
(1998) 05 GAU CK 0035
In the Gauhati High Court
Case No : Writ Appeal No. 366 of 1994

U.P. Mathur (Lt. Colonel)

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 20-05-1998

Acts Referred:

Citation : (1998) 2 GLT 218

Hon'ble Judges : V.D. Gyani, J;P.C. Phukan, J

Bench : Division Bench

Advocate : N. Saikia and J.M. Das, for the Appellant; K.N. Choudhury, Central Govt. Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

V.D. Gyani, J.—This writ appeal is directed against the judgment dated 26.4.94 passed by a learned Single Judge of this Court in Civil Rule No. 160(K)/91, thereby dismissing the petition.

2. Few basic facts as can be gathered from the impugned judgment may now be noted.

3. Appellant was commissioned in the core of Engineers as an Emergency Commissioned Officer on 3rd May, 1964. Subsequently he was granted permanent commission in 1968 making his seniority effective from 14th October, 1965. Eventually he was promoted to the post of Lt. Colonel and in 1978 he was posted as Research and Trial Officer at Army/Air Transport Support School, Agra which was equivalent to the rank of a Major. It was in 1983, a Selection Board held its sitting for selection and promotion from the post of Major to that of Lt. Colonel for the 1965 batch in which Petitioner's case was also considered. He was accordingly informed vide letter dated 31st May, 1983 that his case was considered as fresh case but he could not be placed in an acceptable grade for promotion. The Petitioner therefore complained to the competent authority by his petition dated 31st July, 1983 stating inter alia that his posting and appointment

as Research and Trial Officer in 1978 has adversely affected his career for no fault of his. He also questioned the ACR's pertaining to that period while he was posted at Agra.

4. The competent authority disposed of the complained as communicated to the writ Petitioner Appellant vide letter dated 26th March, 1984, Annexure-II informing him that the assessment of R.O. and P.T.O. in A.C.R. 1977-78 had been expunged and he would be getting a special review by a Selection Board in due course. By the same letter the Appellant was specifically asked if he still desires to pursue his complaint, but the Petitioner did not make any specific and positive response to those query. By Annexure-III dated 4th November, 1984 he was credited "B" for promotion to the rank of Lt. Colonel by No. 4 Selection Board as special review case and had been treated as a selectee Lt. Colonel of his batch. The Petitioner was accordingly informed and in view of the relief granted the statutory complaint dated 31st July, 1983 was not processed further. As noted, in view of the redressal of his grievance it was no longer necessary. It was followed by promotion order dated 19th April, 1985 and the Appellant took charge of C/O 54 Engineer Regiment By letter dated 21st January 1986 the Appellant's special C.R. was initiated by Military Secretary Branch, Army Headquarters as there was some inconsistencies. It was returned to the Headquarter for correction. However, Appellant's case was again considered for promotion to Colonel in December, 1986 by a Selection Board No. 3 and he was informed of the result that he was not placed in an acceptable grade for promotion. This led to yet another statutory complaint dated 23.7.86 by the Appellant. Complaint was followed by reminders, supplementary complaint was also submitted on 26.12.88 supported by additional affidavits. By letter dated 7th August, 1989 giving partial redress to the Appellant, the complaints were rejected. Yet another statutory complaint was lodged by the Appellant on 20th November, 1989 and 20th July, 1990 but these complaints were also rejected by the competent authority. He was pointedly informed that his case was considered by the Selection Board for promotion to the rank of colonel as a final review 1965 Batch and the Board had not found him in acceptable grade for such promotion by selection. Having been considered for three occasions he was no longer eligible for further promotion as per existing rule.

5. Noting the above facts, the learned Single Judge who heard the petition, called for the proceedings of Selection Board No. 3 and on perusal of the same satisfied himself that in all the sitting the Petitioner was credited "Z", "5" which means all the five officers of the Board rejected him, and ultimately the learned Single Judge dismissed the petition concluding that there was no merit in the petition.

6. Mr. Barthakur, learned Counsel appearing for the Petitioner raised the following points:

(i) that the learned Single Judge to take into account paragraph 3 of the letter dated 30th March, 1984 in its entirety. It was specifically urged for confirmation as to whether expunction of ACRs for the period January, 1978 to May, 1978,

June, 1978 to May, 1979 in respect of assessment by I.O., R.O. and S.R.O. was being taken by the M.S. Branch, Army Headquarters. It was only on receipt of such confirmation that the Appellant had made it clear that he would intimate his decision regarding further processing of the statutory complaint. The learned Single Judge, according to Mr. Barthakur committed error in holding that the Appellant did not express his desire to process the complaint.

(ii) that the intermediary authority acted illegally in not removing the ACRs for the year 1978-79 from the Appellant's Dossier and the learned Single Judge omitted to take into consideration the glaring facts which has resulted in injustice to the writ Petitioner Appellant;

(iii) despite being communicated about the approval for promotion along with his other batch-mate as per letter dated 17th August, 1984, the Appellant was not promoted till February-March, 1985. He could only be promoted in May, 1985, which deprived the Petitioner of affirming an ACR for one quarter as Lt. Colonel which had the ruinous affect of keeping out the Appellant from the zone of consideration. None exercising the above for processing statutory complaint has been totally misinterpreted and viewed in a wrong perception by the learned Single Judge. ACR's were biased and the learned Single Judge, was wrong in concluding that the Appellant's grievance as regards ACR is to rectify on the ground that he was granted special review. The Appellant having been made a specific complaint against Major General A.P. Chouhan, who due to his inherent bias rejected the Appellant's complaint dated 23.7.87, 26.12.88, 20th November, 1989 and 28th July, 1990. Major General Chouhan had in one way or the other handled these complaints which he ought to have avoided because of his own bias.

7. It was argued by Mr. Barthakur, learned Senior Counsel that the fact that Appellant's case was rejected by all the five officers, is not much important, inasmuch as, the rejection itself was based on defective ACR's for the year 1978-79. Once these ACR's is corrected as per Rule, it would change the whole hue and texture of the Appellant's case which had not been viewed in its proper perspective.

8. Mr. Choudhury, learned Standing Counsel appearing for the Union of India, on the other hand, argued that this appeal is devoid of any merits, the Appellant's case was considered three times:

(1) special fresh review Sept. 1989 - cut of year 3/96-6/86 and he was graded as "Z" (rejected).

(2) first review Jan. 1990 - Cut of year 6/86-9/86 graded "Z" (rejected).

(3) final review May, 1990 - Cut of year 2/88-7/88 graded "Z" (rejected).

as has also been noted by the learned Single Judge. Referring to Annexure-II, Confidential letter dated 26th March, 1984 he pointed out that the assessment of R.O. and F.T.O. in ACR 1977-78 had been expunged by the MS on technical

grounds as a result of which the writ Petitioner was given a special review (initial) by the Selection Board making it clear to him that if he makes the grade he would be treated as initial selectee Lt. Colonel of his batch, alternatively he will be treated as first review selectee for which he was approved. He was further called upon to say if he still desire to process his complaint further in view of the expunction in his ACR and the resultant special review granted to him. In reply to this communication, the writ petitioner Appellant by his letter dated 30th March, 1984 Annexure-IIA informed the authorities that he would convey his desire to process the complaint further after hearing from the authorities on Special review. By letter dated 30th Oct. 1989, Annexure-18, the Petitioner was informed as follows:

CONFIDENTIAL Telephone : 3019914 No. 05024/MS Complaints 30 Oct '89 SENA SACHIV SHAKHA/MS BRANCH MS COMPLAINTS SETTING ASIDE ACR: IC 21807 LT. COL. UP MATHUR: ENGRS.

1. Reference your note No. 16607/UPH/67/DGBR/EID dated 16 Oct 89.

2. The details of the case are as under:

(a) Lt. Col U.P. Mathur had submitted a Statutoiy Complaint dated 31 Jul 83 against his non-selection for promotion from Maj to Lt. Col. In this complaint his main prayer was for review of his case for selection for promotion to A/Lt. Col. Further he had requested that if any thing had gone wrong during the period 78-79, it should be reviewed and that his ACR initiated in 1978 be checked for technical correctness in respect of reporting officers.

(b) The Officer's above complaint had been duly examined alongwith his record profile and he was informed of the following:

(i) Assessment of RO and FTO in ACR 77-78 has been expunged on technical grounds.

(ii) As a result of the above expunction, he would be given a Special Review (Fresh). If approved, he would be treated as an initial selectee for the rank of Lt. Col.

(c) The officer was then given a Special Review (Fresh) and was graded "B" (fit) and promoted to the rank of A/Lt. Col. as an initial selectee.

(d) In view of the above, the officer's complaint stood redressed.

3. In his letter dated 09 Oct 89 (forwarded vide your letter referred to in Para 1 (above), the Officer's seems to have presumed that his ACR of 1978-79 has been set aside. This presumption is incorrect. The grant of Special Review (Fresh) was on account of expunction of the RO and FTO's assessment in his ACR 77-78.

4. The Officer's ACR 78-79 is very much on record.

5. The Officer may kindly be apprised of the position.

9. In view of the fact that as many as three chances were given and the writ Petitioner Appellant having failed in all the three chances consecutively, he cannot now insist for promotion from Lt. Col. to Colonel. Reliance has been placed by the learned State Bank of India and others Vs. Mohd. Mynuddin, State of Madhya Pradesh Vs. Srikant Chaphekar,

10. Mr. Barthakur, learned Counsel appealing for the Appellant submitted that there can be no quarrel in the proposition as laid down in the aforesaid cases. The writ Petitioner-Appellant is not seeking a straightway direction from the Court to the authorities to promote him, his prayer is for consideration in the light of the Rules. He agrees with the proposition that ordinarily the decision of the selection committee is not to be interfered with but he also submits that in the Appellant's case the very foundation of selection is based on the wrong entries made in the ACRs. Learned Single Judge, as noted by him, having called for the proceeding of Selections and on perusing the same concluded as follows:

This shows that on the basis of redressal granted by the Central Government by its letter 7th Aug. 1989, the Petitioner's case was considered for 3 times and he was not found fit in all the times. To satisfy myself, I have called for the proceedings of selection No. 3 Board and perused the same. On perusal, the Board constituted consisting of 5 officers each time with different officers. In all the sittings the Petitioner was graded "Z" "5". This would mean all the five officers rejected him.

11. Mr. Barthakur, learned Counsel appearing for the Petitioner argued that the uncommunicated adverse entries in the ACRs based and made on erroneous assumption, as though the writ Petitioner-Appellant was an Instructor and not found suitable for constructional duties, vide letter dated 15.1.79 and 3.2.79 written by the Commandant of the School to the Army Headquarters, as per Annexures-A and B to the re-joinder, his performance was wrongly assessed as an Instructor while writing his ACRs for the period January 78 to May 1978 and January 79 to May 1979 and this aspect of the matter has not been touched by the learned Single Judge. The point raised by the learned Counsel cannot be lightly brushed aside.

12. The Appellant filed a statutory complaint dated 31st July, 1983, Annexure-I for setting aside the ACR for the period just mentioned above. A partial relief was given to him by letter dated 26th March, 1984 as per Annexure-2 and the Appellant by his letter dated 30th March, 1984, Annexure-2A requested the authorities to specifically confirm whether ACR based on wrong assessment were to be set aside. The Appellant was informed by letter dated 21.4.84 that he was selected for promotion to Lt. Colonel by Special Review and since a substantial redress had been granted as prayed for, the statutory complaint dated 31.1.83 was not being processed further. This led the Petitioner-Appellant to presume that the ACRs 78-79 had been expunged by the authorities. The Appellant's

another grievance in this connection is that instead of being posted as Lt. Colonel in February-March, 1985, the promotion order was delayed which came only on 24th March, 1985. Thereafter his Regiment moved from Sagar to Nagaland under 8 Mtn. Division in July, 1985. It is the Appellant's claim that he incurred irks of his superior for his refusal to carry out an unauthorised work of construction of GPC Hut which is not permissible under operational working and this action resulted in a biased assessment of his performance noting him as High Average. It is the Petitioner Appellant's case that the adverse remarks were never communicated to him.

13. Again in December, 1986 his case was rejected because of placing of defective report before the Selection Board. The Appellant filed a statutory complaint in June, 1987 and December, 1988 but full redress was not given to him.

14. Learned Counsel argued that a partial redress of recommending the Petitioner's case for promotion can hardly be said to be a relief, the mistake was entirely of the authorities in placing the defective reports for which the Appellant should not suffer as the recommendation has no support and was inconsistent with the Rules, no relief could ever be granted to the Appellant. It was the duty of the authorities to have placed the correct report before the Selection Board. Holding Special Board first in September, 1989, then in January, 1990 and the first review and final review and assessing the Appellant's performance on the basis of erroneously assumed uncommunicated adverse ACRs for 1978-79, 1984-85, 1985-86 was not only illegal and contrary to existing rules but also violative of natural justice.

15. The Supreme Court in *S. Ramchandra Raju v. State of Orissa* 1994 Supp. 3 SCC 424, *B. Kumar v. State of Maharashtra and Ors.* 1988 SCC Supp. 674 and *Union of India and others Vs. E.G. Nambudiri*, has reiterated the principle in the following words:

This case would establish as a stark reality that writing confidential reports bears onerous responsibility on the reporting officer to eschew his subjectivity and personal prejudices or proclivity or predilections and to make objective assessment. It is needless to emphasise that the career prospects of a subordinate officer/employee largely depends upon the work and character assessment by the reporting officer. The latter should adopt fair, objective, dispassionate and constructive commands/comments in estimating or assessing the character ability, integrity and responsibility displayed by the officer/employee concerned during the relevant period for the above objectives if not strictly adhered to in making an honest assessment, the prospect and career of the subordinate officer being put to great jeopardy. The reporting officer is bound to lose his credibility in the eyes of his subordinates and failed to command respect and work from them. The constitutional and statutory safeguard given to the Government employees largely became responsible to display callousness and disregard of the discharge of their duties and make it impossible to the

superior or controlling officers to extract legitimate work from them. The writing of the confidentials is contributing to make the subordinates work at least to some extent. Therefore, writing the confidential reports objectively and constructively and communication thereof at the earliest would pave way for amends by erring subordinate officer or to improve the efficiency in service. At the same time, the subordinate employee/Officer should dedicate to do hard work and duty ; assiduity in the discharge of the duty, honesty with integrity in performance thereof which alone would earn his usefulness in retention of his service. Both would contribute to improve excellence in service.

It cannot be denied or disputed that there has to be objectivity in assessment contained in A.C.R. which has to be restricted to the performance pertaining to the period covered. Any deviation or departure from objectivity would adversely effect any officer or employee. The senior reporting officer owes this moral obligation to subordinate, about whom he is reporting. The other part and probably more important part of the same principle, is the communication of such adverse entry or report in the ACR to the officer concerned whose service career is undoubtedly going to be adversely affected by such uncommunicated adverse entries. Therefore, communication is of utmost importance.

16. Now adverting to the impugned judgment, what the learned Single Judge has done, is to take up the reliefs as sought by the writ Petitioner-Appellant in their serial order (see paras 7, 8 and 9 of the impugned judgment, the rest being narration of facts and arguments). The findings recorded by learned Single Judge against each prayer made and relief sought, as rightly pointed out by the learned Counsel for the Appellant is sadly lacking in reasons in support of the conclusions arrived at by the learned Judge.

17. The Supreme Court in *Maqbool Hussain Vs. The State of Bombay*, has very succinctly explained as to what a judicial decision should be the following passage extracted there from should be the following passage extracted therefrom may prove highly instructive-

A true judicial decision presupposes an existing dispute between two or more parties and then involves four requisites (1) The presentation (not necessarily orally) of their case by the parties to the dispute ; (2) If the dispute between them is a question of fact, the ascertainment of the fact by means of evidence adduced by the parties to the dispute and often with the assistance of argument by or on behalf of the parties on the evidence; (3) If the dispute between them is a question of law, the submission of legal argument by the parties, and (4) A decision which dispose of the whole matter by a finding upon the facts in dispute and application of the law of the land to the facts so found, including where required a ruling upon a disputed question of law.

18. Let us take the reliefs one by one. The first relief relating to ACRs of 1978-79, by all Reporting Officers as being subjective, the learned Single Judge has refused the same mainly on the ground that the Appellant who was informed

by the competent authority vide letter dated 24.11.84 (Annexure-3) that the statutory complaint dated 31.7.83 (Annexure was closed yet the writ Petitioner did not choose to press the processing of the complaint further. No reasons are assigned for arriving at the conclusion. Same holds good in case of relief Clause (b) pertaining to ACRs of 1983-84, 1984-85 as prayed for by the Appellant. The learned Single Judge holds no prejudice has been caused to the Petitioner. Again, no reasons are assigned for this conclusion.

19. As for prayer Clause (c) and (d) for the years 1985-86, 1986-87, the learned Single Judge has held that on the basis of partial relief and redressal granted to the Petitioner vide Central Govt. letter dated 7.8.1989 his case was considered thrice as detailed below-

(a) special fresh review Sept. 1989 out of year 3/86-6/86 and he was graded as "Z" (rejected)

(b) First review Jan. 1990 - cut of year 6/86-9/86 graded "Z" (rejected) ;

(c) final review May, 1990- cut of year 2/88-7/88 graded "Z" (rejected).

20. This was followed by the conclusion as recorded by the learned Single Judge-

This shows that on the basis of redressal granted by the Central Government by its letter 7th August, 1989, the Petitioner's case was considered for 3 times and he was not found fit in all the times. To satisfy myself, I have called for the proceedings of selection No. 3 Board and perused the same. On perusal, the Board constituted constituting of 5 officers each time with different of Bcers. In all the sittings the Petitioner was graded "Z" "5". This would mean all the five officers rejected him.

21. Learned Senior Standing Counsel Mr. Choudhury appearing for the Respondent Union of India supporting the impugned judgment under appeal, and placing reliance on the following judgments as reported in State of Madhya Pradesh Vs. Srikant Chaphekar, and State Bank of India and others Vs. Mohd. Mynuddin, strongly contended that the writ Court does not and should not ordinarily interfere with the decision of the Selection Committee, unless the decision suffers from bias or malafides. As a proposition of law there can be no quarrel with the submission made by the learned Standing Counsel, but there are two reasons firstly the learned Single Judge has assigned, no reason at all in support of his findings and secondly the whole process of selection, from one stage to another is based on an inherently erroneous approach and assumption that the writ Petitioner acquiesced in the closure of the statutory complaint dated 31.7.83 (Annexure-1), that too on an erroneous assumption of fact as rightly pointed out by learned Counsel for the Appellant, that he (the Appellant) did not choose to process his statutory complaint, whereas the fact of the matter is that the writ Petitioner Appellant by his letter dated 30th March, 1984 (Annexure-2A) had categorically stated and communicated -

21807/UMP/Pers 30 Mar 84

STATUTORY COMPLAINT/IC 21807 MAJ UP MATHUR

1. Ref Army HQ letter No. 36500/107/Engrs/MS 50 dt. 13 Mar 84 received vide HQ 2 Corps letter No. 1417/1/MS dt. 26 Mar 84.

2. It may please be confirmed, if action to expunge the ACRs of 1977/78 and 1978/79 in respect of assessment by IO, RO, SRO, is also being taken by MS Branch, Army HQ.

3. I will info my desire to process the complaint further or not on hearing of above and the result of "Space Review (Initial by the Selection Board.

The Appellant in his petition at paragraph 9 has made specific averments about Annexure-2A which the Respondents in their affidavit-in-opposition has not controverted, in the circumstances it can safely be deemed to have been admitted (see Smt. Naseem Bano Vs. State of U.P. and others, It was the duty of the Respondents to have not only controverted Petitioner"s pleaded case but also placed documentary evidence to show how the Annexure 2-A was dealt with and disposed of at their end (see Bharat Singh and Others Vs. State of Haryana and Others, This having not been done, it is futile to contend that the Petitioner had been granted his promotion with seniority in fact there was no grievance left.

22. The learned Single Judge has not adverted or addressed himself to the abovenoted aspect of the case and proceeded on an erroneous assumption of fact that the Appellant had acquiesced in the Respondents" action.

23. There is yet another inherent error occurred on the part of the Respondent authorities and the mistake gone unnoticed by the learned Single Judge and also by the learned Counsel for the Appellant.

24. Admittedly, the writ Petitioner as Major was posted as Research and Trial Officer at AAT SS Agra, during 1978 but he was assigned duty of an Instructor for which he was neither qualified nor posted. Naturally he was wrongly assessed as an Instructor and not found suitable for instructional duties which seriously affected his future prospects of promotion. The Commandant who has also the Initiating Officer for his ACR 1978-79, was more subjective - in his assessment as is also evident from two letters dated 15.1.79 and 3.2.79 (Annexures A and B) written by him. There is no objectivity in such assessment, it is biased. The learned Single Judge has not considered any of these aspects of the matter. It was open to him to come to any conclusion, on consideration of these important facts but omission to consider the same is neither proper nor desirable. Evaluating the performance of a Reference and Trial Officer as Instructor is in reality as good or as bad as assessing the performance of an Engineer in the field as lecturer in the class room. The Standard applied is itself basically wrong. Although shown as R and T Officer in the forms, it is sought to be suggested by the Respondents on the basis of the forms used for ACRs that it is not the form but the substance that matters. The question is not one of form, the lone question is how was he assessed ? What yard stick was applied ?

25. The same fallacious approach has been followed and perpetuated from stage to stage and rank to rank, even as regards relief contained in Clause (b) of the prayer, the learned Judge has held that no prejudice has been caused to the Petitioner as he was granted special review in ACRs 1983-84, 1984-85. The Petitioner had made complaints on 23.7.87 and 26.12.1988, but these complaints were rejected by the Respondents vide letter dated 7.8.89. Here again the learned Judge has not considered the pleaded case of the parties, before arriving at the above conclusion. It is the pleaded case of the Appellant that in Technical ACRs for 1.3.86 to 31.5.86, was deliberately delayed (vide para 30 of the petition Annexure-14). He again submitted a statutory complaint Annexure-19 on 20.11.89 which was rejected vide Annexure-21 on 20.3.90. There is no reference whatsoever of these documented facts in the impugned judgment. Even the Respondents in their affidavit in para 23 admit albeit in a guarded manner "since there were some incongruities the ACR was accepted only after permissible rectification of the observations". Apart from the admission there is a specific allegation of deliberate delay on the part of F.T.O. in forwarding technical ACR and the officer has been named, who saw to it that the Technical ACR reaches the Army HQ. M.S. Branch only after the sitting of the Selecting Board No. 3 held in July, 1986. This belated forwarding of Technical ACRs had the ruinous effect of Petitioner's exclusion from consideration along with his batch mates. Malice means no more than the deliberate or intentional doing of wrongful conduct. This is not the solitary instance. Again in April, 1987 the same officer delayed in initiating and forwarding Petitioner's Technical C.R. which was initiated in October, 1987 almost six months after being asked. It is an admitted position that the forwarding was full of inconsistencies and incongruities (see para 23 of the affidavit-in-opposition). The learned Single Judge without addressing himself to any of these vital facts has recorded his findings on ACRs pertaining to the years 1986-87 and the Technical ACRs 1983-84-85.

26. For a while, it was thought that the matter as a whole be remanded to the learned Judge for consideration afresh, but it would have further aggravated the delay that has already been caused and indeed advanced as one of the grounds for refusing the relief to the Petitioner at this distance of time.

27. The underlying object of this rule of practice has been explained in *Lindsay Petroleum Co. v. Wood* (1874) 5 PC 221 in the following words:

Now the doctrine of laches in Court of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation, which it would not be reasonable to place him if the remedy were afterwards to be asserted ; in either of these cases, lapse of time and delay are most material.... Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either

party and cause a balance of justice or injustice in taking the one course or the other, so far as it relates to the remedy, (emphasis added)

The same principle has been enunciated by the Supreme Court in umpteen cases to wit only a few Moon Mills v. Industrial Court AIR 1967 SC 1450 ; Rabindranath Bose and Others Vs. The Union of India (UOI) and Others, and more recently Mahadav Kalekar and Others Vs. State Bank of Hyderabad and Others,

28. What follows from the foregoing discussion is that the ACRs of 1978-79, at any rate, in its third part of the relief claimed by the Petitioner asking for expunction and clearly indicating the result of the special review before the Petitioner was called upon to make a statement whether he wanted the statutory complaint to be processed further has not been done. The partial redress, granted to the Petitioner which was not in accordance with the Rules, rather violative thereof, really speaking, has not come as a relief to the Petitioner. As a matter of fact, the complaint should have been referred to the Central Govt. for final decision, instead the intermediary authority given the partial redress, vide paragraph 126 of the Special Army Order. It may be noted here that for the period 1975-79 a close system, that is to say, no part of the ACR was to be shown to the officer reported upon except the adverse remark, if any, was being followed. Since the ACR was admittedly not shown nor any adverse remark communicated to the Petitioner, there was no question of making any representation against such ACRs. It cannot therefore be said that the petition suffers from delay or laches. The learned Single Judge has failed to appreciate this aspect of the matter along with bias, already discussed above.

29. In the result, this petition deserves to be allowed. It is accordingly allowed. The impugned judgment as passed by the learned Single Judge is set aside and the Respondents are directed to re-assess and re-consider the ACRs of 1978-79 written by IO, RO, SRO, the Technical ACRs of 1983-84 and 1984-85 and complete the ACRs of 1985-86 and 1986-87 written by RO, SRO, NSRO and PTO and on such re-assessment and re-consideration of the ACRs, the Petitioner who by now appears to have retired, be given all the consequential benefits, if need be, notional and the actual monetary benefits flowing therefrom, which we do not quantify. It is left to the authority concerned. The petition is allowed with no order as to costs.