

(1996) 04 DEL CK 0019

In the Delhi High Court

Case No : Regular Appeal No. 3344 of 1995 and Civil Writ Petition No. 1985 of 1994

Krishan Chand

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 18-04-1996

Acts Referred:

Citation : (1996) 3 AD 413 : (1996) 38 DRJ 397

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

Bench : Single Bench

Advocate : P.S. Sharma, Dinkar Adeeb and A.K. Vashisht, for the Appellant;

Judgement

Anil Dev Singh, J.

(1) This is a petition for review of the judgment and order dated 28th March 1995 rendered in Cwp No.1985/94. By that order, the Writ Petition of the petitioner seeking complete expunction of his confidential reports 6/86, 6/88, 5/89 and 9/89 recorded by the Initiating Officers and the Reviewing Officers and seeking promotion to the post of Colonel was dismissed. The petitioner who appeared in person presented the following written submissions for review of the aforesaid order:

"I)Existence of nexus against the petitioner between Initialing Officers and Reviewing Officers of the impugned reports. ii) Impugned reports initiated/ reviewed malafidely and established the de facto adverse with documentary evidence on inflationary reporting. iii) Reviewing Officer"s report is always based on Initiating Officer"s report, balance portion of the Cr 5/89 Therefore, is untenable on this ground alone. iv) Ultimate affect adverse per se of confidential reports."

(2) The petitioner also advanced oral submissions in reiteration of the aforesaid points.

(3) I have given my earnest consideration to the submissions of the petitioner but I have not been able to persuade myself to accept the review petition. At the outset, it may be observed that the review is not a routine procedure. Court cannot review its earlier order unless there is material error manifest on the face of the record. The power of review is not to be exercised on the ground that decision is erroneous on merits. The power of review is not to be confused with the appellate power which enables an appellate court to correct both errors of law and fact.

(4) In the instant case, the petitioner has not been able to show any error apparent on the face of the order, much less a material error, calling for rectification. The contention of the petitioner that there was nexus between the Initiating Officer Col. D.K. Nandi and the Reviewing Officer Brig. K.C. Dhingra which led to the subjective assessment of the work of the petitioner's performance was dealt with in the order under review. In this regard, it was observed as follows:

"IN so far as the apprehension of the petitioner that 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 the apprehension."

(5) From the above it is apparent that the contention of the petitioner was not accepted. In the non-statutory complaint of the petitioner to the Chief of the Army Staff, which is Annexure P/1 to the writ petition, the reason for apprehending that the appraisal of his work by the Reviewing Officer Brig. K.C. Dhingra may have been subjective was given thus:

"(D)Because of relatively little interaction between Brig. K.C. Dhingra and me and also because of limited opportunities he got to appraising me. I apprehended that he too may have assessed me largely on the basis of the report of Col. S.K. Nandi."

(6) As would be seen from the above representation, the petitioner did not allege any nexus between the Initiating Officer Col. D.K. Nandi and the Reviewing Officer Brig. K.C. Dhingra.

(7) Again in a statutory complaint which is Annexure P/5, the petitioner repeated the same apprehension. At this stage, it would be convenient to refer to para 9 of the complaint of the petitioner:

"9.Based on my statutory complaint dated 3rd December 1990, the Co as had set aside complete assessment of Col. D.K. Nandi in Acr 5/89 had not had adequate opportunities of judging me and had expressed apprehension of appraisal by him largely based on the expunged report of Col. D.K. Nandi are on the basis of adverse information about my personal qualities and performance conveyed to him by Col. D.K. Nandi in fairness, Therefore, complete Acr of 5/89 ought to have been set aside."

(8) The aforesaid shows that the petitioner had not alleged any nexus between Col. D.K. Nandi and Brig. K.C. Dhingra. It was only in the third complaint which is Annexure P/7 that the petitioner for the first time brought in the point of nexus between the Initiating Officer and the Reviewing Officer. In this complaint, the petitioner stated as follows:

"IT is learnt that Maj. K.C. Dhingra has himself been enquired against at Ho 33 Corps following allegations of serious irregularities. Here it is pertinent to state that there were numerous allegations made by Unit Officers and others in writing against Col. Nandi (some of them are alleged to in my non statutory complaint) to both Brig. J.S. Rathore and Maj. Gen. Dhingra. Even....Out of exasperation with my attitude to his unethical ways, there is strong probability to Col. D.K. Nandi having told fantastic story of my misdemeanors to both Brig. J.S. Rathore and Maj. Gen. K.C. Dhingra, who, as the contenance Col. D.K. Nandi's gross-irregularities could have been adversely influenced and felt provoked to damaging the report I can for anything, and authority any tenable poor impression of my performance and potential, they could, and would have, definitely confronted and appraised me of it in service entirely. In the light of foregoing if, upon scrutiny it is found that they have rated me low, the same may be deemed to be for extraneous reasons and held subjective."

(9) The tenor of the aforesaid complaint shows that the petitioner merely has an apprehension that the Reviewing Officer had appraised his performance subjectively. The allegations of the petitioner in this regard are in the realm of conjectures. To start with, the petitioner was merely of the view that the Reviewing Officer could not have made an objective assessment of his performance as he did not have adequate opportunity to watch his performance. Subsequently, he came up with the allegation that since the Reviewing Officer of Acr 5/89 and Icr 9/89 countenanced gross-irregularities of Col. D.K. Nandi, there could be nexus between them. There is nothing to show that Brig. Dhingra had really been influenced by Col. D.K, Nandi in assessing the performance of the petitioner. As already pointed out in the order under attack there is nothing concrete to indicate that the Reviewing Officer was influenced by Col. D.K. Nandi in his assessment of the petitioner's performance. In any event the allegations of the petitioner cannot be taken note of as neither the Reviewing Officers nor the Initiating Officers are parties to the writ petition. The petitioner not having made them parties cannot be allowed to allege mala fides against them.

(10) I am also not impressed with the submissions of the learned counsel that Reviewing Officer's report was based on the Initiating Officer's report and since the Initiating Officer's report was expunged by the Chief of the Army Staff, the Reviewing Officer's report must also go. Each one of the officers, whether the Initiating Officer or the Reviewing Officer or the Senior Reviewing Officer, make their own assessment of the performance of the officer being reported upon.

(11) In so far as the submission of the petitioner that high average rating being per se adverse to the interests of the officer, an opportunity of hearing should

have been given to him by the respondents before recording the same, does not survive as the petitioner filed three complaints to the authorities against the recording of the Acr 5/89 and Icr 9/89 and the same were duly considered.

(12) In view of the foregoing, the Review Petition is dismissed.