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**(2008) 07 DEL CK 0271**

**In the Delhi High Court**

**Case No : Writ Petition (C) No. 3702 of 2003**

LT. Col. Suresh Chand

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision : 24-07-2008**

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation : (2008) 07 DEL CK 0271**

**Hon'ble Judges : Sanjay Kishan Kaul, J;Mool Chand Garg, J**

**Bench : Division Bench**

**Advocate : K. Ramesh and Party-in-Person, for the Appellant; A.K. Bhardwaj and S.S. Pandey, for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

Sanjay Kishan Kaul, J.—The petitioner is aggrieved by his non-selection as a Colonel despite three boards held and has filed the present Writ Petition praying for quashing of the ACR for the period October, 1993 to May, 1994 which according to the petitioner has come in his way of promotion. The petitioner alleges that the ACR for this period was initiated with malice towards petitioner.

2. In order to satisfy ourselves, we have called for the ACRs of the petitioner and the proceeding of the Selection Board. We have seen the profile of the petitioner. Certain aspects which emerged from the same are required to be noted.

3. The relevant period under consideration related to the ACRs of October, 1993 to July, 2002. Undoubtedly, the only ACR which is not very high is for the period October, 1993 to May 1994 which the petitioner seeks to challenge. The previous ACRs have been perused to see whether the impugned ACR was an aberration in the overall profile of the petitioner. We do not find the same as an aberration when compared to his previous records. Interestingly, the immediately previous ACR shows that both the RO and the SRO have given the same grading to the petitioner.

4. The improvement in the performance of the petitioner occurs from the ACR of June 1995 to May 1996 and thereafter it is consistently the same.

5. An important aspect to be noted in respect of the impugned ACR is that a show cause notice was issued pursuant to a court of inquiry for an incident relating to the said period but a non-recordable censure was issued. Thus the profile of the officer for the impugned year was not affected and, in fact, was the same as the previous year.

6. The proceedings of the Selection Board show that there is a reprimand which has entered in the red ink. This reprimand is dated 19.03.1997. The reprimand did not affect the ACRs for that year of the petitioner but is an aspect which appears to have been naturally considered by the Selection Board.

7. We have even seen the profile of the officers who were selected. It is obvious that the two factors which have come in the way of the petitioner are the impugned ACR and the reprimand recorded in the red ink. No legal proceedings were initiated to challenge the reprimand.

8. We cannot lose sight of the fact that it is not the function of this Court to sit as an appellate body over the Board but we wanted to satisfy ourselves that there is no procedural infirmity and there is no element of bias or mala fide. We do not find any of the two elements which would require us to interfere under Article 226 of the Constitution of India.

9. Learned Counsel for the respondent has drawn our attention to a decision in Civil Appeal No. 250/2008 titled as Surinder Shukla v. Union of India and Ors. decided on 9.1.2008 where it is observed in para 9 as under:

The post of "Colonel" is a selection post. A large number of factors are required to be taken into consideration therefore ,viz:

(i) Annual Confidential Reports profile of the officer in the relevant ranks.

(ii) War Reports.

(iii) Battle Awards and Honours earned by the officers during his service.

(iv) Professional courses done by the officer, his performance during the course and grading obtained therein.

(v) Special Achievements and weaknesses.

(vi) Appointments held by the officers including criteria Command/ staff appointments.

(vii) Disciplinary background and punishments.

(viii) Employability and potential including consistent recommendations for promotion to the next higher rank.

10. The aforesaid would thus show that any punishment (like of reprimand in the

case of the petitioner) would be considered for selection to the post of Colonel.

11. The Selection Board which examined the case of the petitioner for promotion was constituted of senior officers. We are informed that the Selection Board is not even aware of the identity of the candidates considered by them as the information relating to the candidates for consideration for selection is contained in the member data sheet but the identity of the officer is not disclosed. There is no malafide alleged against the members of the Selection Board. It is informed from the record that four of the five members of the Board did not favour empanelment of the petitioner.

12. The Selection Board on consideration of the comparative merit did not recommend the petitioner for promotion to the rank of Colonel. It is not the function of this Court in exercise of judicial review to, once again, go into the merit of this decision. There is no irrelevant aspect which has been taken into consideration. The decision making process is not tainted.

13. Dismissed.