

(2002) 12 DEL CK 0028

In the Delhi High Court

Case No : Civil Writ Petition No. 1632 of 2002

Lt. Crd. Rajeev Kishore

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 02-12-2002

Acts Referred:

Citation : (2003) 1 SLJ 76

Hon'ble Judges : B.N. Chaturvedi, J;B.A. Khan, J

Bench : Division Bench

Advocate : Meet Malhotra, for the Appellant; Jayant Bhushan, for the Respondent

Final Decision : Dismissed

Judgement

Khan, J.—Petitioner, a Lt. Commander in the Navy, is clamoring for promotion to the rank of Commander. He was considered by Selection Board-III on 6.5.1999 but was not selected. He filed an ROG against this and during its pendency, he was asked to forward duly filled-up ACR forms for May 1996 to October 1996 which he was told were not available. He was then asked to forward duly filled up ACR forms for the entire period from November 1995 to May 1996 in March 2000 to one Captain Virender Singh. He claims that even though he had completed all these formalities but his ROG was rejected by order dated 31.5.2000. He then approached the next higher authority in second ROG on the ground that Promotion Board had rejected him in absence of relevant ACRs but even this was turned down.

2. Petitioner says he later made representations dated 13.9.2000, 11.6.2001 and 16.7.2001 to Government of India and the defense Ministry which were disposed of by orders dated 18.6.2001 and 29.8.2001 directing the Naval Headquarters to consider his case for promotion afresh and informing him that two of his missing reports were recorded and found to be as per his normal profile and that his non-promotion was due to his low position in order of merit.

3. Petitioner catalogues his several achievements and asserts that it was because of his high profile and superior merit that he was promoted to the rank of Lt. Commander. He maintained his good record all through and was given prize postings from time to time on INS Deepak and INS Viraat. He was also posted as Commanding Officer INS DBT-60 at Indo-Srilanka International Border Line and was selected for prestigious staff course at DSSC Wellington. All this, according to him, was proof enough of his excellent service record and, leaving Respondents with no room for denial of his promotion. He also submits that he had completed the requisite formalities of rendering his relevant ACRs and respondents' failure to record these from November 1995 to May 1997 had vitiated the whole promotion exercise.

4. L/C for petitioner Mr. Malhotra submitted that since process and procedure of reporting ACRs was given a go-by petitioner's rejection by three Promotion Boards in 1999, 2000 and 2001 was palpably bad and deserved to be quashed. He referred to para 0106, 0301 to 0303 of the procedure in this regard to show that these were to be recorded yearly and within the prescribed time, and since this was not done, the whole process of consideration was rendered invalid entitling him to a fresh consideration in the process. The post generation of the missing ACR's could not cure the defect and remedy the situation as no rule empowered respondents to do so and in any case no such report could be stimulated after a gap of more than five years. The procedure followed by respondents was, Therefore, unauthorised. He has referred to provisions of Navy Special order 4/99 which amongst other things provides for deferring of consideration without loss of seniority to suggest that respondents ought to have deferred his consideration in the circumstances. He has relied upon a DB judgment of this court in B. Jumrani v. NBCC Ltd. to suggest that if procedure in recording ACR's was not correctly followed, the promotion proceedings were liable to be quashed on the principle that where a power was to be exercised in a certain way, other methods could not be resorted to in this.

5. Respondents have explained their promotion procedure which they claim was aimed at identifying the most deserving officers for promotion. Under this, the emphasis was given on averaging the grading of the ACRs in the officer's current rank. to arrive at a single grade for each officer. These grades were then arranged to provide for an order of merit and those securing higher merit were selected. This method was devised to ensure that varying ACRs of officers due to transfer and posting profile, etc. did not prejudice their promotional prospects and so that their promotion was not dependent on the number of their confidential reports in the rank. It is also pointed out that an officer was entitled to consideration three times and on missing a chance, could seek fresh consideration without prejudice to his rejection in the previous attempt(s). It is also explained that approximately 60% of the Lt. Commanders normally became liable to be promoted to the rank of Commander and because of this many good officers, though deserving, got excluded due to lack of vacancies in the higher rank because of their low merit.

6. On merits, it is denied that petitioner was promoted to the rank of Lt. Commander because of his excellent service record. His posting was also a routine and a normal posting and so was his qualifying the Staff Course Entrance Examination. The rejection of his ROGs and representations is also justified and so is his rejection in all the three attempts which was based on averaging of his grading in ACRs and his lower merit position. It is also explained that he was given Re-look-I and Relooks-II in 2000 and 2001 when all but one re-generated ACRs in which he was awarded better grading, were taken in regard but, he could still not qualify because of his low profile.

7. The matter throws up several issues viz:- whether consideration accorded to petitioner in the absence of his ACRs from Nov. 1995 to May, 1997, which were admittedly missing was vitiated and whether there was any bar in regenerating these ACRs and taking them into consideration in subsequent looks and whether petitioner was entitled to be promoted because of all this.

8. The answer lies in the relevant provisions of rules of procedure/regulations/guidelines which we have examined. None of these, in our view, lend any support to petitioners pleas. We have not come across any provision providing for deferring of consideration in case of a missing ACR or forbidding its regeneration, much less its consideration in the subsequent Looks. Petitioner's counsel has relied upon paras 0106, 0301 to 0303 in this regard which looked from any angle do not support his claim. These are reproduced to prove the obvious.

"0106. Principles of Reporting. The appraisal system is based on the principle of obtaining one annual confidential report on an officer in the appointment. Additional reports are however, required to be submitted under special circumstances as clarified in this Order. The assessment in these confidential reports should be based on actual performance during the period of report and should not be influenced by previous knowledge of the officer reported upon. For the purpose of bench marking an officer's performance in a year, all the reports rendered in an ACR cycle would be averaged at NHQ/DOP. The average figure would be recorded as the ACR figures for that particular year. This would ensure that an officer obtaining more than one report in a particular cycle is not put to advantage or disadvantage due to disproportionate number of reports.

0301. Responsibility for Rendering Report. The officer reported upon is responsible for ensuring the correctness of his personal particulars in this section. The Initiating Officer is responsible for initiating the report on due date. If for any reason an officer fails to furnish the form duly completed on due date, the Initiating Officer shall initiate the report without the signature of the officer reported upon and make a suitable notation thereon.

0303. Receipt at NHQ. Initiating/Reviewing Officers are to ensure that completed reports are forwarded to the next higher authority soon after they became due. The final reviewing authority is to ensure that the reports finally reach Naval Headquarters within 45 days of their respective. due dates."

9. Para 12 of the Selection Procedure Navy order (Spl) 4/99 provides:-

"12. Reports to be considered : All reports of an officer in his present rank, including Acting rank will be considered. Any report which covers a period less than three months in that rank will not be considered."

10. As is obvious the first three paras lay down for the procedure and methodology for recording of ACRs. These stipulate annual recording of the ACR and for reasons in case of default and so on but these nowhere contemplates or indicate the withholding or deferring of consideration in case of any missing ACR. Nor do these impose any ban or bar on regeneration of such ACR. These also do not imply or suggest that an Officer would receive promotion in case his ACR was missing or a regenerated ACR was taken into account.

11. The Provision in para 0106 that "all reports rendered in ACR cycle of an officer would be averaged" does not and would not mean that his "all annual reports" in that current rank must be available to entitle him for consideration of promotion or that consideration process was to be shelved because of some missing ACRs. The expression "all reports" occurring in this para and para 12 of the Navy order (Spl) 4/99 should in simple terms be taken to mean "All reports before the Selection Board" and not "all annual reports of an officer in his current rank". It would otherwise lead to some illogical and absurd results if consideration was to be denied deferred or granted only because of some relevant missing ACR/s. That could not be the rationale behind these provisions. In any case it would all depend upon the Rule position and in the present case no such rule or regulation was pressed in service to suggest that petitioner was either entitled to promotion or that his consideration was to be deferred because of his missing ACR/s.

12. We are also unable to appreciate petitioner's alternative contention that respondents had no power to re-generate some of his missing ACRs and to take these into regard in his subsequent Relooks-I and II. Even if it was so assumed, it would not advance petitioner's case any way. Because even if these were taken out of consideration, he could still not qualify on the strength of first recorded available ACRs because his merit position was again to be determined on the averaging of his gradings in these ACRs. As a matter of fact, he was benefitted after being given the credit of regenerated ACRs in which he was awarded comparatively better gradings than his originally recorded ACRs.

13. To remove any further misgivings and cobwebs, respondents counsel Mr. Bhushan submitted a chart to show that even if petitioner was awarded the highest grading in all ACRs in his current rank, he would still not make it. Even on this he would rank below 29 other contenders in the merit position. Therefore, tested from any angle, it could not be said or held that respondents had committed any breach of statutory requirements while according consideration to petitioner for his promotion to the rank of Commander or in regenerating the missing ACRs and taking these into consideration in the subsequent Looks. Nor

could it be held that he was otherwise entitled to promotion because of his missing ACR/s.

14. Petitioner's counsel has pressed in service a DB judgment of this court in B. Jumrani Vs. National Buildings Construction Corporation Ltd. and Others, but we find it wholly distinguishable because it nowhere lays down that an automatic promotion would follow in case of a missing ACR and that the consideration would have to be deferred in such a case.

All things considered, we find no merit in this petition which is dismissed.