

(1996) 07 AHC CK 0049

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 18913 of 1991

Ramesh Singh Rathore

APPELLANT

Vs

Union of India & Anr.

RESPONDENT

Date of Decision : 03-07-1996

Acts Referred:

Army Act, 1950 — Section 27

Citation : (1996) 07 AHC CK 0049

Hon'ble Judges : D.S.Sinha, J and N.B.Asthana, J

Final Decision : Allowed

Judgement

D. S. Sinha, J.

1. Heard Sri Ashok Kumar, learned Counsel for the petitioner and Sri Ajit Kumar Singh, learned Counsel appearing for the respondents.

2. The petitioner, a commissioned officer of the Indian Army belonging to 1968 batch, has been denied promotion to the post of Colonel and his statutory complaint in that regard has been rejected by the Central Government. Hence this petition.

3. The case of the petitioner for promotion was considered by the relevant Selection Board first time during the period between 21st November and 7th December, 1988. He was not found acceptable for promotion. The rejection of the candidature of the petitioner for promotion was communicated to him by the communication dated 30th May, 1989, a copy whereof is Annexure "2" to the petition.

4. From perusal of the communication dated 30th May, 1989 it appears that annual confidential reports of the petitioner upto the year 1987-88 taken into account for the purpose of judging his suitability for promotion.

5. On 5th April, 1989 the petitioner made a nonstatutory complaint against some entries in the annual confidential report which were taken into account by the

Selection Board for promotion. In the said nonstatutory complaint the petitioner also raised his grievance against the rejection of his candidature for promotion.

6. The complaint of the petitioner regarding his rejection for promotion was turned down. However, the petitioner was granted redress in the matter of adverse remarks. The decision on the said nonstatutory complaint was communicated to the petitioner through communication dated 3rd November, 1989, a copy whereof is appended to the petition as Annexure "3".

7. Consequent to the partial redress the petitioner was given special review consideration as per Rules in January 1990 and was again found unfit for promotion. Thereafter the case of the petitioner was reconsidered twice, in May 1990 and August 1990. But on each occasion his candidature for promotion was rejected by the Selection Board. The recommendations of the Selection Board were approved by the Government and the petitioner was informed accordingly.

8. In the meantime the petitioner had filed a statutory complaint dated 22nd March, 1990 under Section 27 of the Army Act, 1950, hereinafter called the Act, before the Central Government. A copy of this statutory complaint of the petitioner dated 22nd March, 1990 is on record as Annexure "5" to the petition.

9. The statutory complaint of the petitioner was rejected by the Central Government by means of its order dated 12th February, 1991, a copy thereof is Annexure "7" to the petition.

10. Learned Counsel for the petitioner contended (a) that the denial of promotion to the petitioner was arbitrary and discriminatory; and (b) that the order dated 12th February, 1991 rejecting his statutory complaint was bad in law for non disclosure of reasons for the same.

11. On the other hand, learned Counsel for the respondents contended that the investigation of the matter pertaining to non selection of the petitioner for promotion necessarily involved reassessment of the career profile and comparative merit of the petitioner and such an exercise could not be undertaken by this court in exercise of its special and extraordinary jurisdiction under Article 226 of the Constitution of India.

12. With regard to the contention on behalf of the petitioner regarding non disclosure of the reasons in the order dated 12th February, 1991 rejecting the statutory complaint of the petitioner learned Counsel asserted that there was no provision, statutory or otherwise, requiring the Central Government to give reasons for rejecting the statutory complaint under Section 27 of the Act.

13. At the outset, the court proposes to examine the arguments of the learned Counsel for the parties on the question of requirement of disclosure of reasons in the order deciding the statutory complaint under Section 27 of the Act, which reads thus:

"27. Remedy of aggrieved officers. Any officer who deems himself wronged by

his commanding officer or any superior officer and who on due application made to his commanding officer does not receive the redress to which he considers himself entitled, may complaint to the Central Government in such manner as may from time to time be specified by the proper authority."

14. To buttress the contention that it was obligatory on the Central Government to disclose reasons in the impugned order dated 12th February, 1991 for rejecting the statutory complaint of the petitioner his counsel placed reliance on the decision of Hon"ble Supreme Court of India rendered in the case of S.N. Mukherjee v. Union of India, AIR 1990 SC 1984. On behalf of the respondents reliance was placed upon the decision of Hon"ble Supreme Court of India given in the case of Union of India and others v. E.G. Nambudiri, AIR 1991 SC 1216.

15. In the case of S.N. Mukherjee (supra) Hon"ble Supreme Court examined entire law relating to requirement of disclosing reasons in the order passed by an administrative authority exercising quasijudicial functions and rules as follows:

"Reasons, when recorded by an administrative authority in an order passed by it while exercising quasijudicial functions, would no doubt facilitate the exercise of its jurisdiction by the appellate or supervisory authority. But the other considerations, referred to above, which have also weighed with this Court in holding that an administrative authority must record reasons for its decision are of no less significance. These considerations show that the recording of reasons by an administrative authority serves a salutary purpose, namely, it excludes chances of arbitrariness and ensures a degree of fairness in the process of decisionsmaking. The said purpose would apply equally to all decisions and its application cannot be confined to decisions which are subject to appeal, revision or judicial review. In our opinion, therefore, the requirement that reasons be recorded should given the decisions of an administrative authority exercising quasijudicial functions irrespective of the fact whether the decision is subject to appeal, revision or judicial review. It may, however, be added that it is not required that the reasons should be as elaborate as in the decision of a court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given the consideration to the points in controversy. The need for recording of reasons is greater in a case where the order is passed at the original stage. The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge."

(Emphasis added)

Thus, it is abundantly clear that the concerned authority was obliged to give reasons in support of the impugned order.

16. For the purpose of testing the arguments on the touchstone of law laid down above, it is necessary to notice the relevant text of the impugned order dated

12th February, 1991, extracted below:

"05415/MS Complaints/853/D(MS) Union of India Ministry of Defence

New Delhi, the 12th Feb. '91.

ORDER

The Central Government, after considering the statutory complaint dated 22 March, 1990 submitted by Lt. Col. R.S. Rathore (1C 23125), In against his supersession for promotion to the rank of A/Colonel as well as against ACR 8687 and after perusal" of relevant records, it is satisfied that no injustice has been done to him in this regard. This statutory complaint is, therefore, rejected.

By order and in the name of the President. Sd/K.C.JAIN (KC.Jain)

Under Secretary To The Govt. of India." (Emphasis supplied)

17. The only reason, if at all it is reason contemplated by law, given in the impugned order for rejecting statutory complaint of the petitioner is "no injustice has been done to him in this regard." In the opinion of the court, the expression "no injustice has been done to him in this regard" is not "reason". It is rather "conclusion".

18. In reference to the context. "Reason" means a statement of some fact and/or circumstance, real or alleged, ordinarily employed to communicate the ground, motive, cause or rationale influencing or leading, or sufficient to lead the authority to arrive at the conclusion.

19. The court has scrutinised the impugned order very carefully but has not been able to trace the "reason" for the "conclusion" that "no injustice has been done" to the petitioner. In the absence of reasons, it is not possible for the court to know the ground, motive, cause for rationale which influenced the authority in rejecting the complaint of the petitioner and whether there was any application of mind to the points raised in the complaint of the petitioner. It cannot be gainssaid that nonapplication of mind by a statutory authority while passing an order is well recognised ground for quashing the order. Therefore, the impugned order, in the opinion of the court, does suffer from the vices of nondisclosure of reasons and non application of mind.

20. In the case of Union of India and others v. E.G. Nambudiri (supra), relied upon by the learned Counsel of the respondents, Hon"ble Supreme Court was dealing with the matter arising out of rejection of nonstatutory representation of a Central Government employee against the adverse entries. It was conceded by the learned Counsel for the parties that there were no statutory rules framed under Article 309 of the Constitution regulating the award of entires in the character roll of a Central Government employee or providing for filing of representation against the adverse entries, or its disposal. The entire filed in that regard was regulated by the administrative directions issued from time to time. The administrative instructions issued by the Government did not require the

competent authority to record reasons either in accepting or rejecting the representation of a Government servant, made against adverse entries.

21. In the above backdrop, Hon''ble Supreme Court held that in the absence of any statutory or administrative provision requiring the competent authority to record reasons or to communicate reasons, no exception could be taken to the order rejecting representation merely on the ground of absence of reasons; and that no order of an administrative authority communicating its decision could be rendered illegal on the ground of absence of reasons and it was not open to the court to interfere with such order merely on the ground of absence of reason.

22. It is opposite to note that above dictum was qualified by Hon''ble Supreme Court as below:

"However, it does not mean that the administrative authority is at liberty to pass orders without there being any reasons for the same. In Governmental functioning before any order is issued the matter is generally considered at various levels and the reasons and opinions are contained in the notes on the file. The reasons contained in the file enable the competent authority to formulate its opinion. If the order as communicated to the Government servant rejecting the representation does not contain any reasons, the order cannot be held to be bad in law. If such an order is challenged in a court of law it is always open to the competent authority to place the reasons before the Court which may have led to the rejection of the representation. It is always open to an administrative authority to produce evidence aliunde before the Court to justify its action." (Stress supplied).

23. The decision of Hon''ble Supreme Court in the case of Union''of India v. E.G. Nambudiri (supra), in the opinion of the court, does not help the respondents. Obviously, for the reason that in this case the controversy pertained to the disposal of a representation not contemplated by any Statute, while in the case at hand the court is concerned with the disposal of a complaint provided by the Statute, namely, Section 27 of the Act. Statutory representations and complaints stand on different footing. Such representations and complaints cannot be rejected without disclosing reasons.

24. Even otherwise, Hon''ble Supreme Court has pointed out that the administrative authority is not at liberty to pass order without there being any reason for the same. Hon''ble Supreme Court has further pointed out that if the order communicated to the Government servant rejecting representation does not contain any reason and is challenged in court of law, it is always open to the competent authority to place reasons before the court which have led to the rejection of the representation and to produce evidence before the court to justify the action. In the present case, no reason is disclosed in the impugned order. Even before the court nothing has been placed by way of reasons for rejection of the statutory complaint of the petitioner or by way of evidence to justify the action. Therefore, the court is not persuaded to sustain the impugned

order.

25. The court does not consider it expedient to consider first contention made on behalf of the petitioner regarding alleged discrimination or arbitrariness in rejecting his claim for promotion as the said question will form the subjectmatter of consideration by the Central Government while considering the statutory complaint afresh.

26. In the result, the petition succeeds and is allowed. The impugned order dated 12th February, 1991 (Annexure "?" to the petition) is quashed. The matter stands remitted to the Central Government for disposal of the statutory complaint of the petitioner dated 22nd March, 1990, which will be deemed to be pending as a consequence of quashing the impugned order, by a reasoned order. There is no order as to costs. Petition allowed.