
(2011) 08 DEL CK 0056

In the Delhi High Court

Case No : Writ Petition (C) No. 4103 of 2011

C.R. Dalal

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 17-08-2011

Acts Referred:

Citation : (2011) 08 DEL CK 0056

Hon'ble Judges : Sunil Gaur, J;Pradeep Nandrajog, J

Bench : Division Bench

**Advocate : Rekha Palli, Punam Singh and Amrita Prakash, for the Appellant;
Ankur Chhibber, for the Respondent**

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—O.A. No. 644/2010 filed by the Petitioner has been dismissed by the Armed Forces Tribunal vide impugned order dated 6.5.2011.

2. As per the original application filed by the Petitioner, he was praying that grading of "7" in the ACR for the period September 2001 to August 2002 be set aside; order dated 17.3.2010 rejecting statutory complaint filed by the Petitioner be set aside and Petitioner's non empanelment for promotion as a Brigadier be quashed with a direction that Petitioner's entitlement for promotion to the rank of Brigadier be considered afresh.

3. The Tribunal has noted that the Petitioner was commissioned in the Indian Army as a 2nd Lieutenant on 17.12.1983 and was allotted the Army Supply Corps. The Petitioner earned various promotions from time to time and it was the case of the Petitioner that for the period September 2001 to August 2002, there was an aberration in his ACR inasmuch as "7" marks were allotted to him under the heading "Effectiveness in Training of his Commands". As per the Petitioner other box gradings were between 8 and 9 and as a result of this aberration, which took place in the year 2001-02, Petitioner lost out on promotion to the post of Brigadier.

4. In para 5 of the decision, Tribunal noted that record produced before it showed that the said grading (box) "7" under the heading "Effectiveness in Training of his Commands" was known to the Petitioner in the year 2002 and he never made any complaint till he was superseded.

5. Noting the decision of the Supreme Court reported in 2001 (6) SCC Major Aroon Kumar Sinha v. Union of India and Ors., the Tribunal held that one was not entitled to file a statutory or nonstatutory representation at one's free will. The Tribunal held that the Petitioner ought to have raised the issue in the year 2002 itself. The Tribunal also noted Petitioner's claim that in the past, his gradings pertaining to column in question, had always been marks more than "7", was wrong. To put it differently, the Tribunal held that box grading as "7" under the heading "Effectiveness in Training of his Commands" cannot be said to be an aberration.

6. At the hearing of the writ petition on 12.8.2011, the original record was produced and as per which it was shown to us that in the confidential record of the Petitioner, pertaining to part II thereof, the initiating officer had given marks in the box ratings under the column 9(a) to 9(k) and 10(a) to 10(j) was made known to the Petitioner and his signatures were obtained on 28.10.2002.

7. Relevant would it be to highlight that as per Serial No. 10(c) in the box, marks on a scale of 0 to 10 had to be assigned for the subject "Effectiveness in Training of his Commands".

8. Thus the Tribunal is perfectly justified in returning a finding of fact that on 28.10.2002 the Petitioner was aware that pertaining to Sl. No. 10(c) in part II of the ACR proforma, "7" marks were given to him for "Effectiveness in Training of his Commands".

9. Learned Counsel for the Petitioner was at pains to emphasise that the Petitioner was not raising the grievance pertaining to "7" marks given to him under Sl. No. 10(c) of part II of the ACR proforma. Learned Counsel stated that the grievance is related to the closed part of the proforma which was not shown to the Petitioner or ever communicated to him, being part III of the ACR proforma.

10. Let us visit the pleading in the original application filed by the Petitioner.

11. In para 1 particulars of the impugned order before the Tribunal have been set out. In para 2 relevant facts pertaining to the jurisdiction of the Tribunal have been set out. In para 3 relevant facts pertaining to limitation have been set out. In subparas 4.1 to 4.4 relevant facts to support the claim have been pleaded.

12. The issue of granting "7" marks has been thereafter pleaded in para 4.5 onwards and we highlight the pleadings in paras 4.7,4.8,4.9 and 4.12. The following has been pleaded:

4.7 That similarly, the FTO while grading the applicant mostly "9" in para 18 of

the report, wrote in the pen picture that the applicant meticulously planned and executed ST Plan support to the Infantry Division deployed in operation as part of the strike corps by personal example and maintained a very high successful state of the MT fleet and provided constant supply chain achieving high standard of troops satisfaction. The IO gave overall box grading of "8" and barring para 10(c), in all other qualities in the report, the IO had assessed the applicant "9/8".

4.8 That the assessment of "7" in Para 10(c) of the report is not at all in conformity with the glowing pen picture and the grading given in rest of the report. The FTO box graded the applicant "8" and virtually gave "9" in all qualities in the technical report laced with one or two "8"s.

4.9 That in the subsequent report covering the period Sep 2002 to April 2003, the same IO graded the applicant "8" in Para 10(c) and again wrote in the pen picture that the performance during "Op Parakram" and on relocation has been commendable and that motivated the command by personal example or words to that effect. Whereas, in the previous report he gave "7" in Para 10(c) and thus contradicted himself.

4.12 That it is stated that in view of what has been highlighted herein above, especially the high standard of sustained efficiency in the unit achieved in a war like situation during "Op Parakram" the same could not have been maintained without adequate and proper training of the personnel in all spheres of activity. Therefore, the award of "7" in Para 10 (c) by the IO is definitely an aberration not commensurate with the demonstrated performance and it is an unmatched assessment.

13. In the paras in between the said paragraphs is the assertion by the Petitioner that during the period in question i.e. September 2001 to August 2002, the unit of the Petitioner was deployed in operation PARAKRAM in a near war like situation and that the Petitioner successfully managed the team and thus it was pleaded that giving "7" marks to the Petitioner for "Effectiveness in training of his command" was ex facie wrong.

14. We are discussing the issue whether the Petitioner knew of the marks awarded to him vide column No. 10(c) of part II of the ACR proforma in August 2002 and if yes, was the Petitioner justified in sitting quiet till he was superseded and then raising the issue? We are also discussing the issue whether the Petitioner raised the issue before the Tribunal with respect to the recording in part III of the ACR proforma which is the undisclosed part of the ACR proforma.

15. We have highlighted hereinabove that the pleadings in the original application clearly show that the grievance of the Petitioner is related to Column 10(c) of part II of the ACR proforma and not to the remainder as was sought to be urged before us.

16. We would wish to highlight that the Armed Forces Tribunal is the primary adjudicatory fora where questions of fact have to be settled between the parties

and thus pleadings before the Tribunal in the original application assume importance. It is unfortunate, but we must note that a very wrong tendency is being developed today by altering the nature of the dispute midstream i.e. raise a different dispute before the Tribunal vis-a-vis the one raised in the writ pleadings.

17. We do not permit the Petitioner to raise the issue of marks awarded to him in part III of the ACR proforma for the reason we find that in the original application filed before the Armed Forces Tribunal the Petitioner was raising the grievance only with respect to the "7" marks awarded to him against the trait required to be marked at Sl. No. 10(c) of part II of the ACR proforma.

18. Concurring with the Tribunal that the Petitioner knew of the same in October 2002 and it was too late in the day for the Petitioner to have questioned the same in the year 2009, we dismiss the writ petition.

19. No costs.