
(2012) 02 DEL CK 0352

In the Delhi High Court

Case No : CM No. 1741 of 2012 and WP (C) No. 368 of 2012

Col. R.S. Upadhyay

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 08-02-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 02 DEL CK 0352

Hon'ble Judges : Sudershan Kumar Misra, J;Anil Kumar, J

Bench : Division Bench

Advocate : P.D.P. Deo, for the Appellant; Ankur Chhibber, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.

CM No. 1741/2012

Issue notice to the respondents. Mr. Ankur Chhibber, Advocate appears and accepts notice on behalf of the respondents.

This is an application seeking setting aside of order dated 23rd January, 2012 dismissing the writ petition in default of appearance of the petitioner and his counsel.

The applicant has contended that a request was made with the Registry to list the matter on 19th January, 2012 as the counsel for the petitioner was out of station on 18th January, 2012.

Inadvertently, however, the matter got listed on 18th January, 2012 which is when the Court adjourned the matter and further posted it on 23rd January, 2012.

Learned counsel also contended that by mistake he had noted the next date of hearing as 23rd February, 2012 instead of 23rd January, 2012 and consequently,

he had not appeared before this Court on 23rd January, 2012 and on that date the matter was therefore, dismissed in default of the appearance of the petitioner and his counsel.

The applicant/petitioner has contended that on 27th January, 2012 his counsel came to know from the counsel for the respondents that the writ petition was dismissed in default on 23rd January, 2012. The applicant/petitioner, therefore, made an inquiry and came to know about the dismissal of the writ petition on 23rd January, 2012, whereafter the present application was prepared on 30th January, 2012 and was filed on 6th February, 2012. The application is supported by an affidavit of the petitioner.

Considering the averments made in the application, there is sufficient cause for the non-appearance of the petitioner or his counsel on 23rd January, 2012 when the writ petition was dismissed in default of appearance of the petitioner or his counsel.

Therefore, in the above noted facts and circumstances, the application is allowed and the order dated 23rd January, 2012 dismissing the writ petition in default of appearance of the petitioner or his counsel is set aside and the writ petition is restored to its original number.

WP (C) No. 368/2012

1. The writ petition is taken up for hearing and disposal with the consent of the counsel for the parties. The petitioner has sought the quashing of the order dated 20th September, 2005 to the extent that respondent No. 1 has not quashed the ACRs of the petitioner for the period from 29th July, 1997 to 31st March, 1998 and 1st April, 1998 to March, 1999 and June, 2001 to October, 2001 though the observations of the IO/RO/SRO have been expunged. The petitioner has also sought the quashing of the observations of the RO/Accepting Authority in the ACRs pertaining to the period from 1st April, 2002 to 31st March, 2003, 1st April, 2003 to 31st March, 2004 and 1st June, 2004 to 28th February, 2005 on the ground of being subjective and biased. The petitioner has also prayed for his promotion to rank of Brigadier from 1st October, 2002 with all the consequential benefits and without any loss of seniority and the compensation to the tune of Rs. 15 lacs for harassing the petitioner for 19 months. The petitioner had filed a writ petition being W.P. (C) No. 18598/2005 before the High Court of Delhi which was transferred to the Armed Forces Tribunal, Principal Bench and was registered as T.A. No. 380/2010. The Principal Bench of the Armed Forces Tribunal has partly allowed the petition being T.A. No. 380/2010, titled as "Col. R.S. Upadhyay v. Union of India & Ors.", holding that the findings given by the Army have already been revoked and it will have no bearing on the promotion of the petitioner to the post of Brigadier. To that extent the petition was allowed. It was held that as far as the remaining grievance of the petitioner with regard to the ACRs of 1st April, 1998 to 31st March, 1999 is concerned, it would be open for the petitioner to choose the appropriate forum. Regarding the petitioner's

claim for compensation, it was held that it cannot not be given in the facts and circumstances and thus the claim was rejected and the petition was disposed of accordingly.

2. This is not disputed that the petitioner was commissioned in the Army in the year 1970 in the Corps of the Ordinance Branch and after 23 years of service, he was promoted to the rank of Lt. Col in the Corps of Ordinance in the year 1997 after being posted to the Quality Assurance Organization of Ministry of Defence Production & Supplies in the year 1993.

3. The petitioner was selected by the Quality Assurance Selection Board (QASB) for permanent absorption in Director General of Quality Assurance, Organisation of Ministry of Defence, Department of Defence Production and Supplies in September, 1995.

4. The petitioner asserted that in the year 1997, he was posted at Ludhiana as Quality Assurance Officer (QAO) and officiating as SQAQO at New Delhi from February 1997 to August 1997. A golf tournament was organized by the DGQA for which 75 sports shirts were required which were costing above Rs. 20,000/- each. The petitioner had asked the Director, Major General, Amarjeet Singh for money for the purchase of sports shirts which, however, had annoyed him since he had told him that it was a yearly affair and that no one had so far asked him for any money. He also threatened that if the petitioner was unable to procure the necessary funds then he would have to suffer the consequences. The petitioner alleged that since he had asked for the funds from which the shirt could have been purchased, the Director got very annoyed and thus wrongly implicated him in a fabricated case because of which his ACRs from July, 1997 were spoiled. The petitioner disclosed that Major General, Amarjeet Singh had been petitioner's IO, RO and Accepting Authority for the different stages for the purpose of the ACRs of 1997 to 2001.

5. The petitioner disclosed that he was attached on 2nd June, 2001 and that after keeping him attached for 19 months, he was reverted back to his unit without taking any action against him as nothing was substantiated by way of evidence that warranted any disciplinary action against him. It is also disclosed that a 'displeasure non-recordable' without any speaking order was given to him.

6. The Tribunal has considered the pleas and contentions of the petitioner and the reply filed on behalf of the respondents categorically revealing that the ACRs and the recorded warning had already been set aside against the petitioner by order dated 3rd September, 2004. It was also noted that the ACRs for the period from 1st April, 1997 to 28th July, 1997 had been expunged. The ACRs for the period from 29th July, 1997 to 31st March, 1998 and from April, 1999 to November, 1999 had also been expunged and that the ACRs from the June, 2001 to October, 2001 had been expunged as well.

7. The Tribunal also noted the plea of the respondents that the non-recordable warning given by the Army, after conducting the disciplinary proceedings had

also been removed from the ACRs of the officer and all the previous Quality Assurance Selection Board in which decisions were taken based on these ACRs were put up for the next review Quality Assurance Board.

8. Regarding the grievance of the petitioner with regard to the ACRs from 2nd April, 1998 to 31st March, 1999 which had not been expunged, the Tribunal had held that there is limited jurisdiction of the Army in the said matter, since the ACRs in question had been written by the Quality Control Assurance Board.

9. Relying on the Circular dated 21st February, 1980, 31st October, 1994, 12th April, 2001 and 28th October, 1978, it has been held that on account of dual control if any action had been taken under the Army Act, then it would have been subject for review by the Tribunal, but for all other matters, the Tribunal will not have jurisdiction.

10. The plea of the petitioner that the order dated 3rd September, 2004 removing the recorded warnings from the ACRs does not mean quashing of the ACRs was repelled by holding that the order dated 3rd September, 2004 nullifies the same and technically it stands quashed also and consequently, the authority had removed the recorded warnings from the ACRs and effect of this will have no bearing on the ACRs of the petitioner as the punishment awarded by the Army stands expunged. Thus it would have no bearing for the consideration of the petitioner for promotion in the matter as well.

11. Regarding the ACRs from 1st April, 1998 to 31st March, 1999, it was noticed that the representation made by the petitioner has already been disposed of by the order dated 28th February, 2005 holding that ACRs from July, 1998 to March, 1999 do not need further examination since the decision has been taken after due consideration. The Tribunal did not comment on the same as the ACRs had been written by the Quality Control Assurance Board and in such matters it is covered under the CCS rules. The Tribunal had relied on the Circular of the Govt. dated 12th April, 2001 in this regard. Consequently, the petitioner was given liberty to choose the appropriate forum for the ACRs from 1st April, 1998 to 31st March, 1999.

12. Learned counsel for the petitioner has very emphatically contended that the so far as the ACRs from 1st April, 1998 to 31st March, 1999 are concerned, the same should have also been quashed as all the other previous ACRs had been dealt with, since the ACRs in question had been written at the same time.

13. Learned counsel for the respondents who appeared on advance notice has refuted the same and has contended that merely because the above noted ACRs were written at the same time and that the remarks from the previous ACRs had been expunged does not necessarily mean that the ACRs from 1st April, 1998 to 31st March, 1999 would also have to be quashed as the remarks in the ACRs are for a different period. Learned counsel has further contended that in any case, the Principal Bench of the Armed Forces Tribunal has given the liberty to the petitioner to choose the appropriate forum and file appropriate petition by relying

on the Circular of Govt. dated 12th April, 2001.

14. Learned counsel for the petitioner has not been able to refute that the concerned ACRs had been written by the Quality Control Assurance Board and that the Army has limited jurisdiction under the Army Act in respect of it. This also cannot be disputed that in such circumstances, as has also been observed by the Tribunal that all other matters such as considerations for promotion and its performance, the same are covered by the CCS Rules. In the circumstances, it has been rightly held that for the grievance of the petitioner with regard to the ACRs from 1st April, 1998 to 31st March, 1999 are concerned, it would be open for the petitioner to choose the appropriate forum. In the facts and circumstances, the petitioner has not been able make out any ground which shows any illegality, irregularity in the order of the Tribunal which will require interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India in the facts and circumstances of the case. The writ petition is without any merit and it is, therefore, dismissed.