

(2011) 09 DEL CK 0474

In the Delhi High Court

Case No : Writ Petition (C) No. 5880 of 2011

Rajesh Kumar Bahl

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 26-09-2011

Acts Referred:

Citation : (2011) 09 DEL CK 0474

Hon'ble Judges : Sunil Gaur, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : S.S. Pandey and Santosh Kumar, for the Appellant; Subhash Chand Sharma and M.P. Singh, for the Respondent

Final Decision : Disposed Off

Judgement

Pradeep Nandrajog, J.—The issue is short. The facts have thus to be noted in brief.

2. Working as a Commissioned Officer in the Corps of Engineers of the Indian Army, Petitioner was permanently seconded with the Survey of India.

3. Permanent seconding means that the Petitioner was permanently absorbed under Survey of India. We highlight that being of strategic importance for the defence of the country, a fixed number of army officers are permanently seconded to Survey of India so that with respect to the defence of the nation, there is a close cooperation between the civil administration and the army authorities.

4. The confidential rolls of these officers are recorded both as per the proformas prescribed by the Indian Army and the proforma prescribed for civil servants. It be highlighted that the same officer i.e. one under whom these permanently seconded officers function act as the Reporting Officer or the Initiating Officer and the same officer functions as the Reviewing Officer pertaining to both the ACRs.

5. At a DPC, which met in June 2009, the Petitioner was not empanelled for promotion on account of the reason the civil ACR graded him "Good". The Bench mark for promotion was "Very Good".

6. After the DPC results were declared, the Petitioner learn of his supercession. He raised an issue of his right being violated of not being given an opportunity to file a representation against such ACR grades which were below the bench mark inasmuch as though not conventionally adverse but had an adverse impact.

7. The department took corrective action when this Court directed the department to convey the below bench mark grading to the Petitioner and gave him a right to make a representation their against.

8. Impugned order dated 13.7.2011 has rejected the representation filed by the Petitioner.

9. From the facts which we note here-in-after, it would be apparent that the authority concerned has not applied itself correctly.

10. As we have noted hereinabove, the same officer initiates the ACR grading in both proformas and same officer functions as the Review Officer. In the instant case, for the year 2006, Mr. M.G. Gopal, Surveyor Commissioner of India was the Initiating Officer and the Secretary Ministry of Science and Technology was the Reviewing Officer.

11. Both proformas required the ACR grading to be initiated by the officer pen profiling himself under the self appraisal part of the proforma. Petitioner did so by bringing out the works performed by him, targets achieved etc. during the year.

12. Thereafter, the Initiating Officer penned his opinion with respect to the officer's traits on which individual grades have to be awarded, followed by an over-all grading.

13. Record produced for our perusal would show that 11 traits, on which over all grading is predicated have to be given marks as per the ACR proforma prepared by the Indian Army and we would highlight that as per the instructions, a person awarded 9 marks would be treated as "Out standing". 7 or 8 marks would entitle a person to be treated as "Above Average" (which is equivalent to "Very Good"). 5 or 6 marks would entitle a person to be graded "High Average" (Good).

14. In the proforma for civil servants, the traits on which the grading has to be affected are 9 in number.

15. The 11 traits prescribed in the ACR proforma pertaining to the Indian Army are as under:

- i. Administrative acumen in judicious utilisation of human and material resources.
- ii. Motivation and creation of impact on his command in the face of adversities.

iii. Effective contribution towards personal and professional development of subordinates and their impartial assessment.

iv. Emotional stability under stress and strain.

v. Understanding and appreciation of view points of his subordinates, colleagues and superiors.

vi. Willingness to take his own interest and setting of personal example through his conduct for the betterment of service and his subordinates.

vii. Extraction of unswerving loyalty and respect and willingness to accept full responsibility for his and his subordinates' action.

viii. Integrity, moral strength and intellectual honesty.

ix. Boldness and resoluteness in execution of his duties in the face of odds and difficulties.

x. Physical fitness and mental alertness.

xi. Fluency, precision and brevity in expression."

16. The traits, as per ACR proforma, for civil servants require individual grading on the following:

1. Commitment to the task assigned.

2. Devotion to duty.

3. Human relation (his conduct with his colleagues, superiors and subordinates) and capacity to get the work done.

4. Public relations.

5. Integrity.

6. Technical knowledge, experience and application

7. Decisiveness.

8. Reliability

9. Self Confidence.

17. Highlighting that in the ACR proforma prescribed by the Indian Army, for the year 2006 the Initiating Officer has given 7 marks to the Petitioner i.e. has graded on each trait the Petitioner as "Above Average" i.e. "Very Good". Pertaining to the 9 traits prescribed in the ACR proforma for civil servants, the same Initiating Officer has graded Petitioner "Good" in all the traits, except 1 i.e. "Administrative acumen in judicious utilisation of human and material resources". Over all grading is "Good"

18. Now, the traits can be contrasted.

19. The 1st trait in the ACR proforma for civil servants i.e. "Commitment to the task assigned" would be equivalent to the corresponding traits listed in the proforma prepared by the Indian Army i.e. "Administrative acumen in judicious utilisation of human and material resources" and "Boldness and resoluteness in execution of his duties in the face of odds and difficulties".

20. It would be relevant to note that as per the civil proforma, the Petitioner has been graded "Good" and in the military proforma, the Petitioner has been graded "Very Good" qua the complimentary traits.

21. Pertaining to the next trait, i.e. "Devotion to duty" in the civil proforma, the corresponding in the military proforma would be "Boldness and resoluteness in execution of his duties in the face of odds and difficulties".

22. We highlight that trait No. ix as per the military proforma would relate, as noted hereinabove not only to trait No. 1 as per the civil proforma but even to trait No. 2 of the civil ACR proforma for the reason "commitment to the task assigned" and "devotion to duty" are complimentary terms. Highlighting that as per civil proforma, the Petitioner has been rated as "Good" but in the military proforma as "Very Good", we proceed to consider further.

23. The third trait i.e. the trait of "human relations (his conduct with his colleagues superiors and subordinates) and capacity to get the work done" in the civil proforma, where the Petitioner has been graded "Good", would be the sum total of the corresponding 3 traits listed in the ACR proforma by the Army, being trait "Effective contribution towards personal and professional development of subordinates and their impartial assessment"; "Understanding and appreciation of view points of his subordinates, colleagues and superiors" and "Extraction of unswerving loyalty and respect and willingness to accept full responsibility for his and his subordinates" action".

24. We highlight that in the ACR proforma for civil servants, the Petitioner has been graded "Good" but in the corresponding proforma pertaining to the Indian Army, the Petitioner has been graded "Very Good".

25. The entry corresponding to the trait No. 5 and 6 in the ACR proforma for civil servants i.e. "Integrity" and "Technical knowledge, experience and application" as per the proforma prescribed in the Indian Army, would be "Integrity, moral strength and intellectual honesty".

26. We highlight that as for the others, while filling up the proforma applicable to civil servants, the Petitioner has been graded "Good" and in the proforma applicable to the Indian Army, the Petitioner has been graded "Very Good".

27. The next i.e. trait No. 7 as per the proforma for civil servants is the entry "Technical knowledge, experience and application" and the corresponding entries as per Army ACR proforma would be "Administrative acumen in judicious utilisation of human and material resources" and "Physical fitness and mental alertness". The same anomaly is to be seen in the recording by the Initiating

Officer.

28. The next trait in the proforma for civil servants is "Decisiveness" and the corresponding trait as per the ACR proforma for the Indian Army would be "Emotional stability under stress and strain". Once again same anomaly is to be seen in the recording of the Initiating Officer.

29. The next trait i.e. the trait of "Reliability" on which the officer has to be graded, as per the proforma applicable to civil servants would have the corresponding entries in the ACR proforma of the Indian Army "Understanding and appreciation of view points of his subordinates, colleagues and superiors", "Extraction of unswerving loyalty and respect and willingness to accept full responsibility for his and his subordinates" action, "Integrity, moral strength and intellectual honesty" and "Boldness and resoluteness in execution of his duties in the face of odds and difficulties".

30. It is apparent that there is a complete mismatch. For, the same officer while recording the ACR proforma of the Petitioner as prescribed for civil servants has graded the Petitioner "Good". The same officer pertaining to corresponding traits to be filled up in the ACR proforma prescribed by the Indian Army has rated the Petitioner as "Very Good" officer.

31. It is unexplainable as to how the same officer could have rated the Petitioner "Good" in one set of ACR proforma and "Very Good" in the other.

32. We accordingly hold that the Petitioner has been wronged. The Petitioner has to be graded as "Very Good" officer and a corrective action needs to be taken pertaining to the ACR proforma (civil) for the year 2006.

33. We accordingly dispose of the writ petition quashing the impugned order dated 13.7.2011 and direct a review DPC to be held in which Petitioner's grading for the year 2006 would be treated as "Very Good". If the Petitioner is empanelled for promotion, the Petitioner would be entitled to be promoted from the date persons junior to him were promoted with all consequential benefits, except actual salary which we deny on the principle of not having shouldered the responsibilities of a higher post.

34. We would like to highlight that the instant case brings out the subjectivity in the ACR recordings which Courts can feel in various instances but are rendered helpless on account of fact that the scope of judicial review is restricted. But, one lesson can be learnt.

35. The exhaustive description in the ACR proforma prescribed by the Indian Army pertaining to the traits and the vague description of the traits in the ACR proforma prescribed for civil servants can be one reason why these errors take place. If the attention of the initiating officer is drawn to the sweep of the span of a trait, it is but obvious that the human mind takes a more holistic view while evaluating an individual and thus, a better microscopic look, and hence a more accurate grading. The ACR proforma prescribed for civil servants lists a trait very

broadly and this probably results in a non-focused evaluation by the initiating officer and hence a broad spectrum assessment and not a focused spectrum assessment.

36. It would be expected that the Surveyor General of India would consider suitably modifying the civil proforma for ACR grading so that the facets of individual trait can be expanded with reference to the expanded spectrum emerging in the ACR proforma prescribed in the Indian Army.

37. Compliance be made within a period of 12 weeks from today.

38. No costs.