

(2002) 11 DEL CK 0129

In the Delhi High Court

Case No : Civil Writ Petition No. 1887 of 1988

Om Prakash

APPELLANT

Vs

Chief of the Army Staff and Others

RESPONDENT

Date of Decision : 13-11-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2003) 66 DRJ 139 : (2002) 62 ECC 45

Hon'ble Judges : Jiwan Dass Kapoor, J;B.A. Khan, J

Bench : Division Bench

Advocate : R.K. Kapoor and Sumit K. Khatri, for the Appellant; Nishakant Pandey, for Maninder Singh, for the Respondent

Final Decision : Dismissed

Judgement

Khan, J.—Petitioner, a Battery Havaldar Major (B.H.M.) complains of his supersession and wants promotion to the rank of Naib Subedar. All he says is that he was not considered for promotion though his three juniors were promoted from time to time resulting in infringement of his rights under Articles 14 and 16 of the Constitution.

2. Respondents claim that he was considered for promotion from 1985 to 1989 but he could not be promoted because he failed to satisfy the eligibility criteria for such promotion. It is explained by them that promotion to the post of Naib Subedar was being made on the basis of seniority-cum-merit and the grading criteria of ACRs and availability of vacancies. The grading criteria had been promulgated in the Artillery Records instructions para 575 (b) and was duly approved by the Army Headquarters. Under this petitioner was required to possess three "above average" gradings out of the five last reports. But he had never obtained "above average" grading. On the contrary, three others, even though junior to him, were promoted because they satisfied the eligibility criteria.

3. Petitioner has also filed a rejoinder raising certain questions which are of little

relevance. But substantively he submits that once a report had operated adverse to his interests, it was required to be communicated to him. In other words, he submits that if petitioner had not obtained "above average" grading, it should have been communicated to him to provide him a chance of improving his performance to claim promotion.

4. We have examined the procedure for recording of the Annual Confidential Reports and the relevant para of Artillery instructions. The procedure provides four types of gradings namely, "above average" which carry 4 marks, "high average" 3 marks, "average" 2 marks and "below average" 1 mark. The criteria for promotion lays down that an individual must possess three "above average" gradings out of the five reports rendered out of which at least two should be on regimental duty or as instructor in the Army School of Instructions in the rank of Havaldar and that he should not have earned any lower grading than "average" in the last three years and should have been recommended for promotion in the last three reports. There is no dispute about the criteria nor is this criteria challenged in this petition. Therefore, as it is, petitioner had no option but to satisfy this criteria and since he had failed to obtain three "above average" gradings in his last five reports, respondents' action in denying him promotion to the rank of Naib Subedar could not be faulted. On the same analogy, if three of his juniors who were promoted satisfied this criteria, their promotion could also not be challenged. Nor has it been challenged in the present writ petition.

5. Petitioner's claim that his failure to earn "Above Average" gradings should have been communicated to him has no substance. Firstly, because the relevant procedure/rules do not provide for this. Secondly, the failure to obtain "Above Average" gradings otherwise does not cast any obligation on the Authority to communicate this to the person concerned who may have earned "High Average" grading which is lower than "Above Average" but not adverse. It is only an adverse remark which is required to be communicated. Petitioner in the present case was not denied promotion because of any adverse remark but because he failed to satisfy the prescribed standard which required him to have three "Above Average gradings". The question of communicating this to him did not arise.

Therefore, all told, we find no merit in this petition which is dismissed.