

## **Lt. Col. K.D. Gupta vs Union Of India & Ors on 20 April, 1988**

**Equivalent citations: 1988 AIR 1178, 1988 SCR (3) 646**

**Author: Misra Rangnath**

**Bench: Misra Rangnath, M.M. Dutt**

PETITIONER:

LT. COL. K.D. GUPTA

Vs.

RESPONDENT:

UNION OF INDIA & ORS

DATE OF JUDGMENT 20/04/1988

BENCH:

MISRA RANGNATH

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DUTT, M.M. (J)

CITATION:

1988 AIR 1178	1988 SCR (3) 646
1988 SCC Supl. 347	JT 1988 (2) 199
1988 SCALE (1)791	

ACT:

Army Act, 1950 : Section 20, 191 and 192 and Special Army Instruction No. 1 dated January 9, 1974 Army Officer-Subjected to frequent medical examination-Downgrading and upgrading between shape-I and shape-III-Treated to have been reduced in rank-Whether justified?

HEADNOTE:

The appellant was granted a permanent Commission in the Indian Army in 1958 and appointed as a Second Lieutenant. He rose to the level of Lt. Colonel on 27th February, 1975. In March, 1976 he was directed to report to the Military Hospital for his psychiatric examination, where his medical classification was reduced from shape-I to shape-III, and he was posted as GLO and treated as Major. There was however no specific order reducing him in rank.

In December, 1976, appellant's Classification was upgraded to shape II and in September, 1977 to shape-I. But it was decided that he should be subjected to special review

before restoration of his rank. In a special report the Brigade Commander recorded appreciation of the appellant's work, and recommended his promotion as Lt. Colonel. But the Army Headquarters directed the appellant to the Military Hospital for further examination on the ground that an earlier incident of 1963 had been overlooked when the appellant was graded as shape-I. On this examination, the appellant was permanently downgraded as shape-II.

In 1980, the appellant filed a writ petition in this Court, challenging the action of Army Headquarters and his downgrading. This Court directed that he should be restored to the rank of Acting Lieutenant Colonel from the date he was reverted and that his claims to advancement, pay, arrears of pay, etc. should be considered and disposed of within six months (See 1984 (1) SCC 153).

After lodging his claims, the appellant waited for a reasonable time and then filed a writ petition in the High Court. The respondent contended that there was nothing wrong in the recategorisation and the directions of the Supreme Court had been fully complied with. The High Court dismissed the writ petition.

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In this appeal by special leave, the appellant contended that a prejudicial approach developed against him in the Headquarters establishment without any justification and he had been unduly subjected to psychiatric examination from time to time, and on the basis of the records built up against him adverse opinion had been forthcoming which resulted in recategorisation from shape-I to shape-II. To remove the apprehension of bias, this Court directed that the appellant may be examined by a Board consisting of three Experts with an outsider as Chairman.

After considering the report of the Experts Committee this Court allowed the appeal in part and,

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HELD: 1. The appellant's medical category shall be taken as being continued to be shape-I from 1977 and on that basis his promotional entitlements shall be finalised by the respondents within three months hence. It is open to the respondents to release the appellant from service after this has been done. [655F]

2. The report of the Expert Committee makes it clear that there was no justification for the appellant to be subjected to psychiatric test in 1978 following which he was recategorised as shape-II. [654G]

3. This subject of categorisation on the basis of psychiatric test is technical and should ordinarily be left to experts available in the Defence Department and the guidelines indicated by the Department should be followed. This Court has no intention to disturb the discipline of the Defence Department, but on the basis of material available on the record and on the basis of the report of the Committee of Experts, the appellant is entitled to limited

relief. Though there was no order reducing him from the rank of Acting Lieutenant Colonel to Major, he was treated as having been so reduced. Then followed the frequent psychiatric examinations without any real justification. This recategorisation, in these circumstances, was without any justification. [654H; 655A-B]

[Reiterating that it would like the discipline of the Defence Department to be maintained by itself in the interest of the nation, this Court observed that this case may not be taken as a precedent.] [655F-G]

#### JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1702 of 1987.

from the Judgment and order dated 31.3.1987 of the Allahabad High Court in Civil Misc. Writ Petition No. 5702 of 1985.

Petitioner in-person (Lt. Col. K.D. Gupta) Kuldeep Singh, Additional Solicitor General, C.V. Subba Rao and Pramod Swarup for the Respondents.

The Judgment of the Court was delivered by RANGANATH MISRA, J. This appeal is by special leave and is directed against the judgment of the Allahabad High Court dismissing the writ application of the appellant. He was granted a permanent Commission in the Indian Army in 1958 and was initially appointed as a Second Lieutenant. He obtained successive promotions to the ranks of Lieutenant, Captain and Major. In December, 1974, he was selected for promotion to the rank of acting Lt. Colonel and was so promoted with effect from 27th February, 1975.

From the following year, the appellant came to face a series of set backs in his service. On March 22, 1976, his Brigade Commander directed the appellant to report to the Officer Commanding, Military Hospital, Kirkee for his psychiatric examination. He was examined by Lt. Colonel Mukherjee, specialist in psychiatry on 23rd March, 1976 and by Surgeon Commodore D'netto, Psychiatry Consultant to the Indian Navy on the 26th March, 1976. On the basis of their reports, the appellant's medical classification was reduced from Shape-I to Shape III by order dated August 13, 1976. By order dated November 16, 1976, the appellant was posted as GLO (Major/Captain) 152, G.L. Sec. Type Vice Captain I.K. Bedi, a post ordinarily held by a Major or Captain. Though there was no specific order reducing the appellant in rank from Acting Lt. Colonel to that of Major, he was treated as Major. On December 10, 1976, appellant's classification was upgraded to Shape-II and on a second medical review on September 2, 1977 to Shape-I. His authorities, however, decided the appellant to be subjected to 'Special Review' before restoration of the rank of Acting Lt. Colonel and on October 31, 1977, required the Brigadier Commander to initiate a special report and submit it to the Headquarters. The Brigade Commander recorded appreciation of the appellant's work and recommended his promotion as Lt. Colonel. Yet, the Army Headquarters by letters dated October 12 and November 27, 1978, directed the appellant to be sent to the Military Hospital at Pune for further examination by the psychiatry consultant. It was indicated by way of justification for such

requirement that when the appellant was graded as Shape I, an earlier incident of 1963 had been overlooked. On such examination the appellant was permanently downgraded as Shape II.

The appellant filed an application under Article 32 being Writ Petition No. 5302 of 1980 challenging these actions and his downgrading. A two-Judge bench of this Court by judgment dated August 10, 1983, allowed the same. This Court stated:

"According to the petitioner, this was done entirely without any basis and that even the clinical reports would reveal that the petitioner was perfectly fit. We do not desire to go into these claims of the petitioner since we are satisfied on the material placed before us that even the very reduction of the petitioner's rank in 1976 from Acting Lieutenant Colonel to Major was bad.

Shri Abdul Khader, learned counsel for the respondents explained to us that the petitioner had been reverted from the rank of Acting Lieutenant Colonel to Major for three reasons:

- (i) Reduction in rank had to follow as a matter of course on placement of the petitioner in a lower medical category;
- (ii) After the latest medical examination in 1978, he was not eligible to be considered for promotion for one year; his earlier reduction in rank was, therefore, justified; and
- (iii) He performed no duty for six months from March 22, 1976 when he was admitted in the hospital and under the rules, he stood automatically reduced in rank".

This Court examined all the three points and ultimately ended by saying:

"As stated by us earlier, we find no substance in any one of the reasons mentioned by Shri Abdul Khader on behalf of the respondents for the reversion of the petitioner from the rank of Acting Lieutenant Colonel to Major. The reversion or reduction in rank cannot be justified and it is accordingly quashed. The petitioner is directed to be re stored to the rank of Acting Lieutenant Colonel with effect from the date he was reverted and stripped off the badges indicating his rank. As a result of the restoration of the rank of the Acting Lieutenant Colonel to the petitioner, other consequences, such as, consideration of the petitioner's further claims to advancement, pay, arrears of pay, etc., will have to be considered by the authority and it is directed that these claims may be considered and disposed of within a period of six months from today."

The appellant waited for a reasonable time after lodging his claim and ultimately went before the Allahabad High Court by filing an application under Article 226 of the Constitution being Writ Petition No. 5702 of 1985. Before the High Court he asked for quashing of the proceedings of the Review Medical Board dated 11th January, 1984, and for a declaration that he should be treated as

belonging to medical category Shape-I for all purposes without interruption since 2nd September, 1977. He also asked for an appropriate posting considering his entitlement and other service benefits. The claim was resisted by the respondents on the ground that there was nothing wrong in the recategorisation and the directions of the Supreme Court had been fully complied with and the appellant has no subsisting grievance. On 31st March, 1987, the High Court dismissed the petition. This appeal has been filed after obtaining the special leave.

The appellant as on the earlier occasion argued the appeal in person and began his arguments by contending that the respondents were guilty of not giving effect to the directions contained in the judgment of this Court. When we heard the appellant, we realised how very correct the observation of Chinnappa Reddy, J., where he recorded in the judgment of this Court were:

"As usual with parties, who argued their cases themselves, he was so full of his facts and grievances, big and small, that we experienced, for quite a while, difficulty in getting a picture of the case in its proper frame."

After the matter was heard at length, we found that there was absolutely no merit in the contention of the appellant that the respondents were guilty of not complying with the directions of this Court. Learned Additional Solicitor General was, therefore, right in taking the stand that full effect had been given to the directions contained in the judgment of this Court. We would like to recall here that there were several other contentions made in the writ petition which this Court did not go into by saying that even without considering them the appellant was entitled to his relief. The appellant had moved this Court on the earlier occasion under Article 32 of the Constitution but on this occasion he went before the High Court under Article

226. Some of his allegations had already been made in the writ petition before this Court and others related to subsequent events.

It is unnecessary to go into several aspects which the appellant in his anxiety had pleaded and even canvassed at the hearing. It is sufficient to indicate that the main grievance of the appellant has been against recategorisation from Shape-I to Shape-II. We have already pointed out that the appellant enjoyed Shape-I until 1976 when he was reduced to Shape-3 in August 1976. In 1977, he was brought back to Shape-I. According to the appellant, there was absolutely no justification for the direction made in March, 1976 to subject the appellant for psychiatric examination. Similarly when the appellant had been recategorised in September, 1977, as Shape-I, there was no necessity to require him to be subjected to further examination at Pune. He denied the allegation that the incident of 1963 had not been taken into account while recategorising him as Shape-I. According to the appellant, a prejudicial approach developed against him in the Headquarters establishment without any justification and he has been unduly subjected to psychiatric examination from time to time and on the basis of the records built up against him, adverse opinion has been forthcoming. To meet this objection of the appellant and remove apprehension of bias from his mind, in course of hearing, we suggested to learned Additional Solicitor General appearing on behalf of the respondents that the appellant may be examined by a board consisting of three experts specially constituted with an outsider as Chairman. Respondents' learned counsel after obtaining instructions accepted the

suggestion. By order made on January 25, 1988, this Court directed:

"In course of hearing of the appeal, we suggested to learned Additional Solicitor General appearing on behalf of the respondent to have a fresh psychiatric evaluation of the appellant by a competent body of psychiatrists by including in the board some in-service and retired Army psychiatrists and some from outside. This was initially opposed by learned Additional Solicitor General by contending that it would be against the discipline of the Defence Department and would create in unwholesome precedent. We adjourned the matter and gave him the opportunity to take instructions from Government and we are happy to note that on the basis of instructions, he has agreed. as a special case, to the constitution of such a board of psychiatrists. Appellant has also been heard in person in the matter. He has made writ submissions by way of an application we have taken into consideration.

We direct that a board of psychiatrists consisting of three experts be constituted with the Professor and Head of the Psychiatrist wing of the All India Institute of Medical Sciences, New Delhi, Air Com. K. Sethi Consultant of the Army Hospital at Delhi and Colonel M.A. Bhasin, Senior Advisor in Psychiatry, Southern Command Hospital, Pune. The Head of the Department of the All India Institute of Medical Sciences, as referred to above, shall act as the convenor and chairman of the Board. The Board shall meet at Delhi at such place, date and time as may be fixed by the convenor in consultation with the two other members. The Board shall peruse all the records relevant for the purpose of making psychiatric evaluation of the appellant and the respondents shall produce all such records as may be necessary and required for such purpose by the Board including the relevant instructions of the Defence Department in the matter of such assessment. The appellant shall appear before the Board when directed and the respondents shall take steps to ensure his availability before the Board.

The report should be made available to this Court within six weeks from today. The expenses including payment, if any, necessary to be made to any of the experts shall be borne by respondent No. 1. The evaluation shall inter alia indicate whether there was any justification to categorise the appellant as Shape-II after he had been adjudged as Shape-I and as to whether the present categorisation as Shape-II permanent is justified. We place on record that this shall not be treated as a precedent."

The Board sent its report dated March 8, 1988, after examining the appellant between 22nd February, 1988 and 8th March, 1988. It evolved the following procedure:

- "(a) Each of the experts to examine the patient, independently at least twice.
- (b) Each expert to maintain his own observations.

(c) Daily observations reports of the patient to be recorded by the Senior Resident Psychiatry.

(d) Psychometric evaluation

(e) Perusal of old records of hospitalisation by the three consultants, after the current examination.

(f) Maintenance of confidentiality of observation by the experts, Sr. Resident and the Psychologist.

(g) Review of the unit reports after current examination.

(h) Joint review and report by the board on 7th and 8th March, after examining all the material collected above".

In paragraph 5 of the Reports the Board observed.

"(a) During September 1977, when he was recommended to be upgraded to medical category S-I Lt. Col. K.D. Gupta was a symptomatic as per the medical histories examined by the board. The old medical records do not show any evidence of a psychiatric disorders between September 1977, when he was upgraded to S-I and the review board which took place in November 1978 following which he was recategorised to permanent S-II as per the opinion of that review board on the ground that a relapse could occur in future.

(b) The current AO43/78 and DG Memorandum 97 (extract attached as appendices 'A' & 'B'), precludes such an individual to be upgraded from medical category S-II to S-I.

(c) The natural history of affective psychosis (MDP) ICD 9, is strongly supported of the fact that relapse without any precipitating cause and remission without any medical intervention can take place."

We felt that certain elucidation was necessary and requested the presence of the Chairman Professor Mohan in Court. Prof. Mohan appeared in due course and with reference to what was stated in paragraph 5(a), he stated:

"We were of the view that there was no material in the Medical reports justifying the recategorisation to S-II from S-I apart from apprehensions of relapse."

In answer to a question posed by learned Additional Solicitor General, Dr. Mohan stated:

"During September 1977, when he was recommen- ded to be upgraded to medical category S-I Lt. Colonel K.D. Gupta was a symptomatic as per the medical histories

examined by the board. We meant that there was no record in the history of medical papers to suggest that Lt. Col. Gupta was unwell. "

Upon the suggestion of the learned Additional Solicitor General, Dr. Mohan was asked as to whether he was of the view that the appellant was at the time of the present examination entitled to be categorised as S-I and he answered.

"If you take the natural history of the illness, it is difficult to say one way or the other, because it is self limiting and phasic and after the phase is over there is no residual deficit left. The individual is as normal as anybody else is. The period between attacks varies from one individual to another from months to year ....."

The report and the statement made by Professor Mohan make it clear that there was no justification for the appellant to be subjected to psychiatric test in 1978 following which he was recategorised as S-II.

We agree with the learned Additional Solicitor General that the subject is technical and ordinarily should be left to experts available in the Defence Department and the guidelines indicated by the Department should be followed. This Court has no intention to disturb the discipline of the Defence Department but on the basis of material available on the record which had been partly dealt with by this Court on the earlier occasion while disposing of the writ petition, and what we have now found on the basis of the report of examination by the Committee of Experts the appellant has become entitled to limited relief. Though there was no order reducing him from the rank of acting Lieutenant Colonel to Major, he was treated to have been so reduced. Then followed the frequent psychiatric examinations without any real justification. These have constituted the foundation of the appellant's grievance. His recategorisation as S-II in 1978, in these circumstances, was without justification. He is, therefore, entitled to a reconsideration of his claim for promotion on the basis of his medical categorisation continuing as S-I. In a petition dated 2nd April, 1988, the appellant had asked for certain directions and reliefs. The application is confused one inasmuch as arguments, pleadings and prayers have been jumbled up. The appellant, inter alia, has asked for entitlements of promotion in view of promotions earned by his batchmates. We do not think that would be a safe guide but we do hope and trust that the respondents should consider his case for promotion with an open mind on the basis of his continuity in shape-I. He has also indicated in paragraph 8 of that petition that he is prepared to be released from service after his promotional entitlement is finalised and he is given his dues on such basis as may be determined. The appellant has claimed compensation which we see no basis to grant.

The appeal is allowed in part and to the extent that the appellant's medical category shall be taken as being continued to be S-I from 1977 and on that basis his promotional entitlement shall be finalised by the respondents within three months hence. We make it clear that it is open to the respondents to release the appellant from service after this has been done. This case may not be taken as a precedent and we reiterate that this Court would like the discipline of the Defence Department to be maintained by itself in the interest of the nation Parties are directed to bear their own costs.

G.N.

Appeal partly allowed.



