
(2002) 09 DEL CK 0090
In the Delhi High Court
Case No : C.W.P. No. 5014 of 2001

Lt. Col. Sukhvinder Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 11-09-2002

Acts Referred:

Citation : (2002) 09 DEL CK 0090

Hon'ble Judges : S.B. Sinha, C.J.; Sanjay Kishan Kaul, J

Bench : Division Bench

Advocate : M.G. Kapur, for the Appellant; Maninder Singh, for the Respondent

Judgement

S.B. Sinha, C.J.—The petitioner is an Army Officer. He allegedly upon undergoing a successful career and completion of requisite training, etc. was promoted to the post of Lieutenant Colonel, which is a selection post in the year 1996. He was promoted to Selection Grade Lieutenant Colonel on 20.08.1997. In December, 1998, although he was screened for promotion to the post of Colonel along with other officers of his batch, he was not selected. He thereupon preferred a non-statutory complaint on or about 17.04.1999 for expunction of Annual Confidential Reports (in short, "ACRs"), if any, which were not consistent with the overall career portfolio, in relation to the following:-

"(a) Para 11(d) : Dependability

(b) Para 11(g) : Moral Courage

(c) Para 11(h) : Integrity

(d) Para 11(j) : Loyalty

(e) Para 11(k) : Maturity

(f) Para 14(b) : Thoroughness and efficiency of work in his sphere including allocation of priorities to problems

(g) Para 14(d) : Provides impartial and frank advice

(h) Para 14(h) : Dedication to the org and service"

The form, in which ACR is to be filled up, contains 14 columns.

2. The Chief of the Army Staff directed expunction of Reviewing Officer's assessment of the petitioner in respect of eight qualities on the ground of being "Inconsistent and Subjective ". The said aberrations, if any, were directed to be removed from the ACRs of the petitioners.

3. The petitioner contends that he was put through the Selection Board by the Reviewing Officer in the year 2000, but again he was not selected. Thereafter, he made a statutory complaint for expunction of the entire assessment made by the Reviewing Officer, wherein he raised the following contentions:-

"(a) SUBJECTIVITY is a mental state in its "entirety" and cannot be in parts. Hence when "SUBJECTIVITY Factor has been ESTABLISHED and ACCEPTED as such (by MS Branch); complete CR by the said RO should have been set aside please.

(b) Moreover, the overall Box Grading, Pen Picture and Recommendations by the said RO are bound to be based on the expunged portion also; and Therefore "shall" contain an element of SUBJECTIVITY.

(c) It is an accepted policy of the MS Branch that overall Box Grading, "Pen Picture and the "Recommendations" of an IO/RO have to be in consonance with the figurative awards. Hence my overall Box Grading, "Pen Picture" and Recommendations by the said RO have to contain a direct or guised element of subjectivity so as to be in agreement with the figurative awards; and also the said policy of the MS Branch. Hence retention of balance part of my said CR (by the RO) is neither legally nor logically TENABLE.

(3) Coming to Light of additional facts after submission of my Non-Statutory complaint which corroborate my contention at Para 2 above. I have come to know from the BM of the same Brigade (who was posted in after I was posted out) that wife of the subject RO had stated in her exuberance that she had got me "FIXED" in my CR or words to that effect. This fact may be verified (if necessary) from the aforesaid Officer (Lt. Col. G. Karunakaran Presently 21 C / CO of 5 KUMAON, located at Shahjahanpur) or the DQ (Lt. Col. Sharma of 16 MARATHALI) who succeeded me. I am sanguine that I would have been given full redress by the MS Branch if above statement would have come to light earlier and had been included in My Non-statutory complaint. The veracity of the said statement by the lady was confirmed to me by Lt. Col. G. karunakaran in 1999.

4. Apprehension about CR reviewed on 03 Jun 1990 by Brig. UD Thorat (Now Retd.) . There was a personality clash between my IO and RO in 1990-91 due to theft of ammunition from my unit by a sentry. The said theft took place when I was away on a course. The unfortunate event led to prosecution of the CO, 21 C and then Quartermaster of my unit by GCM/ SCM. I had to record the summary of evidence in respect of one of the accused persons. Indirect pressure was

applied by my RO on me. The pressure was aimed at forcing me to record evidence in a biased manner which I did not agree to. I strongly feel that Brig. UD Thorat my, then RO, would have diluted my CR due to a subjective frame of mind. It seems LOGICAL that REMAINING PART of my partially expunged CR (contested at para 02 and 03 above), has also been retained as the same must have matched with my CR (by RO) for the year 1990. I am sure my CR reviewed on 03 Jun 1990 by RO would have been set aside on grounds of "INCONSISTENCY" had I not been victim of the subject partially expunged report. I would like to urge that award of overall figurative Box Grading of 07 to me (being a Mach Officer) is detrimental to my chances of promotion as other officers serving in less strenuous but protective environment of (Armd Corps/ Mach Inf), get inflated CRs. My reports from 1992 to 1994 at HQ 181 Mtn Bde, must be examined in this light and due weightage be given to my Crs from 1995 to 2000. HENCE, IT CAN BE DEDUCED BEYOND ANY REASONABLE DOUBT THAT THE AFORESAID TWO CRs BY THE ROs HAVE LED TO THEIR RETENTION (BY MS BRANCH) ON MY RECORD DUE TO MUTUAL BUT INADVERTENT CORROBORATION OF THESE CRs, RESULTING IN DENIAL OF WELLDESERVED PROMOTION TO ME. Even if there is still a doubt, the benefit of same should accrue to me as BENEFIT OF DOUBT in such cases legally also is given to the aggrieved party /person. Moreover, keeping in mind my 21 years of blemish-free service (and anguish which I am undergoing for almost 02 years and will continue to undergo till full justice is meted out to me), I urge (at the cost of repetition) that I must be given the "BENEFIT OF DOUBT" and FULL REDRESS BE GRANTED to me please.

(5) Posting as GOSI (Ops) . I was posted as GSOI (Ops) at HQ 12 Corps on promotion to my present rank. This Corps HQ was raised in 1987 and all officers preceding and succeeding me have been promoted to the rank of Colonel / Brigadier, which clearly indicates that my non-promotion is an extremely exceptional one. I would also like to submit that my Colonel of the Regt was my GOC at HQ 12 Corps and I often officiated as his Col. MS or assisted him in Regimental affairs; But still I did not try to "manage" an outstanding / inflated CR which speaks volumes about my total commitment to honesty and fairly (please read in conjunction with para 1 (e) of Appx. A).

(6) Rejection for promotion after partial redress. I have been rejected by N. 3 Selection Board in Jul 2000 after I was granted partial redress for non-statutory complaint against supersession. Hence the redress granted to me has made no material difference to me, as dispensation of justice has not been taken to its logical conclusion. Irony is that the aforesaid RO of partly expunged CR, has still achieved his "AIM" of harming me on ground of SUBJECTIVITY which has deeply and rightly anguished me."

4. By an order dated 30.03.2001, the said statutory complaint has been rejected stating:-

"2. The Statutory Complaint of the officer has been examined in the light of his career profile, relevant records and analysis/ recommendations of AHQ. It is seen

that the impugned CRs 06/89-12/89 & 06/93-03-94 are well corroborated, moderated and consistent reports. Assessment by the reporting officers in these CRs is fair, objective and performance based. Redress where due, consequent to his non-Statutory Complaint dated 17 Apr. 1999, has already been granted to the officer in CR 06/93 06/94. These CRs do not merit any further interference. All other CRs in the reckonable CR profile are also well corroborated reports.

3. The officer has not been placed in an acceptable grade for promotion to the rank of Colonel due to his overall profile and comparative merit."

5. Mr. M.G. Kapur, the learned counsel appearing on behalf of the petitioner, would contend that having regard to the fact that qualities as envisaged in paras 11(d), 11(g), 11(h), 11(j), 11(k), 14(b), 14(d) and 14(h) having been directed to be expunged on the ground of inconsistency and subjectivity, the entire ACRs, should be directed to be quashed.

The learned counsel would contend that for the purpose of further promotion, his performance in the post of Lieutenant Colonel along was to be considered and not his performance prior thereto.

The learned counsel would contend that Pen Picture is a gist of Figurative Assessment and Figurative Overall Box Grading is an approximate average of the assessment of individual qualities. Thus, the learned counsel would contend that figurative assessment is liable to be expunged on the ground of subjectivity on the part of the Reviewing Officer and Pen Picture and the Overall Box Grading must also necessarily be revoked.

6. Mr. Maninder Singh, the learned counsel appearing on behalf of the respondents, on the other hand, would submit that expunction of a portion of assessment of the Reviewing Officer was directed since on examination of records of the petitioner, it appeared that certain qualities of figurative assessment were not in consonance of the petitioner's overall profile, although the same were not found true in respect of the remainder report.

The learned counsel has drawn our attention to the following:-

"6. That the petitioner was commissioned in the Army on 22 Dec 79 and thus belongs to 1979 batch. He was considered by No.4 SB in Nov 96 as a fresh case of 1979 batch and was approved for the promotion up to rank of Acting Lt. Col. The petitioner was considered by No.3 SB in Dec 98 as a fresh case for promotion to the rank of Acting Col. However, he was not graded fit., The details of look / reviews granted to the petitioner by No. 3 SB are as under:-

Sl. No.	Type of look	Period	Cut off	CR	Grading
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(i)	Fresh	Dec 98	06/97-05/98	"Z"	(Unfit)
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(ii)	First Review	Dec 99	06/98 -05/99	"Z"	(Unfit)
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(iii)	Special Review (Fresh)	Jul 2000	06/97 -05/98	"Z"	(Unfit)
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(iv) Special Review (First) Dec 2000 06/98 -05/99 "Z" (Unfit)

(v) Final Review Jun 2001 01/2000-05/2000 "Z" (Unfit)"

7. ACRs made as against an officer play an important and vital role in his career prospects. Not only statutory rules Therefore have been framed, but also guidelines have been issued from time to time by the Central Government as to how great care and caution are required to be taken before service career of an otherwise competent officer may be marred because of some subjective remarks, which do not otherwise fit in his performance and conduct.

8. In the impugned order, no reason has been assigned at all. The contentions raised by the petitioner had not at all been taken into consideration. In the Army Act, a provision for making statutory complaint exists so as to enable the appropriate authority to consider the same in its proper perspective.

9. In view of the fact that the opinion formed against the petitioner by the concerned officers is a subjective one, it ought to have been considered by the appropriate authority strictly in accordance with law. Such an order was also required to be passed having regard to the various principles laid down by the Apex Court and the guidelines issued by the Central Government.

10. It is not in dispute that the matter relating to recording of ACR is subject to guidelines issued under Special Army Order 3/S/89. Paragraphs 5 and 11 whereof read thus:-

"The aim of a Confidential Report broadly is to have an objective assessment of an officer's professional and personal qualities, his competence, employability and his potential as observed during the period covered by the report. All reporting officers must, Therefore, be fair, impartial and objective in their assessment."

"The integrity and effectiveness of the reporting system solely depends upon the reporting officer. It is the bounden duty of the reporting officers to endorse their assessment in an unambiguous and deliberate manner without any prejudice or partiality. All parts of the assessment, especially the pen picture must have relevance to the objectives mentioned."

11. Even down grading entries in confidential reports is required to be communicated, as has been held by the Apex Court in U.P. Jal Nigam and others Vs. Prabhat Chandra Jain and others, in the following words:-

".....As we view it the extreme illustration given by the High Court may reflect an adverse element compulsorily communicable, but if the graded entry is of going a step down, like falling from "very good" to "good" that may not ordinarily be an adverse entry since both are a positive grading. All what is required by the Authority recording confidentials in the situation is to record reasons for such down grading on the personal file of the officer concerned, and inform him of the change in the form of an advice. If the variation warranted be not permissible,

then the very purpose of writing annual confidential reports would not be frustrated. Having achieved an optimum level the employee on his part may slacken in his work, relaxing secure by his one time achievement. This would be an undesirable situation. All the same the sting of adverseness must, in all events, be not reflected in such variations, as otherwise they shall be communicated as such. It may be emphasized that even a positive confidential entry in a given case can perilously be adverse and to say that an adverse entry should always be qualitatively damaging may not be true. In the instant case we have seen the service record of the first respondent."

12. Yet recently in *Bishwanath Prasad Singh Vs. State of Bihar and Others*, the law has been laid down in the following terms:-

"33. A number of decisions dealing with the object and purpose of writing confidential reports and care and caution to be adopted while making entries in the confidential records of Government officers have been referred to in the cases of *High Court of Judicature at Allahabad Through Registrar Vs. Sarnam Singh and Another*, as also in the case of *High Court of Punjab and Haryana Through R.G. Vs. Ishwar Chand Jain and Another*, . We need not repeat the same. Suffice it to observe that the well-recognized and accepted practice of making annual entries in the confidential records of subordinate official by superiors has a public policy and purposive requirement. It is one of the recognized and time-tested modes of exercising administrative and disciplinary control by a superior authority over its subordinates. The very power to make such entries as have potential for shaping the future career of a subordinate officer casts an obligation on the High Courts to keep a watch and vigil over the performance of the members of subordinate judiciary. An assessment of quality and quantity of performance and progress of the judicial officers should be an ongoing process continued round the year and then to make a record in an objective manner of the impressions formulated by such assessment. An annual entry is not an instrument to be wielded like a teacher's cane or to be cracked like a whip. The High Court has to act and guide the subordinate officers like a guardian or elder in the judicial family. The entry in the confidential rolls should be a reflection of personal whims, fancies or prejudices, likes or dislikes of a superior. The entry must reflect the result of an objective assessment coupled with an effort at guiding the judicial officers to secure an improvement in his performance where need be; to admonish him with the object of removing for future, the shortcoming found; and expressing and appreciation with an idea of toning up and maintaining the imitable qualities by affectionately patting on the back of meritorious and deserving. An entry consisting of a few words, or a sentence or two, is supposed to reflect the sum total of the impressions formulated by the inspecting Judge who had the opportunity of forming those impressions in his mind by having an opportunity of watching the judicial officer round the period under review. In the very nature of things, the process is complex and the formulation of impressions is a result of multiple factors simultaneously playing in the mind. The perceptions may differ.

In the very nature of things there is a difficulty nearing an impossibility in subjecting the entries in confidential rolls to judicial review. Entries either way have serious implications on the service career. Hence the need for fairness, justness and objectivity in performing the inspections and making the entries in the confidential rolls.

13. However, before us, the entire records have not been placed by either of the parties. We have not been addressed nor any material has been placed before us to show as to how and in what manner those remarks, which have been expunged, being core ones, would not have a direct bearing in drawing the pen picture and making box grading.

14. In this view of the matter, we are of the opinion that the impugned order cannot be sustained, which is set aside accordingly and the matter is remitted back to the appropriate authority for consideration of the matter afresh. As the matter relating to promotion of the petitioner is pending since 1998, we would request the concerned respondent(s) to pass an appropriate order at an early date and not later than 3 weeks from the date of communication of this order.

This writ petition is disposed of accordingly, without any order as to costs.