
(2001) 12 DEL CK 0143
In the Delhi High Court
Case No : C.W. No. 3863 of 1999

A.S. Johal

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 06-12-2001

Acts Referred:

Citation : (2002) 96 DLT 547 : (2003) 1 SLJ 4

Hon'ble Judges : Dr. M.K. Sharma, J

Bench : Single Bench

Advocate : Rekha Palli, for the Appellant; Rajinder Nischal, for the Respondent

Judgement

M.K. Sharma, J.—This writ petition is filed by the petitioner praying for quashing of the proceedings of the Departmental Promotion Committee dated 10/11-8-1998 wherein the case of the petitioner for promotion was rejected by the said Departmental Promotion Committee as unfit on account of his confidential records with a further prayer for directing the respondents to promote the petitioner to the post of Deputy Commandant with effect from 7.10.1998 and to grant him all the consequential benefits.

2. The petitioner joined Border Security Force on 15.2.1993 as direct entry Assistant Commandant. After successfully qualifying basic training course the petitioner was posted as Assistant Commandant to the 12th Bn Border Security Force and thereafter to 72 Bn from 1st April, 1994 to 13th December, 1995 of the Border Security Force. He also served on 73 (I S duty in Kashmir and 54 Bn (I S duty Handwara). The petitioner while serving with 54 Bn Border Security Force met with a scooter accident on 14.12.1995 outside the BSF Camp, Jammu. Due to the aforesaid accident the petitioner was forced to remain on medical leave up to 7.6.1998. Consequently, his Confidential Reports for the period 14.12.1995 to 31.3.1998 were not initiated and non-initiation certificate was issued for the aforesaid delayed period.

3. However, since the petitioner came within the zone of consideration for his

promotion to the post of Deputy Commandant, the case of the petitioner was considered for such promotion by the Departmental Promotion Committee, which held its sitting on 10/11-8-1998. The said Committee, however, declared the petitioner unfit for promotion to the post of Deputy Commandant after considering his confidential records of service and other basic course reports. Being aggrieved by the aforesaid actions of the respondents in not promoting the petitioner to the post of Deputy Commandant, the present petitioner was filed.

4. It is contended by the counsel appearing for the petitioner that although the petitioner had completed five years of service, his ACRs were available only for the period 1993-94, 1994-95, 1.4.1995 to 14.12.1995 which were to be considered by the Committee and then on the basis of the said records the petitioner should have been rated fit for promotion as he satisfied the benchmark for such promotion. It was submitted by her that the petitioner did fulfill the requirement of such promotions and also fulfilled all the criteria's for such promotion and, Therefore, the assessment made by the Departmental Promotion Committee is required to be sent aside and direction should be issued to the respondents to promote the petitioner to the said post. Counsel appearing for the respondents, however, submitted that all the available records of the petitioner in respect of his confidential reports, including his confidential reports, which were available were considered by the Departmental Promotion Committee and since on consideration of the same, the Departmental Promotion Committee did not find him fit, he could not be promoted to the post of Deputy Commandant.

5. In the light of the aforesaid submissions of the counsel appearing for the parties, I have considered records of the case. The said records disclose that due to the fact that the petitioner suffered an accident and was on medical leave with effect from 14.12.1995 to 7.6.1998, his ACRs were available only for the period 1993-94, 1994-95 and 1.4.1995 to 14.12.1995. The petitioner was appointed as a direct appointee to the post of Assistant Commandant on 8.2.1993 and, Therefore, there was no ACRs available prior to the said date. The records disclose that the Departmental Promotion Committee considered all his reports including the aforesaid Confidential Reports and also the Course Reports which is required to be done in terms of the instructions contained at Para 6(2)(1) (c) of the DOP&T Office Memorandum dated 10.4.1999. The said Memo provides that where one or more confidential reports have not been written for any reason during the relevant period, the DPC should consider the CRs of the years preceding the period in question and if in any case even these are not available the DPC should take the CRs of the lower grade into account to complete the number of confidential reports required to be considered. Even if this is also not possible, all the available confidential reports should be taken into account.

6. In the present case it is established from the records that the aforesaid procedure as prescribed in the Office Memorandum was fully complied with by the respondents. The Bench Mark for promotion from Assistant Commandant to Deputy Commandant was prescribed "Good". In terms of the DOP&T instructions,

which are applicable to the facts of the present case, an officer can be graded as unfit if the officer's overall reports are lacking positive merit and his ACRs reflect adversely on his suitability for such promotion or his ACRs contained orders of penalty for acts and omissions which would render the officer unsuitable for promotion and to whom according to the guidelines on cannot be given the grading of "Good". Reference can also be made to the guidelines on awarding an officer overall as "Good". It is provided therein that an officer may be graded as "Good" if in the opinion of the Selection Committee his CR reflects that the officer's performance is genuinely good and he is fit for promotion and these characteristics are reflected in at least 3/5 ACRs including the ACRs for the latest year. It is further provided that there should be no adverse entry in the CRs of the other years under consideration.

7. The records disclose that the performance of the petitioner from 8.2.1993 to 14.2.1995 was assessed as very good/good. There is admittedly no adverse entry entered in any of the Confidential Reports of the petitioner nor is there any entry of penalty for any act or omission in any of his Confidential Reports. Since the Bench Mark for promotion from Assistant Commandant to Deputy Commandant is good and the petitioner was assessed very good/good for the period from 8.2.1993 to 14.12.1995 i.e. for the period for which ACRs have been prepared by the respondents, it is not understood as to how the petitioner was graded as unfit for promotion. There was no adverse entry or adverse comment in his basic course reports, as well.

8. It is also disclosed from the records as noted even by the the Inspector General on 15.9.1999 that the DPC did not consider the petitioner fit because of absence of 5 ACRs and his long absence due to medical leave. Such consideration and factors, in any considered opinion are unknown and irrelevant and are misconceived. The petitioner is not to be blamed for non initiation of the ACRs by respondents for the period 14.12.1995 to 31.3.1998. The petitioner was under medical treatment during the aforesaid period and was granted leave and initiation certificates were also issued by the respondents. Therefore, his case for promotion to the post of the Deputy Commandant should have been considered only on the basis of his basic reports and ACRs of 1993-94, 1994-95 and ACR for the period 1.3.1995 to 14.12.1995. No other factor could have been considered by the respondents. In that view of the matter, the assessment made by the Departmental Promotion Committee is found to be based on irrelevant and extraneous consideration and the same is consequently set aside and quashed on the ground that certain extraneous and irrelevant circumstances were taken notice by the said Committee while assessing the performance of the petitioner and grading him unfit.

9. Accordingly, the aforesaid assessment and grading given by the Departmental Promotion Committee to the petitioner is quashed. However, no order of promotion as sought for by the petitioner in the writ petition to the post of Deputy Commandant could be issued. This matter is required to be remitted back

to the respondents for assessing the performance and merit of the petitioner for his promotion to the post of Deputy Commandant from the date it was due to convening are view Departmental Promotion Committee. The respondents are, Therefore, directed to convene are view DPC to assess the performance of the petitioner on the basis of the available reports in the light of the guidelines applicable in that regard wherein the performance of the petition shall be re-assessed and in case the petitioner is found fit for promotion he shall be so permotedfrom the date due in accordance with law with all consequential benefits. The Review Departmental Promotion Committee shall be convened within a period of three months from the date of receipt of a copy of this order and the results shall be declared and communicated within three weeks thereafter .

10. The writ petition stands disposed of in terms of the aforesaid observations and directions.