
(2006) 07 DEL CK 0089
In the Delhi High Court
Case No : Writ Petition (C) 2219 of 1999

M.M. Sharma

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 13-07-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2006) 07 DEL CK 0089

Hon'ble Judges : Swatanter Kumar, J;G.S. Sistani, J

Bench : Division Bench

Advocate : Vineet Bhagat, for the Appellant; A.K.Bhardwaj, for the Respondent

Final Decision : Dismissed

Judgement

Swatanter Kumar, J.—In this petition under Article 226 of the Constitution of India, the petitioner prays for issuance of appropriate writ, order or direction quashing the letters dated 26.3.97 and 5.8.97 annexed to the writ petition and further prays for a direction to the respondents to promote the petitioner w.e.f. 1.7.96 in terms of order dated 11.11.96 with all consequential benefits.

2. The case of the petitioner is that the petitioner joined and was working in the cadre of Artificer with Indian Navy. From that post he claims to have earned different promotions from time to time and was promoted from EAR-5 to Ag. EAR-4 and then Ag EAR-4 to EAR-3. He claims to have become eligible for promotion from EAR-3 to CHEAR and a competency certificate was issued by his then Commanding Officer on 24.4.93. In August, 1994 he further qualified his CHEAR "Q" and was promoted to the post of EAR-2 by his Commanding Officer in the month of August, 1995. It is the claim of the petitioner that he was actually promoted as CHEAR by respondent No. 3 vide promotion order dated 11.11.96 which order was forwarded from respondent no. 3 to respondent no. 4 for implementation. The above order of promotion was not implemented by respondent no. 4 for eight and a half months and was withheld illegally vide letter dated 26.3.97 against the provision of law as contained in sub-para 5 of

para 8 of Chapter-I of NI 12/5/91. The promotion order of the petitioner was returned only in August, 1997 by respondent no. 4 in which vague allegations were leveled against the petitioner and which according to the petitioner were wishful thinking of respondent no. 4. These grounds were never communicated to the petitioner at any point of time. The conduct of the petitioner, in fact, was very good and he always got good reports. As a result of denial of his promotion, the petitioner has filed the present writ petition claiming the above reliefs.

3. Upon notice, the respondents have filed the counter affidavit wherein the respondents have taken the stand that the petitioner is not entitled to the relief claimed and have referred to the procedure for promotion. The relevant procedure for promotion is laid down in NI 2/96. The sailor became eligible for consideration for promotion to the rank of CHEAR (Chief Electrical Artificer Radio) in 1996. Promotion to the rank of CHEAR (Chief Electrical Artificer Radio) is regulated by promotion roster which is maintained by Commodore, Bureau of Sailors (CABS). The basis of roster is combination of seniority and qualifying professionally. Whenever a particular sailor becomes due for promotion, the CABS forwards Form IN-52 to the Commanding Officer of the unit/ship where the sailor is borne, who after verifying that the sailor is qualified for promotion in accordance with regulations, and unless he considers that the sailor is unfit for the duties of the higher rank, will promote him and return Form IN-52 duly completed to CABS. It is also averred that if on the receipt of the Form IN 52 or at the end of the two months period of consideration, the Captain decides not to promote the sailor, he shall return the Form IN 52 to the Commodore, Bureau of Sailors. Referring to the sequence of events of the petitioner, it has been stated that right from 1.7.96 till 16.3.99 the petitioner was cautioned about his professional competency. Despite counselling and several warnings, the petitioner did not improve. In view of this fact, the petitioner could not be given the promotion and keeping in view the overall suitability of the petitioner for promotion, the CO only assessed his performance and his attitude having not been found improved despite repeated warnings, the final opinion was expressed as not fit for promotion. The promotion of sailors from promotion roster is governed under Para 8 of Chapter-I of Navy Instructions 2/96 copy of which is annexed to counter affidavit as R-2. The case of the petitioner was considered and then returned to the Bureau of Sailors unimplemented with detailed reasons vide letter dated 5.8.97. It is incorrect that IN 52 was illegally withheld by the Commanding Officer. The respondents pray for dismissal of the writ petition.

4. As is evident from the above- referred pleadings of the parties, the factual matrix of the case is hardly in dispute. The basic contention is what was the service record of the petitioner and whether he was put at notice requiring him to improve his professional skills and the IN-52 was bonafidely withheld by the authorities for the period in question.

5. In the order dated 5th August, 1997 which was written by the Commanding Officer to the Bureau of Sailors, Mumbai in regard to withholding of IN-52 and

returning the same, it was stated as under:

1. Refer to my letter No.800/3/L dated 26th March, 1997.
2. The above mentioned sailor has not been promoted to the rank of CHEAR as found unsuitable for the rank of CHEAR. The sailor has been counselled/warned several times earlier to improve his technical appreciation and to have positive attitude towards the service. However the sailor continues to be casual and indifferent.
3. In view of the above, it is felt that the sailor is not suitable for promotion to the rank of CHEAR, hence IN 52 (promotion order No. 06960112/0019/Jul 96 dated 11 Nov 96) is returned.
4. It needs to be mentioned that the sailor had refused to undergo CPO Management course at INS Agrani in 1996 giving unwillingness for further reengagement. The sailors engagement expires on 26 Apr 1999.
6. The finding with regard to suitability or unsuitability of an employee for promotion squarely falls in the domain of the employer. It is a satisfaction which has been recorded by the Commanding Officer and the other authorities who are supervising the conduct and work of an employee though subjectively but in an objective manner. The satisfaction so recorded by the authorities is subject to judicial review which falls within a very narrow compass. Unless the satisfaction was patently malafide and arbitrary or was in violation to the specific rules governing the service profile of the employee, the court would decline to comment or interfere with such assessment. In the present case there are no allegations of malafides or arbitrariness per se except that the petitioner in ground No. (vii) of the petition has made a bald and vague allegation to the effect "that the petitioner has been victimised by respondent No. 4 for ulterior reasons for best reasons known to him. " This is hardly a ground which the court can take into consideration but in any case there are neither any factual basis nor any documents to support such an allegation.
7. We had perused the records which were produced before us during the course of hearing. From the records, it is evident that while describing the pen picture in relation to working of the petitioner, it was recorded that the petitioner had performed averagely but he had picked- up well and was performing satisfactorily in the current period. However in the half yearly performance evaluation recorded on 31.12.96, it was recorded "the sailor has been advised to show positive attitude towards service and to show more sense of responsibility/ discipline commensuration with his rank ". This was recorded by the Div. Officer as well as by the Lt. Cdr., in charge of the functioning of the petitioner.
8. The respondents have stated in the counter affidavit that IN-52 was retained by the Commanding Officer for a longer period even than the prescribed period but in the interest of the sailor as it was considered that he may show improvement in his working which would help the commodore to recommend him

for promotion rather than make a comment as unfit for promotion. It is averred that the Commanding Officer had kept him under observation for two months as he was not professionally competent for the next rank even on 11.11.96 but as he failed to show improvement despite counseling, the above recommendation declaring him unsuitable for promotion was made.

9. Under the relevant extract of para 8 of Chapter 1 of NI 2/96, an obligation is cast upon the Commanding Officer not to retain the form IN-52 for a period exceeding two months. It is also postulated in the same provision that if he decides that the sailor is fit for promotion, the postponement of the decision shall not affect the date of promotion as shown in Form IN-52. This language of the provision itself shows that the limitation of two months is more directory in nature than mandatory. The purpose of the provision is to protect the sailor against any undue delay for his promotion in the event he is found fit for promotion. In the present case, the Commanding Officer has delayed the submission of the form with an intention that the petitioner could be given a chance to perform better so as to enable his Commanding Officer to make a favorable recommendation and as he failed to show improvement, the report of unsuitability was made. The petitioner is entitled to be considered under (ii) of the same para 8 after a lapse of six months from the date of non-recommendation. We are unable to accept the contention of the petitioner that the respondents have acted arbitrarily or malafidely in submitting the report of non-suitability. The report dated 5th August, 1997 has been made in bonafide exercise of the power vested in the respondents.

10. Ergo, we find no merit in the present writ petition. The same is dismissed while leaving the parties to bear their own costs.