
(2002) 09 AHC CK 0032
In the Allahabad High Court
Case No : C.M.W.P. No. 32540 of 2001

Lt. Col. V.S. Chhauker

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 26-09-2002

Acts Referred:

Citation : (2002) 5 AWC 4375

Hon'ble Judges : V.N. Singh, J;M. Katju, J

Bench : Division Bench

Advocate : R.A. Pandey, for the Appellant;

Judgement

M. Katju, J.—This writ petition has been filed against the impugned order dated 9.5.2002, Annexure-2 to the petition and for a mandamus directing the Respondents to promote the Petitioner to the rank, of Colonel and to set aside from the Petitioner's dossier his complete ACR for the period 1.6.1998 to 31st May, 1999.

2. Heard learned Counsel for the parties.

3. It is alleged in para 7 of the writ petition that in June, 1998, during the absence of the Commanding Officer Respondent No. 5, the Petitioner while officiating as C.O. noticed that approximately Rs. 2 lacs unaccounted cash was lying with the Subedar Major. The Petitioner apprised about it to the C.O. as soon as he returned from leave. The C.O. did not take kindly to this saying that it was already in his knowledge and threatened to spoil the Petitioner's ACR if he raked up the matter. Thereafter, the C.O. became vindictive towards the Petitioner and started harassing him including social boycott of the Petitioner's family. The Petitioner then sought an interview with the Brigade Commander. The correspondence exchanged between the Brigade Commander, the C.O. and the Petitioner on this issue between 18.11.1998 to 1.4.1999 is attached as Appendices A to O of the Petitioner's statutory complaint enclosed as Annexure-1. In para 9 of the petition, it is alleged that the Petitioner was granted

interview by the Brigade Commander on 2.12.1998, during which he apprised the latter about the unaccounted funds saying that without a Court of Inquiry, the extent and responsibility for the unaccounted funds could not be pinpointed. The Brigade Commander asked the Petitioner to put up the complaint in writing. This further infuriated the C.O., who again threatened to spoil the Petitioner's ACR if he did not withdraw the complaint. It is alleged that later the Respondent No. 4 pressurised the Petitioner into withdrawing the complaint and gave an assurance that the Petitioner would not be harmed.

4. In para 10 of the petition, it is alleged that Selection Board was held in December, 1998 and the Petitioner was intimated that he was approved for promotion to the rank of Colonel. In Para 12, it is alleged that the Respondent No. 5 wrote the Petitioner's ACR for the period 1.6.1998 to 31.5.1999 on 1.6.1999 wherein he lowered Petitioner's Box Grading to 7 points as compared to 8 points awarded by the same Investigating Officer in the previous ACR. The Petitioner was also communicated the order of the Respondent No. 5. The Petitioner submitted a non-statutory complaint dated 9.8.1999 which was rejected by the order dated 12.1.2000. The Petitioner was intimated the drop in performance vide letter dated 9.5.2000. It is alleged in Para 18 of the petition that subsequent to the drop in performance, two outstanding AC Rs have been earned by the Petitioner from his present unit, vide Annexures-3 and 4. The Petitioner was subsequently denied promotion. Hence, he filed this writ petition.

5. A counter-affidavit has been filed by the Respondent No. 5. In para 4 of the counter-affidavit the allegation in para 7 of the writ petition were denied, and it is stated that the allegation regarding unaccounted money in the Regiment is totally false, concocted and misleading. In fact in the absence of Respondent No. 5 in the capacity of officiating C.O., the Petitioner did not command the Regiment effectively leading to a situation where the troops welfare was neglected. The Petitioner was performing the duties of Account Officer since December, 1997 and he had authenticated its entry and rendered certificates to quarterly audit boards thrice that all transactions were correct. In para 6 it is stated that based on Petitioner's complaint two special audit boards were ordered after allegation by Commander 96 Infantry Brigade. Three audit boards were ordered after Petitioner's allegation. All the boards found that the allegations were totally baseless.

6. A counter-affidavit has also been filed on behalf of Respondent Nos. 1, 2 and 3. We have perused the same. In Para 3 it is stated that the Selection Boards are constituted to assess the suitability of all eligible officers of a batch for promotion to the next rank. Such officers are given special review with one more report in addition to the reports with which he has already been considered. Although the Petitioner had been approved for promotion as Colonel by the Selection Board in June, 1998. Subsequently, he was given a remark of drop in performance and hence he cannot be promoted. It is alleged that if in the opinion of the Military Secretary, during the intervening period between approval for promotion and

actual promotion, the officer does not maintain satisfactory level of performance, it is treated as a case of drop in performance. Such officers are given a special review. In para 6 it is stated that there is nothing on record to support the contention of the Petitioner to establish that the then C.O. (Respondent No. 5) become vindictive and started harassing him. In para 11 it is stated that consequent to establishment of drop in performance of the Petitioner vide his confidential report, the Petitioner was taken off the senior command course, after drop in performance was approved on 4.8.2001 by the Military Secretary. In para 12 it is stated that the Petitioner's non-statutory complaint was considered by the G.O.C. and rejected.

7. A rejoinder-affidavit has been filed. We have perused the same.

8. In Writ Petition No. 35296 of 1997, Major Ranabir Singh v. Union of India and Ors. decided on 13.2.2002, this Court observed that it is very reluctant to interfere in army matters as that would interfere with army discipline. We are in agreement with the aforesaid Division Bench decision. It is only in very rare cases that this Court will interfere in army matters. Under the Army Act, Rules and Regulations, there is a detailed procedure about giving adverse entry and making representation/complaint against it, and the Petitioner can avail of the same. It is not for this Court to consider whether the drop in performance given to the Petitioner was justified or not as that is the task of the appropriate army authority. Moreover, there are disputed questions of fact in this case, and hence writ is not the appropriate remedy.

9. In para 4 of the counter-affidavit of Respondent Nos. 1, 2 and 3, it is stated that the Petitioner's statutory complaint is pending before Respondent No. 1. We, therefore, direct Respondent No. 1 to decide the said complaint by a speaking order within two months of production of certified copy of this order.

10. With the aforesaid observation, this writ petition disposed off.