
(2000) 05 GAU CK 0002
In the Gauhati High Court
Case No : Civil Rule No. 5789 of 1997

Raksh Pal Rana

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 16-05-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 1 GLT 599

Hon'ble Judges : A.K. Patnaik, J

Bench : Single Bench

Advocate : D.K. Bhattacharya, G. Bhattacharya and S.K. Goswami, for the Appellant; G.P. Bhowmik, CGSC, for the Respondent

Final Decision : Allowed

Judgement

1. In this application under Article 226 of the Constitution, the petitioner has prayed for quashing the orders dated 10.5.1997 and 29.7.1997 by which the respondent Nos. 5 to 41 have been promoted to the rank of 2nd-in-Command in the Central Reserve Police Force (for short "CRPF").

2. The facts briefly are that on 8.10.1984, the petitioner was appointed as Deputy Superintendent of Police, CRPF. The post was re-designated as Assistant Commandant. He was then promoted to the post of Deputy Commandant of CRPF in February, 1992. A gradation list of Deputy Commandant was prepared and circulated on 1.1.1995 in which the petitioner was shown as senior to the respondent Nos. 5 to 41 in the rank of Deputy Commandant. But on 7.4.1996 a Departmental Promotion Committee (for short "DPC") was held to consider promotion from the rank of Deputy Commandant to the 2nd-in-Command in CRPF. Several Officers in the rank of Deputy Commandant including the petitioner and the respondent Nos. 5 to 41 were considered by the DPC. But the petitioner was not recommended for such promotion while respondent Nos. 5 to 41 were recommended for promotion and was promoted by the impugned order dated 10.5.1996 to the rank of 2nd-in-Command in CRPF. On 1.6.1997, the petitioner

submitted a representation to the Director General of CRPF petitioner against supersession. Since there was no reply from the Director General, CRPF, the petitioner sent a reminder dated 18.8.1997. The petitioner was finally informed by letter dated 29.7.1997 that he was considered by the DPC for promotion but he was not found not free from vigilance angle and that he could not be promoted and, therefore, he was not brought on the panel for promotion. Aggrieved, the petitioner has moved this Court for appropriate relief.

3. Mr. DK Bhattacharya, learned counsel for the petitioner, submitted that just before the DPC was held, vigilance certificate was called for from the Commandant, 71 Bn, CRPF, Salakati, Kokrajhar and the said Commandant sent vigilance certificate on 7.10.1996 wherein it was stated that the petitioner was free from vigilance angle and that no DE/PE was pending or contemplated against him. Again by signal dated 18.3.1997, the Director General, CRPF, called for vigilance certificate in respect of the petitioner and the Commandant, 71 Bn, CRPF, by his letter dated 22.3.1997 forwarded the vigilance certificate in respect of the petitioner mentioning therein that he was free from vigilance angle. Hence, the ground for denying the promotion to the petitioner in the communication dated 29.7.1997 was actually not correct. Mr. Bhattacharya further submitted that it will be clear from the affidavit-in-opposition filed on behalf of the respondent Nos. 1 to 4 and in particular paragraphs-6, 10 and 12 that some adverse remarks in the ACRs of the petitioner for the period 15.7.1991 to 13.2.1992 and 13.4.1995 to 20.10.1995 had been taken into consideration by the DPC for not recommending the case of the petitioner for promotion. He vehemently contended that the said adverse remarks had not communicated to the petitioner, as a result, the petitioner has had no opportunity to make a representation against the said adverse remarks and, therefore, the said adverse remarks could not have been taken into consideration by the DPC for not recommending the petitioner for promotion. IN support of the said submission, Mr. Bhattacharya relied on the decisions of the Supreme Court in the case of Gurdial Singh Fijji Vs. State of Punjab and Others, , Amar Kant Choudhary Vs. State of Bihar and Others, , Vijay Kumar, I.A.S. Vs. State of Maharashtra and Others, and U.P. Jal Nigam Vs. S.C. Atri and Another, Mr. Bhattacharya further submitted that so far as ACRs of the petitioner for the period from 15.7.1991 to 13.2.1992 are concerned, adverse entries, if any, for the said period have no significance as once the petitioner was promoted to the rank of Deputy Commandant in February, 1992. In support of the said submission, he relied on the decisions of the Supreme Court in the case of Brij Mohan Singh Chopra v. State of Punjab, AIR 1987 SC 948, in which the Supreme Court has observed that adverse entries, if any, awarded to any employee lose the significance after his promotion to higher post. Finally, Mr. Bhattacharya submitted that it will be clear from the affidavit-in-opposition filed on behalf of the respondent Nos. 5 to 41 that although the Reporting Officer had recorded some adverse remarks for the aforesaid two periods from 15.7.1991 to 13.2.1992 and 13.4.1995 to 20.10.1995, the Reviewing Officers and the Superior

Reviewing Officers have over-ruled the said adverse remarks and have instead assessed the petitioner as "Good" and "Very Good" for the aforesaid periods. According to Mr. Bhattacharya, therefore, the DPC ought not to have taken into consideration the said adverse remarks which were over-ruled by the Reviewing Officers and the Superior Reviewing Officers.

4. Mr. GP Bhowmik, learned CGSC, on the other hand, submitted that by the settled procedure for consideration for promotion, the DPC will have to make its own assessment of the remarks made by the Reporting Officer, Reviewing Officers and the Superior Reviewing Officers and will not go by only the comments made by the Reviewing Officers and the Superior Reviewing Officers. He relied on the averments made in affidavit-in-opposition filed on behalf of the respondent Nos. 1 to 4 in support of his argument that the DPC did not recommend the case of the petitioner for promotion for good and valid reasons. The averments made in paragraph-6 of the affidavit-in-opposition filed on behalf of the respondent Nos. 1 to 4 are quoted herein:

"6. That with regard to the statements made in paragraph-4 of the writ petition, the deponent states that in the Annual Confidential Report for the period 15.7.1991 to 13.2.1992, the Reporting Officer has recorded adverse remarks of very serious nature. While agreeing with the assessment of Reporting Officer, the Reviewing Officer has not over-ruled the adverse remarks. However, the Superior Reviewing Officer while agreeing with the Reviewing Officer has graded the petitioner as "Good". In the ACR for the period from 13.4.1995 to 20.10.1995, adverse remarks of serious nature in connection with the petitioner's involvement in Ganja smuggling activities and fabrication of records have been recorded by the Reporting Officer (DIGP, CRPF, Ajmer). There are no remarks by the Reviewing Officer in this part of ACR. However, the Superior Reviewing Officer in his remarks has mentioned that the Reviewing Officer in his remarks has mentioned that the petitioner has been under-assessed by the DIGP Ajmer in his report. The Superior Reviewing Authority has agreed with the remarks of DIGP, CRPF, New Delhi for the remaining period of the assessment years, i.e. 21.10.1995 to 31.3.1996. The Superior Reviewing Officer has graded the petitioner as "Very Good" for the entire period of assessment. The Departmental Promotion Committee (DPC in short) is not guided merely by the overall grading if any that may be recorded in the confidential reports (in short CR) but makes its own assessment on the basis of entries in the CRs, because sometimes the overall grading in a CR may be inconsistent with the grading under various parameters and attributes. The DPC convened on 7.4.1997 for promotion of Deputy Commandants to 2nd-in Command therefore took note of the above remarks and graded him as "unfit". The remarks of the DIGP, Ajmer have to be read by the DPC as they have not been specifically over-ruled by the Superior Reviewing Officer. That ought to be the reason for grading the petitioner unfit."

5. It is clear from the aforesaid paragraph-6 of the affidavit-in- opposition filed on behalf of the respondent Nos. 1 to 4 that adverse remarks of serious nature in

the ACR for the period 15.7.1991 to 13.2.1992 and adverse remarks of serious nature in connection with petitioner's involvement in gunja smuggling activities and fabrication Of records made by the Reporting Officer (DIGP, CRPF, Ajmer) for period from 13.4.1995 to 20.10.1995 have been taken into consideration by the DPC for not recommending the petitioner for promoting. In paragraph-3 of the Writ Petition, however, the petitioner has expressly averred that during his service period no adverse remarks were ever communciated to him. The averments made in paragraph-3 have been answered in paragraph-5 of the affidavit-in-opposition and it has not been stated therein that the adverse remarks recorded in the ACRs of the petitioner were communicated to the petitioner. Thus, the adverse remarks for which the DPC did not recommend the petitioner for promotion have not been commu-niclated to the petitioner, and the petitioner has no opportunity to make a representation to the concerned authorities to expunge the said adverse remarks. Law is well settled by the Supreme Court in the case of Gurdial Singh v. State of Punjab (supra) that an adverse report in a confidential roll cannot be acted upon to deny promotional opportunities unless it is communciated to the person concerned so that he has an opportunity to improve his work and conduct or to explain the circumstances leading to the report. Such an opportunity is not an empty formality, its objects partially being to enable the superior authority to decide on a consideration of the explanation offered by the person concerned, whether the adverse report is justified. The aforesaid principles laid down by the Apex Court in the case of Gurdial Singh v. State of Punjab have been consistently followed by the Apex Court in Amar Kant Choudhury v. State of Bihar, Vijay Kumar v. State of Maharastra and UP Jal Nigam v. SC Atri and another. In the instant case since the DPC has taken into consideration the adverse remarks against the petitioner made by the Reporting Officer in his ACRs for the two periods and for .this reason, the DPC has not recommended the petitioner for promotion, in my considered opinion, the denial of promotion to the petitioner on the basis of the said recommendation of the DPC to the rank of 2nd-in Command in CRPF is violative of principles of natural justice.

6. I am, however, not Inclined to quash the promotions of respondent Nos. 5 to 41 to the rank of 2nd-in Command in CRPF which have been made as far back as in the year 1997. Considering the fact that the respondent Nos. 5 to 41 were junior to the petitioner in the rank of Deputy Commandant, CRPF and were promoted with effect from 1997. I dispose of this writ petition with the direction that the petitioner's case for promotion with effect from 1997 will be considered by the DPC afresh and in such consideration, the DPC will not take into consideration the adverse remarks for the two periods as Indicated in the affidavit-in-opposition filed by the respondents and in case the DPC recommends the case of the petitioner for promotion in the rank of 2nd-in Command, the petitioner will be given promotion in the rank of 2nd-in Command with effect from 1997, to be more precise, with effect from the date on which his immediate junior in the rank of Deputy Commandant was given promotion and the

petitioner will be given all consequential service benefits accordingly. It is needless to say that after such promotion the petitioner will be given due seniority in the rank of 2nd-in Command in CRPF in accordance with the relevant rules. The aforesaid exercise will be done by the authorities in a period of three months from the date of receipt of a certified copy of this judgment from the petitioner. Since the writ petition has been allowed on this point alone, it is not necessary to decide the other points raised by Mr. Bhattacharya.