

(2012) 07 DEL CK 0454
In the Delhi High Court
Case No : Writ Petition (C) 1184 of 1999

Randhir Singh	Vs	APPELLANT
UOI and Others		RESPONDENT

Date of Decision : 30-07-2012

Acts Referred:

Citation : (2012) 07 DEL CK 0454

Hon'ble Judges : Pradeep Nandrajog, J; Manmohan Singh, J

Bench : Division Bench

Advocate : Anil Gautam, for the Appellant; Ashwani Bhardwaj, Advocate and Dy. Comdt. Bhupinder Sharma, Law Officer, BSF, for the Respondent

Final Decision : Allowed

Judgement

Pradeep Nandrajog, J.—On May 08, 1996, the petitioner was communicated as under:-

Sub: COMMUNICATION OF ADVERSE/ADVISORY REMARKS RECORDED IN ANNUAL CONFIDENTIAL REPORT

Following adverse/advisory remarks have been recorded in your ACR for the year 1994-95:-

He has been attached in Prov Store since long time and he should be put into GD duties to improve his knowledge in GD.

SO who can produce the result under close supervision. He should not be entrusted any works pertaining to financial implications and supervision of stores, etc. particularly purchasing duties.

The SO should not be employed in provisioning duties or in any regimental institutions where there is transaction of hard cash.

2. These remarks are being conveyed to you with a view to help you to improve your performance in the light thereof.

3. Representation against adverse/advisory entries, if any, should be made within one month of the date of communication of these remarks through proper channel.

4. No appeal against the rejection of the representation would be allowed six months after such rejection.

5. Your attention is invited to the instructions issued by the Government of India that if the competent authority after examining the representation of the officer against the adverse remarks recorded in the confidential report finds that the remarks were justified and the representation is frivolous, a note will be made in the confidential report of the Govt. servant that he did not take the corrections in good spirit. Representation if any be made to IG BSF North Bengal Frontier for disposal of the same.

At the outset we may note that the officer issuing the memorandum above has been most negligent, inasmuch as he has picked up a proforma with respect to communication of adverse/advisory remarks and has not bothered to score off either the word "adverse" or the word "advisory"; for the reason a remark cannot be "advisory" and at the same time "adverse".

2. The issue which arises is: Whether the remark is "adverse" or "advisory".

3. Para 2 of the communication throws light as to in what manner the remark was intended to be considered. It is communicated to the petitioner that the remarks are being conveyed with a view to help the petitioner to improve his performance in the light thereof. Regretfully, in the very next para, it is stated that representation against adverse/advisory entries should be sent within a month.

4. The officer concerned has acted mechanically, and this is obvious from the fact that the officer has not bothered to score off one of the two words "adverse" and "advisory".

5. Be that as it may, learned counsel for the respondent frankly concedes that if we read the language of the remarks, they are advisory and not adverse.

6. What has happened is that at a DPC which met on September 07, 1998 to consider promotions to the post of Assistant Commandant, and required to look into the immediately preceding five year ACRs and the service record, keeping in view the benchmark being three "Good" entries in the preceding five years? ACRs and no adverse remark, the DPC has declared petitioner unfit by noting the data:-

ACR/PCR Grading and Med category.

ACR

93-94

94-95

95-96

96-97

97-98

O

A/Adv

VG

VG

G

Med Cat

A

A

A

A

A

7. It is apparent that pertaining to the remark in question i.e. for the year 1994-95, the DPC has considered as if the remark is adverse. We only highlight that the petitioner has been ranked "Outstanding" the preceding year and "Very Good" in the next two years. It is unfortunate that the officers have not applied themselves correctly.

8. The remark being treated as "adverse" has affected the promotion of the petitioner who ultimately earned a promotion in the year 2001, for the year in question i.e. the year 1994-95 became a year of the past when the preceding five years ACRs had to be considered i.e. the ACRs for the years 1995-96 till the year 1999-2000.

9. The writ petition is allowed. It is declared that the remarks in question are "advisory" and not "adverse". To cure the wrong, mandamus is issued to the respondents to convene a Review DPC as of September 1998 in which DPC the remarks in question would be ignored as "adverse". If the DPC finds petitioner having achieved the benchmark, a promotional order would be issued promoting petitioner with effect from the date person immediately junior to him was promoted. No back-wages would be paid, and for which our reason is that the petitioner has not rendered service to the promotional post. But noting that the petitioner ultimately earned a promotion, we direct consequential benefits to flow i.e. notional increment benefit be granted and pay re-fixed with effect from the date the petitioner would be promoted and difference in pay be paid. Noting that the petitioner has superannuated from service, last drawn salary be accordingly

re-worked out and based thereon the pension. The petitioner would also be entitled to costs.