
(1999) 05 DEL CK 0130
In the Delhi High Court
Case No : C.W.P. No. 5410/98

Group Captain J.L. Jaggi

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 01-05-1999

Acts Referred:

Citation : (1999) 50 DRJ 306

Hon'ble Judges : K. Ramamoorthy, J

Bench : Single Bench

Advocate : P.N. Mishra and R.M. Patnaik, for the Appellant; Neeraj Kaul, Tamaliwad and Madhu Kapur, for the Respondent

Final Decision : Dismissed

Judgement

K. Ramamoorthy, J.—The petitioner, who is working as Group Captain in the Indian Air Force, was to be considered for promotion to the rank of Air Commodore in the year 1995. The petitioner submitted a statutory complaint which was rejected by order dated 28.3.1998 and hence the petitioner has brought this petition claiming the following reliefs:-

"It is, Therefore, most respectfully prayed that this Hon"ble Court will be graciously pleased to issue a writ of Mandamus or any other writ, direction or order directing the respondents to promote the petitioner to the rank of Air Commodore with effect from the date when his juniors were promoted;

And issue a writ of Certiorari quashing the impugned order of the Respondent dated 23.9.1998 rejecting the petitioner"s statutory complaint".

2. The petitioner has set out his excellent performance in his career and the Selection Board had not considered his case in proper perspective and there was absolutely no rhyme or reason for not empanelling the petitioner for promotion to the rank of Air Commodore. And the Promotion Board which met in 1995 had cleared the names of Group Captain M.P. Sanyal and Group Captain P.K. Pradhan, who were juniors to the petitioner. According to the petitioner, there were no

adverse remarks against him in the ACRs and the respondents never communicated to him that he had any adverse remarks against him. In the counter filed by respondents 1 to 3, it is stated that the petitioner was considered for promotion by Promotion Board PB-I/95, PB-I/96 and PB-I/97 but was not cleared and, Therefore, he was not empanelled for promotion to the rank of Air Commodore. The petitioner filed his rejoinder and he has also filed, what is called the transit cover and instructions for completion of appraisal report form No. P-57-B wherein instructions have been given as to how the Initiating Officer has to record his views in the ACRs for the officer concerned.

3. While rejecting the statutory complaint, the Directorate of Personnel (Officers) had said:-

"1. Reference letters No. Air HQ/61650/1/DS(A) dated 02 Jul 96 and Air HQ/C 9665/3/IMT(A) dated 26 Mar. 98.

2. Statutory Complaint filed by Group Captain JL Jaggi (9665) Lgs has been considered by the competent authority. On the basis of the records, the competent authority has observed that notwithstanding the numerical gradings, the adverse remarks in successive years show the officer in very poor light. In that context and in view of the fact that no weighty reason has been adduced by Gp. Capt. JL Jaggi in his statutory complaint, the competent authority has rejected the officer's statutory complaint. The officer may please be informed accordingly."

As per this letter, the adverse remarks against the petitioner had stood in the way of his being not promoted.

4. The learned senior counsel for the petitioner Mr. P.N. Mishra submitted that the authority concerned had referred to adverse remarks in the order which was communicated to the petitioner and the Selection Board had proceeded to consider the case of the petitioner in the light of the said adverse remarks which were not communicated and that would vitiate the entire selection process.

5. The learned senior counsel for the petitioner Mr. P.N. Mishra submitted that the petitioner is not challenging, in law he cannot challenge, the decision arrived at by the Selection Board. The learned senior counsel submitted that if the very basis of the consideration by the Selection Board was not acceptable in law, the petitioner can seek to get a direction to the competent authority to reconsider the matter and a direct constitution of new Selection Board for the purpose of considering his case with reference to the date when the juniors to the petitioners were promoted.

6. The learned counsel for the respondents Mr. Neeraj Kaul submitted that a perusal of the ACRs and the recordings pertaining to the Selection Board would show that there were no adverse remarks against the petitioner and the Selection Board which met thrice had considered the case of the petitioner in the light of his profile and the Selection Board found the petitioner not suitable for

promotion and the petitioner is trying to blow out a case just for the purpose of maintaining this writ petition.

7. I heard the learned senior counsel for the petitioner Mr. P.N. Mishra and the learned counsel for the respondents Mr. Neeraj Kaul. The counsel sought to cover a very wide field and cited number of authorities for the purpose of showing the difference in approach with reference to the consideration of adverse remarks for the purpose of compulsorily retiring an employee and the consideration of the adverse remarks for the purpose of considering the case of the employee for promotion to the next higher rank.

8. On the facts and circumstances of this case, on a perusal of the records it could be seen that there have been no adverse remarks against the petitioner. The view by the Reporting Officer that the Initiating Officer has assessed the petitioner would not amount to any adverse remarks. As a matter of fact, the view by the Returning Officer was before the Selection Board.

9. The learned senior counsel for the petitioner Mr. P.N. Mishra, no doubt, was justified in trying to project a case in the light of reference being made in the order impugned to adverse remarks. However, Mr. Neeraj Kaul, the learned counsel for the respondents, with particular reference to the remarks made by the Initiating Officer and the Reporting Officer, which are also perused by the learned senior counsel for the petitioner, admittedly a mistake had crept in and a reference is made to adverse remarks in the impugned order and according to Mr. Neeraj Kaul, the learned counsel for the respondents, that cannot be the basis of the case of the petitioner when, as a matter of fact, there are no adverse remarks against the petitioner. The respondents now state that there are no adverse remarks against the petitioner.

10. It was for the Selection Board to consider the suitability of the officer before it in the light of his performance and when the competent personnel in the Selection Board had considered the case of the petitioner, the petitioner cannot claim anything more. In this view, I think it wholly unnecessary to engage in the survey of authorities cited by the learned senior counsel for the petitioner Mr. P.N. Mishra and Mr. Neeraj Kaul, the learned counsel for the respondents.

11. I am of the view that there is no illegality, irrationality or anything contrary to law in the order passed by the Competent Authority on 23.9.1998, which is impugned. Accordingly, the writ petition stands dismissed. There shall be no order as to costs.