
(1999) 04 DEL CK 0071
In the Delhi High Court
Case No : CW. No. 180 of 1997

Col. S.S. Bajwa

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 12-04-1999

Acts Referred:

Citation : (1999) 49 DRJ 529

Hon'ble Judges : K. Ramamoorthy, J

Bench : Single Bench

Advocate : B.K. Aggarwal, for the Respondent

Final Decision : Dismissed

Judgement

K. Ramamoorthy, J.—The facts necessary for the disposal of the case could be given shortly in the following terms:

The petitioner was working as Colonel in the Indian Army and he was to be promoted to the post of Brigadier. According to the petitioner, he was due for promotion in September, 1995. His case was considered by the Selection Board in March, 1996 and his case was rejected. The Selection Board found him fit for promotion in September, 1996 but he was not given promotion. According to the petitioner, he had given a statutory complaint against his supersession and also the setting aside of the ACR, which was against him, for the year 9/94 to 7/95.

2. The petitioner has prayed for the following reliefs:-

"It is, Therefore, respectfully prayed that this Hon"ble Court may be please to send for the records of this case, and after perusal thereof, may be pleased to:

a) issue a writ, order or direction commanding the respondents to declare the result of the board proceedings held in September, 1996 immediately and to give effect thereto on priority so far as the case of the petitioner is concerned;

b) issue a writ, order or direction commanding the respondents to promote the

petitioner to the rank of Brigadier on the basis of result of Board held in Sep, 96 and thus allow him to serve for 2 more years up to 31.1.99 in terms of the rule position on the subject;

c) issue a writ, order or direction quashing the ACR for 1994-95, the same having been illegally initiated against the rule position and for directing the respondents to reconsider the case of the petitioner for promotion by placing him in the same position as he was when he was considered during March, 1996;

d) issue a writ, order or direction quashing the order of superannuation of the petitioner whereby he is superannuated w.e.f.31.1.97;

e) issue a writ, order or direction commanding the respondents to decide the statutory complaint of the petitioner, which is pending with them since July, 1996;

f) dispense with service of advance notice on respondents.

It is further prayed that during the pendency of this writ petition, the superannuation of the petitioner due on 31.1.97 may be stayed until the decision of the Board held in Sep 96 is disseminated and till the statutory complaint filed by the petitioner is decided."

3. The writ petition was presented on the 16th of January, 1997.

4. On the 22nd of January, 1997, the Military Secretary Branch, Army Headquarters, DHQ PO, New Delhi passed the following orders:-

"1. Reference your letter No. 265014/49/SC/C/MS dated 30 Jul 96.

2. Col.S.S.Bajwa (IC-25754), AD Arty has submitted a statutory complaint dated 02 Jul 96 against supersession. The complaint has been considered by the Central Government who have directed rejection of the complaint subject to setting aside of CR 09/94-07/95 on technical ground.

3. Accordingly, CR 9/94-7/95 has been set aside.

4. A copy of Govt. Order No. 36501/2874/96/MS Compls/43/SC/D(MS) dated 21 Jan 2 97 is forwarded herewith in original for handing over to the officer under acknowledgement. 5. Please acknowledge."

5. The case of the petitioner is that against the adverse remarks in the ACR, he had filed a statutory complaint in 1996 and that was not disposed of by the authority concerned and during the pendency of the decision, on the basis of the adverse remarks his, case was considered by the Selection Board and once the ACR was set aside, the petitioner's case should have been considered afresh and that has not been done by the respondents. The petitioner asserted that the Selection Board found him fit for promotion in September, 1996 and a perusal of the records would vindicate his stand.

6. In the counter-affidavit, it is stated:-

"In reply to this para, it is most humbly submitted that ACR is not the main input for promotion. Promotion depends on various factors such as war/operational reports, course gradings, performance in command/staff, disciplinary background etc. Selection is based on over all profile of an officer vis-a-vis comparative merit. Contentions raised by the petitioner in this para about his assessment is not borne out by the record."

7. Dealing with the claim of setting aside of the ACR, it is stated in the counter:

"In reply to these paras, it is humbly submitted that the details of the alleged incident of 30th October, 1994 are denied for want of knowledge. The petitioner has failed to implead the authorities concerned with dealing with the alleged incident and Court of Inquiry etc. In any case, an award of non-record able censure, as contended by the petitioner, does not form part of the dossier of an officer. Therefore, the entire matter of the alleged incident and Court of Inquiry is irrelevant to the instant controversy. It is further submitted that the competent authority, consequent to statutory complaint dated 2.7.1996 have set aside the CR 9/94 - 7/95 on technical ground and thus, the grievance of the petitioner in this regard does not survive."

8. The respondents had also denied the assertion by the petitioner that he was found fit for promotion by the Selection Board in September, 1996. The petitioner filed his rejoinder and stated that :

"Contents of this para of the petition are reiterated. Though not denied, yet attempt has been made to submit that the ACR is not the only input for promotion. Even if that be conceded, then also, the record of service of the petitioner cannot be faulted on any count. It has neither been pointed out nor there is any such reason for which the petitioner can be found wanting. The war/operation reports of the petitioner are above average. The petitioner is not lacking in course grading. His performance in command is also well up to the mark. There is no disciplinary case which could be taken into consideration. The petitioner, as already submitted, is prepared to get his record compared with the persons who have made the grade and this Hon"ble Court would see that this would be born out by the records which may kindly be perused."

9. This is not a correct approach to the matter. The suitability of an officer to the rank of a Brigadier, as stated in the counter, would depend on various factors, and ACR alone is not decisive on the point. The petitioner would state that:

"It has also been conceded by the respondents that the award of non-record able censure is not forming part of the dossier of the petitioner. To that extent, it is true that the controversy arising out of the incident is irrelevant. However, the petitioner had made mention to all these facts because only on account of this incident, he was brought down in the report for the year 1994-95. The said report, on a representation made by the petitioner, has now been set aside, a fact which has been conceded."

10. The petitioner would further state:

"The respondents themselves have admitted that the grievances of the petitioner now did not survive. Though for this report and for the incident, the grievance of the petitioner may not survive, yet on account of setting aside of this report, all the three considerations given by the Boards to the petitioner have become bad in law and required to be set aside with the direction to the respondents to reconsider the case of the petitioner . afresh."

11. I have perused the records. The case of the petitioner that he was found fit for promotion by the Selection Board in its meeting held in September, 1996 is not correct. I have perused all the relevant files. The case of the petitioner was considered by the Selection Board after taking into account all relevant factors. Therefore, I do not find any error on the face of the record.

12. Accordingly, I do not find any reason to accept the case of the petitioner. The writ petition stands dismissed.

13. There shall be no order as to costs.