

(2011) 05 DEL CK 0153

In the Delhi High Court

Case No : Writ Petition (C) 7613 of 2010

Shri Jagmohan Singh Negi

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 18-05-2011

Acts Referred:

Citation : (2011) 5 ILR Delhi 690

Hon'ble Judges : Suresh Kait, J; Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Rekha Palli, Amrita Prakash and Punam Singh, for the Appellant; B.V. Niren, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Having been appointed as an Assistant Sub-Inspector (Ministerial) with Central Industrial Security Force on 22.8.1972, Petitioner earned promotion to the post of Sub-Inspector on 12.4.1978 and further to the post of Inspector on 24.3.1986. He earned promotion to the post of Asstt. Commandant on 2.7.1992 and further to the post of Deputy Commandant on 20.7.2000 and went further up the ladder when he earned promotion to the post of Commandant on 2.1.2006.

2. Aged 57½ years and left with less than 21½ years" service, at a Screening Committee which met on 25.5.2009, with reference to the AC Rs of the Petitioner prepared up to 31.3.2008 and warnings or displeasures awarded up to 31.3.2009, the Screening Committee decided to put the name of the Petitioner in a list of such officers whose further retention in service required to be considered in public interest or otherwise under Rule 56(j) of the Fundamental Rules and considering the matter further recommended that being unfit for continuance in service, Petitioner be prematurely retired and this was followed by an order dated 16.3.2010 being passed by the Competent Authority intimating Petitioner his being prematurely retired with effect from the forenoon of 18.3.2010.

3. The service record of the Petitioner would reveal that except for a period or two when Petitioner was graded "Good", for the remainder of the career spanning 26 years, till he earned promotion to the post of Commandant on 2.1.2006, Petitioner had been graded either "Very Good" or "Outstanding", but all of a sudden there was a drop in performance inasmuch as the grading became "Average" with respect to the year 1.4.2006 till 31.3.2007 and onwards. In other words, for 3 successive years i.e. the year 1.4.2006 - 31.3.2007, 1.4.2007 - 31.3.2008 and 1.4.2008 - 31.3.2009 the Petitioner was graded "Average". Not only that. Petitioner had been awarded 1 warning and 1 IG's displeasure on 13.6.2007 and 14.6.2007 and we may note that after 25.5.2009 when the Screening Committee met and made the recommendation, thereafter Petitioner was awarded 2 more displeasures on 9.6.2009 and 25.11.2009 as also a warning on 26.2.2010.

4. It may be noted here that the grading awarded to the Petitioner for 3 years i.e. the year 2006 - 07, 2007 - 08 and 2008 -09 were admittedly below benchmark and were required to be communicated to the Petitioner for his response and we find that after the Petitioner was prematurely retired, in the month of April 2010, the below benchmark "Average" ACR gradings for the period 1.4.2006 - 14.10.2006, 15.10.2006 - 31.3.2007, 1.4.2007 - 31.10.2007 and 1.11.2007 - 31.3.2008 were communicated to the Petitioner for his response and Petitioner's response dated 15.5.2010 was rejected vide order dated 15.10.2010.

5. During arguments there was considerable confusion as to whether at all the Petitioner was given an opportunity to represent against the "Average" ACR grading for the period 1.4.2008 - 31.3.2009 in respect whereof we find that admittedly no grading was done for the period 1.4.2008 - 4.9.2008 and only for the period 5.9.2008 - 31.3.2009 was the Petitioner assessed and graded "Average".

6. During pendency of the writ petition the Petitioner was communicated the "Average" ACR grading for the period 1.4.2009 - 30.6.2009.

7. Since the Screening Committee had met on 25.5.2009 and by which date ACR gradings up to 31.3.2008 were ready and were considered, we eschew any controversy for the subsequent ACR gradings as also the controversy relating to the warnings and displeasures issued post said date inasmuch as admittedly, the Screening Committee had considered the service record up to the period 31.3.2008 and the penalties levied up to said period.

8. 2 things strike out with prominence. Firstly, Petitioner had not been granted an opportunity to respond to the below benchmark gradings i.e. "Average" gradings for the 3 years:

1.4.2006 - 31.3.2007, 1.4.2007 - 31.3.2008 and 1.4.2008 - 31.3.2009 and in respect whereof as noted herein above, limited to 2 years, opportunity to make a representation was given after the Screening Committee had already made the

fatal decision. Secondly, that the 3 year period proved fatal to the Petitioner, whose service profile otherwise had been either "Very Good" or "Outstanding".

9. Learned Counsel for the Petitioner had sought to urge personal mala-fides against Sh.H.V. Chaturvedi, IG (North). But we find no foundation thereof neither in the pleadings in the writ petition nor we find he being made a party to the writ petition. It is only in the additional affidavit filed by the Petitioner, after the pleadings were completed, that it has been alleged that Sh.H.V. Chaturvedi who was the Reviewing Officer of the Petitioner has acted with bias; but without any particulars of the bias being stated and thus we hold that neither is there a foundation for the plea of mala-fide and bias nor there is any basis to infer the same and hence we reject the charge of any kind of bias against Sh.H.V. Chaturvedi.

10. The question would be: Whether the Screening Committee could consider such below benchmark AC Rs of the Petitioner in respect whereof the Petitioner required the same to be communicated to him with an opportunity to give his response and if we hold that the Screening Committee was unjustified in considering the same, the effect thereof? A second question would arise being that, should the Petitioner be entitled to the relief prayed for if the first question is answered in his favour keeping in view that the Petitioner has been afforded an opportunity to respond to the below benchmark ACR gradings and the representation has been rejected; the question would be whether it would be an idle formality to direct a Review Screening to be done with respect to the same material? The third question which would arise would be whether 3 years" drop in performance would be sufficient material to hold that the Petitioner is a dead wood?

11. At first blush, one may rush to a conclusion that the first question has to be answered against the Respondents inasmuch as it strikes that if ACR recording has not attained finality, the ACR grading at the inchoate stage cannot be considered and especially when the same has a civil consequence. But everybody who has something to do with law well knows that the path of law is strewn with examples of open and shut cases and what seemed to be at first blush unanswerable charges end up completely answered or conduct which seems to be completely unexplainable at the first blush being fully explained and thus we do not jump to a conclusion.

12. It is recognized that compulsory or premature retirement is not a stigma. It is not in violation of a right of a civil servant to serve till the age of superannuation for law grants, the government and assurance of a minimum service i.e. pensionable service before which the civil servant cannot be removed from service save and except by way of penalty. Crossing the said stage, it is public interest which determines whether the civil servant must continue.

13. The right to make a representation against a below benchmark ACR grading is the recognition of the right to be heard on a subject where some civil

consequence may flow, but pertaining to uncommunicated adverse remarks being considered by the Screening Committees, the law has grown in a different direction; holding that uncommunicated adverse remarks can be considered by Screening Committees on the issue of compulsory or premature retirement and the reason thereof is that such an order is neither stigmatic nor does it take away any right of a civil servant, to whom right guaranteed is a minimum pensionable service and beyond that it is public interest which determines how long should he serve.

14. There were conflicting judgments of two Judge Bench of the Supreme Court. One set of judgments took the view that adverse entries which were not communicated to the civil servant could not be considered by Screening Committees inasmuch as the right of the civil servant to make a representation there-against was violated and it would be akin to condemning a person without hearing him. Some took the view that right to be heard had no role in a matter pertaining to compulsory retirement or premature retirement even limited to the point of considering adverse remarks without giving an opportunity to be heard on the said adverse remarks.

15. The matter was referred to a three Judge Bench of the Supreme Court and we have a decision reported as Baikuntha Nath Das and another Vs. Chief District Medical Officer, Baripada and another, wherein it was held that notwithstanding law blurring the distinction between administrative and quasi-judicial decisions with respect to fair hearing, in matters pertaining to compulsory retirement or premature retirement, since said decision was not penal in nature, it was permissible to take into account uncommunicated adverse entries in the AC Rs of a civil servant. Since we do not wish to make our decision lengthy, to the inquisitive reader who would want to enrich himself with the reasoning of the law, we would commend that paragraph 15, 25, 28, 29 and 32 of the opinion in Baikuntha Nath Das's case (supra) be read.

16. The first question posed is thus answered against the Petitioner and in view thereof, we need not answer the second question.

17. For the third question posed, we may only state that the law is clear. No doubt the entire service record of a person has to be considered but prominence has to be on the last few years of service, for the reason, a person may improve with passage of time or may deteriorate with the passage of time. After all, on the issue of premature retirement or compulsory retirement what has to be considered is: Whether it would serve public good to continue with the services of the employee concerned or not. That is the reason why those who are found to be "Average" would require, in public interest, to be weeded out notwithstanding an "Average" grading not being adverse, but the same being not complementary would justify the person moving out, to be replaced by fresh blood; this serves the public interest. We need not burden ourselves to make a catalog of various authorities which so hold and thus we rest ourselves by noting that in sub-para (iv) of Para 32 of the decision in Baikuntanath Das's case

(supra) this principle has been so reiterated.

18. It is true that till the year 2005 the service profile of the Petitioner was "Very Good" or "Outstanding", but we find that for 3 immediate years, commencing from the very first year of Petitioner's promotion to the post of Commandant, the performance fell. As noted herein above the Petitioner was promoted as a Commandant on 2.1.2006 and we find that the performance of the Petitioner as a Deputy Commandant for the year 1.4.2005 till the year 31.3.2006 recorded till the period 31.12.2005 has been "Very Good". For the period 1.1.2006 till 31.3.2006 the ACR has not been recorded. Thereafter, for the period 1.4.2006 onwards for 3 successive years the performance had been "Average".

19. We agree with the submission of learned Counsel for the Respondents that it may have happened that the Petitioner who earned promotion as a Commandant in the year 2006 had only 6 years to serve and he knew fully well that keeping in view his seniority he could earn no further promotion and thus he slackened or alternatively he was unable to cope up with the duties of a Commandant which qualitatively suddenly jumped vis-?-vis the duties of a Deputy Commandant.

20. We are not to speculate as to what happened as indeed any endeavour by us on the subject would be nothing but surmises and conjectures and thus we speak no more lest we are accused of being verbose and indulging in speculative reasoning. Even otherwise, we are not supposed to go into the reasoning of Petitioner's performance falling steeply.

21. The Petitioner has, in Annexure P-9 to the rejoinder affidavit filed, tabulated the various attributes on which the Petitioner has been graded for the period 1.4.2006 onwards till 31.3.2009 and therefrom learned Counsel sought to urge that it would be difficult to sustain the ACR grading being overall graded "Average".

22. We do not agree, and for which we may note that for considerable period and for considerable attributes the individual columns have been filled up with the remarks: "Just Average", "Average", "Adequate" and "Satisfactory". It is true that for about 30% period and for about 30% individual attributes the Petitioner has been graded as "Good". Suffice would it be to state that if for approximately half period, different attributes graded are "Adequate", "Just Average", "Average" or "Satisfactory" and for the remainder 50% period the person concerned is graded "Good"; the overall grading being "Average" would not be so arbitrary so as to invite judicial intervention. Thus, the challenge to the ACR gradings as awarded and recorded is rejected.

23. Endeavour of learned Counsel for the Petitioner to compare the previous ACR gradings with the current ACR gradings is neither here nor there for the reason the previous ACR gradings were for subordinate posts and the ones which are not too favourable to the Petitioner pertain to the period when Petitioner was promoted to the post of Commandant, which post is not only higher in hierarchy but has a qualitative jump in the onerous duties which have to be performed and

we cannot sit over the decision of the Initiating, Reviewing and Accepting Authority.

24. Accordingly, we dismiss the writ petition but refrain from imposing any costs.