

(2007) 07 DEL CK 0170
In the Delhi High Court
Case No : Writ Petition (C) 1986 of 2003

Devendra Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 16-07-2007

Acts Referred:

Citation : (2007) 07 DEL CK 0170

Hon'ble Judges : T.S. Thakur, J;S.N. Aggarwal, J

Bench : Division Bench

Advocate : Major K. Ramesh, for the Appellant; Anjana Gosain and Pushpa P. Jhuraly, for the Respondent

Final Decision : Dismissed

Judgement

T.S. Thakur, J.—In this petition for a Writ of Certiorari, the petitioner has assailed the confidential reports recorded by his Initiating and Reviewing Officers for the period May 1990 to December, 1990 and from June, 1992 to May, 1994 on the ground that the same are subjective and in violation of the instructions issued by the Army Headquarters. A Mandamus directing the respondents to hold a fresh Selection for considering the petitioner's case for promotion to the next higher rank of Lt. Colonel has also been prayed for.

2. The petitioner was serving as a Major in the Indian Army. He was, between May, 1990 to December, 1990, posted in 97, Independent Field Workshop, AD Group. He continued in the said formation for the period June 1992 to May, 1994 also. A confidential report was initiated on the petitioner by Col. N.P.S. Siddhu, Commanding Officer of 51, Field Workshop for the period between May 1990 and December, 1990. After the transfer of Col. Siddhu, a similar report regarding the petitioner was initiated by Lt. Col. V. Khullar for the period 1992-93 and 1993-94. The petitioner did not admittedly make any grievance against the said reports at any time till his case was considered for promotion to the next higher rank of Lt. Col. in the year 2000. As a matter of fact, he did not make any grievance against the reports till he filed a statutory complaint in April, 2001. The said complaint

was examined by the Government of India and rejected in terms of an order dated 15th July, 2002, impugned in this petition. Aggrieved, the petitioner has filed the present writ petition with a prayer for a writ of mandamus directing the respondents to constitute a Selection Board for a fresh consideration of his case for promotion.

3. We have heard learned Counsel for the respondents and perused the records. Mr. Ramesh fairly conceded that, in so far as the challenge to the ACR for the period May 1990 to December, 1990 was concerned, the same is rendered academic as the said report was not taken as an input while considering the petitioner's claim for promotion in the year 2000. He, however, argued that the ACR recorded by Lt. Col. Khullar for the period 1992-93 and 1993-94 was legally defective in that the initiating officer was not competent to initiate a report as he was himself facing a Court of Inquiry during the relevant period. He urged that pursuant to the said Court of Inquiry proceedings, the officer was not only awarded a severe reprimand but had been removed from command for a period of nearly five months between June 1993 to November, 1993. Any report by Lt. Col. Khullar for the said period was, in any case, unjustified as the petitioner had not served under him, which service was an essential pre-condition for the initiation of a proper report.

4. On behalf of the respondent Ms. Anjana Gosain argued that there was nothing illegal or incompetent about the report initiated by Lt. Col. Khullar regarding the petitioner for the periods between 13th June, 1992 to 31st May, 1993 and 1st June, 1993 to 31st May, 1994. She submitted that while it was correct that the Initiating Officer had been attached on account of a disciplinary action against him from 29th June, 1993 to 25th November, 1993 for a period of 150 days, the report initiated by the Officer regarding the petitioner did not relate to the said period of attachment. She relied upon para 30 of the Special Army order 3/S/89 to argue that the pendency of any disciplinary case against the Initiating Officer did not in itself disqualify him from initiating a report. Any such disqualification or incompetence would arise only if the Military Secretary directed dispensing with the initiation or endorsement of CRs upon satisfaction of the two conditions stipulated in the said paragraphs. In the present case, since the case was at no stage put up before the Military Secretary for dispensing with the requirement of initiation or endorsement of the CRs by Lt. Col. Khullar, no order dispensing with the said requirement was passed by him. There was, Therefore, nothing illegal or incompetent about the report initiated by the said officer.

5. We have given our careful consideration to the submissions made at the bar and perused the record. Out of three periods relevant to the challenge in this writ petition, the period between May, 1990 to December, 1990 goes out of reckoning as the ACR for the said period was never taken into consideration by the Selection Board held in the year 2000. Major Ramesh also fairly gave up his challenge to the reports for the said period.

6. The only question that remains to be considered is whether the reports

initiated against the petitioner for the period June 1992 to 31st May, 1993 and 1st June, 1993 to 23rd May, 1994 were vitiated by any defect of jurisdiction or other illegality. According to the petitioner, once the Initiating Officer was himself involved in a disciplinary case, he was rendered incompetent to initiate a report regarding any officer serving under him. Para 30 of the Special Army Order 3/S/89 referred to by the respondents governs such a situation and may Therefore be extracted:

When a reporting officer is involved in a disciplinary case, the requirement of initiation or endorsement of CRs may be dispensed with prior approval of the Military Secretary under the following conditions:

(a) The disciplinary case is of a serious nature and it is considered by the Superior Reporting Officers in the channel that concerned reporting officer will not be able to render objective and balanced report.

(b) The date on which the concerned reporting officer is considered to have been involved, is due date for the CR or any date prior to that.

7. Perusal of the above would show that mere involvement of the Reporting Officer in a disciplinary case does not ipso facto denude him of the power to initiate a report. What is important is that the Military Secretary issues an order dispensing with the requirement of initiation or endorsement of a CR by any such officer upon satisfaction of the two conditions stipulated in Sub-paragraphs (a) and (b) of para 30 supra. The respondents have on affidavit stated that at no stage was any case put up before the Military Secretary for dispensing with the requirement of initiation or endorsement of CR by Lt. Col. Khullar on account of his involvement in the disciplinary case nor was any order dispensing with such requirement ever passed. That being so, Lt. Col. V. Khullar could not be rendered incompetent to initiate a report only by reason of his involvement in a disciplinary case. The obligation to initiate a report regarding the petitioner, who was serving under Lt. Col. Khullar, thus continued. Inasmuch as Lt. Col. Khullar discharged that obligation by initiating a report for the period during which the petitioner had actually served under him, he committed no illegality. That period, as noticed earlier, did not include the period of 150 days during which the Initiating Officer was attached on account of the disciplinary action against him.

8. Major Ramesh next contended that since the initiated officer was himself involved in a disciplinary action, any report initiating by him regarding the petitioner's performance was bound to be biased and subjective in nature. We do not think so. The procedure to be followed in cases where the Initiating Officer is himself facing a disciplinary action is covered by the provisions of the Special Army Order referred to earlier. So long as the said order permits the Initiating Officer to initiate a report, we can assume that the initiation of such a report is neither subjective nor biased unless the contrary is satisfactorily proved. There is, in the instant case, no material whatsoever to suggest that the report of Lt. Col. Khullar regarding the petitioner was in any way biased or subjective in

nature. All that the petitioner has alleged is that Lt. Col. Khullar had tried to pressurize the petitioner to make a false statement in connection with a murder that had taken place in the unit. That assertion is unsupported by any other material on record. Indeed even Lt. Col. Khullar who is alleged to have pressurized the petitioner has not been impleaded as a party/respondent to the proceedings. In that view, it would be difficult for us to dub the report initiated by the said officer as a subjective or biased report.

9. Independent of what we have said in the foregoing paragraphs, we see no reason for the petitioner's failure to make a grievance against the reports initiated against him by Lt. Col. Khullar for a period of nearly eight years or so. As noticed earlier, the disputed reports relate to the period 1992 to 1994. The said reports remained unsoiled till 2000 when the petitioner was considered on the basis thereof. It is only in the year 2001 that the petitioner for the first time filed a statutory complaint against the respondents which was upon consideration turned down by the Central Government. If the petitioner was serious about pursuing his challenge to the reports on the ground of bias, he ought to have agitated the matter at the appropriate stage and sought redress either in a statutory complaint or by way of a writ petition. The fact that he remained content with the reports and allowed his case to be examined for purpose of promotion to the next higher rank, eight years after the reports were recorded, goes to show that the petitioner had reconciled to if not accepted the reports.

10. In the circumstances, we see no merit in this writ petition, which fails and is hereby dismissed but in the circumstances, without any orders as to costs.