

(1997) 07 AHC CK 0013
In the Allahabad High Court
Case No : C.M.W.P. No. 13621 of 1994

Lt. Col. Mahabali Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 28-07-1997

Acts Referred:

Army Act, 1950 — Section 27
Constitution of India, 1950 — Article 226

Citation : (1997) 07 AHC CK 0013

Hon'ble Judges : D.P. Mohapatra, C.J; S.R. Singh, J

Bench : Division Bench

Advocate : Ashok Kumar, for the Appellant; U.N. Sharma, for the Respondent

Final Decision : Allowed

Judgement

S.R. Singh, J.—Present petition has its genesis in a dispute centring around the endorsements recorded by First Technical Officer In Petitioner's A. C. Rs. for the year 1984-85 and in seeking redemption from the perceived wrongs, the Petitioner has filed the present petition basically for the following reliefs:

(a) Issue a writ, order or direction in the nature of mandamus directing the Respondents to consider the promotion of the Petitioner expunging the endorsements recorded by F. T. O. in his A. C. Rs. for the years 1985 and 1986 "Annexure 2" dated 9 March, 1994.

(b) Issue a writ, order or direction in the nature of certiorari summoning the records and quashing the Impugned A. C. Rs.

2. Concededly, the relief (a) aforesaid has not been couched in an intelligible manner inasmuch as the expression "Annexure 2 dated 9 March, 1994" has been penned as a post-script to prayer (b) after the mark of full stop at the end of the figure "1986". The learned Counsel appearing for the Petitioner stated that the order dated 9th March, 1994 by which the statutory complaint of the Petitioner in re A.C.R. 1984-85 has been rejected, is also sought to be quashed besides the

endorsement scripted by the F. T. O. in S.C. R. 1984-85 (incorrectly delineated in the prayer (a) as A.C.R. for the years 1985 and 1986).

3. The reliefs claimed herein, are premised on the allegations inter alia that while posted in 504 A. S.C. Battalion under 4-Infantry Division (Uttar Pradesh), the Petitioner was evaluated worth seven marks by Lt. Col. S. M. Panu, the then Officer Commanding, 504, A. S.C. Battalion whereas he ought to have been accorded 8 marks instead of 7 in his A.C.R., 1983, that in the year 1984, the Petitioner was transferred from Allahabad to Siachin Glacier Area, where he had to brave the brunt of vagaries of precipitous climatic conditions and was exposed to the bullets of enemies for a period spanning over two years and three months as against the normal tenure of six months, performing his duties satisfactorily, but he was eschewed from reckoning for promotion, which, according to him, fell due in the year 1984 and when he looked back, he found that Brig. Harjeet Singh, the then D. D. S. T., 15 Corps, had graded the Petitioner worth 5 marks in the A. C. R, for the year ending 31st May, 1985 and this sudden swing to 5 marks" abysmal grading, was not only manifestly illegal but had on its forehead the taint of perversity, infringing on Para 33 of the Special Army Order (in short S. A. O.) 3.5.89, that this illegal grading by Brig. Harjeet Singh and seven marks grading while the Petitioner was stationed at Allahabad in the year 1983, were the main obstacle operating in the way of the Petitioner getting promotion to the next higher rank and that his statutory complaint in re A.C.R., 1984-85 has been illegally rejected without elaborating any reason for the same.

4. Counter-affidavit filed by Capt. M. Ravi Kumar, unfolds that promotion upto the rank of Major are time scale and contingent upon the length of service, passing applicable promotional examinations and absence of any disciplinary case, etc., and that selection for higher ranks does not depend upon single A.C.R. but is made up on consideration of the overall profile of an officer and inter se batch-merit keeping in view the number of vacancies. Promotion policy laid down by the Government (as contained in Annexure C.A I. to the counter-affidavit), indicates that promotion in the Army to the rank of Lt. Col. and above is predicated upon selection and all officers of a particular batch are screened by a duly constituted Selection Board and assessed on their "overall profile" and batch merit. It is stated in the counter-affidavit that in his A.C.R. 1983-84. the Petitioner was overall graded with 7 points (above average) by his 1. O. Lt. Col., M. S. Panu, but that being the closed period of reporting, the adverse assessment was not exhibited to him. It is further averred in the counter-affidavit that the Petitioner earned two A. C. Rs. while serving in High Altitude; first, for the period between October. 1984 to May. 1985 and the second one, for the period between June, 1985 to May, 1986, but these assessments were not divulged to the Petitioner as per policy then in vogue. The first report, it is stated, was "high average" and the second one, "above average". The assessment of "high average" by Brig. Harjeet Singh is said to be "in tune with the established past profile of the Petitioner".

5. According to rating scale, high average" is recorded as worth 6 and 5 points, while "above average" carries 8 and 7 points and outstanding" overall performance is categorised worth 9 points. The assessment for promotion, according to the policy indicated in Annexure CA-1, in respect of each officer is made by the members of the Selection Board on the basis of (a) War report; (b) All relevant Confidential Reports earned by the Officer; (c) Professional Course done along with gradings obtained therein; (d) Honour and Awards; (e) Disciplinary Awards, if any; (f) Special Achievements and weaknesses; (g) Service in High Altitude; Field/Opposite Areas; and (h) Employability and potential including consistent recommendations for promotion to next higher ranks. It further reveals that an officer is given three considerations for each Selection Grade promotion to the next higher rank as (a) Fresh consideration; (b) Ist Review and (c) Final Review and if the officer is not found fit for promotion even after the final review, he is treated as finally superseded and his case is not considered any further except as a special review case. Army Headquarters Military Secretary's Branch letter dated 6.5.87 (Annexure CA-II) contains detailed guidelines of assessment regulating selection for promotion of the officers to the Rank of Lt. Col. and above. Salient features of guidelines are as follows:

- (a) Selection is to be based on the overall profile the officer with special stress on the performance in criteria command appointment.
- (b) Due consideration is given to officer who show consistency in overall performance and they are given preference over late starters.
- (c) The officer should have been consistently recommended for promotion to the next rank. Credit is given to those officers who have earned positive recommendations for promotion in their very first report in command.
- (d) The officer should have done P.S.C./P.T.S.C./Post Graduate course and/or worked well in staff/E.R.E./Instructional Appnts. However, qualification of P.S.C.. P.T.S.C. or H.O. is neither a substitute for mediocre performance in command nor a licence for promotion.
- (e) Officers should have the potential for being employed or being rotated in staff, Instructional or E.R.E. appointments.
- (f) Character qualities, Disciplinary background and decorations form an Important input of the overall profile of the officer and due consideration should be given while assessing border-line cases.
- (g) While assessing officers with disciplinary background the gravity and nature of the offence and the service level at which the offence was committed should be taken into consideration.
- (h) Cases involving moral turpitude, gross negligence, acts of cowardice, or un-officer-like behaviour which reflects on the moral fibre of an officer will not be recommended for promotion.

(i) Performance during war forms an important fact of the overall record of the officer.

6. We have heard Colonel Ashok Kumar, Advocate, appearing for the Petitioner and perused the writ petition as well as counter-affidavit. There was no appearance on behalf of the Respondents.

7. There is no denying the significance and vital bearing which the confidential reports reflect in the service career/prospects of an officer. In *S. Ramachandra Raju Vs. State of Orissa*, , the need to write confidential reports objectively, fairly and dispassionately in constructive manner either commending or degrading the conduct, character, efficiency or integrity of the officer, has been underscored by the Supreme Court. The decision aforesaid has been quoted with approval in *State of U.P. Vs. Yamuna Shanker Misra and another*, and it has been re-emphasised that "writing confidential reports bears onerous responsibility on the Reporting Officer to eschew his subjectivity and personal prejudices or proclivity or predilection and to make objective assessment". It has been further emphasised that the career prospects of subordinate officer or employee largely depends upon the correct assessment by the Reporting Officer. Accordingly, the Supreme Court as ruled that the Reporting Officer "should adopt fair, objective, dispassionate and constructive commends/comments in estimating or assessing the character ability, integrity and responsibility displayed by the officer/employee concerned during the relevant period for the above objectives if not strictly adhered to in making an honest assessment, the prospects and career of the subordinate officer being put to great jeopardy". In *State Bank of India etc., Vs. Kashinath Kher and others, etc.,* , the Supreme Court has pointed out that the object of writing the confidential reports is two-fold; firstly, to give opportunity to the officer to remove his deficiencies and to inculcate discipline and secondly, it seeks to serve improvement of quality and excellence and efficiency of public service. In *Yamuna Shanker Misra's case (supra)*, the Supreme Court referred to its earlier decision in *U.P. Jal Nigam and others Vs. Prabhat Chandra Jain and others*, , and held that if the officer concerned is to be downgraded from the previous reports, then in that situation, the authority recording confidentials is to "record reasons for such downgrading on the personal file of the officer concerned, and inform him of the change in the form of an advice". The objects of writing confidential reports or character-rolls as Indicated above, have been reiterated by the Supreme Court in a recent decision in *Swatantar Singh Vs. State of Haryana and others*, .

8. The Petitioner is aggrieved of the "high average" assessment made in his A.C.R. 1984-85 by Brig. Harjeet Singh as also the order dated 9th March, 1994 rejecting his statutory complaint u/s 27 of the Army Act, 1950 in re A. C. R 1984-85.

9. On the facts stated in the counter-affidavit, it is patent that in his A. C. R 1983-84 (August 12, 1983 to May 31. 1984) "the Petitioner was overall graded with 7 points (above average) by his I. O. U. Col. S. M. Panu" and the same, i.e.,

"above average" was his rating for the period between June, 1985 to May, 1986. If we go by the numerical value of "high average", the Petitioner was awarded 5-6 points in his A.C.R. 1984-85 as against 7 points awarded to him in his A.C.R. anterior to and posterior to 1984-85 wherein the Petitioner was rated "above average". What was the reason then to downgrade him to high average" during the period between October, 1984 and May, 1985 has not been elaborated in the A.C.R., 1984-85 nor any cogent reason has been assigned in the counter-affidavit. The reasons for such downgrading were admittedly not recorded on the personal file of the Petitioner, nor was he made aware of the change in the form of advice, when instructions, particularly, the instruction No. 120 of the Instructions for Rendition of the Confidential Reports for officers upto the rank of Colonels, clearly postulate a duty cast upon the Reporting Officer to counsel and guide the officer concerned as well as apprise him of his fallibility and shortcomings. The downgrading of the Petitioner in A.C.R.. 1984-85 without any perceptible or discernible reasons cannot but be given the appearance of arbitrariness and it speaks volumes on the objectivity of assessment by the F. T. O. Brig. Harjeet Singh, who does not appear to have performed his onerous responsibility of writing confidential reports as the First Technical Officer in tune with the requirements of instructions issued in this regard and the law discussed hereinabove. It would be pertinent to observe here that according to the inspection note scripted by the Commanding Officer, 503, A. S.C. Battalion, the Petitioner's unit was found to be. "A well administered unit which has a high standard of technical efficiency" and these remarks were counter-signed without qualms by Brig. Harjeet Singh himself in the words; "A very satisfactory report". It is thus not understandable as to why the Petitioner was downgraded from "above average" to "high average" in A.C.R., 1984-85. The Central Government while weighing up the Petitioner's statutory complaint u/s 27 of the Army Act, 1950, do not seem to have adverted itself to these aspects of the matter and rejected the statutory complaint without assigning any reason

10. Section 27 of the Army Act, 1950, is a remedial provision and, therefore, this Court is of the considered view that disposal of statutory complaint in a matter like the one on hand, is not an empty formality to be observed without proper-self direction to all the relevant factors. Before rejecting the statutory complaint, in the present case, the Central Government ought to have addressed itself to the question whether the A.C.R. complained of, was scribed objectively, fairly, dispassionately and in a constructive manner or it was born of the subjectivity supplemented by personal prejudices and/or proclivity of Brig. Harjeet Singh. The observation made by the Central Government in its order dated 9th March, 1994 "that no injustice has been done to him in this regard" cannot be equated to "reason" for rejecting the statutory complaint. It is at best a "conclusion" arrived at by the Central Government as held by the Division Bench of this Court in K. Ramesh Singh Rathore v. Union of India 1996 (3) ESC 493 (All). The Supreme Court in S.N. Mukherjee Vs. Union of India, , has clearly ruled that "except in cases where the requirement had been dispensed with expressly or by

necessary implication, an administrative authority exercising Judicial or quasi-judicial functions, is required to record the reasons for its decision." One more exception has been carved out by the Supreme Court In S. N. Mukherjee's case (supra) and that is where the appellate or revisional authority affirms an order passed by an original authority agreeing with the reasons contained in the original order. As pointed out above, the personal file of the Petitioner does not contain any reasons for downgrading him in his Annual Confidential Report 1984-85. It was, therefore, imperative for the Central Government to disclose reasons for rejecting the statutory complaint filed by the Petitioner against the Annual Confidential Report. 1984-85. it is true, as held by the Supreme Court in Union of India and others Vs. E.G. Nambudiri, , that if the order as communicated to the Government servant rejecting the representation does not contain any reasons, the order cannot be held to be bad in law, for if such an order is challenged in a court of law, it is always open to competent authority to place reasons before the court, which might have led to the rejection of the representation and it is open to an Administrative Authority to produce evidence aliunde before the court to Justify its action, but in the instant case, no reasons have been setforth in the counter-affidavit nor any evidence aliunde has been brought on record of the writ petition to Justify rejection of the statutory complaint. The impugned order dated 9.3.1994 rejecting the Petitioner's statutory application in re A.C.R., 1984-85, therefore, cannot be sustained.

11. Now the question that begs an answer is what relief should be given to the Petitioner. it is well-settled that High Courts exercise supervisory power under Article 226 of the Constitution as distinguished from the appellate power and, therefore, it is not permissible for this Court to supplant Petitioner's A.C.R., 1984-85 by a report which this Court may consider to be a proper one in the circumstances of the case, but the Central Government can do so while disposing of the Petitioner's statutory complaint u/s 27 of the Army Act, 1950 in re A.C.R., 1984-85 and this Court can certainly direct the Central Government to reconsider the Petitioner's statutory complaint afresh and dispose it of in accordance with law and in the light of the observations made in this judgment and give appropriate relief to the Petitioner in respect of his grievances as against A.C.R., 1984-85 as well as in the matter of promotion to next higher rank.

12. As a result of foregoing discussion, the petition succeeds and is allowed. The impugned order dated 9th March, 1994 (Annexure 2 to the petition), is hereby quashed and the Central Government is directed to reconsider the Petitioner's statutory complaint and dispose it of afresh in accordance with law and in the light of the observations made in this judgment, extending all consequential reliefs to the Petitioner. In the facts and circumstances of the case, however, we make no order as to costs.