

(2007) 10 DEL CK 0230
In the Delhi High Court
Case No : Writ Petition (C) 7865 of 2004

Sarjeet Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 12-10-2007

Acts Referred:

Citation : (2007) 10 DEL CK 0230

Hon'ble Judges : T.S. Thakur, J;S.N. Aggarwal, J

Bench : Division Bench

Advocate : Ravi Prakash, for the Appellant; Rajeeve Mehra, for the Respondent

Final Decision : Dismissed

Judgement

T.S. Thakur, J.—In this petition for a writ of mandamus, the petitioner has prayed for a direction to the respondents to upgrade his ACRs for the period 1990-91 to 1997-98 and to treat them to be up to the benchmark for purposes of promotion. A mandamus directing the respondents to constitute a Review Departmental Promotion Committee for consideration of his case from the date he first became due for such promotion has also been prayed for.

2. The petitioner joined the Central Reserve Police Force as a Sub Inspector in the year 1969. In due course, he was promoted to the rank of Deputy Commandant in November 1990. He was considered for promotion to the next higher rank of Second-in-Command on different occasions between 1994 up to 2004. Since, however, his ACRs were found to be below the benchmark prescribed for such promotion, he was not recommended or promoted to the next higher rank. Aggrieved by his supersession, the petitioner filed W.P.(C) 7832/1999 in the High Court of Allahabad which was disposed of by an order dated 10th May, 2002 passed by the said Court with a direction to the Director General of the CRPF to consider, within two months, the representation which the petitioner may make in regard to his promotion.

3. A representation was accordingly made by the petitioner which was considered

and rejected by order dated 29th May, 2003 passed by the Directorate General. The rejection order pointed out that the petitioner had been considered for promotion to the rank of Second-in-Command on 3rd August, 1994, 9th August, 1995, 25th June, 1996, 7th July, 1997, 11th February, 1998, 12th August, 1994, 3rd February, 2000, 30th February, 2000, 30th January, 2001, 30th January, 2002, 11th March, 2002, 26th December, 2002 and 10th April 2003 but since the officer could not make the prescribed benchmark, he was not empanelled. The order further pointed out that the DPCs that considered the case of the petitioner had not committed any procedural error or irregularity and that government instructions regulating the conduct of DPCs had been followed in letter and spirit. The order noted that the supersession of the petitioner was on account of his overall performance which was not meritorious enough to earn him promotion to the next higher rank.

4. Aggrieved by the order aforementioned, the petitioner has filed the present writ petition in which he has, inter alia, prayed for upgradation of his ACRs for the years 1990-91 to 1997-98 so as to be notionally treated up to the benchmark prescribed for promotion. A declaration to the effect that there was no independent post of Second-in-Command in the CRPF has also been prayed for in the writ petition.

5. Appearing for the petitioner, Mr. Ravi Prakash did not pursue the prayer for declaration made in the writ petition. In regard to the rest, he made a two fold submission in support of the petition. Firstly, he contended that in terms of circulars dated 31st October, 1972 and 21st September, 1994 issued by the respondents, any report which was likely to affect the petitioner's chances for promotion had to be communicated to him. Since no such communication had, in the instant case been received, the petitioner's supersession was illegal and in violation of his fundamental rights. Secondly, he argued that the reports ought to have been accompanied by guidance, advice and counseling by the superiors if his performance was found to be unsatisfactory by them. He drew support for that submission from the contents of two circulars referred to earlier and urged that any report in derogation of the instructions contained in the said circulars would be liable to be expunged or suitably upgraded so that the same does not affect the promotional chances of the petitioner. It was contended by Mr. Prakash that in cases where the grading given by the Reporting Officer had been toned down by the Reviewing Officer or the Superior Reviewing Officer, reasons ought to have been given for such moderation which he described as downgrading. Reliance was placed by him upon instructions dated 16th November, 2005 issued by the Ministry of Home Affairs emphasising the need for supporting reasons in cases where the report was downgraded by a Superior Officer.

6. On behalf of the respondents, it was argued by Mr. Mehra that the ACRs of the petitioner were recorded upon a fair and proper assessment of his performance and that none of the said reports was per se adverse so as to make their communication an absolute necessity. Most of the time, the petitioner's

performance reports were, according to Mr. Mehra, good, satisfactory or average which did not require any communication as the same could not be said to be adverse. The benchmark for promotion of an officer to the next higher rank, was, according to Mr. Mehra, extraneous to the recording of the ACRs. The benchmarks, argued the learned Counsel, may vary from year to year depending upon how the DPC or the Government views the need for fixing or altering the minimum standards for promotion. Merely because a benchmark had been fixed and the petitioner's performance found below the same resulting in his supersession could not bring in the requirement of communication of the report to him even when the same was not in itself adverse. It was also argued by Mr. Mehra that the petitioner's performance from the year 1999-2000 onwards was good as was evident from his reports with the result that the petitioner had been promoted to the next higher rank of Second-in-Command in April, 2004 and to the rank of Commandant in September, 2006. He urged that there was nothing arbitrary, vindictive or perverse in the recording of the ACRs or the consideration of the petitioner's case for promotion on various occasions in the past to warrant interference by this Court.

7. We have given our anxious consideration to the submission made at the bar. Mr. Mehra had from the official record available with him tabulated the petitioners gradings for various years between 1990-91 to 2003-04 as under:

Year	Grading By Reporting Officer	Grading by Reviewing Officer	Grading by Super Reviewing Officer	Communication if any
1990-91	Satisfactory	Good	Good	Average Nil
1991-92	Good	Good	Average	Adverse Remarks
1992-93	Good	Good	Good	Nil
1993-94	Average	Satisfactory	---	Average Nil
1994-95	Good	Good	Good	Nil
1995-96	V. Good	Good	Good	Nil
1996-97	Good	Satisfactory	Good	Nil
1997-98	Average	Average	Average	Nil
1998-99	Average	Good	Average	Advisory Memo 17/6/1999
1999-2000	V. Good	V. Good	V. Good	Nil
2000-2001	Outstanding	V. Good	V. Good	Nil
2001-2002	V. Good	V. Good	V. Good	Nil
2002-2003	Outstanding	Outstanding	- Nil	2003-2004
Outstanding	Good	V. Good	Nil	8.

A bare perusal of the above would show that the petitioners performance between 1990-91 till 1998-99 has been judged as average/satisfactory or good. For the year 1995-96, the reporting officer had given to the petitioner a grading of very good, which was then moderated to good by the Reviewing Officer. These grading are not per se adverse to the petitioner so as to make their communication to him essential supersession based on any such grading would not be vitiated simply because the said gradings were not communicated to him. Reliance by the petitioner upon circulars dated 31st October, 1972 and 21st September, 1994 is, in our opinion, misplaced. The said circulars have been issued to make the procedure for recording of ACRs objective and to avoid any injustice to the officers arising from non-communication of reports which are otherwise adverse and likely to affect their promotional chances. That apart, the circulars cannot be viewed or

interpreted as if they were statutes in themselves. They are no more than administrative instructions that simply restate the legal requirement that adverse remarks must be communicated to the officers concerned if they are likely to affect their promotion. The need for advice, guidance and assistance referred to the circulars also aims at introducing an element of fairness in action inasmuch as the officers are informed about their deficiencies and have an opportunity to remove the same. In any event, the petitioner has not alleged that there was any area where his performance was under rated on account of lack of any counseling or guidance to him. In para 14 of the petition, the petitioner has made a grievance only regarding the year 1998-99 and alleged that he had never been given any advice regarding his performance. The respondents have in reply referred to an Advisory Memo dated 17th June, 1999 addressed to the petitioner to the following effect:

To

Shri Sarjeet Singh,

Dy. Commandant,

92, Bn, CRPF, (through Comdt. 92 Bn)

Varanasi (U.P.)

Subject : ADVISORY MEMO

Your performance for the period from 1.4.1998 to 31.3.99 has been found not up to the desired standard. Hence as per the existing instructions, I am desired to advise you to improve upon your performance.

Sd/-

(Bachan Singh)

ADDL. DIGP (ADMN)

CS, CRPF

9. The above, in our opinion, sufficiently discharges the obligation of correcting, counseling and advising the petitioner in regard to his performance. The petitioner has not complained about any other report on the ground that he did not receive any counseling or advice from his superior regarding his performance. We have, in the circumstances, no hesitation in rejecting the argument that confidential reports between 1990-91 to 1998-99 were adverse and could not, Therefore, be taken into account while considering the petitioner's case for promotion or that they should be upgraded and deemed to be up to the benchmark prescribed for promotion. So also, we have, for the reasons stated above, no difficulty in rejecting the submission that the reports were inadmissible for a proper consideration of the petitioner's case for promotion as they were not accompanied by guidance and counsel required under the circulars relied upon by the petitioner.

10. That brings us to the question whether the toning down of the reports by the superior officers was bad as the same was unjustified being unsupported by any reasons. The argument that reasons for toning down of the report should have been given is based entirely on a circular issued by the Home Ministry as late as in November, 2005. Even assuming that the said circular would be relevant for judging the validity of the reports prior to the issue thereof, we find from the tabular statement extracted earlier that between 1990-91 and 1998- 99 the petitioner had only once been rated very good by the reporting officer.

The First and the Second Reviewing Officer had, however, brought it down to good. No reason for this down grading if at all one can use that expression "have been recorded". The question, however, is whether the same would make any material difference. That is because even if the petitioners downgrading from very good to good in the year 1995-96 is reversed and his performance rated very good, he would remain below the benchmark for promotion to the next rank. The benchmark for grant of promotion to the rank of Second-in-Command and above admittedly was a minimum of three very good entries and two not below good out of the last five ACRs. That being so, the petitioner would not have had any chance of promotion as he did not admittedly satisfy the requirements of the above benchmark till the year 2004 when he got promoted as Second-in-Command.

It was only in the year 2004 that the petitioner really touched the benchmark prescribed for promotion and was accordingly promoted in April of that year.

His further promotion to Commandant came in September, 2006 based on his continuous good performance from the year 1999 onwards. It is, Therefore, obvious that the non recording of the reasons for down grading of the petitioner's report for the year 1995-96, is wholly inconsequential.

11. There is no merit in this petition which fails and is hereby dismissed but in the circumstances without any order as to costs.