
(2008) 09 OHC CK 0099
In the Orissa High Court

Colonel Narendra Kumar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 05-09-2008

Acts Referred:

Army Act, 1950 — Section 27

Citation : (2008) 2 OLR 773

Hon'ble Judges : R.N. Biswal, J;B.P. Das, J

Bench : Division Bench

Final Decision : Allowed

Judgement

B.P. Das, J.—The case of the petitioner is that he is a Commissioned Officer in the Indian Army holding the rank of Colonel and now posted at Cuttack to work as Director, Recruiting in the Army Recruitment Office, Cuttack. He is aggrieved by the rejection of his representation and statutory complaints and the subjective endorsements made by the then Higher Technical Officer (HTO). Major General S.K. Dahiya in the petitioner's Confidential Report (C.R.) for the period from 14.2.2003 to 31.8.2003 and also the subjective endorsements entered in his C.R. by the said HTO, who has entered the same despite having had no interaction with the petitioner. The petitioner is also aggrieved by the action of the O.Ps. in refusing to entertain his representations made for debarring the endorsements made by the said HTO in his C.R. and in not sending the statutory complaints by him to the Central Government for redressal. According to the petitioner, he has a brilliant service career since the date of his initial recruitment as a Commissioned Officer and in usual course he would have been nominated to a career course, i.e., Higher Defence Management Course (HDMC)/Higher Command (HC) Course commencing from May/June 2008 by the Military Secretary Branch, Army Head Quarters but for the fact of certain entries made in the Confidential Report of the petitioner covering the period from 14.2.2003 to 31.8.2003 recorded by the HTO, who had never any interaction with the petitioner being located far away at Udampur in different working conditions. The representation of the petitioner was never considered in spite of the strong

recommendations of his superior Officers and in terms of the provisions contained Section 27 of the Army Act, 1950, Clause-364 of the Defence Service Regulations. The statutory complaint was also not taken into consideration, for which this writ petition has been filed with the prayer, as indicated above.

2. A counter affidavit has been filed by the O.Ps. taking a stand that the assessment of officers in Annual Confidential Reports (ACR) was regulated by Special Army Order (SAO) 3/S/89, which has been replaced by Army Order 45/2001, and other relevant policies at any given time. The gradings are numerical from 1 to 9 (overall as well as in personal qualities and performance variables in different qualities) and in the form of pen picture also. The entire assessment of the officer in any ACR consists of assessment of three different reporting officers whose assessments are independent with each other and the selection/rejection is based upon the overall profile of an officer and comparative merit within the Batch as evaluated by the Selection Board. According to the O.Ps., the petitioner did not make the grade based on his overall profile as evaluated by the Selection board. It is further stated in the counter affidavit that it is the decision of the Selection Board, which is paramount, and it is only the Selection Board, which has to assess the suitability of the petitioner for promotion to the rank of Colonel. It is also stated that a number of factors are taken into consideration for detainment of officers for Higher Defence Management Course (HDMC)/Higher Command Course (HCC) and CR is not the sole criteria and the CR of the petitioner for the period from 14.2.2003 to 31.8.2003 was also endorsed by Major General (now Lt. General) S.K. Dhiya as HTO, being the Major General ASC of Head Quarter Northern Command, who was in the technical chain of command of the petitioner during the relevant period.

3. The sum and substance of the counter affidavits that the CR of the petitioner with endorsement made by S.K. Dahiya was standing on the way of consideration of his case by the Selection Board as the same was not favourable.

But the case of the petitioner is that there was no interaction with S.K. Dahiya, as indicated above, so S.K. Dahiya giving him down rated in CR is illegal because he had no occasion to assess the petitioner.

In order to know the actual position, we have called for the records.

4. Colonel B.S. Raju, who is present in Court along with the Assistant Solicitor General, produces the records. On perusal of the records, we find that the petitioner for the period in question has incurred box graded in internal assessment by 9/8 but the HTO for the said period on four occasions has given 7. But the personal qualities of the assessment are potential. It is recommended throughout that the impugned CR can be analysed against Past Profile Sheet (PPS) drawn on ratee. The aforesaid CR has been recommended indicating therein that the PPS of the ratee reflects a steady profile wherein, he has been consistently graded 9/8 in box and "should promote" in Recommendation For Promotion (RPMN) in his reckonable profile. The ratee has never been graded 7"

in box and has also never been recommended "May Promote" in RPMN by any reporting officer in his reckonable profile. On the overall analysis it is indicated that the ratee has a consistent profile with grades of 9/8 in box and "should promote" in RPMN in his reckonable profile. In the recommendation for promotion, it is indicated that the award of 7" in box and "may promote" in RPMN by the HTO, in the impugned CR be expunged on approval of the Chief of the Army Staff (COAS) on the grounds of inconsistency and subjective reporting by the HTO. It is further suggested that the case has been discussed with and it was decided to wait till the next CR is received. The decision was taken on the basis of the direction of the Military Secretary (MS), if an aberration occurs in the first CR earned by the CO, which merits interference, one more input will be awaited before the case is taken up for expunction.

This shows that the case of the petitioner was under active consideration by the O.Ps. and the CR, which was received by then, indicates for the period from September 2003 up to February 2004. It is further indicated that the PPS of the ratee reflects a consistent profile wherein, the rates has been graded 9/8 in box in the past five years. In the past five years, the ratee has not been graded 7" in box but has earned 7" in figurative on three occasions in one report. So in the overall analysis, as indicated in the second CR for the duration 15th February 31st August 2003, all the reporting officers have endorsed "8" pt report and recommended "should promote" at RPMN. In the overall analysis, in point No. 9, it is stated that in the last five years, the ratee has a consistent profile with grades of 9/8 in box and has always been recommended "should promote" at RPMN. However, ratee has earned 7" in figurative on three occasions, albeit in one report. The ratee at report No. 18 has earned 7" at figurative twice in tech variables. Significantly, the HTO in report No. 18 is the same as in the impugned CR. In point No. 11, it is stated that in view of the foregoing, the "seven of assessment by the HTO with "may promote" at RPMN w/o any justification in the pen picture, suggests subjectivity and biased reporting. Then ultimately, in the recommendation part, it is recommended that the entire assessment of HTO, in the impugned CR, be expunged by the COAS on grounds of subjective and biased reporting. Further it was also recommended for expunction of the entire assessment of HTO on the ground of biased reporting and inconsistency with the past profile.

The records so produced before us and the recommendations made therein strengthen the objections of the petitioner to the reporting made by S.K. Dahiya. Perusal of the report shows that effort has been made by the authorities to give a fair deal to the petitioner, but ultimately, for the reasons not known to the petitioner, he has been deprived of the same. Looking at the records and the recommendations of the authorities at different point of time, as indicated in the aforesaid records, we are of the opinion that the grading given by S.K. Dahiya, who had never visited and seen the petitioner working, should not be a cause for depriving the petitioner of the promotional rank, as there is no adverse remark ever recorded against him. Paragraph-118 of the Army Order also speaks that

the assessment contained in the CR will be restricted strictly to the performance and potential as observed during the period covered by the report. Therefore, the assessment of Mr. S.K. Dahiya without visiting to his place of work and without seeing the petitioner and without scrutinizing his work is not in consonance with the Army Order. We may here further reiterate that paragraph-5 of the Army Order stipulates that the aim of a Confidential Report is to have an objective assessment of an officer's competence, employability and potential as observed during the period covered by the report.

5. In view of such, we have no hesitation to allow this writ petition and accordingly, we do so and direct the O.Ps. to consider the case of the petitioner afresh without taking into consideration the grading awarded by the then HTO, S.K. Dahiya in the petitioner's CR for the period from 14.2.2003 to 31.8.2003. Further we direct that rejection of the representation of the petitioner as well as the statutory complaints to expunge the entire endorsements made by the HTO, S.K. Dahiya in his CR. shall not stand on the way of implementing the order of this Court. Let the entire exercise be completed within six weeks from today.

R.N. Biswal, J.

6. I agree.