

(2000) 11 SC CK 0125

In the Supreme Court Of India

Case No : Civil Appeal No. 5651 of 1997

Amrik Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 16-11-2000

Acts Referred:

Citation : AIR 2002 SC 2382 : (2002) AIRSCW 2562 : (2001) 89 FLR 79 :
(2001) 2 JT 568 : (2008) 1 SCALE 409 : (2001) 10 SCC 424

Hon'ble Judges : M. Jagannadha Rao, J;M. B. Shah, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This is an appeal preferred by the appellant, who is a Lt. Colonel in the Indian Army, against the judgment of the High Court of Patna in C.W. J.C. No. 8083/94 dated 18.2.1997. The writ petition filed against that judgment was dismissed by the learned Chief Justice of the Patna High Court, Justice D.P. Wadhwa (as he then was) and learned Justice Radha Mohan Prasad, the other Judge of the Bench, writing separate judgment. So far as the judgment of the learned Chief Justice is concerned, it states that the non-promotion of the appellant along with his batch mates who were promoted in 1990, could not be interfered with in writ jurisdiction and that the fresh assessment that was made pursuant to an earlier direction of the High Court in C.W. J.C. No. 175/1992 dated 25.3.1994 could not be interfered with under writ jurisdiction. The other learned Judge in his separate judgment, made certain observations stating that the appellant's previous records were good and that the appellant otherwise deserved promotion but the learned Judge said, in writ jurisdiction he could not interfere, because it would amount to a review of the decision of the Selection Committee, as an appellate authority. Thus, in spite of certain observations made in favour of the appellant, learned Justice Radha Mohan Prasad ultimately concurred with the judgment of learned Chief Justice, in dismissing the writ petition. It is against this judgment that his appeal has been preferred.

2. On an earlier occasion, the appellant filed C.W. J.C. No. 175/1992 challenging the orders dated 15.5.90 and 30.4.1991 by reason of which promotion of the appellant to the rank of Lt. Colonel was refused on the basis of the ACRs of the year for 1985-86. It was prayed in that writ petition that the order dated 15.3.87 and the other order of January 1989 communicated on 3.2.1989, rejecting the promotion should be quashed. A further direction was sought to issue a writ of mandamus for considering the case of the appellant for promotion along with his batch mates who were promoted in 1990.

3. It will be noticed that the appellant was subsequently promoted as Lt. Colonel (Time Scale). But in the present proceedings, he is claiming that he ought to have been promoted as Lt. Colonel from an anterior date from 1990 when his batch mates were promoted to higher posts as Lt. Colonel.

4. So far as the promotion to the post of Lt. Colonel is concerned, it is done by way of selection process. During the course of the selection, the ACRs of the previous 5 years would be considered. With regard to the ACRs of each year, there is an assessment made by the immediate superior officer called "Investigating Officer", then a Senior Officer above him called "Reviewing Officer" and finally a Senior Officer above the Reviewing Officer called "Senior Reviewing Officer" of a very high rank.

5. The records relating to this case were produced before the High Court and also before us. It appears that for the year 1985-86, the Investigating Officer had given a fairly good report about the appellant on 7.2.86. The Reviewing Officer while giving him good report in various respects, made a particular remark which was adverse to the appellant in the sense that the appellant was "advised to display resoluteness during execution of operations". While the I.O. granted an assessment marking as No. 7, the R.O.'s assessment was 5. The S.R. O., who thereafter gave his remarks, gave him an assessment of No. 5. In other words, the assessment, so far as the year 1985-86 was concerned, was 7,5,5, as assessed by the I.O. , R.O. and S.R. Order respectively. The assessment by the S.R. Order was on 14th November, 1986. For 1990, ACRs in previous 5 years were relevant.

6. In subsequent ACRs of the later years, invariably the appellant got various ranking on assessment at 7,8 and 9 also. Assessment at 9 appears to be a case where the performance is "outstanding".

7. But in the context of the dispute raised in the case, material was produced for 5 years prior to 1990, among which the ACR for 1985-86 was definitely adverse and relevant.

8. In the earlier judgment of the High Court, it directed a fresh review or reconsideration of the appellant's case de novo for promotion in 1990 along with his batch mates, in accordance with the guidelines which were filed as Annexures "A" and "B" which has now been set out in the judgment under appeal before us. The High Court on that occasion, noticed that certain contentions raised by the

appellant in the writ petitions were not specifically denied in the counter filed by the Department, namely that he was awarded medals in earlier years and also in regard to an allegation that the guidelines in Annexures "A" & "B" were not followed. It was also observed that the Selection Board did not observe the direction which were annexed as Annexure-13. It was thus on the ground that the Selection Board did not follow the guidelines of their own, the non-promotion of the appellant was held to be contrary to the guidelines and therefore arbitrary and illegal. The writ petition was allowed by judgment dated 25.3.94 and a de novo consideration was directed.

9. Subsequently, the appellant's case was reconsidered by another Board. But the matter went against the appellant once again. That is how the present writ petition was filed in 1994.

10. We have already referred to the views of the learned Judges who decided the present writ petition. We have already stated that, though the reasoning is different, the ultimate conclusion is that the writ petition is to be dismissed.

11. In this appeal, we have heard Shri M.N. Krishnamani, learned senior Counsel appearing for the appellant and Shri Mukul Rohtagi, learned Additional Solicitor General. We called for the files relating to the ACRs. of the years 1985-86 containing remarks of I.O. , R.O. and the S.R. Order which are placed before us. We also directed to be informed as to what manner the case of the appellant was considered along with other members of his batch who were promoted in 1990. In response to the directions, certain material has been place before us.

12. As already stated, any reconsideration of the appellant's case for promotion from 1990-91 when his batch mates were promoted, will depend upon the assessment to be made on the basis of the ACR of the previous 5 years including the ACR for 1985-86. While the remarks of the I.O. were favourable to the appellant and even the remarks of the R.O. were by and large favourable to him, there was an adverse remark relating to "non-display of resoluteness of execution during operations". It was on this basis that the R.O. gave him 5 marks while the I.O. gave him 7 marks. The R.O. was of the rank of a Brigadier. The S.R. Order was a Major General and in the remarks of Major General dated 14th November, 1986, he thought it fit to agree with the R.O. by awarding him only 5 marks.

13. It may be that, before the year 1985-86 and even subsequently the performance of the officer has been so good that he got marks 7,8 and 9 in a number of years. But ultimately, what is relevant for the purpose of this case are the ACR for 5 years prior to 1990 which includes the years 1985-86 and that contains one adverse remark. It is true that earlier writ petition was allowed. There was no direction to exclude the adverse remark of 1985-86. In fact it will not be permissible to direct exclusion of the same from consideration.

14. The scope of judicial review in such matters of assessment of merit for purpose of promotion has been dealt with by this Court recently in the case of

15. In para 29 of the said judgment, this Court stated as follows:

The contention put forth before us is that there are factual inaccuracies in the statement recorded by the Cabinet Secretary in his note and, therefore, must be deemed to be vitiated so as to reach a conclusion that the decision of the Government in this regard is not based on proper material. The learned Attorney General, therefore, took great pains to bring the entire records relating to the relevant period which was considered by the Cabinet Secretary and sought to point out that there were notings available in those files which justify these remarks. Prima facie, we cannot say, having gone through those records, that these notings are baseless. Critical analysis or appraisal of the file by the Court may neither be conducive to the interests of the officers concerned or for the morale of the entire force. May be one may emphasize one aspect rather than the other but in the appraisal of the total profile, the entire service profile has been taken care of by the authorities concerned and we cannot substitute our view to that of the authorities. It is a well-known principle of administrative law that when relevant considerations have been taken note of and irrelevant aspects have been eschewed from consideration and that no relevant aspect has been ignored and the administrative decisions have nexus to the facts on record, the same cannot be attacked on merits. Judicial review is permissible only to the extent of finding whether process in reaching decision has been observed correctly and not the decision as such. In that view of the matter, we think there is no justification for the High Court to have interfered with the order made by the Government.

16. In that case, this Court referred to the advisory remarks both by the I.O. and the R.O. that officers should be bold and aggressive in operation and should lead his men personally to difficult objectives. The R.O. had said that the officer's performance as a Rifle Coy Commander in the "recent" operations had been satisfactory though not upto the expected level. All the Reporting Officers gave him above average ratings with sprinkling of outstanding ratings. It was held by this Court that the High Court was in error in interfering with the non-promotion of the respondent in that case (writ petition) and in directing fresh consideration.

17. In our view, the observations made in the said judgment are apt in this case also. The adverse remarks for the year 1985-86 in the present case cannot be said to be irrelevant matter for the purpose of consideration of the appellant for promotion as Lt. Colonel along with his batch mates in 1990.

18. So far as the very adverse remark itself is concerned, our attention was invited to the letter written by Lt. Colonel Patwardhan on 25.2.1991 making certain allegations against the R.O. who gave the said adverse remarks to the appellant. But inasmuch as no specific allegations of mala fide have been made in the writ petition and the R.O. was not impleaded as a party to the case. It could not be said that the adverse remarks in the ACR of the year 1985-86 by

the R.O. was mala fide.

19. So far as the consideration of the appellant's case along with others are concerned, learned Additional Solicitor General placed before us the ACR of 3 of the officers against whom appellant had made specific allegations. In regard to each of the 3 officers, we find they were graded 6, 7 and 8 by the I.O. , R.O. and the S.R. Order and therefore, the appellant cannot have any grievance that his case was not properly considered along with batch mates of the appellant. Learned Additional Solicitor General brought to our notice the cases of certain officers who had got higher grading than the appellant and who did not have any grading as 5 in any particular year, but who had still not been promoted as Lt. Colonel in that year. The point here is even when such persons were not promoted, appellant could not have any grievance. The direction of the High Court in the earlier writ petition that the appellant should be considered along with the members of his batch of 1990 should be considered from a practical standpoint. It is not as of appellant's grading should be considered side by side with hundreds of officers who were considered and where only 140 were promoted.

20. We have been informed that while fresh consideration was made, the Selection Board, in fact, had before it the files relating to all the officers of the appellant's batch who were promoted in 1990. Having regard to the statement in the counter affidavit filed in the High Court as well as in this Court by the respondents, we cannot reject the contention of the Department that the cases of other officers of the same batch were placed before the Selection Board while reconsidering the matter.

21. In the result, we are not inclined to grant any relief to the appellant in spite of the fact that his performance in the subsequent years has been shown to be very good and his ratings were very high. Ultimately the single adverse remark of 1985-86 by the Reviewing Officer had stood in his way, not only at the time of original consideration but also when the matter was considered afresh pursuant to the directions of the High Court. The result may be unfortunate. But the scope of the jurisdiction of the High Court being very limited, we cannot go into the correctness of the adverse remarks nor into the assessment made by the Selection Board on the two occasions.

22. It is, however, made clear that in this case, we are only concerned with the case of the appellant for reconsideration for promotion in 1990 along with his batch mates of 1990. We are not concerned with his promotion with effect from any later date.

23. For the reasons stated above, the appeal is dismissed. There will be no order as to costs.