
(1997) 07 AHC CK 0108
In the Allahabad High Court
Case No : C.M.W.P. No. 9987 of 1994

Captain C.P. Singh

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 21-07-1997

Acts Referred:

Army Act, 1950 — Section 27
Constitution of India, 1950 — Article 226

Citation : (1998) 1 AWC 49 : (1997) 3 UPLBEC 1702

Hon'ble Judges : S.R. Singh, J;D.P. Mohapatra, J

Bench : Division Bench

Advocate : Lt. Colonel Ashok Kumar, for the Appellant;

Final Decision : Dismissed

Judgement

S.R. Singh, J.—Petitioner was commissioned by the President of India in the Rank of 2nd Lieutenant in the Electrical and Mechanical Engineering Corps and was appointed as such in Short Service Commission (S.S.C. for brief), initially on contract for a period of five years on March 8, 1986. The present petition has been filed for the relief of a writ, order or direction in the nature of mandamus commanding the respondents to consider the petitioner for grant of permanent commission de novo on or before 30th April, 1994 and also for issue of a writ order or direction in the nature of certiorari, summoning the records of his A.C.R. and those of other officers of this batch, who were allegedly offered crucial favour of being insidiously granted permanent commission and quashing the selection process including Annexure 4, by which the petitioner's statutory complaint dated 27.8.1991 met the fate of rejection and Annexure 6, which is the record of interview in respect of the petitioner, held on 15.10.1992, infer alia, on the ground that the petitioner has been singled out for the hostile discrimination in the matter of grant of permanent commission and his statutory complaint against denial of permanent commission has been illegally rejected by a cryptic order.

2. In substance, what is sought to be judicially reviewed herein, is the non-selection of the petitioner for grant of permanent commission and rejection of his statutory complaint u/s 27 of the Army Act. 1950- The first contention advanced by the learned counsel appearing for the petitioner is that the petitioner was illegally and arbitrarily denied being granted permanent commission. It is alleged in the petition that the petitioner was due for being granted permanent commission around March 8, 1990, but the same was procrastinated by Army Headquarters, Military Secretary Branch vide their communication dated 11th October, 1990 and subsequently, when the matter came to be considered, he was denied permanent commission and instead, bestowed extension of five years in short service category. It is alleged that "overall average profile" of the petitioner had not been correctly fed into the computer maintained in the Army Headquarter, Military Secretary Branch in that ; (a) his overall average profile had been fed with the date that he had been awarded "severe reprimand" in the year 1986, whereas the fact remained that the award of severe reprimand was pared down to reprimand" by the G.O.C. in Chief and, (b) "overall average profile" did not record the fact that he had achieved excellence and had played games at the divisional level and instead, it was shown that he had obtained proficiency in the unit level only. It is also alleged that the award of reprimand for the year 1986 lost its sting after one year but the said fact was blinked back from the "overall average profile" of the petitioner. It is further alleged that Lt. Colonel V. J. S. Gill, arrayed as a party-respondent No. 5, who was the initiating officer of the petitioner during the year 1990. resorted to the use of blade eraser in gross violation of para 11 of S.A.O. 3/5/89 to reduce the petitioner's grading in A.C.R. It is also alleged that Captain Rajendra Prasad was granted extension of five years" service vide Army Headquarter M.S. Branch Letter No. 05492/ Extn/115/MS-R & C, dated 8th October, 1990. but later on, granted permanent commission ulde Military Secretary Branch Letter No. 05493/MS-R & C of 4th June. 1991 and similarly. Captain Tarun Madan was granted extension vide M. S. Branch Letter No. 05492/139/Prov/Entry-R & C, dated 16th October, 1990 and later on. this short service officer was also bestowed permanent commission, while the petitioner has been denied grant of permanent commission Sans any rhyme or reason. Likewise, Captain Man Mohan Chamola belonging to 13. Mech, Inf. was neither granted permanent commission, nor granted extension of service and Army Headquarter had ordered his release, but he was by a quick of fate recalled from his home and granted permanent commission vide Army Headquarter Military Secretary Branch Signal No. 383814/MS/SP, dated 24th November, 1988.

3. A perusal of the counter-affidavit would bespeak that Lt. Colonel V.J. S. Gill had graded the petitioner in A.C.R, for 1990 "above average" and there was no tampering in the grading awarded against column of integrity and quality. The counter-affidavit further reveals that the petitioner, who belonged to short service commission, 41 Course, was screened for grant of permanent commission in September, 1990, as he was completing initial contractual period

of five years in 1991 but he was chucked back from the Board as per policy in vogue that a short service commissioned officer would be eligible for consideration of grant of permanent commission only after he has earned three reports whereas the petitioner had earned only two reports till September, 1990. However, he was considered for grant of permanent commission along with the next batch, i.e., S.S.C. 42 Course by which time he had earned the requisite three reports. It is also revealed from para 17 of the counter-affidavit filed by Lt. Colonel Laxmi Chand that as per policy in vogue, only those officers, who were in the top 50% of the batch, would be granted permanent commission and the petitioner could not secure permanent commission since he did not merit in the first 50% in his batch. It is also stated in paragraph 20 of the counter-affidavit that Captain Rajendra Prasad was initially granted extension for five years as he did not merit amongst top 50% of his batch but due to setting aside of his adverse A.C.R. for 1989, he was reconsidered by No. 5, Selection Board in April, 1991 as per the provisions of para 35 of A.O. 18 of 1988 and found qualified for the same and similarly Captain Tarun Madan was also reconsidered by No. 5, Selection Board in April, 1992, due to setting aside of his adverse A.C.R. 87 and was found qualified for grant of permanent commission, being amongst top 50% of his batch. So far as Captain M. M. Chamola is concerned, it is stated in para 21 of the counter-affidavit that he was considered for grant of permanent commission by No. 5 Selection Board in April, 1988, but did not merit in the top 50% of his batch and was therefore, released on completion of his contractual period since he did not opt for extension of service, but it so happened that in the meanwhile one officer of the same batch, who was approved for permanent commission sought his being released owing to familial problems and his request was acceded to by the Government and Captain M. M. Chamola, who was the next in succession in order of merit, was called against the vacancy so created in accordance with the procedure in vogue. These facts clearly manifest that the cases of Captain Rajendra Prasad, Captain Tarun Madan and Captain M. M. Chamola flowed from different perspective and the allegations that the petitioner was made a victim of hostile discrimination, do not command for acceptance. The facts stated in the counter affidavit clearly demonstrate that non-selection of the petitioner was predicated on merit and not born of any hostile discrimination. The petitioner did not romp home to secure a position amongst the first 50% of the officers of his batch and, therefore, he could not be granted permanent commission as per procedure in vogue. Such an administrative decision taken by the Appropriate Authority on the recommendation of the duly constituted Selection Board, cannot be characterised as illegal, arbitrary or capricious or discriminatory and is not liable to be interfered with under Article 226 of the Constitution.

4. "Judicial review", under Article 226 of the Constitution, "is concerned not with the merits of a decision but with the manner in which the decision was made.....Judicial review is entirely different from an ordinary appeal. It is made effective by the court quashing an administrative decision without substituting its

own decision and is to be contrasted with an appeal with the appellate Tribunal substituting its own decision on the merit for that of the administrative officer" as per Lord Fraser in *Re-Arnin* vide quotes in *Tata Cellular v. Union of India* JT 1994 (4) SC 532.

5. In *Chief Constable of the North Wales Police v. Evans* (1982) 3 All ER 141, it was observed by Lord Hailsham as under:

"Purpose of Judicial review is to ensure that individual receives fair treatment and not to ensure that the authority, after according fair treatment reaches on a matter which it is authorised by law to decide with its conclusion which is correct in the eyes of the court."

6. In the same case, Lord Brightman observed that "Judicial review as the words imply is not an appeal from a decision but a review of the manner in which a decision was made", and held, that "it would be an error to think that the court sits in judgment not only on the correctness of the decision-making process but also on the correctness of the decision itself."

7. The aforesaid observations made by the Lord Hailsham and Lord Brightman were quoted with approval by their Lordships of Supreme Court in *State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh and Others*, , and while upholding that the judicial review is directed not against the decision, but is confined to the examination of the decision making process. It was held by the Supreme Court as under:

"When the issue raised in Judicial review is whether a decision is vitiated by taking into account irrelevant, or neglecting to take into account, relevant factors or is so manifestly unreasonable that no reasonably authority entrusted with the power in question could reasonably have made such a decision, the judicial review of the decision-making process includes examination, as a matter of law, of the relevance of the factors."

8. In the case of *Tata Cellular* (supra), the Supreme Court while reiterating the principles aforesaid held that "Judicial review is concerned with reviewing not the merits of the decision in support of which the application for judicial review is made but the decision-making process itself" and enumerated some broad grounds upon which an administrative action is subject to control by judicial review and classified them under the heading of "illegality"; "irrationality" and "procedural impropriety". In their supervisory jurisdiction as distinguished from the appellate one. the courts do not themselves embark upon rehearing of the matter but nevertheless courts will, if called upon, act in a supervisory capacity and see that the decision making body acts fairly. If the decision making body is influenced by considerations which ought not to influence or fails to take into account the matters which ought to have been taken into account the courts will interfere. If the decision making body comes to its decision on no evidence or comes to a finding so unreasonable that a reasonable man could not have come to it then again the courts will interfere. Further if the decision making body goes

outside its power or misconstrues the extent of its power, then too the courts can interfere, and if the decision making body acts in a bad faith or with ulterior object which it is not authorised by law, its decision will be set aside in supervisory jurisdiction. A decision of a public authority will be liable to be quashed or otherwise dealt with by appropriate order in judicial review proceedings, where the courts concludes that the decision is such that no authority properly directing itself on the relevant law and fact acting reasonably could have reached it.

9. The decision by the appropriate authority to grant or not to grant permanent commission to an officer though administrative in character, is fraught with civil consequence and is, therefore, open to judicial review by the High Court under Article 226 of the Constitution but the power of judicial review is circumscribed to scrutiny of the decision-making process only and is to be exercised in the light of the principles laid down above and applying the principles to the facts of the present case, we find that the appropriate authority did not take recourse to any hostile or discriminatory procedure in the matter of consideration for the grant of permanent commission in relation to the petitioner. His case was considered as per policy in vogue along with other eligible officers of his batch on the basis of "reprimand¹ on record and not on the alleged report of "severe reprimand" and we have no reason to disbelieve the averment made in this respect in para 12 of the counter-affidavit. The petitioner could not secure a place within the top 50% of the officers of the batch and, therefore, he could not be granted permanent commission. The legality of the policy in vogue is not under challenge and there is no allegation of mala fide against the members of the Selection Board which considered the petitioner's case for grant of permanent commission. It is not for this Court to supplant the expertise conclusion of the Selection Board by its own in the matter of selection of qualified officers in respect of grant of permanent commission. Non-selection of the petitioner for grant of permanent commission, therefore, cannot be branded as illegal, arbitrary or discriminatory.

10. The next contention is that the statutory complaint of the petitioner u/s 27 of the Army Act, 1950 has been rejected by cryptic order which cannot be sustained. Section 27 is a remedial provision in that, it provides that any officer, who deems himself wronged by his commanding officer or any superior officer and who, on due application made to his commanding officer, does not receive redress to which he considers himself entitled, may complain to the Central Government in such manner as may, from time to time, be specified by the proper authority. It is implicit in Section 27 of the Army Act, 1950 that the Central Government is under an obligation to address itself to the statutory complaint and dispose it of in accordance with law for making a complaint to the Central Government u/s 27 of the Army Act, 1950, is not an empty formality. Central Government has to address itself to the grievances raised in the complaint and redress the same in accordance with law. This necessarily implies that the Central Government while disposing of the representation, shall act in a fair and reasonable manner and not arbitrarily and capriciously and it would be in

consonance with the principle of natural justice that reasons in support of order are disclosed therein for that would ensure compliance of rules of natural justice. It would serve yet another purpose. Reasons, if recorded in the order, would serve to reinforce the confidence of the complainant that justice has been done to him and it also enables the higher courts to see whether decision-making authority has acted on relevant consideration. In S. N. Mukherjee's case (supra), it has been emphasised that "except in cases, where the requirement has been dispensed with expressly or by necessary implication, an administrative authority exercising judicial or quasi judicial function, is required to record the reasons for its decision". However, it has been held by the Apex Court in the said decision that "reasons are not required to be recorded for an order passed by the Confirming Authority confirming the findings and sentence recorded by the Court Martial as well as for the orders passed by the Central Government dismissing the post confirmation petition." in the present case, the Central Government has rejected the statutory complaint preferred by the petitioner against his non-selection for grant of permanent commission. The Central Government by rejecting the representation, has, in fact, confirmed the decision taken by the Selection Board. Therefore, no exception can be taken to the order dated 1st July, 1992, rejecting the petitioner's statutory complaint u/s 27 merely because, it contains no reason.

11. That apart, in the instant case, on the reasons disclosed in the counter-affidavit, we are satisfied that the selection proceedings were not vitiated by the vice of mala fides or arbitrariness and therefore, the Central Government cannot be said to have acted illegally in rejecting statutory complaint filed by the petitioner u/s 27 of the Army Act. The view that we are taking, finds support from the decision of the Supreme Court in Union of India and others Vs. E.G. Nambudiri, , wherein it has been held as under:

"If the order as communicated to the Central Government servant rejecting the representation does not contain any reasons, the order cannot be held to be bad in law. If such an order is challenged in a court of law, it is always open to the competent authority to place the reasons before the court which may have led to the rejection of the representation. It is always open to an administrative authority to produce evidence aliunde before the court to justify its action."

The decision by the Division Bench in K. Ramesh Singh Rathore v. Union of India and another 1996 (3) ESC 493 (All), is unavailing to the petitioner, inasmuch as the only reason assigned in the order rejecting the statutory complaint in that case was that "no injustice has been done" which reason was found by the Division Bench to be a "conclusion" as distinguished from "reasons" and even before the court, nothing had been placed by way of reasons for rejecting the statutory complaint. In the present case, on the facts stated hereinabove, we are satisfied that the Central Government had good and valid reasons for rejecting the statutory complaint and upholding the non-selection of the petitioner for grant of permanent commission.

12. No other points have been pressed into service.

13. As a result of the foregoing discussion, the petition fails and is accordingly dismissed with cost on parties.