

(1999) 05 DEL CK 0104
In the Delhi High Court
Case No : C.W.P. No. 4239/98.

Lt. Colonel M.P.S. Gill

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 04-05-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) 3 AD 846

Hon'ble Judges : K. Ramamoorthy, J

Bench : Single Bench

Advocate : Mr. Mr. kant Sharma, for the Appellant; Mr. Rajinder Nischal, for the Respondent

Judgement

K. Ramamoorthy, J.—The writ petitioner has prayed for the following reliefs:-

"(i) Pass an appropriate writ/order/ directions to the respondents to consider the petitioner for promotion from Lt Col to Colonel without taking in to consideration the impugned ACR for the period 6/92-4/93 in the selection board which is going to be held in the month of December 1998.

(ii) Pass appropriate writ/order/ directions to the respondents to defer the petitioner's name from the next Promotion Board of the petitioner for promotion from Lt. Col. to Colonel till the disposal of this writ.

(iii) Pass an appropriate writ/order directions to the respondent that the impugned ACR for the period 6/92-4/93 be either quashed or be taken of the records/dossier of the petitioner.

(iv) Pass an appropriate writ/order/ directions to the respondents to promote the petitioner as colonel with retrospective effect giving all the past consequential benefits.

(iv) Pass an appropriate writ/order/ direction to the respondents to keep a vacancy of colonel for the petitioner till the final adjudication of this writ petition

by this Hon"ble Court."

3. The short facts necessary for the appreciation of the point raised by the petitioner is that the petitioner was superseded for the next promotion post of Colonel and according to him that is because of the adverse remarks in the ACR for the period June/92-4/93. In the counter affidavit, the claims of the petitioner are disputed and according to the respondents there is no adverse remarks against him in the ACR for the period mentioned above. He was not selected by the Selection Board three times after taking into account his performance and on comparative merits of officers who were being considered for promotion.

4. The learned counsel for the petitioner Mr. Shri kant Sharma submitted that owing to adverse remarks in the ACR the respondents had not considered his case for promotion and before the Selection Board all the facts were not placed.

5. The learned counsel for the respondents Mr. Rajinder Nischal submitted that the respondents had followed the rocedure prescribed and had acted in accordance with law.

6. The petitioner has proceeded on the wrong premise that there were adverse remarks in the ACR. The original records were produced and I had perused the same. There are no adverse remarks against the petitioner and the respondents are right in this aspect. The respondents have stated in the counter:-

"The assessment of officers in ACR is regulated by Special Army Order (SAO) 3/5/98 and other relevant policies at any given time. The gradings are numerical from 1 to 9 overall as well as in personal qualities and performance variable in different qualities and in the form of penpicture also. The entire assessment of an officer in any ACR consists of assessment of various reporting officers whose assessment are independent of each other.

The petitioner belongs to 1977 batch of the Regiment of Artillery and he was given the following considerations for promotion to the rank of Colonel:-

Fresh Case Considered as a fresh case by No. 3 Selection Board in Dec. 96 and was rejected with cut off CR Sep. 95 to May 96.

First Review Considered as first review case of 1997 batch during Dec.97 with cut off CR June 96 to Mar 97.

The petitioner was thus considered on above two occasions by differently composed Selection Boards. The Selection Boards take into consideration a number of factors such as war/operational reports, course reports, ACRs, performance in command and staff, honours and awards, disciplinary background, and not only the ACRs or one/few ACRs as is made out by the petitioner. In this context attention is invited to para 10 of policy letter dated 06 May 87 (ANNEXURE 2) Selection/rejection is based upon the overall profile of an officer vis-a-vis his comparative batch merit.

The petitioner did not make the grade on his overall profile as compared to the

batch merit. It was up to the Selection Board to assess the relative merits of various officers."

7. The Selection Board had considered all aspects of the matter and on comparative merits of the candidates recommended the candidates for promotion. The petitioner was not selected because of his performance. While considering the case of the candidates, the Selection Board, as per the records, had taken into account the merits of all candidates and it cannot be said that the process adopted by the Selection Board is illegal or irrational. I am satisfied that the respondents have acted in accordance with law and the petitioner has assumed things and he had filed the writ petition.

8. I do not find any merit in the writ petition. Accordingly, the same is dismissed. There shall be no order as to costs.