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On the Case of G. Smith

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IN THE SENATE OF THE UNITED STATES.

APRIL 2, 1872.—Ordered to be printed.

Mr. COCKRELL, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany bill S. 40.]

The Committee on Military Affairs, to whom was referred the bill (S. 40) "To authorize the President to restore George W. Smith to his former rank in the Army," has duly considered the same, and submit the following report:

This bill authorizes the President to restore to his former rank and relative grade in the Army, George W. Smith, late Captain United States Regular Infantry.

The letter of George W. Smith to Hon. J. J. Ingalls shows the grounds upon which the passage of this bill is asked, and is as follows, to wit:

FORT STANTON, NEW MEXICO,
October 6, 1877.

DEAR SIR: I have the honor to submit to you the following statement, and respectfully request your influence in my case. As a mere boy I was present in nearly all the important movements of the "Free State" cause in Kansas from the years 1855 to 1860. I was severely wounded on the 12th of August, 1856, at the battle of Franklin (four miles from Lawrence). My father, Judge Smith, was then, with Governor Robinson, General Dietzler, and others, a prisoner near Lecompton. I served under John Brown at Lawrence during the darkest days of that eventful period, and entered college in 1860-1861, just in time to derive no benefit from a collegiate course; having in April, 1861, enlisted in a Pennsylvania regiment. I was again badly wounded at Falling Waters, Va., and in August, 1861, was made captain Eighteenth United States Regular Infantry. As a captain, I commanded eight companies of that regiment nearly two years. I was brevetted major for "gallant and meritorious conduct" at the battle of Chickamauga, Ga., September, 1863, and lieutenant-colonel "for conspicuous gallantry at the battle of Jonesboro', Ga., September 1, 1864."

I have participated in nineteen general battles, more than thirty skirmishes, and have been "under fire" sixty-three times. I lost two adjutants, two orderlies, and two horses under fire at Chickamauga. I have been wounded to such an extent that I never will be free from the effects of the same. I have never been in arrest; never been before a court martial, and have, in my capacity for one year as adjutant-general of a division 7,000 strong, and as aid-de-camp of the Fourteenth Corps (Thomas's), for many months, served to the perfect satisfaction and in every case with unqualified approval of my commanding generals.

On account of the ill health of my wife and her utter inability to cross the plains, I resigned my commission in 1866, and re-entered the Army in 1873, as second lieutenant Ninth Cavalry, on the line of the Rio Grande. I have educated myself in Latin and Greek, and I speak and write French, Spanish, and German. For nearly five years I have been constantly on duty in the field, commanding whites, negroes, Mexicans, and Indians, and against hostile Indians, Mexicans, cattle-thieves, and outlaws.

I desire to call your attention to the following act:

"Reappointed, Liéut. T. J. Spencer, late first lieutenant Tenth Cavalry, to be first lieutenant cavalry, with his relative rank and grade in the Army from June 30, 1867, provided he is to receive no pay or allowances for the time he was out of the military service of the United States."

Now, Senator Ingalls, Lieutenant Spencer was arrested, tried, convicted, and sentenced by a general court-martial to be dismissed the service, and he was dismissed and the sentence approved by the President. The act of the last Congress reappoints him from the original date of his entry into service.

Is it more honorable to be tried, convicted, and dismissed in disgrace than to resign with an honorable record and two brevets? If not, then I have the honor to ask you to introduce a bill which shall read as follows:

"Reappointed, Lieut. G. W. Smith, Ninth Cavalry, late captain Eighteenth Infantry, to be captain Eighteenth Infantry, to date from August 5, 1861, provided that he is to receive no pay or allowances for the time he was out of the military service of the United States."

Such a reappointment, Mr. Ingalls, can only work injustice to the now-ranking captain of infantry (whom I ranked twelve years ago), by delaying his promotion if I remained in the infantry, but as I would at once transfer to my own corps, cavalry, no one has a right to complain. Now, sir, my father has never received from Kansas any recognition of his labors in her behalf from 1855 to 1877. Will you take this matter in hand and help me? Messrs. Haskell, Plumb, and Phillips, of the House of Representatives, have known me for years. General Banning, of the House of Representatives, was in former years a comrade; General Mitchell, of Ohio, General Baird, of Sheridan's staff; Generals Forsyth, Johnston, Van Devere, and many others, have indorsed me, but your influence, if you cast it in my favor, will accomplish in a day more than all of them. Mr. Babcock, of Lawrence, General Fraser, and many others, will vouch for my personal habits. You will never have occasion to regret your efforts in my behalf. Will you help me and see me through?

I am, sir, very respectfully, your obedient servant,

G. W. SMITH,
United States Army.

The Hon. J. J. INGALLS, U. S. S.,
Washington, D. C.

Your committee referred the bill and letter to the Secretary of War, and received from him the following letter and report to him from the Adjutant-General, to wit:

WAR DEPARTMENT,
Washington City, November 8, 1877.

SIR: In response to your letter of the 29th ultimo, requesting, for the information of the Committee on Military Affairs, the military history of George W. Smith, late captain Eighteenth Infantry, I have the honor to transmit herewith the report of the Adjutant-General of the Army, to which is appended the full record of this officer from the date of his appointment as captain, August 5, 1861, to the present time.

I beg to invite your attention to the views expressed by the Adjutant-General relative to "the justice and propriety of this bill (S. 40) and similar ones, and the effect upon the officers and service." These views are concurred in. The inclosures to your letter are returned herewith.

Very respectfully, your obedient servant,

GEO. W. McCARRY,
Secretary of War.

Hon. F. M. COCKRELL,
of Committee on Military Affairs, United States Senate.

ADJUTANT-GENERAL'S OFFICE,
November 6, 1877.

SIR: I have the honor to return herewith the letter of Hon. F. M. Cockrell, of the Senate Military Committee, dated October 29, 1877, inclosing a bill (S. 40), "To authorize the President to restore George W. Smith to his former rank in the Army," and requesting the military record of Captain Smith, and the "opinion of the department upon the justice and propriety of this bill and similar ones, and the effect upon the officers and service."

George W. Smith was formerly captain Eighteenth Infantry, and resigned in 1866; and is now second lieutenant Ninth Cavalry, to which office he was appointed by the President in 1873. His military history, compiled from the records of this office, is herewith inclosed. His record in the Army is good. He voluntarily resigned his commission as captain, and the resulting vacancies were duly filled by promotion. His restoration to the rank of captain, and assignment to a vacancy of that grade in any regiment, would be contrary to existing laws of promotion, and a great injustice to

the officers who would become legally entitled to promotion upon the occurrence of such vacancy. Captain Smith does not claim that any injustice was done him in connection with his resignation, and an excellent record can give him no claim to a position belonging by law and right to another.

Experience has clearly shown that departures from the established laws and regulations governing appointments and promotions are greatly injurious to the military service. Even this case may be cited as an illustration. A first lieutenant was dismissed by sentence of court-martial, duly approved, and a special act was passed by Congress authorizing his restoration to his former rank; and he was reappointed by the President accordingly, but on condition of his tendering his resignation. Captain Smith comes to Congress, asking a law giving him back an office which he resigned, not because he has any legal or equitable right to it, but bases his request upon the ground that Congress has enacted a law restoring a dismissed officer, and that he has a better claim for restoration than such officer.

I am, sir, very respectfully, your obedient servant,

E. D. TOWNSEND,
Adjutant-General.

To the HON. SECRETARY OF WAR.

WAR DEPARTMENT, ADJUTANT GENERAL'S OFFICE,
Washington, November 6, 1877.

Military history of George W. Smith, of the United States Army, as shown by the files of this office:

Appointed captain Eighteenth Infantry 5th August, 1861; brevetted major September 20, 1863, for gallant and meritorious services at the battle of Chickamauga, Ga.; lieutenant-colonel September 1, 1864, for gallant and meritorious services during the Atlanta campaign, and at the battle of Jonesborough, Ga.

Service.—Joined regiment August, 1861, and served with it at Columbus, Ohio, to October, 1861; on recruiting-service to March, 1862; with regiment at Columbus, Ohio, to May 31, 1862; in the field in Kentucky and Tennessee to December, 17, 1862; on leave of absence, with view to accept colonelcy of volunteer regiment, to March 30, 1863, when he rejoined his regiment and served with his company in the Department of the Cumberland to June 15, 1863; commanding battalion of regiment in same department to July 30, 1864; acting assistant adjutant-general first division, Fourteenth Corps, to January 17, 1865; aid-de-camp to Maj. Gen. J. C. Davis, commanding Fourteenth Corps, to June, 1865; on recruiting-service to September, 1865, when he rejoined his regiment at Columbus, Ohio, serving therewith to November, 1865, when he proceeded with his company to Kansas, and was, on November, 21, 1865, assigned to duty as acting assistant adjutant-general, district of Kansas, performing that duty to March 25, 1866, when he availed himself of leave of absence for fifty days, and resigned May 15, 1866.

Appointed second lieutenant Ninth Cavalry, 6th August, 1873; joined regiment September 8, 1873, and served with it in Texas, on the Rio Grande border, to January 20, 1874; member of board purchasing horses for regiment to June 14, 1874; in campaign against Indians in Indian Territory and Texas, commanding, Indian scouts, to January, 1875; with regiment at Fort Clark, Texas, to October 19, 1875, then with company *en route* to and in New Mexico to present date.

THOMAS M. VINCENT,
Assistant Adjutant-General.

George W. Smith was a brave and meritorious officer, and was captain in the Eighteenth United States Infantry Regiment, and for reasons entirely satisfactory to himself, and without any coercive measures, voluntarily tendered his resignation in 1866, and asked to be discharged from his position of captain. His resignation was accepted and he was accordingly honorably discharged and retired to citizen life. The vacancy caused by his resignation was duly filled by appointment by the President, confirmed by the Senate. In 1873 he again desired to quit civil life and enter the Army, and was accordingly, in 1873, appointed a second lieutenant in the Ninth United States Cavalry Regiment, and voluntarily accepted that rank and grade, and was mustered into the service, and has since been serving in that rank. With his own voluntary acts he is now dissatisfied, and seeks to be restored to the rank and grade he would have held in the Army had he been continuously in the service and had never resigned. To justify his application he cites the case of Lieutenant Spencer, in whose behalf an act of Congress was

passed. This seems to be the sole ground. Whether that act was a wise and judicious one or not your committee have not inquired. There may have been special reasons for its passage. Congress evidently so thought, or it never would have passed.

That act only authorized the President, in the exercise of his discretionary appointing power, to appoint Spencer to a rank and grade above that to which he could have appointed him under the laws regulating appointments by promotion. The action of the Executive is shown by the reports of the adjutant-general.

Your committee concur in the views expressed by the adjutant-general and adopted by the Secretary of War, and see no reason to justify the passage of this bill, and therefore recommend that it be indefinitely postponed.

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