
(2002) 11 DEL CK 0023

In the Delhi High Court

Case No : Civil Writ Petition No. 7599 of 2001

Col. R.S. Raina

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 12-11-2002

Acts Referred:

Citation : (2002) 11 DEL CK 0023

Hon'ble Judges : B.N. Chaturvedi, J;B.A. Khan, J

Bench : Division Bench

Advocate : S.M. Hooda, for the Appellant; Rohit K. Aggarwal, for the Respondent

Final Decision : Dismissed

Judgement

Khan, J.—Though petitioner had already retired from service in the rank of Colonel in Indian Army, he still wants his promotion as Brigadier.

2. Petitioner was commissioned in the Army Medical Core on 22.7.1968. He ran into rough weather when his Initiation Officer (IO) one Major General Arjun Rai awarded him "below average" grading in the interim/early ACR for 06/97 to 03/98. This, according to hi, was communicated after more than two years to him without giving him any warning, counselling or communicating any weak points to him. He filed a non-statutory complaint against this and prayed for removal of his name for consideration of his promotion by Selection Board (Med)-II which was being held on 11.7.2000. His request was rejected and the Selection Board was held on 11.7.2000 in which he was graded "R" (unfit for promotion) which was communicated to him on 14.9.2000. Meanwhile, his statutory complaint was processed and he was granted partial redressal and his entire assessment recorded by the IO in CR of 06/97-03/98 was ordered to be expunged including the pen-picture and recommendations for employment on grounds of inconsistency. The aberration was also ordered to be removed from his CR Dossier.

3. Petitioner's grievance is two fold - firstly that he was entitled to a review of

his promotion case on file immediately on receipt of the directions of the Chief of the Army Staff granting him redressal which relief was granted to two of his batch-mates - Col. H.K. Mani and Col. C.V. Koshi but was denied to him and that his ACR for 2000 was not considered by the Selection Board while rejecting him for promotion on 8.3.2000.

4. Respondents have filed a detailed reply explaining their position. According to them, after it was noticed that IO had awarded petitioner below average (4 marks) in paras 12(h), 12(n), 12(o) and 12(s) respectively, necessary justification was sought from them IO. Later extract from para 12 was also not received back duly signed by the petitioner for which reminders were sent to him and which was ultimately received on 10.11.2000 and meanwhile the Selection Board-II was already held and that is how the delay occurred in communicating the remarks to him. It is denied that Army Policy provided for withdrawal of his name for promotion from the Selection Board because of pendency of his statutory complaint. Nor was it granted by the Army Chief in his redressal. The review of his promotion case on file could also not be undertaken unlike his two batch-mates as he had not asked for it in his statutory complaint, nor was it granted by the Army Chief. It is explained that as per the Government of India letter No. 9(2) dated 26.2.1996, on promotion for selection and promotion of AMC, AD Corps, MNS officers in vogue, Director General Army Forces Medical Services (DGAMFS) prepares an approach paper for guidance of Selection Board in detail. Under Para 5 of this, zone of consideration equal to two times the number of vacancies arising for the period under consideration in order of seniority in addition to officer/s graded "R" (not selected) by the previous board. The officer whose statutory complaint is pending is to be graded by the promotion board on basis of the available record without reference to the statutory complaint. In case his statutory representation is accepted on relief granted, his case is considered afresh by the Promotion Board on the basis of modified record and if the officer is found fit, he is placed on the selection list with original seniority. Having said all this, it is lastly disclosed that petitioner's case was reviewed on the parameters of Selection Board held on 11.7.2000 on 14.12.2001, but he was again found unfit as he failed to obtain the minimum prescribed standard of 8.07 marks.

5. Petitioner's star grievance is that he was not granted review of his promotion case on file after redressal granted to him by Chief of the Army Staff. Though respondents had resisted this in the first instance by maintaining that there was no occasion to do so as he had not asked for it, they had eventually done so and reviewed his promotion case on the analogy of his two batch-mates in which he had failed to make the grade and had obtained only 7.63 marks as against prescribed 8.073 marks. This was done by taking in regard the relevant record under the policy which required his 3 last ACRs to be considered as was done in the case of his batch-mates in whose case also ACRs up to 1999 were taken in regard. This should have answered his complaint but for his new plea that respondents should have considered his ACR for 2000 which had become

relevant on the date his promotion case was reviewed.

6. Petitioner's alternative claim appears fallacious on the face of it. Because under the policy, if an officer's statutory complaint is accepted, he is entitled to a fresh consideration for his promotion on the basis of the modified record and if found fit, he is placed on the select list with original seniority. The record shows that petitioner's promotion case was reviewed on the analogy of his two batch-mates on the basis of the relevant modified record, taking in regard the redressal granted to him by way of expunction of the impugned early ACR but he was not still found fit and could not be selected and promoted retrospectively. It seems that petitioner mistakenly assumes that once his interim ACR was expunged, it would result in his automatic promotion. But that somehow is not the case because this only entitled him to a fresh consideration only on the basis of modified record. Whether or not he would qualify and be selected would depend on the quality of his relevant record and other factors.

7. His second contention that his ACR for 2000 should also have been taken into account on the date when his promotion case was finally reviewed is both untenable and misconceived. Because he overlooks that his review was to relate back to the time when he was considered along with his batch-mates first which was to be done on the basis of relevant/modified record in reference to that period as was done in the case of his two batch-mates. In other words, he was being given special corresponding review consideration by the Board on the basis of relevant modified record and had he qualified, his original seniority in the promoted rank would have been protected. It was not that he was being considered first time in 2001 to warrant taking of his latest ACR of 2000 into consideration. That being so, the question of his ACR for 2000 being taken into account did not arise. And once he had failed to qualify in this manner, that was the end of the road for him.

His petition accordingly fails on this premise and is dismissed.