
(2004) 03 MP CK 0086
In the Madhya Pradesh High Court
Case No : Writ Petition No. 6000 of 2001

Major TPS Kandra

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 31-03-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 1 MPHT 397 : (2005) 1 MPLJ 459

Hon'ble Judges : Dipak Misra, J

Bench : Single Bench

Advocate : Rohit Arya, for the Appellant; Nair, for the Respondent

Judgement

Dipak Misra, J.

Invoking the extra-ordinary jurisdiction of this Court, the petitioner through this petition has prayed for number of reliefs but has confined the prayer for quashment of the ACRs contained in Annexure P-3, for all other reliefs are absolutely dependent on the same.

The facts have been narrated in great detail in the petition. The petitioner, who is the Lieutenant Colonel (in Time Scale), has faced the dejection of non-promotion to the post of Lieutenant Colonel (Selection Grade). Such a situation has come into being, as has been put forth in the petition, as there has been improper consideration of his case on the backdrop of certain ACRs, which have no legs to stand upon. In essence, in the absence of such ACRs, or in the event of annulment of such ACRs, the petitioner has extremely a bright chance to be considered in proper perspective by the Selection Board for the promotional post, namely, Lieutenant Colonel (Selection Grade). This being the expose of facts, I proceed to advert to the controversy in issue.

ACRs, which are creating impediment on the path of the petitioner for getting promotion to the Selection Grade, can be categorized into three spells, namely, 16-9-92 to 10-1-1993, 11-1-1993 to 31-5-1993m and 1-6-1993 to 31-5-1994. It

is worthwhile to note that the petitioner did not accept the aforesaid ACRs lying low but made non-statutory complaints to the respondent No. 2, the Chief of Army Staff who, as far as these spells are concerned, expunged the report of the initiating officer with respect to CR 06/93-05/94 but confirmed all other aspects in respect of all other spells. Being aggrieved, the petitioner preferred a statutory appeal to the Union of India, which has been rejected vide Annexure P-14, dated 5-1-2001.

Assailing the aforesaid order, various assertions have been made in the petition and many a ground has been urged in the petition. A counter affidavit has been filed by the respondents supporting the orders passed by the respondent No. 2 and respondent No. 1 respectively. I am not disposed to elaborately state the pleadings. I would be adverting to the same while encapsulating the submissions of the learned Counsel for the parties.

Mr. Rohit Arya, learned Senior Counsel appearing for the petitioner has criticized the manner and method and eventual deliberation which forms the foundation for passing of the orders by the authorities with regard to the aforesaid three spells. It is contended by him that the ACRs have not been recorded on the correct evaluation and the same are against the Army Orders and instructions. Learned Senior Counsel has submitted that there is a specific proforma for maintenance of ACRs and the said proforma has come into existence on the basis of Army Orders and if ACRs were recorded following the guidelines and the proforma, such kind of adverse ACRs would not have come into existence and the petitioner would not have faced any kind of remora in his selection.

As far as the first part is concerned, it is submitted by Mr. Arya that the said ACR is not founded and based on total objectivity inasmuch as the remarks awarded to the petitioner as regards stamina runs counter to the letters of appreciation issued by competent authority on 13-12-1992 vide Annexure P-1 whereby he had bestowed immense praise on the petitioner emphasising on his leadership, decision making ability and stressing on his degree of understanding, intellectuality and courage.

So far as the second spell is concerned, it is submitted by Mr. Arya that the said report was written on 10-6-1993 when the Initiating Officer was admitted in the ICU in the hospital and, therefore, as per Army instructions contained in Annexure P-6, Army Order No. 43/78, it is impermissible as therein it has been provided that when the officer is in hospital, he is disqualified to do any official work. It is also canvassed by Mr. Arya that there are certain situations and instances by which this kind of ACRs are to be communicated. But in the present case, the same was communicated without the obtaining situations, the ACRs as such suffer from illegality.

With regard to third spell, it is contended by Mr. Rohit Arya that when non-statutory compliant was submitted to the respondent No. 2, the said authority set aside the order passed with regard to the report of the initiating officer but

what remained on record is the report of reviewing officer and, therefore, it can not be taken into consideration as there is no report of the senior reviewing officer as mandated under the instructions.

It is further canvassed by Mr. Arya that the Appellate Authority has not considered this aspect and has without application of mind rejected the statutory complaint. Vide Annexure P-14 after narrating the facts, he has observed that the same do not merit any further interference as there are well moderated and corroborated reports.

Lastly, it is canvassed by Mr. Arya, that remarks which have been awarded can be divided in three compartments, namely, Administrative Variables, Personal qualities and Box Grading to the officer concerned. While awarding good marks on the first two categories, it would amount to giving good remarks in the Box Grading as a consequence of which the career grading of the petitioner would have increased.

Mrs. Nair, learned Senior Counsel appearing for the respondents has submitted that as far as the salary part is concerned, the authorities have considered the same and it can not be changed solely because there was a letter of appreciation vide Annexure P-1, dated 13th December, 1992. It is urged by her that there was no irregularity. As far as the first spell is concerned, the stand taken by the petitioner that the same has not been done with utmost objectivity is absolutely fallacious and untenable. With regard to second spell, learned Senior Counsel submitted that it does not show that the initiating officer was admitted in the ICU and hence was incapacitated to write ACRs with regard to the petitioner. Such a submission is neither here nor there because that does not vitiate ACRs which have been properly written and endorsed. With regard to third spell, submission of Mrs. Nair is that the language that has been employed for the purpose of reporting of endorsement by the RO and SRO is totally different inasmuch as the term used is "endorsement" but in the case at hand there was an endorsement by the initiating officer and the reporting officer but subsequently it was expunged, therefore, it does not create any defect in such recording.

To appreciate the rival submissions raised at the Bar, I have carefully perused the pleadings on record. A document (Annexure P-3) has been filed before this Court. Certain important instructions have been mentioned therein. It is thought apposite to refer to certain clauses of the same as they are relevant for our present purposes. In this regard, I may refer with profit to the "objective of a reporting system". Paragraph 1 of the same deals with objects of the reporting system. It reads as under :-

"The prime objective of a reporting system is to serve the interest of service by ensuring that the Personnel Branch knows the officers and makes an optimum use of their capabilities. This implies that the officers showing promise are spotted and assigned higher responsibilities. Postings are done in a manner that the organization gets the best from its members. It gives them job satisfaction

and officers are apprised, without equivocation, the standard of their performance including their weaknesses for further professional development. Hence the reporting system has an important bearing on the efficiency of the Army as a whole and on the well being of the officer cadre in particular."

I have referred to the same only to highlight that they have to be read in conjunction with the instructions so that the officer working in the Army knows that there are written instructions and orders for objective assessment of one's caliber activity and there is nothing called subjective or personal opinion.

This being the position, I think it condign to refer to the last spell as Mr. Arya has with vehemence emphasised on the last spell. While so doing, learned Counsel brought to the notice of this Court certain inconsistencies. Before I comment in this regard, I may refer with profit the decision in this context rendered by the Apex Court in the case of Lt. Colonel K.D. Gupta v. Union of India and Ors. AIR 1989 SC 1393. In the aforesaid case, the two-Judge Bench speaking about service of the Army expressed thus :-

"The defence services have their over peculiarities and special requirements. The considerations which apply to other Government servants in the matter of promotion can not as a matter of course be applied to defence personnel of the petitioner's category and rank. Requisite experience, consequent exposure and appropriate review are indispensable for according promotion and the petitioner, therefore, can not be given promotions as claimed by him on the basis that his batch-mates have earned such promotions. Individual capacity and special qualities on the basis of assessment have to be found but in the case of the petitioner these are not available. We find force in the stand of the respondents and do not accept the petitioner's contention that he can be granted promotion to the higher ranks as claimed by him by adopting the promotions obtained by his batch-mates as the measure."

I have only extracted the view expressed by the Apex Court in this regard to appreciate the scenario. At this juncture, it is worth noting that the learned Single Judge in the case of the Major General R.S. Taragi V. Union of India and Ors., 1994 MPLJ 986, has essentially held that there has to be fair and just consideration with regard to promotion as dignity of an individual and equality in the matter of promotion, are the two facets of an officer who holds such a post. In Paragraphs 18 and 19, the learned Single Judge held as under:-

"18. It is an undisputed fact that ACRs played very significant role before Selection Board. They may mirror individual capacity and portray presence or absence of special qualities needed for promotion.

Testing the facts on the basis of aforesaid position of law and logic, it is found that Paragraph 15 (b) in ACR of 1988 recommended non-promotion on the obvious basis of assessment recorded in its Para 18. The competent authority on non-statutory complaint, permissible under the law, found it fit to expunge Para 15 (b). Once that was so, it becomes inexplicable as to how and why its

foundation, as contained in Paragraph 18, was permitted to be retained ? In my view, Para 18 was closely inter-linked with Para 15 (b). Both can coexist or suffer simultaneous mortality. It was a case of procedural correction. It seems little illogical to kill Para 15 (b) and still will Para 18. Frank Further, J., very fittingly spoke that "He that takes the procedural sword shall perish with the sword."

It is worth noting here that the learned Single Judge had posed a question to himself on what basis a portion was deleted and the rest was allowed to stay. It is appropriate now to appreciate the orders passed on the non-statutory complaints contained in Annexure P-10. In the said order, the competent authority in Paragraph 2 held as under :-

"Non-statutory complaint dated 31-5-96 submitted by IC Maj TPS Kandra, Army against supersession has been examined against his overall profile and other relevant documents. After consideration of all aspects of the complaint and viewing it against the redress sought by the complainant, the COAS has directed that partial redress be granted by way of expunction of the IO's complete assessment in 6/93-5/94 on grounds of inconsistency."

At this juncture, I may state the confidential report of the earlier years which had been dealt with and the order was passed. I do not intend to comment on that. This order was the subject-matter of the appeal before the Appellate Authority. Appellate Authority as has been indicated above has dismissed the appeal, after narrating certain facts. The question that arises for consideration is whether the Appellate Authority has appreciated the memo regarding the statutory appeal in proper perspective or not. Leaving the question here, I shall proceed to deal with other spells, I have already narrated, attacking and assailing the issues which have been Vehemently put forth by Mr. Arya.

As regards the first spell, the competent authority has given low figurative marks to the petitioner. The Appellate Authority has recorded that the petitioner was of the low medical category. Though it can not be stated that there was contradiction yet here the Appellate Authority when apprised of the aforesaid letter which was written by a responsible officer should have viewed partly.

As far as the second part is concerned it has been asseverated by Mr. Arya that the Initiating Officer was in the ICU in the hospital. It is put forth by Mr. Arya that the petitioner himself got the Initiating Officer admitted in the hospital. That apart, a stand has been taken that there is a inconsistency and deviancy between Administrative performance and personal qualities. I have already indicated with regard to third spell that the submission of Mrs. Nair in a literally interpretation may not be found fault with. That word has been used in praesenti and therefore, it has to be understood as it is, inasmuch as in the case at hand, there were IO and RO. While accepting the aforesaid, a submission was raised and this Court thinks that the impact of expunging of the IO's report can not be totally marginalized.

But what would be the impact when subsequently a higher officer expunges the

report of the Initiating Officer. Judged from all the spectrums, it is discernible that as far as the third spell is concerned, there has to be a proper objective penetrating analysis keeping in view the documents so that an officer of this high grade does not suffer. Having held that this relates to different field altogether, I am disposed to think it requires a re-look and re-appreciation and if I may be allowed to say, an appreciation in proper perspective. I am inclined to think so as the order passed by the Appellate Authority contained in Annexure P-14, dated 5-1-2001 only has mentioned that there is no subjectivity or bias in the CRs. Mr. Arya submitted, with all humility at his command, that the petitioner has never stated with regard to bias but has emphasised on certain facts which are in the realm of objectivity. Apart from that, the Appellate Authority has referred to the non-statutory complaint and observed that the appeal docs not merit further interference and all the other CRs are also well moderated and corroborated. In my view the manner in which the appeal has been disposed, there can be no scintilla of doubt that the Appellate Authority had been himself not aware with regard to whole scenario and the gamut of facts. Use of words "moderated" and "corroborated" do not justify the order.

He should have addressed himself with regard to letter of appreciation contained in Annexure P-1, dated 13-12-1992 and should not have agreed that there has been a low medical category. If the certificate is correct, I am inclined to think the conception of low medical category may not appear true. True it is, the matter relates to the Army affairs, but when a high responsible officer is involved, it has to be given due weightage.

In view of the aforesaid, the order passed by the Appellate Authority vide Annexure P-14 stands quashed and it is directed that the Appellate Authority shall dispose of the appeal keeping in view the observations made above within a period of three months from the date of receipt of the order passed today. It would be open to the petitioner to file documents in support of his appeal. If the petitioner seeks permission for personal hearing, it will be up to the Union of India to afford such an opportunity.

With the aforesaid directions, the writ petition stands disposed of. There shall be no order as to costs.

C.C. as per rules.