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UNION OF INDIA

v.

R. BHUSAL

JULY 12, 2006

B

[ARIJIT PASAYAT AND S.H. KAPADIA, JJ.]

Service Law:

C

Armed Forces—Air Force—Claim for Permanent Commission—Officer granted Short Service Commission—With Helicopter Short Service Commission course—After completion of initial period, considered but not recommended for permanent Commission and release order issued as his performance appraisal was below minimum requirement—Medical fitness was also below the required category—Order challenged on the ground that lower medical category should not have been taken into account to deny him permanent Commission—High Court allowing writ petition—Held, conclusions arrived at by High Court were beyond pleadings—Specific stand of the Department was performance criteria fixed under the applicable policy regulations was not fulfilled by the Officer—There is no specific challenge as to applicability of either criteria or policy regulations.—In the fitness of things, High Court should re-hear the matter.

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E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1622 of 2004.

From the Judgment and Order dated 18.2.2003 of the High Court of Delhi at New Delhi, in Writ Petition No. 8307/2002.

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Mohd. Yusuf, Kiran Bhardwaj and Sushma Suri for the Appellant.

N.M. Krishnamani, Narender Kaushik, Pankaj Kaushik and Ashok Kumar Sharma for the Respondent.

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The Judgment of the Court was delivered by

ARIJIT PASAYAT J. Union of India calls in question legality of the judgment rendered by a Division Bench of the Delhi High Court allowing the writ petition filed by the respondent. By the impugned judgment, High Court directed the present appellant to grant the writ petitioner a permanent

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commission. It was further directed that alternate employability was to be given, keeping in view his medical fitness. A

Background facts in a nutshell are as follows:-

The respondent was granted Short Service Commission with No.3 Helicopter Short Service Commission Course on 19.2.1993. His initial terms was for ten years as per terms and conditions of service. In February 2001, he was considered for grant of permanent commission. The suitability assessment consisted of minimum demonstrated performance and medical fitness. The former was to be gauged from the grading in the confidential annual reports for the previous three years and on the basis of mandatory qualities like professional knowledge, job proficiency integrity, loyalty, dependability, sense of responsibility, courage (mental and physical), bearing and demeanour. For grant of permanent commission, a minimum average of 6.5 in the previous three years appraisals and not less than 6 in the mandatory qualities. As regards medical categorisation, the requirement was not below the rating of A-2-G-2. According to the appellant, respondent averaged 6.0 as against the minimum requirement of 6.5. As regards medical fitness, he was in the category of A4G3. Accordingly he was not recommended for permanent commission by the Board and release order was issued on 11.4.2002. Respondent's representation was rejected. Thereafter, respondent filed a writ petition before the High Court. His basic stand was that he was in the lower medical category as he was involved in an aircraft accident and that should not have been taken into account to deny permanent commission, particularly when the Chief of the Air Staff had on enquiry found that no one could be blamed and the injuries sustained by the petitioner were attributable to service. C D E

Stand of the present appellant was that low medical categorisation had no bearing on the decision to deny the permanent commission. It was categorically stated that the writ petitioner did not meet the minimum performance criteria. F

As noted supra the High Court allowed the writ petition. G

Learned counsel for the appellant submitted that the High Court did not consider the case in its proper perspective and allowed the writ petition overlooking the fact that there was no challenge to the performance criteria adopted and determination on the basis thereof. H

Learned counsel for the respondent supported the judgment of the High

A Court.

We find that the High Court's consideration of the writ petition filed by the respondent and conclusions arrived at were beyond the pleadings. The High Court acted on certain materials and purported concession without examining whether that concession was well founded and whether the appellant got an opportunity to clarify the position as regards the applicability of the regulations which according to the High Court had application. The basic challenge in the writ petition was that the medical deficiency found by the appellant was not properly assessed. In the counter affidavit, the specific stand of the appellant-Union of India was that the medical deficiency was only of the factors while assessing suitability for permanent commission. The Union of India's specific stand was that the performance criteria fixed under the applicable policy regulations was not fulfilled by the respondent. In the rejoinder affidavit filed, there was no specific challenge as to the applicability of the either criteria or policy regulations.

D Therefore we find no substance in the plea of learned counsel for the respondent that though the High Court apparently travelled beyond the pleadings, its conclusions are justified in law.

E In the fitness of things, the High Court should rehear the matter. We make it clear that we have not expressed any opinion on the acceptability of the plea raised by the respondent in the writ petition. If the High Court so feels, it may permit the parties to place further materials in respect of their respective stand. Learned counsel for the appellant submits that by virtue of interim order the respondent is continuing in service. Keeping that in view, we request the High Court to explore the possibility of disposing of the writ petition within a period of four months from the date of receipt of our order.

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The appeal is accordingly disposed of. No costs.

R.P.

Appeal disposed of.