

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl) No(s).8100/2008

(From the judgement and order dated 05/05/2008 in WPCRL No.579/2008
of The HIGH COURT OF DELHI AT N. DELHI)

BHIM SINGH

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.
(for final disposal)

Respondent(s)

Date: 10/11/2009 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ALTAMAS KABIR
HON'BLE MR. JUSTICE CYRIAC JOSEPH

For Petitioner(s) Capt. Virendra Kumar, Adv.
Mr. M.P. Jha, Adv.
Mr. Ram Ekbal Roy, Adv.
Mr. Harshvardhan Jha, Adv.

For Respondent(s) Mrs. Indira Jaisingh, ASG.
UOI Mrs. Rekha Pandey, Adv.
Mrs. Sunita Rani Singh, Adv.
Mrs. Anil Katiyar, Adv.
Mr. B. Krishna Prasad, Adv.

UPON hearing counsel the Court made the following
O R D E R

Leave granted.
The appeal is allowed in terms of the
signed order.

(Ganga Thakur)
PS to Registrar

(Juginder Kaur)
Court Master

Signed order is placed on the file.
IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. OF 2009
(Arising out of S.L.P.(Crl.) No.8100/2008)

Bhim Singh

...Appellant(s)

Versus

Union of India & Ors.

...Respondent(s)

O R D E R

Leave granted.

This Appeal is directed against the judgment and order dated 5th May, 2008, passed by the Delhi High Court in Writ Petition (Crl.) No.579 of 2008 dismissing the same holding that no grounds had been made out to interfere with the order impugned therein.

The appellant was enrolled as a Sepoy in the Army on 6th October, 1982, and discharged after 22 years. Before the High Court, the grievance of the appellant was against his discharge on account of Low Medical Category and failure of the respondent-authorities to promote him to the rank of Naik Subedar. It has been recorded by the High Court that an earlier writ petition filed by the appellant was withdrawn, and, thereafter, the present Writ Petition was filed. Despite having noticed the fact that the appellant had approached the court after a long interval, the High Court

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took the date of the legal notice of 29 th November, 2007, as the starting point of cause of action. The High Court considered the fact that the appellant had been placed on the low medical category on account of injury having been sustained in an accident on 19th December, 1991, and was finally placed in the medical category BEE with effect from 27th February, 1994, and continued to remain in the lower medical category which ultimately led to the decision to discharge him from the Army with effect from 31st December, 2005. The ground given was that the appellant was in the category below SHAPE-1 and thus not upto the prescribed military physical standards.

It appears that on the question of promotion, the High Court found that the appellant was not eligible for promotion to the next higher post in view of the criteria laid down in the Rules wherein it has been indicated that for promotion to the post of Naik Subedar from the Post of Havildar, the candidate was required to fulfill at least the following two conditions:

a) Only last five reports will be considered out of which minimum three reports must be in the rank of Havildar and in case of shortfall, rest may be in rank of Naik.

b) At least three out of last five reports be "Above Average" with minimum two in the rank of Havildar and remaining should be not lower than "High Average".

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Holding that the appellant was not eligible in view of the aforesaid Rules, the High Court rejected the appellant's claim for promotion to the post of Naik Subedar. judgment of the High Court, the appellant has filed the present Appeal.

Aggrieved by the

Capt. Virendra Kumar, learned Advocate, appearing for the appellant, submitted that the appellant had rendered his services in the Front during the Kargil War and that the ground that he was in low medical category should not have been relied upon by the Army authorities for the purpose of discharge. Capt. Virendra Kumar also pointed out had the appellant not been discharged on 31st January, 2005, he could have been considered for the post of Naik Subedar which would have entitled him to continue for a longer period of service. He also pointed out that in the judgment of the High Court impugned before us, the High Court had indicated that the appellant had been discharged on 31st December, 2005, whereas the respondents claimed that he was discharged on 31st January, 2005. According to him, this was not a mistake or typographical error, but the actual recording of a fact. He, therefore, urged that the Annual Confidential Report for the year 2005 ought to have been taken into consideration also when the matter relating to his promotion was being considered.

One further submission made by Capt. Virendra Kumar may also be recorded, namely, from the year 2003-2004 the appellant

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had not been communicated with the remarks in his Annual Confidential Report. On the aforesaid grounds it was urged that the order of the High Court was liable to be set aside and

the appellant was entitled to be treated as having been continued in service and should have been given his retirement benefits accordingly.

The case made out on behalf of the appellant was strongly opposed by learned Additional Solicitor General, Ms. Indira Jaising. She has pointed out that as far as the

criteria regarding promotion is concerned, since the appellant had not fulfilled the criteria mentioned in clause (b), as set out herein-above, which required the appellant to have at least two remarks of "Above Average" in the rank of Havildar, the

High Court has rightly found that the appellant was not eligible for promotion. According to Ms. Indira Jaising the

date mentioned in the judgment has to be taken as an obvious mistake. Learned ASG, however, conceded that since the Medical

Board had not been constituted to determine the appellant's physical condition and having regard to the decision of this

Court in the case of Union of India vs. Rajpal Singh, 2009 (1)

SCC 216, the order of discharge without holding such medical

examination could not be sustained. She has very fairly

submitted that the order of discharge be set aside and the

appellant be treated to have been superannuated on 31 st

October, 2006, when he would have reached the age of

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superannuation in the rank of Havildar.

Having regard to the submissions made on behalf of the respective parties, we are of the view that the order of the

High Court cannot be upheld as far as the appellant's right to

continue in service, till he attained the age of

superannuation as Havildar, was concerned. As mentioned

herein-above, in view of the decision cited herein-above and

the stand taken by Ms. Jaising, we are of the view that part of

the order of the High Court impugned in the present appeal

requires modification.

As far as the question of promotion is concerned, we are

also inclined to agree with Ms. Jaising that having regard to

the criteria as set out herein-above, the appellant also did not meet the requirements and the order of the High Court as far as the said aspect is concerned, does not require any interference.

In that view of the matter, we allow the appeal in part and we set aside the order of discharge dated 31st January, 2005, and direct that the appellant shall be treated as being in service till 31st October, 2006, when he would have superannuated as Havildar. Consequently, he will be entitled to all the benefits as a result thereof. All benefits which would be due to him in terms of this order are to be made available to the appellant within three months from date.

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The appeal is allowed to the above extent. There will be no order as to costs.

.....J.
(ALTAMAS KABIR)

.....J.
(CYRIAC JOSEPH)

New Delhi,
November 10, 2009.