
(1995) 02 MP CK 0056
In the Madhya Pradesh High Court
Case No : M.P. No. 5137 of 1989 (J)

Nb. Sub. Uttam Chand

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 16-02-1995

Acts Referred:

Citation : (1995) 2 MPJR 167

Hon'ble Judges : M.V. Tamasker, J

Bench : Single Bench

Advocate : Madan Singh, for the Appellant; I. Nair, for the Respondent

Final Decision : Dismissed

Judgement

M.V. Tamaskar, J.

The petitioner was appointed Naib Subedar in the year 1980. He has been superseded for promotion to the post of Subedar. The promotions are based on the Rules (Exhibit-A) which classifies the criteria for promotion of J. C. Os. and N. C. Os. The relevant Rule in the instant case is Rule 4 (c), which is quoted below:

4. Annual Confidential Reports/Character Rolls -

(c) For promotion to the rank of Subedar -

(i) Three out of the last five reports rendered on an individual should be "High Average" out of which at least two should be on regimental duty or as an Instructor in Army School of Instruction in the rank of Naib-Subedar.

(ii) No report should be lower than "Average" in the last three years.

(iii) Should have been recommended for promotion in the last three years.

(iv) Should not have been involved in disciplinary vigilance or criminal case.

The record of the petitioner as disclosed is as under :

Naib Subedar Uttam Chand has stated that he had earned very good annual confidential reports for the years 1981, 1982 and 1983 and he was also approved for promotion to the rank confidential reports from 1981 to 1988 is given below :

1981

1982

1983

1984

1985

1986

1987

1988

(a) IO 3-R

4-R

4-R

4-R

2-R

2-R

3-R

4-R

(b) RO 3-R

4-R

3-R

2-NR

2-R

2-NR

2-NR

4-R

Certain amplifications to this record are given below :

IO Means Initiating Officer

RO means Reviewing Officer

2 points means "Average"

3 points means "High Average"

4 points means "Above Average".

R. means "Recommended for next promotion"

NR means "Not recommended for next promotion."

On perusal of the data given in paragraph-5 of the Return, it is found that the petitioner has not been recommended for promotion in the last three years i.e. he has been recommended in the year 1982 and 1983 and not in the year 1984, as such, the petitioner has been superseded. He is graded as "Above Average" i.e. 4 points in the years 1982 and 1983 but not in the year 1984 as the Initiating Officer has given four marks but not the Reviewing Officer who has given two marks to him.

The contention of the learned counsel for the petitioner is that down grading in the year 1984 was mala fide. He has invited attention to paragraph 18 of the petition. It is quoted as under :

18. That the trouble started only when "reviewing Officer" was asked to explain reasons about the adverse remarks of "Not Recommended; without any adverse support. That before endorsing any adverse remarks on ACR there should be either written warning or criminal case against the incumbent and such remark is generally communicated during the month of December or early January. It is suspected that the petitioner was to be promoted to the rank of Subedar with effect from 1 Aug. 1985, and to stop his promotion, intentionally, he was discriminated and made prey of some junior Jocks. Such act of the respondent No. 3 (Commanding Officer) can be called as Malafide discrimination.

It is also alleged that because of the attitude of the Reviewing Officer with a view to favour Junior Naib Subedars whose names have been mentioned in para 19 of the petition, the petitioner has been superseded.

Having considered the submission made by the learned counsel for the petitioner, it is not possible to hold that the allegations of mala fides as spelled out are enough. They are vague and are not substantiated by material on record.

As regards the grading of the petitioner for the year 1984, this Court cannot interfere with the grading given by the officers who have their special expertise and knowledge. In *Air Vice Marshal S. L. Chhabar, VSM (Retd.) vs. Union of India* and another 1993 (II) L.L.J. 658, it is stated as under by the Supreme Court:

According to us, neither the High Court nor this Court can moderate the appraisal and the grading of the appellant for a particular year. While exercising the power of Judicial review, a Court shall not venture to assess and appraise the merit of the grading of an officer.

The petitioner did not qualify under criteria laid and as such has not been

promoted. The allegations of malafides are vague and are unsubstantiated by material on record, as such, they are rejected.

The petitioner has now retired in the year 1989. If the petitioner is not found to be qualified under the criteria laid, this Court cannot help the petitioner.

The petition is dismissed accordingly. There shall be no order as to costs. The security amount, if any, be refunded to the petitioner.