

(1995) 03 DEL CK 0090

In the Delhi High Court

Case No : Civil Writ Petition No. 1985 of 1994

Krishan Chand

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 28-03-1995

Acts Referred:

Citation : (1995) 2 AD 492 : (1995) 33 DRJ 363 : (1995) LabIC 372

Hon'ble Judges : A.D. Singh, J

Bench : Single Bench

Advocate : V.K. Shall and V.K. Seth, for the Appellant;

Judgement

Anil Dev Singh, J.

(1) This writ petition filed by the petitioner seeks expunction of complete confidential reports both by the initiating officer and reviewing officer of 6/86 and 6/88 and 5/89 and also challenges his non selection to the post of Colonel. The brief facts giving rise to this petition are as under:

(2) The petitioner is a serving officer of the Indian Army. He was approved for promotion to the select rank of Lt. Col. by Selection Board No.4 in March, 1989. In the year 1990 the petitioner was not detailed on Senior Command Course unlike his batch mates. This indicated that his confidential reports (for short "CR") after his selection as Lt. Colonel, being Cr 5/89 and Icr 9/89, initiated by his Commanding Officer, Col. D.K.Nundy, with whom he had allegedly strained relations may have been based on his adverse subjective appraisal thereby degrading his profile. As a result of this apprehension, on December 3, 1990 the petitioner filed a non-statutory complaint before the Chief of the Army Staff. While the non- statutory complaint was pending the petitioner was considered for promotion by the Selection Board in September 1991 but he was not approved for the same. Later by a communication dated January 30, 1992 the petitioner was informed that the Chief of the Army Staff had set aside complete assessment by the initiating officer Col. Nundy for Acr 5/89 and Icr 9/89 on the

ground of subjectivity. It may be mentioned that in the representation of the petitioner he had also brought to the notice of the Chief of the Army Staff the complaints of certain officers against his Commanding Officer. By a second communication of the same date viz January 30,1992 the Chief of the Army Staff directed investigation into the allegations of misappropriation of two unit generators. Yet by a third communication of the same date the petitioner was informed that the Chief of the Army staff while disposing of his non-statutory complaint remarked as follows:

"I do not feel the behavior of this officer is an officer like"

(3) After the setting aside of Acr 5/89 and Icr 9/1989, in so far as it related to the assessment of the initiating officer, the petitioner was given fresh consideration for promotion to the rank of colonel by the Selection Board in August 1992 but he was again not approved for the same. The petitioner not having been approved for promotion filed a statutory complaint to the Central Government on January 4, 1993 against his non-selection to the next higher rank and also called in question the Acr of 6/86,6/88 and also Acr of 5/1989 recorded by the reviewing officer Brig. K.C. Dhingra. Before the statutory complaint was disposed of by the Central Government the petitioner was again considered by a Selection Board in May 1993 but he was not approved for promotion to the rank of Colonel. On October 27,1993 the Central Government rejected the statutory complaint. This was followed by yet another consideration, the fourth one, by the Selection Board but the petitioner was again not approved for promotion. In these circumstances aggrieved by the non approval for promotion and the rejection of the statutory complaint the petitioner has come to this court by way of this writ petition.

(4) The petitioner appearing in person submits that because of his straightforward and forthright approach his Commanding Officer D.K.Nundy was not happy with him. He also states that the Commanding Officer was entertaining a bias against him which resulted in the degradation of his service profile as the latter had given him an adverse Acr for 5/89 and Icr for 9/89. The apprehension of the petitioner is that for the same period the reviewing officer, Brig. Dhingra may also have made an adverse subjective assessment of his performance under the influence of Lt.Col. Nundy. The petitioner also submits that the remark of the Chief of the Army Staff that his behavior was not officer like was unwarranted and had gone into his service record. He also canvasses that Central Government ought to have set aside Acr 6/96 and 6/88 as they were also based on adverse subjective appraisal of petitioner's performance. On the other hand learned counsel for the respondent submitted that Acr for 5/89 and Icr for 9/89 of the petitioner initiated by Col. D.K. Nundy being subjective were set aside by the Chief of the Army Staff but in so far as Acr 6/86 and 6/88 are concerned, the same were not set aside by the Central Government as they were considered to have been correctly recorded. It is also submitted that the service profile of the petitioner was considered by four different boards but he was not

approved for promotion. It was also pointed out that selection is made on the basis of the overall profile of an officer and his batch merit and one Acr or one Icr cannot make or mar the career of an officer. Learned counsel for the respondent also submitted that the remark of the Chief of the Army Staff was not placed on the personal file of the petitioner nor the same was placed before the Selection Board.

(5) I have considered the submissions of the petitioner and the learned counsel for the respondent.

(6) The respondent has produced the permanent dossier cover of the petitioner. In so far as the Cr 6/89 is concerned, a perusal thereof shows that the remarks of the initiating officer were expunged by the Court and his views were not taken into consideration by the three subsequent Selection Boards. In so far as the apprehension of the petitioner that the initiating officer may have influenced the opinion of the reviewing officer is concerned, there appears to be no justification for the same and a perusal of the pen picture of the petitioner's performance recorded by the reviewing officer belies his apprehension. Besides the reviewing officer has not made any adverse remark against the work and conduct of the petitioner. Rather pen picture recorded by the reviewing officer speaks quite well of his performance. The petitioner then submitted that there may be incongruity between the pen picture and figurative assessment made by the reviewing officer. He contends that the officer who is not to be promoted is given lower figurative assessment than the officers who are to be promoted. He also submits that officers getting above average ratings are the ones who make to the next higher rank. On the other hand it is pointed out by the learned counsel for the respondent that pen picture and figurative assessment is checked by three different officers and in the event of any incongruity between them the same is pointed out to the reviewing officer for his comments. After receipt of his comments the Cr is accepted or modified. My attention was drawn to the Acr of the petitioner covering the period February 7, 1988 to May 31, 1988 for which an exercise was undertaken whereby in view of the variation between assessment recorded by the Initiating officer and the Reviewing Officer, the comments of the reviewing officer were called.

(7) In so far as the ACRs 6/86 and 6/88 are concerned it is pointed out by the learned counsel for the respondent that the statutory complaint made by the petitioner was considered by the Government of India but the same was rejected as being without merit. From a perusal of the remarks of the initiating officer in column 21 of the Acr of 6/86, it appears that no thing adverse has been recorded against the petitioner rather the remarks are quite favorable to the petitioner. The figurative assessment in the said column rates him above average. It needs to be pointed out that at that time the initiating officer of the petitioner was Lt.Col. S.D.Sharma. The petitioner submits that even Lt.Col. Sharma had strained relations with him and Therefore Acr initiated by him was not in consonance with his performance. The petitioner also submits that there were

two or three incidents because of which the Reviewing officer of the time Brig. Kulwinder Singh may not have given the correct pen picture of his performance and figurative assessment therefore. Again the apprehension of the petitioner is in the realm of speculation. On perusal of the remarks recorded by the Reviewing Officer, Brig. Kulwinder Singh, in column 22 of the Acr, the allegations appear to be without substance. Besides the statutory complaint in respect of the Acr of June 1986 was made only in the year 1993. In case there was any substance in the allegation of the petitioner there was no reason why the petitioner did not seek a remedy earlier. The delay in moving the complaint is, however, explained by the petitioner by stating that during the period commencing from January 1986 to March 1990 the figurative assessment made by the initiating officer was not being communicated to the officers and Therefore like others the petitioner did not have any occasion to know about the same. Besides his submission is that when he was not selected by the selection board in the year 1992 he figured out as to what must have gone wrong and by recounting the events he came to the conclusion that it may have been for the adverse Acr recorded by Sharma or Nundy that he was not promoted. I have considered the submission of the petitioner but there is nothing to show that Acr recorded for the period covering 6/86 was not correctly recorded or the officers concerned were biased against the petitioner. In any event the officers who could answer the allegations of the petitioner have not been made parties. Moreover there are no adverse comments in the pen pictures recorded by Brig. Kulwinder Singh in Column 22 of the Acr and the Senior Reviewing officer Maj. Genl R.Narsihman in column 23 thereof. The figurative assessment of the petitioner's performance recorded by them in columns 22 and 23 rate the officer as above average. The pen pictures and the figurative assessments by the Reviewing Officer and Senior Reviewing Officer are dated June 12, 1986 and June 26, 1996 respectively. In so far as the assessment of the individual traits of the petitioner are concerned the rating ranges between high average and above average. As regards the Acr of 6/88 (from February 7, 1988 to May 31) is concerned, the assessment made by Shri D. K. Nundy, the initiating officer in regard to the various qualities of the petitioner range between above average and outstanding. The initiating officer has also recorded the performance of the petitioner in column No.21 as above average. The pen picture and figurative assessment recorded by the initiating officer is dated June 24, 1988. On July 5, 1988 the Reviewing officer Brig. J.S Rathore, however, recorded the performance of the petitioner in column 22 of the Acr as high average and in regard to his personal qualities his assessment ranges from high average (mostly) to above average. It may be pointed out that the petitioner has not leveled any allegations against the reviewing officer. The only allegation is that he could have been influenced by Nundy in assessing the performance of the petitioner. This submission of the petitioner is again in the nature of speculation. There is nothing concrete to show that the reviewing officer was influenced by the Lt.Col. Nundy in his assessment of the petitioner's performance. It may be mentioned that there was a special review by Lt. Genl. DSR Sahni who gave average rating to the petitioner.

(8) In so far as the question of promotion of the petitioner is concerned, the respondents have placed before me the relevant Member Data Sheets. These Member Data Sheets gives the overall profile of the petitioner. After setting aside of the ACRs 5/89 and 9/89 recorded by the initiating officer three different Selection Boards considered the petitioner for promotion but each time he was not approved for promotion. The process of selection cannot be questioned. All that has to be seen by the court is whether the process of selection was fair and reasonable and whether the person concerned was considered in accordance with the norms laid down. There is nothing to show that the process of selection was unfair or arbitrary or the petitioner was not duly considered. Any selection process may have its merits and demerits but it is not a matter in the jurisdiction of the courts as it is essentially a matter of authorities.

(9) In view of the above discussion the writ petition is dismissed with no order as to costs.