

(1999) 03 KAR CK 0059
In the Karnataka High Court
Case No : Writ Petition No. 6288 of 1989

Lt. Col. Ram Autar Sharma

APPELLANT

Vs

Government of India

RESPONDENT

Date of Decision : 24-03-1999

Acts Referred:

Citation : (1999) 6 KarLJ 256

Hon'ble Judges : V.P. Mohan Kumar, J

Bench : Single Bench

Advocate : Party in Person, Col.V.K.K. Nair, for the Appellant; Smt. Veena Jadhav, Additional Central Government Standing Counsel and Sri V.G. Dharma Kumar, Central Government Standing Counsel, for the Respondent

Judgement

1. The grievance of the petitioner who is a member of the Armed Forces and who has put long service and had secured the rank of Lt. Colonel at the stage of superannuating is that his legitimate claim for promotion to the cadre of Colonel has been overlooked by the competent authorities on the basis of adverse non-disclosed remarks in Annual Confidential Reports (hereinafter referred to as "ACR" for short).

2. The case of the petitioner in brief is that he was stationed as a Commanding Officer in Assam Rifles. He came under the dual control of Inspector General of Assam Rifles ("IGAR" for short) and the local Commander at Brigade level. The ACR as far as petitioner is concerned, is to be prepared by the Army and by the General Officer Commanding ("GOC" for short) Mountain Division. Under the said Division, there were several Brigades. The petitioner is concerned with 5 and 192 Mountain Brigade. In 1983, when the petitioner was promoted as Lt. Colonel he was posted to command 9 Assam Rifles deployed in Arunachal Pradesh. He was working as such till 10-7-1987. The relevant ACR related to the period 1983-84, 1984-85, 1985-86 and 1986-87. The ACRs are prepared in the following manner:

Initiating	Officer	(I.O.)	Brigade	Commander	Reviewing	Officer
(R.O.)	General	Officer	Commanding	(Divisional	Commander)	Superior

Review Office (SRO)Corp Commander I.G.A.R. Force Commander The grading in the ACR is 4 and 5 points is average 6 and 7 points is high average 8 and above is above average. 3. The controversy begins with the ACR for 1983-84. The period is December 1983 to 31-5-1984. The ACR has been initiated by the I.O. i.e., 5 Mountain Brigade and reviewed GOC 2 Mountain Division. The complaint of the petitioner is that while the I.O. awarded 7 marks and made an exceptionally good "pen picture" the R.O. reduced it to 6 points and made the following remarks:

"needs further experience to improve his potential in command".

This according to the petitioner is an adverse remark. There was yet another handicap. Till that year i.e., 1984 for the purpose of promotion the requirement was to consider two command report; but with 1984 this was done away with and only one report. So much so, the previous ACRs were not taken note of and the consideration for promotion depended only on the last report. This according to the petitioner prejudiced his fair chance for consideration for further promotion.

4. The next stage of complaint relates to the period June 1984 to 31-5-1985. During this period the procedure adopted was that the entry in the ACR would be made known only if there be any adverse materials. Thus the ACR was not disclosed to petitioner presumably as there were no adverse remarks. The petitioner was superseded to be promoted to the category of Colonel from Lt. Colonel, nevertheless.

5. The petitioner submitted review petition with respect to the ACR for the year 1983-84. Thereupon, he was informed that his review petition has been rejected though the entries were not treated as adverse. Thereupon, he made a statutory complaint on 9-3-1987. He challenged the entry referred to supra, in the ACR for 1983-84. The petitioner submits that for the purpose of promotion past 5 ACRs are considered at one time. The promotion from Lt. Colonel to Colonel the selection is done by No. III Selection Board. They prepare Member Data Sheet. When the petitioner was not selected for promotion, he secured an interview with the Military Secretary and at the time of the interview he discovered the following defects in the preparation of the ACR:

"(i) The ACR for the year 1986 was incomplete in that the ACR for the year June 1985 to February 1986 were not countersigned by the Review Officer or Superior Review Officer. This is corroborated from para 5 of Annexure-B.

(ii) The ACR was initiated by the 5 Mountain Command for four years. But, factually this should have been initiated at 192 Brigade Command. These ACRs therefore legally cannot be taken note of by the authorities, in the matter of promotion, as it was not prepared by the officer under whom the petitioner worked".

6. He contends that his statutory appeal has been rejected without application of

mind. He therefore seeks to quash those orders and prays for the consequential relief of promotion as Colonel with effect from the date on which he was superseded.

7. A statement of objection has been filed traversing all the contentions raised by the petitioner and denying all the allegations. It is alleged that the case of the petitioner for promotion at the relevant time has been considered fairly, that the remarks pointed out as adverse by the petitioner were not treated as adverse in nature but only as advisory remarks, that only relevant materials were taken into consideration by the Selection Board while considering the claim of the petitioner for promotion to the cadre of Colonel, that securing of the points as stated by the petitioner alone may not be the crucial circumstances for promotion, that the potentialities of the officer for promotion has also to be borne in mind, that the statutory complaints of the petitioner were examined by the statutory authority keeping in mind all relevant considerations, that no undisclosed materials were relied upon to overlook the claim of the petitioner and that the claim of the petitioner was considered fairly and in an unbiased manner and that no mala fide consideration influenced the decision making body while deciding the claim of the petitioner.

8. I heard the matter in detail earlier when the party appeared in person; but as the respondents' Counsel who was appearing earlier Mrs. Nagini Radhakrishnan was not fully instructed in the matter the same was adjourned. Later it was posted but, as the party was not present I requested Col. V.K.K. Nair, learned Counsel to assist the Court and to address the argument; he did so commendably well. Smt. Veena Jadhav, Additional Central Government Standing Counsel, appeared for the respondents and argued the matter at length. I reserved the matter for orders. Later the Central Government Standing Counsel secured the confidential back records. After I perused the matter, I reposted the case to 17-3-1999 and heard the Counsels again.

9. The Defence Forces have its own modalities in the matter of discipline and promotions. It may adopt such other modalities as are appropriate, tested and evolved by long passage of time. One has to remember that these rules are intended to encourage and promote people who would spare no pains to implement discipline in the forces and would be capable of safeguarding the interest of the country. What a civilian may treat as an apposite procedure need not always sound to be appropriate in the case of a disciplined force. All rules of natural justice, logic etc., cannot be engrafted as such in these proceedings without suitable modification and changes. That of course does not mean that it is the rule of the jungle that prevails in the forces. All that can be insisted upon would be whether the decision-making process is correctly adhered to and whether the decision taken is in any way mala fide or vitiated. The end result may not be a subject-matter of judicial review if the decision making authority has kept in view the relevant parameters while deciding the issue in question i.e., considering of relevant materials and exclusion of irrelevant materials to form its

decision.

10. Col. V.K.K. Nair pointed out mainly two aspects. There was an entry in the ACR of the officer referred to supra which according to the respondent is only advisory in nature. But, if the Reviewing Officer (R.O.) on the basis of the report felt that the claim of the petitioner for promotion is treated as not yet ready for being recommended for promotion, then that remark has to be treated as an adverse remark. He requested the Court to peruse the files and ascertain the position. I have, with this contention in mind, perused the files and I am free to state that the said remark was not adverted to while considering the claim of the petitioner for promotion after December 1983 to May 1984 to the Rank of Colonel. This is clear from the file. In other words, irrelevant considerations have not gone into the decision making process. As stated earlier the decision is not amenable to judicial scrutiny if the authorities had not misled themselves by taking note of irrelevant consideration. The challenge of the petitioner of the impugned action on this ground has therefore to fail.

11. The next point the Counsel wanted to be ascertained was whether while dealing with the statutory complaints preferred by the petitioner, the authorities have adverted to all relevant materials. In this behalf there is one aspect to be remembered. The Army has a strength of nearly 13 million soldiers. Confidential records would be maintained with respect to all these officers/soldiers. If lengthy statutory complaints are submitted by substantial percentage of them and if the judicial bodies call upon the competent authority to write detailed orders, perhaps the officers will have to spend more time at office desk than at the forward line! Therefore necessarily a via media has to be evolved to avoid any miscarriage of justice due to total non-application of mind. That perhaps may be, preparation of material notes on the statutory complaint and the competent authority dealing with the same; if the files disclose the materials necessarily to sustain the decision on the statutory complaint, then one has to conclude that there has been a proper disposal of the statutory complaints. The principles of the Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, , cannot in any way vitiate such orders. Besides, there are no set dogmas to be applied in the matter of forming a decision in relation to awarding of promotions. If so, largely it depends on the satisfaction of the selection committee. If the decision arrived at is plausible to be arrived at and is not a decision that no reasonable man addressed in law and informed of the facts of the case would arrive at, then it has to be accepted as correct even if it be that one is able to point out loopholes and shortcomings therein.

12. In this case, we have seen that the alleged adverse entry was not relied on by the III Selection Committee while considering the case of the petitioner for promotion earlier. That means they have not allowed their decision to be influenced by any irrelevant materials. Admittedly, the petitioner has not scored above the average points in the ACRs. The pen picture drawn is also not that of an outstanding officer. The alleged non-signing of the ACRs for the subsequent

years by R.O. and SRO is only a curable defect as the ACR written by the I.O. did not contain any adverse entries which required to be rectified or examined by the superior officers. Perhaps if there be any such adverse entry, then the petitioner would have had to rely on the recordings of R.O. and SRO to promote his claim for promotion. As such, the defect, one cannot say, even if it did exist, does go to the root of the matter.

13. In this case the files disclose that all the relevant materials to decide the issues raised by the petitioner, were before the competent authority while he dealt with the statutory complaint preferred by the petitioner. For the reasons set out above, there was no need to make an elaborate order dealing with each and every point raised by the petitioner. There is intrinsic evidence to show that the authority has kept in view all materials needed to decide the issue raised by the petitioner in his statutory complaint, and such consideration meets the requirement of law.

14. As stated supra, once it is shown that there is no material illegality in the order, this Court cannot reconsider the issues and substitute the decision. That power is totally within the province of the original authority. This Court is not exercising any appellate or revisional jurisdiction in these matters. The exercise to discover suitable candidate with matching requirement to the office to be held, is bestowed on those officers who are dealing with such officers day in and day out and the power of this Court is only to ascertain as to whether such authorities have been swayed by any illegal or irrelevant consideration in the decision making process. Once it is shown that it is not so, then this Court should refrain from probing further into the matter. After perusal of the files and after hearing the respective Counsels, I am of the view that no illegality has been committed by the authorities while dealing with the claim of the petitioner for promotion to the cadre of Colonel and petitioner cannot also complain that the statutory complaints made by him have not been dealt with the competent authorities in accordance with law. I therefore dismiss the writ petition.

15. Before parting with the case I would place on record the deep sense of gratitude of this Court to the learned Counsel Col. V.K.K. Nair who assisted this Court with in-depth study and facility.