
(2002) 11 RAJ CK 0004

In the Rajasthan High Court

Case No : Civil Writ Petition No. 4507 of 1998

Gopal Singh Rathore

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 15-11-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 4 WLC 503 : (2003) 2 WLN 433

Hon'ble Judges : N.N. Mathur, J

Bench : Single Bench

Final Decision : Allowed

Judgement

N.N. Mathur, J.—The grievance voiced by the petitioner in the instant writ petition under Article 226 of the Constitution of India is that he has been wrongly deprived of promotion on the post of Deputy Commandant, while persons junior to him have been promoted vide order dated 13.2.1993. Initially, the petitioner approached to the Jammu & Kashmir High Court by way of writ petition for redressal of the said grievance. The respondent BSF took the stand that the petitioner was not considered for promotion by the Departmental Promotion Committee because of adverse entry in the ACR for the year 1989-90. However, it was admitted that the said adverse entry was not communicated to the petitioner. In view of this, the Jammu & Kashmir High Court allowed the writ petition and directed the respondent to communicate the adverse entry to the petitioner. A liberty was also given to the petitioner to make a representation against the said adverse entry. It was observed that if the adverse entry continued against the petitioner, he would not be promoted but if the entries are obliterated, he will be entitled to promotion with retrospective effect. Accordingly, the adverse entries were communicated to the petitioner under communication dated 23.3.1998 (Annex. 4). The remarks made in the ACR of the year 1989-90 as communicated vide Annex. 4, reads as follows:

The officer has been assessed as matured, sober, physically tough, energetic with

initiative and drive and satisfactory performance while posted in the border area... To be kept under watch.

2. The petitioner made a detailed representation against the said adverse entry. The representation was rejected and in view of the adverse entry, the decision not to promote the petitioner on the post of Deputy Commandant remained intact.

3. It is contended by Mr. J. P. Joshi, learned Counsel for the petitioner, that the remarks as communicated to the petitioner in the ACR for the year 1989-90 can not be considered adverse by any standard or stretch of imagination. The recording of personal appraisal of the petitioner to the effect that the petitioner may be kept under watch, appears to be only a note of caution. It may, at the most, be considered in the form of advisory. On the other hand, Mr. Vyas, learned counsel appearing for the respondents, submits that the remark "to be kept under watch" is significant, serious and adverse, if it is read in totality. It is further submitted that there were certain allegations and complaints against the petitioner of conniving with the smugglers etc. He has invited our attention to the averments made in para 9 of the reply to the petition. It is further submitted that the petitioner's name remained in the list of officers having doubtful integrity for the years 1990 to 1993.

4. I have considered the rival contentions. It is now well settled that the object of making adverse remarks is to assess the competence of an officer on merits and performance of an officer concerned so as to grade him in the various categories as outstanding, very good, satisfactory and average etc. The competent authority and the reviewing authority have to fairly and objectively assess the character, integrity and performance of the incumbent. If in the opinion of the competent authority or reviewing authority, the officer is of doubtful integrity, he is required to make such entry in the ACR. Such an entry is communicated to the incumbent so that he may submit his explanation. In the instant case, there is nothing to show that there was any entry in the ACR with respect to doubtful integrity of the petitioner. The petitioner has been assessed as matured, sober, physically tough with initiative and drive. Further, his performance while posted in border area has been assessed as satisfactory. It is, however, remarked that the petitioner be kept under watch but then there is nothing to further show as to what for he, is required to be kept under watch. In view of this, the remark that the petitioner be kept under watch, has been erroneously considered as adverse. Even if a representation is made against such ACR and the same is rejected, it can not be considered adverse, if infact it is not adverse. It will be within the domain of the DPC to consider, if the remark is infact adverse or not. The denial of promotion to the petitioner on the post of Deputy Commandant considering the ACR for the year 1989-90 referred to above is wholly unjustified and arbitrary. The petitioner deserves to be promoted on the post of Deputy Commandant with all consequential benefits as per the rules regulating his services. I am fortified in my view by two decisions of the Apex Court in M.A.

Rajasekhar Vs. State of Karnataka and Another, and Vijay Kumar, I.A.S. Vs. State of Maharashtra and Others,

5. Consequently, the writ petition is allowed. Petitioner Gopal Singh Rathore has already been promoted on the post of Deputy Commandant. He shall be given the said promotion with retrospective effect with all consequential benefits. The order is to be complied with within a period of three months from today. No order as to costs.