
(1991) 02 KL CK 0013
In the High Court Of Kerala
Case No : O.P. No. 5192 of 1990-R

P.V. Nayar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 20-02-1991

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1992) 2 LLJ 765

Hon'ble Judges : K. Sreedharan, J

Bench : Single Bench

Advocate : B.V. Nayanar, for the Appellant;

Final Decision : Allowed

Judgement

K. Sreedharan, J.—The case throws light to the havoc that can be caused by a superior officer's confidential adverse remarks in the confidential record. How the future of an officer, be he in the civil service or military service, can be doomed by a superior is established in this case.

2. The facts germane for the decision of this O.P. are as follows:-

The petitioner was commissioned in the executive Branch of the Indian Navy in the year 1964. He is in the rank of Commander from 1979 onwards. He was selected by the Naval Head Quarters to head a special Indian Naval Detachment in Italy at Livorno in order to oversee production, inspection and sea-trials of sophisticated homing torpedoes manufactured for the Indian Navy. He used to report the progress made by the manufacturers. Due to delay in production by M/s. White Head Motofides the stay of the Indian team headed by the petitioner had to be extended by nine months beyond the original contractual period of 2 1/2 years. The extended period was to expire on June 30, 1983. By April-May, 1983 it became evident that the contractor was not in a position to complete the contract on or before June 30, 1983. Nothing was heard on this issue from Delhi. Petitioner made arrangements for the return to India on 30th June itself. The

Indian Embassy made all arrangements for the return of the petitioner and his team and gave clearance to move from Livorno to Rome. While at the Embassy he came to know of the decision requiring him to continue at Livorno till the end of July. Since the news of extension was taken as a bolt from the blue, petitioner gave certain details to the Indian Ambassador. The details so submitted were communicated to Delhi by the Ambassador as an official savingram. This savingram was not relished by the higher-ups in Delhi. Petitioner and his team had to stay back in Italy till July 31, 1983. On his return he was served with a showcause notice, a copy of which is marked as Ext. P7. He submitted his explanation, Ext. PS. The Chief of Naval Staff by Ext. P10 appears to have exonerated him from liabilities. But he was served with Ext. P11 letter of displeasure. His superior officer in Delhi, who was found fault with by the Chief of Naval Staff on account, of his failure in not initiating action to extend the term of the stay of the petitioner and his team of officers in Italy early made adverse entries in the annual confidential report. That report was written by the Initiating Officer on September 8, 1983. But it was communicated to the petitioner only on October 21, 1983 (Friday) along with Ext. P21(a) communication. According to the peititoner, a promotion committee for selecting officer to the cadre of Captain was to meet on October 24, 1983 (Monday). Petitioner was not in a position to file any representation before any superior officer to have the adverse entry made by his superior officer namely Director of Naval Armament Inspection (DNAI). The Selection Board was to act on the confidential report of the officers concerned. On account of the adverse report made by DNAI petitioner was denied promotion. He represented the matter to the Naval Head Quarters and the Central Government. His request to have the adverse entries made by the DNAI expugned was turned down. On account of the adverse entries made in the confidential report of 1983 he was denied promotion in 1984 and 1985 because each year confidential report of the previous five years has to be taken note of. So, according to the petitioner, the then DNAI who was Hi-disposed towards him has barred his future once for all. For rectifying this misdeed on the part of the then DNAI he has approached this court.

3. For a proper understanding of the harm caused by the adverse report made by the then DNAI, I would read that report, the remarks of the Reviewing Officer and the Minutes of the Selection Board. Adverse entry made by the Intialing Officer reads:-

"The officer"s performance during the period had been much below expectations. Delay in acceptance of sea launches necessitated extension of his stay in Italy but during implementation of these orders he displayed certain undesirable traits i.e. resisting orders which do not suit him, defiant and disrespectful attitude to the superior authority, lack of sense of discipline/duly and denying his (utterance)/conversation oi the instructions conveyed to him. The officer is presently posted as DDNAI and 1 find that he does not get on well with others, is short tempered and his behaviour towards superior authority and his service discipline leave a lot to be desired. I cannot help feeling that the officer"s

attitude (stems) from having worked in the coveted assignment in Italy on his own without exposure to service environment-/discipline. I do not consider him fit for further promotion at present."

This adverse entry was forwarded to the Ambassador of India in Rome who was the Reviewing Officer. The Ambassador made the following remarks as Reviewing Officer on October 3, 1983:-

"Car. P.V. Nayar"s overall performance during the period under review fell short of standard. While repeated delays in sea-trials and deliveries of equipment were largely the fault of the Italian manufacturers, the officer himself must share part of the responsibility for lack of proper vigilance and monitoring and for not alerting the higher authorities in time. I am not sure whether he actually resisted orders for transfer but he did display irritation and annoyance which was partly understandable since the orders had been issued at the eleventh hour which caused him a great deal of personal inconvenience, even hardship. As this officer is endowed with a very high degree of intelligence, ability, professional competence, qualities of leadership, his future potential and prospects should be determined not just on the basis of his performance during the last one year but over a much longer period. Blocking of promotion for any length of time may be too severe a punishment even after making allowance for the officer"s lack of initiative, grit and gumption in counter-acting delays in delivery of defence equipment."

When the petitioners case came up before the Selection Board consisting of high ranking Naval Officers, they observed:-

"The case of the officer was discussed in great detail. Analysing the trend of the Officer"s qualities assessed by DNAI in the past, the Promotion Board was of the opinion that the latest ACR on this officer was biased. The Promotion Board, however, took particular note of the Ambassador"s remarks as the Reviewing Officer and, considering the totality of his earlier record, came to the conclusion that the officer had not yet come to the threshold for promotion. The Promotion Board, therefore, decided to grade him "R" (not yet fit for promotion)."

4. From among the officers of DNAI Branch one officer was to be selected for the higher cadre, namely that of Captain. Three officers were considered by the Selection Board. The first two were M/s. G.V. Iyer and J.S. Bhatnagar. Both were found not fit for promotion. Since it was the third look in the case of Sri. Iyer he was graded "U". The only other officer who remained among N.A.I. officers was the petitioner. After having found that the last A.C.R. on this officer was biased the Board went on to review the confidential report and assigned him higher numericals. No provision of the Navy Order, Navy Act or Circular was placed before me by the learned Central Government Pleader authorising the Selection Board to review the confidential report of an officer whose eligibility for promotion is being considered by the Board. In such a situation, the Selection Board was not justified in assigning fresh numericals to the petitioner. When the

Board found that the confidential report was biased they ought to have eschewed that confidential report and taken note of the confidential report for the immediately preceding 4 to 5 years. This having not been done, it has to be held that the Selection Board had not done justice in the case of the petitioner. The entire confidential report of the petitioner was made available to court. For the year 1981-82 petitioner got 6.8 as average numericals and promotion potential of 7, So total of P.Q. & P.P. for the year was 13.8, Similarly the total of P.Q. & P.P. for 1980-81 was 13.9, for 1979-80 it was 13.7, and for 1978-79 it was 12.6. An officer who was getting such high number has been granted P.Q. + P.P. as 7.7 by the Initiating Officer and by the Selection Board on review as 10.1. So, but for the vindictive attitude shown by the Initiating Officer petitioner would not have been given such a low ranking. This low ranking was the outcome of the personal vendetta entertained by the Initiating Officer. It is evident by the show cause notice issued by him as well. But the adverse effect of that had been neutralised by the Chief of Naval Staff in Ext. P10 remarks. The adverse confidential report of 1983 had its shadow in the year 1984 as well. In 1984 he was granted P.Q. + P.P. as 10.5 only. The position changed in the subsequent year 1984-85 when he was given 14.4. Petitioner maintains that standard in the subsequent years as well when he was granted 14.

5. In a Naval Officer's career he will be considered for promotion to the higher cadre only on 3 occasions. If he fails to get selected, he loses his chance for further promotion. Petitioner's case came up for the first time in 1983. On account of the adverse entry made by the Initiating Officer in 1983 he was denied selection. That report as per Rules had to be taken note of in 1984 and 1985. So the harm that was done by the DNAI in 1983 had its impact in 1984 and 1985 and consequently on the entire career of the petitioner.

6. Learned Central Government Pleader wants this court to non-suit the petitioner on the ground of laches and long delay. Firstly it is contended that the petitioner had not raised any objection within reasonable time to have the adverse confidential report of 1983 expunged. I find precious little in this submission. Ext. P14 is a letter from the petitioner addressed to the Directorate of Naval Armament Inspection. It is dated February 27, 1984. In paragraph (1) he makes mention of a representation dated October 27, 1983 against the adverse remarks entered by DNA1. Nowhere in the counter-affidavit it is averred that such a representation dated October 27, 1983 was not sent by the petitioner. So I proceed on the basis that the petitioner took timely action to have the adverse remarks expunged. It is then contended by the learned Central Government Pleader that petitioner has approached this court only in 1990 and that final order on his representation was passed by the Government of India on February 18, 1987 as evidenced by Ext. P21. This also does not carry conviction. According to me, as a dutiful Naval Officer even after Ext. P21, he was appealing to the higher authorities and to the Supreme Commander namely the President of India to have his grievances redressed. In Ramchandra Shankar Deodhar and Others Vs. The State of Maharashtra and Others, a Constitution Bench of

the Supreme Court observed (Para 10-p.228):

" In the first place it must be remembered that the Rule which says that the court may not enquire into belated or stale claims is not a rule of law but a rule of practice based on sound and proper exercise of discretion and there is no inviolable rule that whenever there is delay the court must necessarily refuse to entertain the petition."

In the instant case, a superior officer arbitrarily made untenable reports in the confidential records of the petitioner and consequently petitioner was prejudiced to the maximum. When such an injustice has been done to the petitioner, this court is not to throw out his case on the ground of technical plea of delay or laches. Where injustice has been done to a party, this court must strive hard to undo that injustice. In this view, I hold that the petitioner's claim is not hit by lapse of time.

7. Petitioner was working in the Naval Armament Inspection cadre. He was the only officer seeking promotion from that cadre to the higher post of Captain. According to him, if he had made the grade he would have been definitely promoted to the cadre of Captain. This averment made by the petitioner has not been countered by the respondent even though the learned Central Government Pleader has filed an additional affidavit today, February 20, 1991. This stand taken by the petitioner appears to be well-founded as seen from the Minutes of the Selection Board. From the file relating to the procedure of the Board it is evident that the Board had considered 14 officers in "X" Branch for promotion to 8/9 vacancies, 14 officers from "ES" Branch for 8/9 vacancies and one officer from "NAIO" for one vacancy. From this it is evident that officers in "X" Branch are not to be considered for promotion in the NAIO Branch or vice-versa. If petitioner who belonged to NAIO Branch had made his grade he would have been selected to the post of Captain. This could not be done because of the adverse entry made in the annual confidential report.

8. In view of what has been stated above and on going through the records now placed before me, I am convinced that the petitioner was subjected to unnecessary harassment at the hands of the then DNAI who made the adverse confidential report. If that confidential report had been eschewed and the Selection Board considered the petitioner's case uninfluenced by that report, I am convinced that the decision of the Board would have been otherwise. So I direct the respondent to consider the claims of the petitioner for promotion to the cadre of Captain ignoring the confidential report of 1983 and to pass appropriate orders in accordance with law as expeditiously as possible, at any rate, within two months from the date of receipt of copy of this judgment.

9. The original petition is allowed in the above terms. Issue carbon copy of the judgment to the Parties on usual terms.