

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 550/2004 & CM 930/2005

Havaladar Shital Prasad Singh ...Petitioner through
Mr. Suresh Chand,
Adv.

Versus

Union of India & Ors. ..Respondent through
Mr. Manoj Ohri, Adv.

Date of Hearing : November 20, 2007

Date of Decision : November 30, 2007

CORAM:

HON'BLE MR. JUSTICE VIKRAMAJIT SEN

HON'BLE MR. JUSTICE S.L. BHAYANA

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

: VIKRAMAJIT SEN, J.

J U D G M E N T

1. The Petitioner prays for the issuance of a writ of certiorari calling for the records of the case and for the quashing of the Instructions dated 9.5.2002; and for a direction to promote the Petitioner to the rank of Naib Subedar and that his seniority be counted with effect from 1.6.2002 having passed the Army English Certificate-II (AEC-II). The Petition discloses that the Petitioner was enrolled in the Army on 27.5.1982 in the rank of

Sepoy. At that time the Petitioner was a matriculate, however without English being one of his subjects. There is some controversy as to whether the Petitioner was an Infantry Soldier or a Gunner. From the Counter of the Respondent it appears that he could have fulfilled these dual roles. The Petitioner has been promoted to the rank of Havaldar on 1.1.1999 without having cleared the AEC-II. It is not in dispute that the Petitioner has cleared the Promotion Cadre Test on 27.6.2001, making him partially eligible for the promotion of Naib Subedar. The Petitioner makes a grievance of the fact that after about one year of that event, on 9.5.2002, he was informed that his promotion could not be effected as he had not passed the AEC-II Examination. According to the Petitioner this is the first time he came to know that an essential prerequisite for being promoted to the rank of Naib Subedar was passing of this Examination. The letter dated 9.5.2002 is Annexure P-2 to the Petition. The letter also mentions that the said precondition would apply to drivers/operators/gunners, and obviously for this reason a controversy has been raised as to whether the Petitioner was in the Infantry or was a Gunner.

2. The immediate question that arises is whether the

Petitioner learnt of the necessity to pass the AEC-II in May 2002 or even prior thereto. Learned counsel for the Respondent has drawn our attention to Appendix 'C' to the letter dated 9.5.2002 containing a note which reads thus:-

Personnel who have passed Matric or equivalent exam without English and with Maths subjects need not to pass any Army Certificate of Education and Army English Certificate but required to pass Army English Certificate of initial mustering and subsequent upgradation.

3. Instead, learned counsel for the Petitioner seeks to rely on Appendix 'D' which refers to personnel enrolled in the Army under Matric prior to 1/4/1986 and personnel enrolled in the Army under dispensation in education standard for recruitment vide Army HQ letter No.B/10133/MP3 (PBOR) dated 19.3.2001 are required to pass only Army Certificate of Education for initial mustering and subsequent upgradation. However, on a proper perusal of Appendix-C it will become evident that in the case of the Petitioner it was necessary for him to have cleared AEC-II as he was a Normal Entry Rate, that is, a Matriculate with Maths but without English. A letter vide dated 19.3.1991 given under Annexure-I reiterates that 'Normal Entry Rate' personnel who are lacking mandatory requirement of passing a

particular subject are required to qualify the same before they are detailed to undergo the promotion cadre. Although the question does not arise in this case, for the Petitioner to be eligible for further promotion to Subedar, he would have to clear AEC-II. It is worth emphasising that these requirements have been laid down in Qualification Regulations for Soldiers, 1958 (for short Regulations) dated AI115/70 (CS No.306/10/70). Rule 8 of the Regulations specifically states that persons who have passed matriculation examination without English as one of the subjects will require to pass the Army English Certificate Examination as prescribed for the concerned category in Chapter-IV for initial mustering and subsequent upgradation. It is noteworthy that these Regulations predate the Petitioner's engagement in the Army.

4. The problem that has arisen is that the Petitioner was permitted to appear for the promotion cadre without his having the prerequisite qualification of AEC-II. In view of the Regulations it would not be correct for the Petitioner to assert that he learnt of this necessity only on 9.5.2002. Learned counsel for the Respondents has stressed the point that Circulars, highlighting this requirement, had been issued from

time to time, which were also placed in the Unit Movement Hall and were displayed on the Notice Board. The conundrum to ponder upon is whether the Respondents should be disallowed, at this stage, from insisting that the Petitioner should possess the AEC-II qualification, on the face of their negligent error in permitting him to appear in the Promotion Cadre without the prerequisite of AEC-II.

5. The Petitioner had filed a non-statutory as well as statutory complaint on 27.6.2002 and 8.9.2003 respectively to the appropriate Authorities representing that he should not be compelled to clear the AEC-II, for the second time, subsequent to his having cleared the Promotion Cadre. The Petitioner has also relied on the fact that he has cleared the pre-law examination, which, on equivalence, is higher than AEC-II. We are not at all impressed with the last argument. If qualifications have been laid down by an appropriate or competent authority they must be complied with. Equivalence would arise only where two qualifications appear to be the same, *albeit* they have been awarded by Universities or School Education Boards.

6. The statutory as well as non-statutory complaints proved to be sterile. Dissatisfied with this result the Petitioner appears

to have addressed a communication to the Chief of Army Staff, which is contrary to the extant Regulations. This is viewed as an act of indiscipline, and with just foundation. As a result the Petitioner received a Red Ink Entry which imposed on him the punishment of not being eligible for consideration for promotion for one year, that is, with effect from 9.10.2002 to 8.10.2003. It will be recalled that the Petitioner passed the Promotion Cadre on 11.6.2002, and thus could not have claimed a promotion in this period. Arguably, had the AEC-II Examination been held between 11.6.2002 and 9.10.2002, and had the Petitioner appeared with success, a promotion may have become claimable. The present Petition has been filed in January, 2004.

7. We consider this factor to be of importance as it discloses the reasons which propelled the Petitioner into filing the present Petition. It appears to us that till the imposition of the Red Ink Entry the Petitioner had not articulated his argument that he was eligible for promotion to the rank of Naib Subedar without clearing the AEC-II Examination. Having become debarred for consideration for promotion till 2003 he realised that he would become much junior to his colleagues if he were to obtain all the

qualifications after October 2003.

8. We are of the opinion that since the Petitioner was a matriculate without English, it was an essential prerequisite for him to have cleared his AEC-II prior to appearing in the Promotion Cadre. Since the Regulations were in existence much prior to his enrollment, the Petitioner cannot contend that the terms of service have been altered to his detriment or that he was unaware of them. There is also another intervening event which has had the effect of delaying the Petitioner's promotion and that is "Operation Parakaram" as a consequence of which the AEC-II Examination, scheduled for May 2002, was cancelled. This had the effect of delaying or postponing the Petitioner's promotion. As already noted above the Petitioner's Red Ink Entry had also delayed his promotion.

9. It is because of these events that the Petitioner has now put forward a case that he should stand exempted from clearing the AEC-II, for which we find no foundation. In order to catch up with the seniority of his peers the Petitioner now seeks to contend that he should be granted seniority/promotion from the date when he had passed the Promotion Cadre on 27.10.2001.

However, on that date, as we have already observed, he did not have the prerequisite qualification of AEC-II. The confusion has become worse confounded by the fact that the Petitioner has cleared the AEC-II on 11.6.2002. However, contrary to his expectations, the Respondents have insisted that he should thereafter reappear in the Promotion Cadre. It is this insistence which has further delayed his promotion.

10. While exercising powers under Article 226 of the Constitution of India, we would interfere with any Policy set-down/established by a Competent Authority only if it appears to us to be unconscionable, or perverse, or unreasonable in the Wednesbury mould. We do not find any such infirmity in the Respondents' action in this case. Their insistence has been on strict adherence to a sequence of events envisaged under the Regulations, that is, possessing of AEC-II clearance, wherever applicable, as a precondition for appearing in the Promotion Cadre. Had the Petitioner not received a Red Ink Entry he may have been able to appear in the Promotion Cadre between 9.10.2002 to 8.10.2003. Obviously he would not have filed the present petition.

11. The Petitioner alone has not been singled out for adverse

treatment. Havildar Jagjeevan was similarly placed, in that he had first cleared his Promotion Cadre and thereafter passed the AEC-II. The Respondents had insisted that he should appear in Promotion Cadre after having passed the AEC-II which he complied with. This sequence must also be fulfilled by the Petitioner. So far as Havildar Brajesh Kumar and Havildar Hem Chand are concerned, the Respondents have stated that they would be eligible for promotion only on following the settled sequence. In any event the Writ Court will abjure from passing orders which run counter to legitimate established Policy, Rules or Regulations or law even if there has been an infraction in respect of other candidates, otherwise the writ would run counter to law, which is clearly impermissible. The question of giving any retrospective operation with effect from 1.6.2002 to Petitioner's qualification is not tenable.

12. In these circumstances we find no merit in the Petition and the same is dismissed.

(VIKRAMAJIT SEN)
JUDGE

November 30, 2007
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(S.L. BHAYANA)
JUDGE