
(2001) 07 DEL CK 0091
In the Delhi High Court
Case No : CWP No. 4692 of 1997

Lt. Col. Gurmit Singh

APPELLANT

Vs

Union of India and another

RESPONDENT

Date of Decision : 30-07-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 61 DRJ 84

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : Mr. Pradeep Nandrajog, for the Appellant; Ms. Jyoti Singh, for the Respondent

Final Decision : Dismissed

Judgement

Vikramajit Sen, J.—In the Petition, after a number of hearings, the narrowed down question which remains for determination is whether the Respondent have considered only the Annual Confidential Reports (hereinafter referred to as ACRs) onwards from the 11th year of service of the petitioner. Initially, the considered of these ACRs was challenged on the ground that the Petitioner ought to have been governed by the Rules applicable to officers in the Army Medical Corps. On the Respondence" categorical statement that the Remount and Veterinary Corps of the Army (RVC) was not governed by the Rules applied in the Army Medical Corps, this ground was very fairly and correctly not pressed. The scope of interference by the High Court under Article 226 is limited. It is not to adopt the approach of a Court of Appeal, to re-assess the gradings obtained by the ratee officer, or judicially review the policy of the Respondents in regard to the promotion Policy of its personnel. Courts may interfere where Principles of Natural Justice have been ignored and thrown to the winds or where the Respondents have acted contrary to the Rules and Policy and/or with mala fides and bias.

2. Mr. Nandrajog, Learned Counsel appearing for the petitioner vehemently

argued that in paragraph 2.1 of the Petition there was an averment that the "Petitioner's career profile has always been " above average" i.e. box gradings were "8" out of maximum "9" for the period during which ACRs were shown to the Petitioner." In its Counter/Reply the Respondents have mentioned and traversed the ACRs for only five years - 12/72, 12/73, 12/74, 05/83 and 05/84. The contention of Mr. Nandrajog is that the only conclusion that could be drawn is that apart from these years, in all other years the petitioner had received box gradings of "8". His contention is that once this conclusion is reached the only corollary would be that the Petitioner had received extraordinary and excellent box gradings of "8" consistently from the eleventh years onwards sans the two ACRs for 1983 and 1984. On this concise argument, it was submitted that the Writ Petition ought to be allowed as the Respondent had acted contrary to their Rules and Policy.

3. Ms. Jyoti Singh, Learned Counsel appearing for the Petitioner has emphasised that the assumption drawn by Learned Counsel for the petitioner is not logically correct. Since the assertion in the Writ Petition was confined to the ACRs shown to the Petitioner the corresponding reply was restricted only for this period that had been mentioned. It is her contention that in the years 1985-1989, the "dark period", the Respondent's policy was that ACRs were not shown to the officer concerned. Hence, the box gradings for these years were not traversed in the counter/reply of the Respondents. Had the Petitioner's averment in the Petition not been restricted only to the ACRs shown to him, the Respondents would have specifically replied that during this "dark period", the Petitioner had not received box gradings of "8".

4. The original records were produced in Court and have been carefully perused. The statement pertaining to the Cr.06/82-05/83: 6 points; and CR. 06/83-05/84: 7 points on verification, are correct. In the period thereafter, there are six years where the Petitioner has not received a gradings of "8". In these circumstances, the premises on which the writ petition is predicted do not in fact exist.

5. Learned Counsel for the Respondents had submitted that apart from the box gradings, there are various other factors which are taken into consideration when an officer has to be promoted to a Selection Grade. Firstly, his comparative merits in the batch of officer within promotional purview is extremely important. It is possible that other officers within the group have even higher ratings. Furthermore, even if a particular officer receives a box gradings of "8", his scoring in the various categories is also relevant. In Lt. Col. Krishan Chand vs. Union of India and Others , 1996 5 AD (Delhi) 199, the Division Bench approved such an approach in paragraph 18 where it observed that - "Selection is based on an overall profile of an officer with special stress on the performance in criteria Command appointment." Learned Counsel for the Petitioner had controverted this submission and argued that factors on which an asterisk had been placed required the Respondents to communicate an unfavorable gradings to the officer concerned, and not that the gradings of these factors would be

separately considered. This question need not be gone into further, since the Petitioner has not received the grading he mistakenly believes he obtained. This consideration would be relevant only in the event that all the officers had received the same box grading, and despite that position only some of them had been promoted and others passed over.

6. Ms. Jyoti Singh relied heavily on the fact that unlike the normal practice, the Petitioner was considered on six occasions. She also underscores the fact that in the petition even a bald assertion of mala fides or bias cannot be found. She reiterates that the Petitioner has failed to secure his promotion purely because of his comparative assessment.

7. Having considered the facts of the case in their entirety, since mala fides are wholly absent and since Respondent have not acted contrary to the Scheme and Rules pertaining to promotion, the interference of this Court under its extraordinary powers is not called for.

8. The Writ Petition is, accordingly, dismissed.