
(2006) 07 GAU CK 0004
In the Gauhati High Court
Case No : Writ Petition (Civil) No. 313 of 2000

P.K.Laxman

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 18-07-2006

Acts Referred:

Constitution of India, 1950 — Article 226, 226

Citation : (2007) 4 GLR 907

Hon'ble Judges : B.K.Sharma, J

Bench : Single Bench

Advocate : H.Hai, H.Rahman, Advocates appearing for Parties

Judgement

1. By means of this writ petition, the petitioners seek a direction to the respondents to correct the Annual Confidential Report ("ACR") containing the adverse remarks and consequential retrospective promotion of the petitioner.

2.1 have heard Mr. A. Hai, learned counsel for the petitioner and also Mr. H. Rahman, learned Assistant Solicitor General for the respondents. A counter affidavit has been filed by the respondents.

3. While entertaining the writ petition by order dated 21.1.2000, it was noticed that virtually on the same cause of action, the petitioner had earlier filed a writ petition being Civil Rule No. 3949/95 and the same was disposed of on 12.9.1998. Having regard to the institution of the earlier writ proceeding, it was observed by order dated 21.1.2000 that the present writ petition is not maintainable. However, the learned counsel for the petitioner was directed to produce the certified copy of the final order passed in the writ petition. Mr. Hai, learned counsel for the petitioner submits that the records of the earlier writ petition could not be traced out.

4. On perusal of the writ petition, it appears that while the petitioner was serving as inspector under the respondents a proceeding relating to temporary misappropriation of fund was initiated against the petitioner and others.

Annexure A to the writ petition reflects receipt of Rs. 19,425 by the petitioner along with others from the ration fund, for some other use. As per the findings of the court annexed to the writ petition as Annexure B, the petitioner was made responsible in not making the necessary entries in the register of DDO.

5. By Annexure C communication dated 22.5.1991, the petitioner was communicated with the following adverse remarks for the period ending 31.3.1991.

"He celluded with his 21C in misusing private funds temporarily by him and subsequently retained a photostat copy of the temporary receipt and complained against him for the misuse of funds."

6. Reacting to the aforesaid adverse remarks and the liberty granted to the petitioner to make representation against the adverse remarks, he submitted Annexure D, representation dated 21.6.1991. On perusal of the representation, it appears that the petitioner admitted withdrawal of the ration money for some other use. In consideration of the representation against the adverse remarks, the respondents rejected the same and conveyed to the petitioner by communication dated 16.7.1991. Thereafter, some officers were promoted as Assistant Commandant by Annexure F order dated 20.5.1994. It appears that although the DPC considered the case of the petitioner, he was not found suitable for promotion due to the adverse entries in the ACRs. It was at that stage, the petitioner approached this court by filing the aforesaid writ petition being Civil Rule No. 3934/95.

7. According to Mr. Hai, learned counsel for the petitioner, since the petitioner was promoted as Assistant Commandant during the pendency of the writ petition, although prospectively, the writ petition was withdrawn and this court provided for preferring an appeal for retrospective promotion.

8. It appears that after disposal of the writ petition, the petitioner preferred an appeal/representation claiming retrospective promotion, i.e., from 1994. As noticed above, the petitioner was promoted as Assistant Commandant with effect from 6.9.1996 and he claimed the promotion with retrospective effect in terms of the aforementioned Annexure F order dated 20.5.1994 by which same others were promoted. The representation/appeal preferred by the writ petitioner was rejected by Annexure G order dated 17.2.1999. It was indicated that the case of the petitioner was considered by the DPC held on 22/23.2.1994 and 20.3.1995, but his case for promotion could not be recommended in view of the gradings in the confidential reports. Now by filing the instant writ petition, the petitioner who in the mean time has been promoted as Assistant Commandant with effect from 6.9.1996 has prayed for his retrospective promotion, i.e., with effect from 1994, when the order of promotion dated 20.5.1994 was issued. The prayer made in the writ petition, as noticed above, is for correction of the adverse remarks in the ACR for the year 1990/91 and consequential retrospective promotion.

9. The respondents in their counter affidavit have denied the contentions raised

by the petitioner. According to them, the adverse remarks were recorded in the ACR of the petitioner as per the reflection made in the conduct of the petitioner and that the case of the petitioner was dealt with taking into account all relevant factors. According to the respondents, the petitioner could not be promoted with effect from 1994 since the DPC in consideration of the relevant ACR's did not find the petitioner suitable for promotion as he did not earn the requisite savings.

10.1 have considered the submissions made by Mr. Hai, learned counsel for the petitioner and the stand of the respondents in their counter affidavit. I have also heard Mr. Rahman, learned Assistant Solicitor General. As noticed in the order dated 21.1.2000, the petitioner had earlier approached this court by filing the aforementioned writ petition being Civil Rule No. 3934/95. The writ petition was filed making a grievance against denial of promotion on the basis of the adverse remarks. As per the submission made by the learned counsel for the petitioner, the writ petition was withdrawn with liberty to file appeal/ representation to the respondents. The liberty was granted in view of the promotion of the petitioner as Assistant Commandant in the year 1996, i.e., during the pendency of the writ petition. If the petitioner was aggrieved by the adverse remarks in the ACR, the matter ought to have been agitated in the earlier writ petition. Instead, the writ petition was withdrawn with a liberty to file representation/appeal praying for retrospective promotion. The prayer for retrospective promotion and expunction of adverse remarks are two distinct and independent causes, although adverse remarks may have a bearing in promotion, but unless the adverse remarks are expunged or there is occasion for constituting a review DPC for consideration of the case of the petitioner for retrospective promotion, merely because the petitioner during the pendency of the earlier writ petition was promoted as Assistant Commandant, he cannot claim retrospective promotion, till such time the adverse remarks hold the field.

11. Law is well settled that the writ court can not sit on appeal over the findings arrived by the DPC unless any mala fide and/or arbitrary exercise of power and jurisdiction is established. It is on record that the case of the petitioner was considered by the duly constituted DPC and having regard to the adverse remarks of the petitioners in his ACR, his case could not be recommended for promotion. It is not a specific case of denial of promotion solely on the basis of the adverse remarks as contained in the ACR for the period of 1990-91. As per the stand of the respondents in their counter affidavit, the petitioner could not be promoted since he could not earn the requisite gradings in terms of the entries made in the ACRs.

12. If the respondents could not promote the petitioner on the basis of the parameters laid down for such promotion, no fault can be attributed to the respondents. The submissions made by the learned counsel for the petitioner that the petitioner has been deprived of his promotion with effect from 1994 due to mala fide exercise of power, cannot be accepted for the simple reason that had been the intention of the respondents, he would not have been promoted two

years thereafter, i.e., in 1996. Further no materials have been placed on record attributing mala fide exercise of power so as to say that the petitioner has been deprived of his promotion due to mala fide exercise of power.

13. The adverse remarks recorded in the ACR of the petitioner has been quoted above. Such adverse remark was preceded by aforementioned enquiry in which it was established that the money under the head of ration money" was utilized for some other purposes and the same was admitted by the petitioner. In the representation made against the adverse remarks, the petitioner admitted that the amount was utilized for some other purpose. Needless to say that even for temporary misappropriation of Government money, an officer/ employee is responsible. Thus, I do not find any discrepancy in the ACR of the petitioner for the year 199091.

14. For all the aforesaid reasons, discussions and findings, I do not find any merit in the writ petition and accordingly it is dismissed. However, there shall be no order as to costs.