

(1997) 09 DEL CK 0052

In the Delhi High Court

Case No : Civil Writ Appeal No. 1909 of 1995

M.P. Singh

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 05-09-1997

Acts Referred:

Citation : (1997) 43 DRJ 29

Hon'ble Judges : Devinder Gupta, J; Cyriac Joseph, J

Bench : Division Bench

Advocate : Balram Gupta, A.K. Vali and Ranbir Singh, for the Appellant;

Judgement

Devinder Gupta, J.

(1) This petition instituted on 16.5.1995 seeks to quash annexures P-5 (letter dated 4.12.1991 from Maj. Gen. K.N. Sardana, Additional Director, General Army Education to the petitioner), P-10 (Communication dated 12.2.1993 rejecting the petitioner's non- statutory complaint dated 14.7.1992 against Acr for period 1990/91), P-12 (Communication dated 31.3.1993 rejecting the petitioner's non- statutory complaint dated 26.11.1992 against A.C.R. for the period 1991-92) and P-20 (Communication dated 14.3.1995 by which the petitioner was informed about the result of his interview with Chief of Army Staff that he had not been found fit for promotion to higher grade). Consequently the petitioner has prayed for issuance of directions against the respondents to take into consideration the special inputs (annexure P-15 and annexure P-16) in assessing his suitability for the post of Major General; to expunge the report made by Major General K.N. Sardana, and the report alleged to have been written against the petitioner under his influence; to consider the petitioner for promotion to the rank of Major General and to post him as such against the post, which was due to fall vacant on 1.7.1995 and to permit the petitioner to publish the book written by him on the History of Indian Military Academy. After the respondents filed their reply the petitioner filed rejoinder in which a further prayer was made for quashing annexure P-23 (communication dated 24.1.1995 conveying rejection of his

statutory complaint dated 19.5.1994 against his supersession to the rank of Maj. General).

(2) It is the petitioner's case that he joined National defense Academy in 1957 and on passing out from Indian Military Academy in 1961 he got his permanent commission in Artillery in Indian Army on 11.6.1961. During service the petitioner completed his graduation in Arts, did M.A. in History; M.Sc. in defense Studies; and completed his Ph.D. in the field of Military History. Petitioner also attended the defense Services Staff College at Wellington. From the rank of Major to Lt. Colonel and from Lt. Colonel to Colonel and from Colonel to Brigadier the petitioner got his promotions as a fresh candidate. He was promoted as Brig. in 1987. Since all promotions till the rank of Brigadier were got by him on the basis of first Board, it obviously implies that he had flawless and immaculate service record. He was due for promotion to the rank of Major General in 1992, which promotion, according to the petitioner, was denied to him arbitrarily. His case is that throughout he had given immaculate performance and was promoted on first consideration. He would not have suddenly become so bad to deny him promotion, which according to him, must have been due to the circumstances as narrated by him in the petition, namely, the episode of writing a book on the History of Indian Military Academy.

(3) It is alleged that he was posted as Head of Academic Department of Indian Military Academy (for short "IMA") in June 1988 and continued to occupy this position till October, 1990. A team of officers had been assigned the task of writing History of Ima but the Director General of Military Training did not find the work in order and consequently the same was rejected. The petitioner though on academic assignment and also having research oriented mind, suo motu undertook the work of writing a book on IMA. On one of his visits to Ima Major General K.N. Sardana, Additional Director General Army Education was apprised of the work. Rather than appreciating petitioner's effort, in the presence of other officers, Major General Sardana remarked that the petitioner was wasting his time in writing History of IMA. This work had not been assigned to him officially. It was also observed that the petitioner should rather and better concentrate on his work as Head of Academic Department of the IMA. According to the petitioner, Major General Sardana, thus, got annoyed with him and thereafter an effort was made by Major General Sardana to pollute the channel of reporting with regard to the petitioner. He also noticed distinct change in the attitude of Major General P.K. Khanna, Deputy Commandant and Chief Instructor, who was petitioner's immediate superior officer.

(4) It is alleged that his work with regard to the History of Ima was accepted to be published as an official version and the task of publishing was assigned to M/s Book World, Dehradun. Major Gen. Sardana on a subsequent visit to the Ima was told that the book was being published by M/s Book World. This further annoyed him. Again, in the presence of some other officers Maj. Gen. Sardana observed that the petitioner had disobeyed his order. Major General K.N. Sardana ensured

that the book is not published as the official version. Petitioner thereafter decided to publish the book of his own.

(5) As in the past, before getting the book published the petitioner requested the then Chief of Army Staff Gen. S.F. Rodrigue to contribute Foreword to the book. Chief of Army Staff was pleased to do so when he wrote the foreword on 23.7.1990 observing:

"THIS unique approach makes the work even more interesting. The credit for this work goes to Brig. (Dr.) M.P. Singh. This book will find an important place in the historical prospective."

(6) On 15.7.1991 petitioner's Explanation was called as to why he had approached the Chief of Army Staff directly for a Foreword and violated Army Order 15/S/81. Reply annexure P-4 dated 19.8.1991 was submitted by the petitioner in which it was made clear that the Forewords are obtained by authors on personal request. The normal channel of communication would stand violated only when any work is to be published officially. The book was no more to be published as an official version. The petitioner had neither given the same for publication, nor there had been any publication so far. Only a request had been made by the petitioner to the Chief of Army Staff for contributing Foreword. Army Order 15/S/81 did not prohibit obtaining contribution of Foreword for a book written by an Officer in individual capacity and no written permission was required through proper channel. The request which the petitioner made was not an official communication, nor it related to any service matter of the petitioner. On an earlier occasion also the petitioner had directly requested the Field Marshal Manekshaw for a Foreword to his book "Indian Army under East India Company". No objection had been taken at that time also. It was pointed out that since the book had not been published so far there was no question of having violated the Army Order. Petitioner, thus, has challenged the Caution/Warning administered through communication (annexure P-5) dated 4.9.91 for having violated the channels of correspondence. By the same order the petitioner was asked to return the draft copy of the "Annals of the Indian Military Academy".

(7) The petitioner has alleged that the during his posting at Army Headquarters in October, 1990 as Deputy Director Army Education, he was directly under Major General Sardana, who was the Additional Director General Army Education. Finding the atmosphere unworkable, as the petitioner was being hurt in every aspect, he applied for study leave so that he could pursue his post-doctoral research and also be away from that kind of atmosphere. Major General Sardana did recommend the application of the petitioner but did not place the same before the Screening Committee, in violation of Army Order 11/87.

(8) The service record of the petitioner prior to the episode of the book had either been "very good" or "outstanding" with Box Grading of 7 given by Major General K.L. D'Souza for the year 1989-90 with special remarks "an asset to the Organisation". Just before the petitioner was to be considered for promotion to

the rank of Maj. Gen. an attempt was made by Maj. Gen. Sardana to prevent the petitioner from becoming the Head of the Education Corps and to promote a junior, i.e., Brig. R.B. Sharma. During the period of 1990-1992 he was not assessed properly. Major General Sardana gave Box Grading of 5 to the petitioner for 1990-91. Though for 1991-92 box grading of 7 was given to the petitioner by Major Gen. Sardana, he evaluated the petitioner with regard to the personal qualities with low grading so that the same would stand in the way of the petitioner. Warning annexure P-5 in 1991 was issued only in view of the fact that the petitioner had directly requested the Chief of Army Staff for contributing Foreword to the petitioner's book. The reports which Maj. Gen. Sardana wrote were not fair and are the result of annoyance. This would be evident from the fact that nothing adverse had been recorded against the petitioner and yet low grading was given to him. Low grading in 1990-91 was given because of the book episode and not for any other reason that the petitioner had deteriorated in any manner. Box Grading 7 for 1991-92 was not supported by the pen picture and individual qualities of the petitioner. This was done purposely by Maj. Gen. K.N. Sardana in order to keep the petitioner below the required criteria.

(9) It is alleged that the petitioner made representation (annexures P-9 and P-11) with regard to the reports for the years 1990-91 and 1991-92 respectively but the same were rejected through communications (annexures P-10 and P-12 respectively).

(10) It is alleged that in October, 1992, on the retirement of Major General Sardana the process of selection of Colonel Commandant was announced. The petitioner is of the firm belief that though he got 100% votes yet Major General Sardana ensured that necessary notification is not issued in petitioner's favour. The special Annual Confidential Reports (for short "ACR") in 1993 was written by Lt. Colonel Ashok Joshi, who gave Box Grading of 5 to the petitioner. This was also done under the influence of Major General Sardana. Moreover this Box Grading of 5 was self contradictory, in view of the fact that General Joshi had assessed the petitioner as "prompt and methodical officer". There was nothing on record to suggest that the petitioner had deteriorated in his quality, in any manner. By the beginning of 1993 the petitioner found that it was rather difficult to continue at his post at Army Headquarter, Therefore, he requested for being posted out of Army Headquarter. The petitioner in April, 1993 was posted as Commandant, Army Education Corps Training College & Centre, Panchmari and became the Officer-in-charge (Record). In July, 1993 Brig. O.P. Parmar, an officer junior to the petitioner was promoted as Major General.

(11) On 25.8.1993 the petitioner met the then Chief of Army Staff and in this interview two basic grievances were projected by the petitioner (a) withholding of his appointment as Colonel Commandant and (b) promotion to the rank of Major General. Petitioner has alleged that Chief of Army Staff was convinced with regard to both. As regards the first grievance necessary directions were given to forthwith issue necessary notification, which, according to the petitioner, was

issued on 30.8.1993 (annexure P-7). As regards the other grievance of the petitioner, it is stated that the Chief of Army Staff desired that fresh inputs would be sought before injustice done is remedied. Petitioner has further alleged that on 20.9.1993 Major General S.K. Behl wrote Acr (annexure P-15). This, according to the petitioner, was special input for the period from April, 1993 to July 22, 1993. In this special input the petitioner was given Box Grading of 8 and was assessed as "eminently suited to head the Army Education Corp." Special report, according to the petitioner, under para 78 of Special Army Order 3/S/89 is called for a specific purpose, e.g., consideration for promotion. Acr for 1993-94 was written by Major General O.P. Parmar. Petitioner was given Box Grading of 8. Report for the period July, 1994 to June 1995 was written by Major General Seighal. In this report also, the petitioner was given Box Grading 8. Though the report is for the period ending 30th June 1995 yet the same was communicated through letter dated 27.2.1996. Communication was delayed with the sole object that the petitioner should not be able to make use of the same for the purpose of consideration of his case for promotion.

(12) In nutshell the grievance of the petitioner has been that except for the period of the episode of the book, namely, the intervening period from 1990-92, the service record of the petitioner had been very good/outstanding. Only during 1990-92 the petitioner was not assessed fairly and positively. Had there been anything adverse against the petitioner, the respondent ought to have brought the same on record. It cannot be said that for these two years the petitioner had deteriorated in his qualities since nothing adverse was brought to the notice of the petitioner. It was due to the book episode and since Major General Sardana was Commandant of the petitioner that these reports were spoiled by or under the influence of Major General Sardana.

(13) Statutory complaints preferred by the petitioner were rejected through annexures P-10, P-12 and P-23 without assigning any reason whatsoever. As such the same are violative of principles of natural justice. All statutory and non-statutory complaints are required to be considered by the Competent Authority. There is no provision that the same can be rejected without assigning any reason. It is necessary to pass a speaking order with reasons and the same must be communicated to the petitioner. In the absence of the same, the orders are liable to be quashed.

(14) The then Chief of Army Staff before whom the petitioner had appeared for interview, on 25.8.1993 unfortunately expired and because of which the petitioner could not be given redress in time. During that period no further action was taken on the grievance of the petitioner with regard to his promotion as Major General. Petitioner accordingly on 24.1.1995 met the new Chief of Army Staff in which meeting the petitioner expressed his grievances. Again, on 17.2.1995 the petitioner met the Chief of Army staff. Different details were explained to him and the petitioner was assured that the injustice done to him would be set aside. Petitioner has challenged the action of the respondents in not

promoting him to the next rank alleging that whenever the Selection Board is to consider an official for next step of promotion, service profile is to be taken into consideration, keeping all aspects in view. In short the reports are not to be blindly followed. The Board has to see that if there is a short period during which an official has not been assessed objectively, what was the reason for the same. Did the officer conduct himself badly? Or, is there anything on record to show that he deserved low grading? And, if it is found by the Board, on the basis of the entire record that the officer had not been assessed objectively, there would be no justification in denying the promotion.

(15) In this background the petitioner has prayed for quashing of annexure P-5, the warning issued to him; (Annexures P10 & P-11) the two communications as regards rejection of his complaints with regard to the ACRs for 1990-91 and 1991-92; Annexure P-20, conveying the result of the interview with Chief of Army Staff that he had not been found fit for promotion to the higher post and annexure P-23, the communication dated 24.1.1995 that the statutory complaint dated 19th May, 1994 against supersession to the rank of Major General has been rejected by the Central Government.

(16) Respondents in the reply filed on the affidavit of Lt. Col. Dinkar Addeb, Assistant Military Secretary (Legal), Army Headquarter, New Delhi, which is sworn on the basis of the service record of the petitioner, have taken a preliminary objection. It is alleged that there are various allegations leveled by the petitioner against Major General Sardana. The writ petition is liable to be dismissed due to failure to implead him as a respondent. On merits, it is denied that any injustice had been done to the petitioner. As regards promotion, it is stated that promotions in the army from the rank of Major to Lt. Colonel and above are through Selection Board. Each officer is, as per the existing policy and practice, considered three times, namely, fresh, first review and final review on the basis of his service profile along with his batch-mates. If an officer is approved for promotion in the first consideration as a fresh case, his seniority remains intact. If he is not approved as a fresh case, seniority is lost by one batch and he is considered as a first review case with the next junior batch and so on. If on further and last consideration also an officer is not found fit for promotion, he is deemed to be superseded. The army being a paramedical organization and having a command oriented structure, selection and parameters for each higher selection rank are from strict to stricter and thus supersession is a routine incidence of service. The promotion is not based on vacancies. All approved officers of a particular batch are empanelled and physically promoted in order of seniority, as and when vacancies occur.

(17) It is stated that para 108 of Regulations for the Army, 1987 (Revised Edition) and Army Headquarter Policy letter dated 6.5.1987 are the relevant guidelines for the Selection Boards, which are constituted under the authority of Chief of Army Staff and are comprised of very senior Army Officers. The relevant Selection Board for promotion from the rank of Brig. to the rank of Major General

is called No.1 Selection Board, which comprises of Chief of Army staff as Chairman, six Army Commanders, namely, General Officers, G-O-Cs in all five Commands and of Army Training Command and Military Secretary. All Members arrive at their decisions independently. Decision of the Board is recommendatory in nature. The Competent Authority to approve the same is the Central Government.

(18) The respondents have denied that the petitioner has been ignored for the post of Maj. General. It is stated that the performance of the petitioner as Brigadier has been average. He was not found fit for promotion to the rank of Major General on the basis of his overall profile. As per the record, the petitioner was posted as Head of Academic Department of Indian Military Academy in June, 1988. During March, 1987 the then Commandant, IMA had given a task to Brig. R.C. Seighal and a team of officers to write a book on the history of IMA. As the book was not up to the mark, the then Commandant Lt. Col. M.P.S. Bal directed the petitioner and other officers to continue the task. The petitioner was informed that the said task was given to him in the performance of his official duties and not in a personal capacity. The petitioner was entitled to take access to various documents, record, history of IMA, which was established some time before Indian Independence. Respondents have denied that writing of the book and work thereon was done by the petitioner alone in his private, personal or individual capacity. It was in continuance and furtherance of directions given to a team of officers for completing an officially assigned task as Head of Academic Department and, thus, the obtaining of Foreword from Chief of Army Staff is in contravention of Special Army Order No.15/S/81. The petitioner did submit an application to proceed on study leave but the same was not granted to him due to organizational interest and also for the reasons that the petitioner had already done Ph.D.

(19) The reply further says that the non-statutory complaints of the petitioner dated 14.7.1992 and 26.11.1992 against ACRs for the year 1990-91 and 1991-92 were duly considered by the competent authority and the same were rejected on merits after due application of mind. The Authority was not required to pass a speaking order.

(20) In so far as allegations leveled by the petitioner against Major General Sardana that the impugned ACRs were written due to personal animosity or for any other reason or under his influence, the respondents have stated that the allegations pertain to Major General Sardana, who has not been arrayed as a party to the writ petition and for that reason the respondents are not in a position to state anything. However, it has been stated that the non-statutory complaints were duly considered on the basis of the relevant record and on due application of mind, the same were rejected. The respondents have also stated that the petitioner was given a higher average grading report by the initiating officer Lt. General Ashok Joshi but have denied that Lt. General Joshi was under the influence of Major General Sardana. It is stated that Lt. General Joshi

initiated three reports of the petitioner and all the reports were found to be inconsistent. Petitioner was posted out only after he had completed his normal tenure at Army Headquarter.

(21) As regards the petitioner's interview with Chief of Army Staff on 25.8.1993, it is stated that after the interview the then Chief of Army Staff directed that the case of the petitioner for promotion to the rank of Major General be not considered till fresh inputs are received. The petitioner's case thereafter was to be considered only after fresh inputs had been received. In so far as the Acr initiated by S.K. Behl on 20.9.1993, the same could not be accepted and treated as fresh input as Acr also was technically invalid as per para 63 of Special Army Order 3/S/89. A delayed Acr cannot be initiated by the reviewing officer. Respondents have not denied that the petitioner was given interview by Chief of Army Staff on 24.1.1995 and 17.2.1995, but it has specifically been denied that the Chief of Army Staff, after the interview directed the Military Secretary or any other officer to set aside the Acr initiated by Major General Sardana. It is stated that the petitioner was informed by the Military Secretary's Branch of the result of the interview that he had not been found fit for promotion to the higher rank on the basis of his overall service profile.

(22) In the light of the aforementioned pleadings, counsel for the parties made their submissions at length. The original record of selection, namely, the minutes of 120th, 121th and 129th Meetings of No.1 Selection Board held respectively in October, 1992, 23/24.4.1993 and 21/22.10.1994 were made available to us, which have been gone through by us. Respondents also made available the service record of the petitioner, which contains original ACRs and other relevant documents. We have also gone through the same.

(23) As per the instructions Box Grading of 9 is considered as "outstanding", Box Grading 8 or 7 as "above average", Box Grading 6 or 5 is "high average" and Box Grading 4 as "average". Box Grading 3 or 2 is "low average" and Box Grading 1 is "below average". Petitioner's case is that his service profile except for 1990-91 and 1991-92 has been outstanding or "very good". Only during the intervening period of 1990-91 and 1991-92 the petitioner was not assessed objectively. On a reading of the entire petition the main and primary grievances made by the petitioner are against Maj. Gen. Sardana that it was due to his concerted effort and as a result of his annoyance towards the petitioner because of the petitioner's undertaking the work of writing History of Ima that petitioner's service profile was damaged by him and under his influence by the other officers, namely, Lt. General Ashok Joshi and Maj. Gen. P.K. Khanna.

(24) Needless to add that such allegations of malafides leveled by the petitioner against certain officers, without impleading those officers as party to the writ petition, cannot be permitted to be urged in support of his contention. Personal allegations made against those officers could be answered by them and no one else. It is not that the petitioner was not put to his guard that such allegations cannot be entertained or looked into in the absence of those officers as parties to

the petition. In the counter affidavit filed by the respondents on 11.12.1995 the petitioner's attention was drawn to this lacuna in the petition. Though the petitioner filed rejoinder thereafter but made no effort to implead them as parties. Even during the course of hearing it was pointed out to learned counsel for the petitioner that in the absence of those officers being parties, it will not be permissible for the petitioner to press for those allegations of personal malafides against the officers concerned. We will have, Therefore, to proceed on the basis of other material available on record to look into the grievances made by the petitioner by ignoring the allegations of malafide.

(25) The petitioner has not made any grievance as regards his ACRs prior to 1989. His statutory complaints were also against the ACRs for the year 1990-91 and 1991-92. The petitioner is not right in saying that he was graded "outstanding" or "very good" prior to 1990; as is evident from service record, Acr for the period 1.9.1988 to 31.8.1989 does show that the initiating officer gave the Box Grading of "5". The Senior Reviewing Officer gave the Box Grading of "5" whereas the Head of the Service gave Box Grading of "4". While giving Box Grading a number of factors are required to be taken into consideration, namely, professional competence appropriate to his rank and service; administrative activities and judicious utilization of human and material resources; creativity; clarity of thoughts; analysis of decisive approach in reaching conclusions and deciding a definite course of action etc. Initiating Officer and the Reviewing Officer while giving their Box Gradings have to take into consideration 17 qualities and traits of an officer. For the period 1.9.1986 to 19.6.1987 also the petitioner was graded by the Initiating Officer, Reviewing Officer and Senior Reviewing Officer as 7, 6 and 7 respectively. For a period from 1.9.1989 to 27.7.1990, which is an earlier Acr, Box Grading of "7" each was given by the Initiating Officer, Reviewing and Non-technical Senior Reviewing Officer whereas Box Grading of "5" was given by the Head of Service.

(26) For the period from 1.9.1991 to 30.6.1992, Initiating Officer gave Box Grading of "7" whereas Reviewing Officer gave Box Grading of "5". Incidentally it may be mentioned that the Initiating Officer was Major General Sardana. For the period from 1.11.1992 to 1.2.1993 Box Grading of "5" was given both by Reviewing Officer and Senior Reviewing Officer. Only after the petitioner had been posted out of the Army Headquarter, in the next Acr for the period from 1.7.1993 to 30.6.1994, both Initiating Officer and Reviewing Officer gave Box Grading of "8" and also for the period from 1.7.1994 to 30.6.1995 the petitioner was given Box Grading of 8, both by the Reviewing Officer and N.S.R.O. Initiating Officer was not available for giving his Box Grading.

(27) The record nowhere reflects that the warning as conveyed to the petitioner through annexure P-5 was ever taken into consideration or influenced either the Initiating Officers or the Senior Reviewing Officers or the Head of the Service in giving their respective gradings. As a matter of fact the warning has not at all been placed on the petitioner's service record and as such it cannot be said that

it ever or might have influenced the officer(s). Record does reveal that even prior to 1990 the petitioner had been given Box Grading of less than "7" and "6". In the absence of any other material and in the absence of non-impleadment of Major General Sardana, against whom the petitioner has leveled allegations of malafide, it cannot be said that the petitioner was not properly assessed or that the book episode ever influenced the judgment of the Initiating Officers, Reviewing Officers or the Head of Service in making their respective assessments.

(28) Acr initiated by Maj. Gen. S.K. Behl on 20.9.1993 rightly was not accepted as it was technically invalid as per the Instructions contained in Para 63 of Special Army Order No.3/S/89, which says:

"DELAYED ACRs will not be initiated by the Ro under the provisions of Para 73 below. The above para suggests that a delayed Acr cannot be initiated by the Reviewing Officer. Para 54 lays down the period of initiation of yearly reports. For delayed reports relevant instructions are to be found in Paras 61 and 62. Para 73 gives the circumstances under which reports can be initiated by the Reviewing Officer. While para 73 enables the Reviewing Officer to initiate Annual Report or Interim Report, Para 63 puts a restriction on the power of the Reviewing Officer to initiate a delayed report. The petitioner's contention is that Annexure P-15 is to be treated as a special input in view of the directions of Chief of Army Staff and such special input is called under para 77 only for the purpose of promotion. Para 77 lays down the circumstances under which special report may be rendered and says: "77. A special Report may be rendered under the following circumstances: (a) When called for by Army Headquarters or GOC-in-C Command for any specific purpose, e.g. to assess an Officer's fitness for employment in a particular rank or for promotion. (b) When reporting officer considers it necessary to recommend an officer for change of employment. Such reports should normally be initiated when an officer has proved to be unsuitable in his existing appointment due to reasons other than professional incompetence or inefficiency or inherent traits of character. This is not a case of adverse Report as in Para 79 below. (c) In case of officers approved for promotion to higher rank, when drop in performance is noticed which in the opinion of his superior officer renders him unsuitable for promotion."

(29) The purpose for which aforementioned special report may be called is stated in para 78 that it is called for a specific purpose. One of such purpose is consideration for promotion. Para 78 reads:

"A special Report is distinctly different in character from the Review and Adverse Reports, which are initiated in the event of unsatisfactory performance. A Special Report is called for a specific purpose of consideration for promotion, permanent commission, for any specific employment and so on."

(30) No doubt that the Chief of Army Staff after the petitioner was granted interview on 25.8.1993 had remarked that the case of the petitioner for promotion to the higher rank be not considered till fresh inputs were received but

there is nothing on record to suggest that annexure P-15 was the special input as contemplated under Para 77 of the Special Army Order. The record also does not reveal that the Chief of Army Staff had called the special input or that Maj. General S.K. Behl sent annexure P-15 as a special input. Rightly the petitioner was informed that this report annexure P-15 being a delayed report was technically not in order.

(31) Minutes of the Selection Board held in October, 1992, April, 1993 and October, 1994 perused by us reflect that the Selection Boards recorded the decisions and made their recommendations on the basis of service pro-file of each officer. The petitioner was duly considered on three different occasions by three different Selection Boards. Policy of promotion is not under challenge. The petitioner along with other officers was duly considered on the basis of the same criteria. There is no allegation of malafide against any of the members of the Selection Board. Thus, we find no ground to interfere with the recommendations made by the Selection Board. Against his non-selection and supersession the petitioner filed complaints, which were duly considered in the light of the grievances made.

(32) The grievance of the petitioner is that the respondents ought to have assigned or conveyed reasons while communicating rejection of the petitioner's non-statutory/statutory complaints.

(33) It may be observed that no rule or administrative order has been brought to our notice for recording of reasons while rejecting a representation. In the absence of any statutory rule or statutory instructions requiring the Competent Authority to record reasons for rejecting a representation made against an adverse entry, the Competent Authority isn't under any obligation to record reasons. Record does suggest that all points raised by the petitioner were duly noted and considered by the Competent Authority in exhaustive notes, which are available on the file. Comparing the earlier service pro-file, vis-a-vis, the impugned ACRs it was noticed that there was no inconsistency in the Box Grading given to the petitioner for the relevant period for which the complaints had been made by the petitioner. The petitioner's complaint in the light of the comments made thereon by the Officer forwarding the same to the Competent Authority were duly considered by the Competent Authority and were rejected. May be that identical orders were passed in annexures P-10 and P-12, but it cannot be said that mere recording of an identical order would amount to non-application of mind. Representations have been rejected on due consideration in a fair and just manner. The order of rejection would not be rendered illegal merely on the ground of absence of reasons. In the absence of any statutory order or statutory provisions requiring the Competent Authority to record reasons or to indicate the same to the petitioner, no exception can be taken to the order rejecting the representations merely on the ground of absence of reasons. The complaints were not statutory. Statutory complaints are made only u/s 27 of the Army Act. Both were non-statutory complaints. The same were

rejected and rejection was communicated through annexures P-10 and P-12. As the complaints were duly considered no grievance can be made that in the absence of reasons or communication thereof the same are bad. Reference may be made to the decisions of the Supreme Court in *Union of India and others Vs. E.G. Nambudiri*, which holds that the rejection of representation against adverse remarks need not be by a speaking order, in the absence of any statutory rules or statutory instructions requiring the Competent Authority to record reasons. However, record must show that the complaints were duly considered and a fair decision was taken. This decision was followed in *Chandra Gupta, I.F.S. Vs. The Secretary, Govt. of India, Ministry of Environment and Forests and others*, which says:

"THERE is no dispute that there is no rule or administrative order for recording reasons in rejecting a representation. In the absence of any statutory rule or statutory instructions requiring the competent authority to record reasons in rejecting a representation made by a government servant against the adverse entries the competent authority is not under any obligation to record reasons. But the competent authority has no license to act arbitrarily, he must act in a fair and just manner. He is required to consider the questions raised by the government servant and examine the same, in the light of the comments made by the officer awarding the adverse entries and the officer countersigning the same. If the representation is rejected after its consideration in a fair and just manner, the order of rejection would not be rendered illegal merely on the ground of absence of reasons. In the absence of any statutory or administrative provision requiring the competent authority to record reasons or to communicate reasons, no exception can be taken to the order rejecting representation merely on the ground of absence of reasons. No order of an administrative authority communicating its decision is rendered illegal on the ground of absence of reasons *ex facie* and it is not open to the court to interfere with such orders merely on the ground of absence of any reasons. Howsoever, it does not mean that the administrative authority is at liberty to pass orders without there being any reasons for the same. In governmental functioning before any order is issued the matter is generally considered at various levels and the reasons and opinions are contained in the notes on the file. The reasons contained in the file enable the competent authority to formulate its opinion. If the order as communicated to the government servant rejecting the representation does not contain any reasons, the order cannot be held to be bad in law. If such an order is challenged in a court of law it is always open to the competent authority to place the reasons before the court which may have led to the rejection of the representation. It is always open to an administrative authority to produce evidence *aliunde* before the Court to justify its action."

(34) Annexure P-5 is only a letter dated 4.12.1991 sent by Major General Sardana to the petitioner informing him that he had obtained a Foreword directly from Chief of Army Staff for the book "Annals of IMA" without prior permission of IMA. The petitioner was cautioned to refrain from indulging in such practices,

which are vocative of the prescribed order on channels of correspondence and are contrary to the accepted norms of service. Petitioner was asked to return the draft to Ima by 15.12.1991 and ensure that the book is not published without prior permission of IMA. Neither Special Army Order 15/S/81, nor Regulation 557 prohibits an individual from approaching the Chief of Army Staff with a request to write a Foreword to a book being a personal work of an individual. Respondents have not placed on record any material to show that the petitioner was assigned the work of writing the book, whereas the petitioner has alleged that the book was personal adventure of his own. As such we have to proceed on the basis that it was his personal adventure. Therefore, when on an earlier occasion also the petitioner had been obliged by the Field Martial Manekshaw, the then Chief of Army Staff, with a Foreword and no objection was taken, no exception could have been made in petitioner's approaching the Chief of Army staff, who willingly wrote a Foreword to his book and for that reason the cautionary remarks "to refrain from practices which are vocative of prescribed orders on channels of correspondence and are contrary to the accepted norms of Service" contained in annexure P-5 are liable to be quashed and set aside. In these proceedings we are not deliberating on the right of the petitioner to publish the book "Annals of Indian Military Academy" without permission as the same would be dependent upon the interpretation of the relevant Special Army Order and the information contained in the Book, which has not been placed on the record. This question as such is left open. In so far as claim for promotion and grievance towards the impugned ACRs are concerned, we find no ground to interfere with Annexures P-10, P-12, P-20 and P-23.

(35) In view of the above the writ petition is partly allowed by quashing the aforementioned cautionary remarks in Annexure P-5. Rest of the prayers made in the writ petition are declined. Rule is discharged. Parties are left to bear their respective costs.