 & 12 which are extracted herein below:

> "***10.*** *In R. v. National Insurance Commr., ex p Michael, the Court of Appeal in England had to construe phrase "caused by accident arising out of and in the course of employment" appearing in the 1965 Act mentioned above. Lord Denning M.R. started his judgment with the observation: (WLR p. 112 C-D)*
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> "*... So we come back, once again, to those all too familiar words 'arising out of and in the course of his employment'. They have been worth—to lawyers—a King's ransom. The reason is because, although so simple, they have to be applied to facts which vary infinitely. Quite often the primary facts are not in dispute; or they are proved beyond question. But the inference from them is matter of law. And matters of law can be taken higher. In the old days they went up to the House of Lords. Nowadays they have to be determined, not by the courts, but by the hierarchy of tribunals set up under the National Insurance Acts."*

11. *Construing the meaning of the phrase "in the course of his employment", it was noted by Lord Denning that the meaning of the phrase had gradually been widened over the last 30 years to include doing something which was reasonably incidental to the employee's employment. The test of "reasonably incidental" was applied in a large number of English decisions. But, Lord Denning pointed out that in all those cases the workman was at the premises where he or she worked and was injured while on a visit to the canteen or other place for a break. Lord Denning, however, cautioned that the words "reasonably incidental" should be read in that context and should be limited to the cases of that kind. Lord Denning observed: (National Insurance case, WLR p. 113 F-G)*

"*... Take a case where a man is going to or from his place of work on his own bicycle, or in his own car. He might be said to be doing something "reasonably incidental" to his employment. But if he has an accident on the way, it is well settled that it does not "arise out of and in the course of his employment"…. Even if his employer provides the transport, so that he is going to work as a passenger in his employer's vehicle (which is surely 'reasonably incidental' to his employment), nevertheless, if he is injured in an accident, it does not arise out of and in the course of his employment…. It needed a special 'deeming' provision in a statute to make it 'deemed' to arise out of and in the course of his employment…."*

12. *It was also pointed out by Lord Denning in the aforesaid case of R. v. National Insurance Commr., ex p Michael that the extension of the meaning of the phrase "in the course of his employment" has taken place in some cases but in all those cases, the workman was at the premises where he or she worked and was injured while on a visit to the canteen or some other place for a break. The test of what was "reasonably incidental" to employment, may be extended even to cases while an employee is sent on an errand by the employer outside the factory premises. But in such cases, it must be shown that he was doing something incidental to his employment. There may also be cases where an employee has to go out of his work place in the usual course of his employment. Latham, C.J. in South Maitland Railways Pty. Ltd. v. James observed that when the workmen on a hot day in course of their employment had to go for short time to get some cool water to drink so as to enable them to continue to work without which they could not have otherwise continued, they were in such cases doing something in the course of their employment when they went out for water."*

7. The learned counsel further informs this Court that there has been re-designation of the post concerned and presently the name of the post held by the petitioner is Warrant Officer and the next promotional post is Naib Subedar.

8. Shri Roy, the learned C.G.C., on other hand has submitted that the decision of the Deputy Commandant, as communicated vide letter dated 08.04.2019 is not liable to be interfered with. By referring to the affidavit-in-opposition filed on 19.08.2020, the learned C.G.C. has submitted that adequate reasons have been pleaded to justify the impugned action. It is submitted that there is a distinction between injuries sustained in a training period and those sustained in Active Government duty and the consequence of sustaining such injuries in the two cases cannot be equated. Emphasis has also been laid by the learned C.G.C. on doubting the procedure adopted by the Court of Inquiry which had culminated in the opinion and also the concurrence order dated 06.06.2018. He submits that the findings are vague and cannot be relied upon and the aspect of the injuries sustained during the training period has been totally overlooked.

9. The rival contentions have been duly considered and the materials placed before this Court have been carefully perused.

10. To examine the case of the petitioner vis-a-vis the defence of the respondents, it would be necessary to look into the grounds on which the impugned order has been sought to be defended by the respondents. There are two grounds which are discernible from the affidavit-in-opposition filed on 19.08.2020. The first ground is a distinction which is sought to be carved out between Active Government duty and the training period. The second ground is questioning the findings of the Court of Inquiry.

11. Let us examine the second ground first. The objection is that the findings

are vague and not acceptable. The materials on record would show that an order was issued on 03.05.2018 by the Competent Authority convening a Court of Inquiry which was also constituted. The aforesaid Court of Inquiry in its sitting had examined three numbers of witnesses and after examination of the materials on record had come to a finding and thereafter had given the opinion which has already been extracted above. The findings and the opinion cannot be said to be vague in any manner or to have been given without examination of the materials on record. The competence / legality of the convening order or the competence of the Court of Inquiry have not been questioned. In any case, it would be wholly unreasonable for the respondents to question the findings of a Court of Inquiry which was constituted by the respondents themselves. Though in a given case, the findings may not be concurred with, the present case does not contain any such circumstance for which the findings can be treated to be vague or unacceptable.

12. As regards, the first stand whereby a distinction has been sought to be carved out regarding injuries suffered in Active Government duty and those suffered in a training period, it is not in dispute that the aforesaid training period was not an induction training but a routine training which is required to be undergone by every employee / Officer under the respondent – Organisation. The petitioner was appointed in 1995 and the injuries were suffered in the training held in the year 2005 for which the petitioner was categorised to low medical category.

13. This Court has also been informed that the petitioner's appointment was as Lance Naik / Writer which is presently re-designated as Warrant Officer. This Court has also been informed that there is a relaxation meant for P2 Officers and if it is construed that the injury suffered by the petitioner is during Active

Government duty, he would be entitled to such relaxation.

14. This Court finds force in the contention of the learned counsel for the petitioner, who by relying upon the case of ***Surendra Pandey*** (supra) has submitted that such distinction of injuries suffered in a training and those suffered in Active Government service is not sustainable.

15. In view of the above, this Court is of the opinion that a case for interference is made out and accordingly it is directed that the case of the petitioner for promotion to the next higher post of Naib Subedar is required to be considered on its own merits along with other eligible candidate.

16. The aforesaid consideration be made in the next promotional exercise as and when conducted.

17. Writ petition accordingly stands allowed.

JUDGE

Comparing Assistant