
(2003) 11 GAU CK 0030

In the Gauhati High Court

Case No : Writ Petition (C) No. 194 (SH) of 2003

M.S. Chahal

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 14-11-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) GLT 548 Supp

Hon'ble Judges : B. Lamare, J

Bench : Single Bench

Advocate : H.S. Thangkhiew and B.W. Phira, for the Appellant; C. Choudhury, for the Respondent

Final Decision : Dismissed

Judgement

B. Lamare, J.—Heard Mr. H.S. Thangkhiew, learned Counsel assisted by Mr. B.W. Phira, learned Counsel for the Petitioner and also heard Mr. C. Choudhury, learned Senior Addl. C.G.S.C. for the Respondents.

2. The case in brief is that the Petitioner is a Major in the Infantry of the 4th Battalion of Sikh Regiment and he is presently posted at Shillong. An All India Competitive Examinations for training in Defence Service Staff College for higher appointments used to be held every year and the common entrance examinations held in September every year as provided under para 7 of the Special Army Order No. 9.8.87. The procedure for selection of Officers for DSSC and TS Course is also prescribed under the said Special Army order.

3. The Petitioner has applied for DSSC in the year 1988 and he appeared at the entrance examination but could not qualify for selection. He was entitled to two more chances but as the Petitioner was on duty in operation Vijay (Kargil War) and Operation Rakshak (J and K counter insurgency operation) for the three years he could not apply or appear for the said examination and hence he was given compensatory chance in the year 2002 when he was posted at Shillong.

4. The Respondent No. 3 issued a letter vide No. A/17053/GS/MT-2 dated 27.3.2002 stating herein that in view of operation Parakram and related movement/deployment of formations it has been decided to dispense with the written examination scheduled in September, 2002 and officers will be nominated for DSSC-59 based on career Profile Values (CPVs). By the said letters it is clarified that the eligibility criteria would be as per SAO.9/S/87. It is this order issued by the Respondent No. 3 that the Petitioner is aggrieved and approached this Court by this petition.

5. The case of the Petitioner is that by the letter dated 27.3.2002 the process for conducting written examination has been violated. The Respondent No. 3 by dispensing with the written examination paving way for arbitrary action in as much as officers upto 3 years do not have any career evaluation and officers upto 8 years of service have no ACRs. Such Officers are evaluated through a one page cryptic remark of Unit Assessment Card only and there is no scope for detailed and scientific evaluation of career. Moreover, the young Officers whose assessment are based only in the Unit Assessment Card (UACs) and those officers below 8 years who have no ACRs are given a chance to be selected for the DSSC-59.

6. It is also the case of the Petitioner that he apprehends that the aforesaid letter dated 27.3.2002 it will lead to the process of pick and choose and the officers who are not eligible on merits to be selected for DSSC-59. This also lead to arbitrary nominations treating the officers with ACRs and those Officers without the ACRs at par in the process of selection. The Petitioner's case is also that after issuance of the said letter dated 27.3.2002, he submitted a statutory complaint on 24.10.2002 challenging the nominations on the basis of the aforesaid letter but his statutory complaint has not been disposed of even after a lapse of 180 days, therefore, by this action the Respondents have acted illegally and arbitrary in depriving the Petitioner of his right to be selected to the said DSSC-59.

7. The Respondents countered the claim of the Petitioner and stated in their affidavit that in the year 2002 due to Operation Parakram there was large scale movements/deployment of Arniy Units. Under such circumstances, it was not desirable operationally nor was it fair for officers deployed in operations to undertake a comprehensive competitive examination. The issue was examined in detail at various levels and after the detailed examination of the matter it was decided as matter of policy by the Chief of Army Staff that the written examination scheduled in September, 2002 for selection of Officers for DSSC course No. 59 and TSOC 29 shall be dispensed with. It was also decided that the assessment shall be made on CPVs through a computer generated merit based selection. Accordingly, this policy was formulated vide letter dated 27.3.2002. It was also decided as a policy matter that the officers who are in their last mandatory chance for DSSC-59 can exercise the option to withdraw from selection based on CPVs for the said course if they desire and such officers, who

decided to withdraw were also given the option to avail their mandatory chances in the 2003 for taking part in the competitive written examination for DSSC-60.

8. The Respondents also contended that the Petitioner taking advantage of the said policy decision as per letter dated 27.3.2002 applied for selection based on CPVs his case was laid down as per norms of selection alongwith other eligible officers based on comparative merit. But the Petitioner could not be selected based on his own profile and comparative merit. The Petitioner also did not opt for withdraw from selection based on CPVs and availed his subsequent mandatory chance in the year 2003 by taking part in the competitive written examination for DSSC-60. The Petitioner having not availed the option and preferred to take the opportunity based on CPVs and having availed in the selection process is not entitled to challenge the selection for DSSC-59.

9. The Respondents also contended that the Petitioner submitted the statutory complaint on 24.10.2002 challenging his non selection for DSSC-59 and the same was duly examined and as there was no merit in the complaint it was rejected by the Central Government by order dated 23.6.2003.

10. Mr. Thangkhiew, learned Counsel for the Petitioner contended that the officers were given three chances to appear for selection for DSSC and the age limit is prescribed as 35 years. The Petitioner could avail chance only in the year 1998, in the year 1999, 2000 and 2001 he could not avail the three chances as he was on duty in Operation Vijay and Operation Rakshak in J and K, the Petitioner was therefore, given last mandatory chance in the year 2002. Therefore, the last mandatory chance in the year 2002 is a very valuable chance for the Petitioner for his career in service, but by the issuance of the said letter dated 27.3.2002 by the Respondent No. 3 the scope was opened for selecting the officers Who were junior and did not have any ACRs like the Petitioner. Therefore, the Petitioner has been treated illegally as equal to his junior. The matter of selection by CPVs is totally wrong and arbitrary and as this leads to pick and choose policy in the matter of selection of officers, the junior officers who are not equal to the Petitioner. The assessment based on UAC is totally against the selection made in the previous years as there was no written examination to assess the merits of the officers. The learned Counsel also submitted that the Petitioner has been treated arbitrarily and malafide with an intention to deprive him of being selected for the DSSC-59. Even the statutory complaint of the Petitioner should have been disposed of in April, 2003 has not been disposed of till date of filing of the writ petition after a lapse of a statutory period of 180 days for disposal of the complaint. This was the arbitrary and discriminatory action on the part of the Respondents contents by the learned Counsel for the Petitioner.

11. Mr. C. Choudhuiy, learned Counsel for the Respondents at the first instant submitted that the Petitioner has no legal or fundamental right to challenge the said letter dated 27.3.2002 or the process for selection thereunder in as much as the Petitioner was very much aware that the officers who are availing the last mandatory chance for DSSC-59 were given an option to appear for the DSSC-60

and to avail the compensatory chance in the year 2003. The Petitioner had chosen to apply for CPVs based selection at his own will fully knowing that he has the option to appear for the DSSC-60 in the year 2003. According to the counsel that the Petitioner having appeared in the DSSC-59 and could not come out successfully has no right to challenge the selection made for DSSC-59. The learned Counsel also submitted that the Petitioner having availed in the selection cannot turn around and challenged the process for selection.

12. Mr. Choudhury further contended that the issue of the letter dated 27.3.2002 was made after considering the defects faced by the officers due to various operations which would not be possible to have the written examination for DSSC-59 in September, 2002. Therefore, the written examination for September, 2002 was dispensed with under the order of Chief of Army Staff in order to meet the operational and administrative requirements of the Army during the Operation Parakram. The matter was examined at length and a policy decision was decided to the selected officers based on CPV for DSSC-59. The learned Counsel also contended that the decision to make the selection for DSSC-59 based on CPVs through a computer generated merit based selection was found to be reasonable by the authorities and therefore, the officers who had their mandatory/compensatory chances were permitted to apply for CPVs based examination for DSSC-59. It is also contended that the inputs required for selection of officers for the course whether based on UAC or ACRs are the same. It is also contended that the evaluation by way of UAC is as detailed and scientific like any other form of appraisal. The UAC in fact is a confidential report in which officers are assessed for their performance during the reporting period. It was a conscious decision taken by the Army authorities to replace ACRs with UACs in respect of those Officers below eight years of service. SAO 9/S/87 came into effect from 1.1.1990 and it has not mentioned about the UAC which was introduced only in the year 1989. The learned Counsel therefore, contended that the selection made through CPVs is as good as made by holding a written examination.

13. From the pleadings made by the parties and submissions by the learned Counsel for the Petitioner it is seen that the first point to be considered in this petition is whether the said letter dated 27.3.2002 dispensing with the written examination was issued fairly and properly by the competent authority. For the purpose of proper examination the letter is reproduced below:

Extract of Army headquarter letter No. A/17053/GS/MT-2 Dated 27 March, 2002.

Combing Entrance Examination for DSSC-59/TSOC-29 Reference: (a) SAO 9/S/87 as amended (b) Army HQ DGMT (MT-2) Letter No. A/16074/GS/MT-2 dated 21.9.2001.

General

1. In view of the turbulence caused due to Operation PARAKRAM and related movement/deployment of formations, it has been decided to dispense with the

written examination scheduled in September, 2002. Officers will be nominated for DSSC-59 and TSOC-29 based on Career Profile Values (CPVs).

2. Modalities to be followed are given in the succeeding paragraphs.

Eligibility conditions

3. Eligibility conditions laid down in the SAO 9/S/87 (as amended) will hold good. However, it may be noted that only those officers who are having one of their mandatory/compensatory chances are permitted to apply. Other eligibility conditions will remain the same.

Nominations of Officers for the Course

4. Officers will be nominated in the order of merit for each Arm and Service based on their "Career Profile Values" (CPVs). Top 20 officers in the overall list will comprise the competitive merit.

Processing of Applications

5. IAFX 1962 (Mod) will be submitted to Army Head-quarters so as to reach DGMT (MT-2) between 01 Apr to 15 Jul 2002.

6. Documents in support of educational qualifications (marks sheet etc.) and service in CI/HAA duly attested will be sent alongwith the applications, where necessary. Irrelevant Part II orders will NOT be enclosed. Incomplete applications are liable to be summarily rejected. Disciplinary action will be initiated for furnishing any false information. Other instructions as given in our letter quoted above will be complied with by all applicants.

7. Officers will be informed of the correctness and acceptance of their applications after due processing is done by DGMT (MT-2) by 10.9.02.

The perusal of the above letter shows that due to Operation Parakram and related movement/deployment of formation the written examination was dispensed with and the career CPVs was introduced for DSSC-59. However, the eligibility criteria is laid down in ASO 9/S/87 as amended was made applicable. The original records produced by the Central Govt. Standing Counsel shows that the matter was examined by the Director General, Military Training (DGMT) and thereafter it was put up to the higher authorities and finally obtained the approval of Chief of Army Staff. The record also shows that the decision to dispensed with the written examination was to enable the officers who were to avail their mandatory/compensatory chances to appear for the selection. The records also show that in the year 1971 due to war the DSSC examination for 1972 had to be cancelled as no applications could be called for the said order therefore, the matter dispensed with the written examination for DSSC-59 was found to be reasonable and just by the authorities. This policy decision which had the approval of the Chief of Army Staff in my opinion is found to be just and reasonable and there is no arbitrariness and malafide in making this decision. Moreover, the Petitioner who is fully aware of option given to those officers who

had a mandatory chance to make their option for the DSSC-60 in the year 2003 did not make any option for the DSSC-60. The Petitioner therefore, has not bias or there is no discrimination against the Petitioner by making this decision in issuing the letter dated 27.3.2002 for DSSC-59. The record also shows the decision dispensed with the written examination was made only for DSSC-59 and not for the future DSSC-60. This in my opinion is within the scope and wisdom of the competent authority as they are the best judge to make such a policy decision for their own officers due to prevailing circumstances of Parakram Operation and other deployment of forces during the period. Therefore, there is no arbitrariness or malafide in the policy decision made by the Respondents by dispensing with the written examination for DSSC-59. The next point for consideration is with regard to the statutory complaint made by the Petitioner on 24.10.2002. According to the Petitioner although the course was to start from 16.6.2003 but his statutory complaint was not disposed within the statutory period of 180 days which has expired in April, 2003. Therefore, according to the Petitioner, the non disposal of this writ petition shows the discriminatory and arbitrary attitude of the Respondents towards Petitioner to deprive him for the chance of selection. To answer to the said point raised by the Petitioner we may look into the original records produced by the counsel for the Respondents. The records show that the complaint of the writ Petitioner was examined at various levels of the military authorities and lastly, the matter was placed before the Govt. of India, Ministry of Defence and the Central Govt. found that the grievances raised by the Petitioner in his complaint and the complaint was disposed of by the order dated 23.6.2003 by the Director to the Govt. of India, Ministry of Defence with the following orders:

No. A/17053/GS/MT-2/612-C/D(GS-II)/3 Government of India Ministry of Defence New Delhi 23.6.2003

ORDER

IC-47781K Major MS Chahal, Int. has submitted a Statutory Conqjlaint dated 24 October, 2002. The Officer has stated that in March 2002 Army HQ issued a new policy for nomination of candidates for DSSC-59 based on Career Profile Values (CPVs). The selection process adopted for nomination is perverse and suffers with gross anomalies and inconsistencies.

2. He has requested for the following:

(a) The list of nomination of candidates issued by Army HQMS Branch letter No. A/14714/DSSC-59/MS-18 dated 11 October, 2002 be cancelled being unfair unjust and unconstitutional.

(b) The pohcy under which various CPVs parameters have been classified and assessed be set aside.

(c) Selection process be commenced de novo amongst the candidates through revised policy after rectifying the anomalies.

(d) Alternatively he be selected/nominated candidates for DSSC-59.

3. The Statutory Complaint of the officer has been examined in the light of the analysis/recommendations of AHQ. After consideration of all aspects of the complaint and viewing it against the redress sought, it has emerged that policy for nomination based on CPVs was finalised after due deliberation and apprehensions of the officer regarding policy are unfounded. The officer did not exercise the option of appearing DSSC entrance examination to be conducted in year 2003. The officer has not been nominated for DSSC-59 due to comparative merit, based on CPVs derived as a result of laid down which was uniformly applied to all in service.

4. The Central Government, therefore, rejects the Statutory Complaint, dated 24 October, 2002 submitted by IC-47781k, Maj MS Chahal. Int.

By order and in the name of the President.

Sd- (Sanjay Prasad) Director to the Government of India

From the above order, it shows that the policy for selection based on CPVs was taken after proper examination and the Petitioner had accepted the same, he did not exercise his option for appearing in DSSC-60 to be held in the year 2003. The order disposing the complaint of the Petitioner was passed after the Petitioner has approached this Court in this petition. The contention of the Petitioner that the delay in disposing the complaint was violation of the principle of natural justice to frustrate the claim of the Petitioner for selection cannot be accepted as the writ Petitioner while approaching this Court has prayed for stay of the nomination for DSSC-59, but this Court consider it fit not to stay the selection of DSSC-59, but instead observed that the selection for DSSC-59 shall be subject to the result of this writ petition. Moreover, inspite of disposing the statutory complaint, the Petitioner has opted for appearing in DSSC-59 and also appeared in the selection but could not come out successfully. Therefore, the contention of the Petitioner that the delay in disposal of the complaint was to frustrate his selection for DSSC-59 is totally unacceptable.

14. The next claim of the Petitioner in this writ petition is a direction from this Court not to give effect to the letter dated 27.3.2002 and also to quash the said letter and selection on the alternative the Petitioner has also sought for a direction to allow him to join the course. This claim of the Petitioner in this writ petition is contradictory. It shows that if the Petitioner is allowed to join the course the question of quashing the letter dated 27.3.2002 does not arise therefore, only illegality according to the Petitioner in the said letter dated 27.3.2002 and the selection made thereunder is not questioned by the Petitioner if he is allowed to join the course.

15. The next point to be seen is as to whether the Petitioner is barred from raising the process of selection by CPV Computer generated merit based selection after he has appeared for selection for DSSC-59 could not come out

successfully.

16. The Apex Court in the case of Madanlal and Ors. Petitioners v. State of J and K and Ors. Respondents reported in 1995 3 SCC considering the case of Om Prakash Shukla Vs. Akhilesh Kumar Shukla and Others, in paragraph 9 and 10 of the judgment is as follows:

Before dealing with this connection, we must keep in view the salient fact that the Petitioners as well as the contesting successful candidates being Respondents concerned herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Upto this stage there is no dispute between the parties. The Petitioners also appeared at the oral interview conducted by the Members concerned of the commission who interviewed the Petitioners as well as the contesting Respondents concerned. Thus the Petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted. In the case of Om Prakash Shukla v. Akhilesh Kumar Shukla it has been clearly laid down by a Bench of three learned Judges of this Court that when the Petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a Petitioner.

Therefore, the result of the interview test on merits cannot be successfully challenged by a candidate who takes a chance to get selected at the said interview and who ultimately finds himself to be unsuccessful. It is also to be kept in view that in this petition we cannot sit as a Court of appeal and try to reassess the relative merits of the candidates concerned who had been assessed at the oral interview nor can the Petitioners successfully urge before us that they were given less marks though their performance was better. It is for the interview committee which amongst others consisted of a sitting High Court Judge to judge the relative merits of the candidates who were orally interviewed, in the light of the guidelines laid down by the relevant rules governing such interviews. Therefore, the assessment on merits as made by such an expert committee cannot be brought in challenge only on the ground that the assessment as not proper or justified as that would be the function of an appellate body and we are certainly not acting as a court of appeal over the assessment made by such an expert committee.

The above law laid down was also followed in the case of Chandra Prakash Tiwari and Others Vs. Shakuntala Shukla and Others, in this case also, the Apex Court followed laid down in the case of Omprakash Shukla v. Akhilesh Kumar Shukla

and also the case of Madanlal v. State of J and K held in paragraph 34 of the judgment which reads as follows:

There is thus no doubt that while question of any estoppel by conduct would not arise in the contextual facts but the law seems to be well settled that in the event a candidate appears at the interview and participates therein, only because the result of the interview is not "palatable" to him, he cannot turn round and subsequently contend that the process of interview was unfair or there was some lacuna in the process.

The above law laid down by the Apex Court is also followed by this Court in a catena of cases that whenever a candidate has appeared in an interview and participated in all the process of selection and having apprehension that he would not come out successfully cannot turn round and challenge the interview for selection process.

17. The records produced show that 483 officers appeared for DSSC-59 and TSOC-29 out of whom 107 officers were nominated/selected and 10 officers were kept as reserve, 7 officers were nominated for TSOC-29 and one officer was kept reserve. Record also shows that the position of the Petitioner according to the merit list is at serial No. 483.

18. This Court also strongly observed that the Petitioner is trying to mislead this Court when he did not make any statement nor whisper thereof in his writ petition that he appeared for selection for DSSC-59. This action of the Petitioner shows that he was trying to misuse the process of Court by concealing the facts from the court. The Petitioner admitted this fact of his appearing before the selection for DSSC-59 in his affidavit in reply only after the question was raised by the Respondents in the affidavit-in-opposition. Even then he made a vague statement that he did not make any option for compensatory chance in the year 2003 as he has excellent record and good chance of being selected for DSSC-59 on the basis of his outstanding career profile values. The action of the Petitioner therefore is uncalled for and by his own action, the Petitioner is not entitled to any relief from this Court in exercising of power under Article 226 of the Constitution.

19. For the aforesaid reasons, I find no merit in this writ petition and accordingly, it is dismissed. However, considering the facts of the case, there will be no order as to costs.