
(2008) 03 DEL CK 0085

In the Delhi High Court

Case No : Writ Petition (C) No. 17454 of 2006

Commodore V. Ravindra Nathan VSM

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 14-03-2008

Acts Referred:

Citation : (2008) 102 DRJ 165

Hon'ble Judges : J.M. Malik, J;A.K. Sikri, J

Bench : Division Bench

Advocate : Sukhjinder Singh, for the Appellant; Jyoti Singh, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Sikri, J

1. The petitioner is agitated about his non promotion to the rank of Rear Admiral. The Promotion Board, which held its meeting on 23.8.2006, did not recommend him for promotion to the said rank. Instead his junior (respondent No. 5) succeeded in getting the recommendation of the Promotion Board.

2. The petitioner feels that he was overlooked for promotion because of some adverse remarks in his Annual Confidential Report written by the then Flag Officer Commanding-in-Chief (respondent No. 4 herein) on 1.3.2005 as well as on 6.1.2006. The petitioner had even submitted his statutory petition to the Chief of Naval Staff (respondent No. 2 herein) on 24.3.2006 for expunction of these remarks which was allowed on 22.8.2006 but relief sought for was denied to him. As a consequence, when the Promotion Board met on 23.8.2006, influenced by the said adverse remarks, the petitioner was ignored for promotion. In these circumstances, the petitioner submitted appeal to Central Govt. for expunction of his adverse remarks on 25.9.2006 and added one more request, viz., the Promotion Board may be approved only after disposal of the appeal of the petitioner. As this statutory appeal was not decided, the petitioner filed writ petition bearing WP (C) No. 15511/2006 which was disposed of on

6.10.2006 with direction to the central government to decide the petitioner's statutory appeal within four weeks. Complying with the direction, the central government considered the appeal of the petitioner but rejected the same vide orders dated 3.11.2006. Not satisfied, the petitioner filed the present petition.

3. We have already outlined the sequence of events. In order to appreciate the case of the petitioner, it would be necessary to state the career profile of the petitioner as claimed by him and the nature of adverse remarks. According to the petitioner, he is a highly decorated officer and having academically outstanding profiles. He was commissioned in the Indian Navy on 8.10.1973 in the Education Cadre/Branch of the Navy. He boasts that it was due to his wholehearted dedication, hard work, beyond the call of duty and meritorious service, that he rose to the rank of Commodore (equivalent to the rank of Brigadier in the Army). He is highly decorated officer, in that he was awarded:

a. Vishist Seva Medal.

b. Commendation of Flag Officer Commanding in Chief Souther Naval Command.

c. G.C. Raja Sports Award by Chief Ministry of Kerala.

d. Commendation by Director General, National Cadet Corps.

4. Academically, the petitioner is M.Sc. (Maths), M.Sc. (Met.), Advance Meteorologist (IMD, Pune), Senior Forecaster, AFMC Coimbatore, Satellite Interpreter, AFMC (Coimbatore), ISO Lead Auditor, PGD HRM (IGNOU).

5. On 24.6.2004, the petitioner was appointed the "Command Education Officer and Command Welfare Officer and Ex-Officio Chairman of Naval Children School". It is the submission of the petitioner that at the time of taking over as the "Chairman Naval Children School", the performance of the students was sliding "downhill". With the petitioner's vast experience as the "Principal, Sainik School, Korukonda" he put the administrative system in a proactive mode, reactivated the School Management Committee as per the "Naval Education Society" and "CBSE" norms and arrested the downward trend in the performance of the students of school. However, this tightening of the administrative machinery by the petitioner was not to the liking of the Principal of the Naval Children School, Mr. Thomas Koshy, a retired Naval Officer and an appointee of the respondent NO. 4, who was highly connected with the hierarchy of the Southern Naval Command Kochi, headed by the respondent No. 4. The Chief Staff Officer (Personal and Administration) and the Principal did not support the petitioner's initiatives and gave incorrect in-put to the respondent No. 4. The petitioner was not allowed to appraise the respondent No. 4 with the true facts. This was the beginning of a distorted image, which the respondent No. 4 kept in mind, without getting to the bottom of the issues, since he had a soft corner for the Principal. He also states that various irregularities on the part of the Principal, Naval Children School were unearthed and brought out by him as a result two inquiries were instituted against the Principal by the respondent No. 4 in which the said

Principal was indicted. However, due to his good contacts with the hierarchy of Flag Officer Commanding, Southern Command Kochi, he was shielded at the behest of the respondent No. 4. On the other hand, the petitioner was given an oral order by his Chief of Staff, at the behest of respondent No. 4, "Not to be sighted anywhere near school premises". The respondent No. 4 totally sidelined the petitioner and did not give a single opportunity to apprise him of the ground realities and endorsed adverse remarks in two ACRs of the petitioner rendered on 1.3.2005 and 6.1.2006.

6. According to the petitioner, these adverse remarks were contrary to the procedure laid down in paragraph 0410 of Navy Order (Special) 05/2005 which provides that it is the duty of the reporting officer to take note of the adverse remarks in an officer, serving under him and try to eliminate these rather than merely reporting on him. It is only when an officer fails to show improvement despite advice/warning, the reporting officer must enter the adverse traits in the confidential report. The adverse remarks are to be shown to the officer and his signatures obtained. Same rule is "mutates mutants" applicable to the Reviewing Officer. This rule was totally overlooked by reviewing officer i.e. respondent No. 4 inasmuch as at no stage the petitioner was ever counseled by him. The adverse remarks were not shown to him nor the extract of these remarks were communicated to him.

7. Respondent No. 2 namely the Chief of Naval Staff passed orders dated 22.8.2006 on the statutory petition submitted by the petitioner for expunction of the adverse remarks. In communication dated 22.8.2006 conveyed to the petitioner, he was informed that the matter was looked into in accordance with IHQ MoD (Navy) letter No. DL/1321/12 dated 20.1.2005 and in accordance with instructions contained therein. The matter was referred to autonomous Redressal and Complaints Advisory Board (RACAB) for examination and finding no need for expunction of the reports, the letter stipulated as under:

3. The Chairman, RACAB has in his findings, reported to the CNS that the Board has examined all aspects of the case and careful consideration to the submissions made by Cmde V. Ravindranathan in his representation dated 24 Mar 06. The Board has come to the conclusion that the two reports in question have already been suitably moderated by CNS, as SRO, keeping in view the officer's past profile giving him full justice. Therefore, there is no need for expunction of the reports.

4. The above recommendations of RACAB have been approved by the CNS.

8. The Central Government while rejecting the statutory appeal of the petitioner vide orders dated 3.11.2006, inter alia, observed that:

2. The Ministry has carefully examined the representation submitted by Commodore Nathan and has found that his CR profile is consistent, balanced and performance based and does not merit intervention at the MOD level.

3. Therefore, the representation dated 25th September, 2006 submitted by Commodore V. Ravindra Nathan is rejected.

9. In the counter affidavit filed on behalf of the respondents, various allegations made by the petitioner and noted above have been denied. It is also stated that his representation against the adverse remarks was forwarded to RACAB which is an independent body set up at Integrated Headquarters, Ministry of defense (Navy) head by one Vice Admiral with two Rear Admirals as members to examine such representations and submit its recommendations to the Chief of Naval Staff. The representation of the petitioner was examined by the RACAB in its meeting held on 17.8.2006. After detailed examination of the records, the Board concluded that the remarks made by two different Initiating Officers (IOs) and the same Reviewing Officer (RO) in the two impugned reports revealed the personality traits of the petitioner in his leadership qualities. The remarks of the assessors were found to be more in the nature of recommendations and Therefore, could not be termed as "adverse". These two reports were also found to be substantially moderated upwards by the Chief of Naval Staff (CNS) in his capacity as SRO commensurate with the petitioner's past profile. The Board, Therefore, recommended rejection of the representation of the petitioner which was accepted by the Chief of Naval Staff (CNS) and the petitioner was informed of the position on 22.8.2006. It is stated that as the petitioner was not satisfied with the reply, the petitioner submitted another representation dated 25.9.2006 with a request to forward his case to the Ministry of defense for consideration. While the representation of the petitioner was under consideration by the Ministry of defense, his name came up for consideration for promotion to the rank of Rear Admiral by Promotion Board 1-A held on 24.8.2006, along with another officer, viz Commodore Andre Aroume (respondent No. 5). On comparative merit the latter was select listed for promotion as a Rear Admiral. Orders of Ministry of defense conveying approval of the Raksha Mantri for select listing Commodore Andre Aroume for promotion was received at Integrated Headquarters, Ministry of defense (Navy) on 22.9.2006. In the meantime, the petitioner filed a Writ Petition WP (C)1551/2006 seeking directions to Ministry of defense to dispose of his statutory representation dated 25.9.2006 before approving or giving effect to the Promotion Board proceedings held on 24.8.2006. This writ petition came up for hearing on 6.10.2006, when this Court was informed that the proceedings of Promotion Board 1-A had already received approval of the Raksha Mantri on 20.9.2006. On this, the Court disposed of the writ petition giving directions to the respondents to pass orders on the representation of the petitioner within four weeks with liberty to the petitioner to question the correctness of the order passed by the respondents on his appeal, if against him, in accordance with law and may also question the selection of any of the persons, to the post in question. After careful examination of the representation dated 25.9.2006 submitted by the petitioner, the Ministry of defense found that his ACR profile was consistent, balanced and performance based and hence did not merit intervention. The representation of the petitioner

was, Therefore, rejected by Ministry of defense and a reply was sent to him on 3.11.2006. It is further stated that the representations submitted by the petitioner were examined thoroughly, initially by Redressal and Complaints Advisory Board and thereafter by Ministry of defense and were rejected as they were devoid of merit. Based on inter-se merit he petitioner was not select listed for promotion to the rank of Rear Admiral in the Promotion Board 1-A held on 24.8.2006.

10. We have heard the learned Counsel for the parties. We also summoned the records relating to ACRs of the petitioner as well as Commodore Andre Aroume who was given promotion over and above the petitioner. We also summoned records of the Promotion Board which met on 23.8.2006 for this purpose.

11. We may state at this stage that in so far as two alleged adverse ACRs are concerned, in the counter affidavit the respondents have stated categorically that petitioner's ACR profile was consistent, balanced and performance based. The fact of the matter is that the two impugned reports are not even treated as adverse. These reports were deliberated upon by an independent agency RACAB which concluded that the adverse remarks made by two Initiating Officers and the same Reviewing Officer in the two reports revealed the personality traits of the petitioner in his leadership qualities. The remarks of the assessors were found to be more in the nature of recommendations and Therefore, could not be termed as "adverse". These two reports were also found to be substantially moderated upon by the Chief of Naval Staff in his capacity as Senior Reviewing Officer commensurate with the petitioner's past profile.

12. After going through the ACR dossier of the petitioner for the various years and comparing it with the ACR for the aforesaid two periods in question, we find this assertion in the counter affidavit to be correct. Navy has unique system of "Performance Appraisal Review Board". It is contained in Chapter 25 of Regulations for the Navy 1965 Part I. As per Navy Instructions 20/90 regarding said chapter amended on 1.1.2000, the provision regarding the Performance Appraisal Review reads thus:

PERFORMANCE APPRISAL REVIEW - (1) All reports on Naval Officers of the rank of Lt Cdr and Cdr will undergo a "Performance Appraisal Review" at Naval Headquarters by a Performance Appraisal Review Board (PARB) with a view to analyze instances of wide deviation from their previous overall career profile. The reporting/reviewing officers will be required to support very high/low marking in the remarks column. While reviewing the reports at Naval Headquarters, numerical grades may be suitably moderated on the recommendations of the PARB with the approval of Chief of the Naval Staff so as to bring them in tune with officers' demonstrated past performance. CNS will lay down detailed guidelines to be followed for this purpose.

(2) A similar review of the records of all naval officers of the rank of Capt and above will be undertaken and gradings suitably moderated by the Chief of the

Naval Staff as Senior Reviewing Officer/Next Senior Reviewing Officer.

13. As is clear from the above, the purpose of PARB is to analyze instances of wide deviation from their previous overall career profile. Thus, wherever it is found that the Reporting/Review Officer has given very high or very low grading as compared to the previous overall career profile, PARB recommends such ranking to be suitably moderated with the approval of CNS so as to bring them in tune with Officers' demonstrated past performance. The detailed guidelines in this respect are also formulated. This process, thus, removes any subjectivity of a particular Reporting/Reviewing Officer by putting a check on such deviations. As per the review methodology laid down in the guiding principles for the PARB, the recommendations by the PARB are to be primarily in the following two categories:

(a) Accept deviation if the spike in numerical gradings are adequately supported by the Pen Picture by the IO/RO/SRO.

(b) Recommend moderation to smoothen out the spike by taking into account the officers past performance.

14. It is not necessary to state in detail the methodology as well as PARB norms which are to be adopted as per the guidelines. However, what is to be emphasized is that a detailed and scientific method is sought to be introduced to remove subjectivity and at the same time, achieve objectivity as much as possible so that a particular officer does not suffer because of a harsh and tough IO/RO and another particular officer is not allowed to gain advantage because of an unduly liberal IO/RO. In the light of these guidelines, we found from the ACR dossier in respect of the petitioner, as produced by the respondents, that there was a suitable moderation done keeping in view his past profile. We observe that during the period he was on deputation with the NCC, his ACRs recorded by Initiating Officer in the NCC were much higher than the normal profile and Therefore they were suitably moderated by the PARB by bringing it down to the level the petitioner had achieved during his Navy days in earlier years. Likewise, even for particular years, when the petitioner was working in Navy and overall grading was lesser than the previous grading, the same was suitably upgraded. In this scenario, we find that there is proper consideration of his representation by the Ministry of defense and it is rightly observed in its impugned order dated 3.11.2006 that the ministry "has found that his CR profile is consistent, balanced and performance based". Therefore, there is no scope of any interference with the grading which the petitioner received in the years in question.

15. Keeping in view the aforesaid, we now take up the issue of non-promotion of the petitioner to the rank of Rear Admiral. The ACRs of both the petitioner as well as Commodore Andre Aroume produced before us clearly reveal that the average grading of the petitioner after taking into consideration ACRs of all the years was much below than that of Commodore Andre Aroume. The rank average of Commodore Andre Aroume is 15.213. As against it, the petitioner could achieve

the rank average of 14.627. The respondents produced before us the grading which the petitioner could have got even if the marks obtained in two disputed ACRs are discarded. This exercise is done in the following two manners:

a) For the years 2005 and 2006 instead of grading of 7.1 and 7.0 which the petitioner, in fact, got, his grading of 7.4 was assumed for these years which is the highest grading the petitioner has got in the relevant years. Even after giving grading of 7.4 for the years 2005 and 2006, the average grading calculated in this manner would come to 14.718.

b) Alternatively, if the grading of the years 2005 and 2006 is not taken into consideration at all and average of other years is only considered, it comes to 14.703.

16. Therefore, even if all the possible alternatives are adopted, in comparison, petitioner's grading falls far below Commodore Andre Aroume. In such circumstances, giving promotion to the respondent No. 5 cannot be faulted with as on comparative merit the respondent No. 5 stole march over the petitioner.

17. No doubt, petitioner has impressive career profile. It is for this reason only he kept on getting promotions in time on earlier occasions and rose to the level of Commodore. However, one has to keep in mind that as a person achieves higher rank, thereafter in view of lesser number of posts for further promotions, one has to face tough competition and sometimes even persons with merit lose out to better and more meritorious officers. Therefore, if the petitioner could not get the promotion to the rank of Rear Admiral in 2006, it is not that he is not a good officer but it is to be accepted by him that there was another officer who was better than him.

18. Keeping in view the aforesaid discussion, we are unable to grant any relief to the petitioner. This petition thus merits dismissal. We accordingly dismiss the petition but with no orders as to costs.