

(2007) 09 DEL CK 0168

In the Delhi High Court

Case No : Writ Petition (C) 324 of 1996

Warrant Officer, B. Ram

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 14-09-2007

Acts Referred:

Air Force Act, 1950 — Section 161, 26
Constitution of India, 1950 — Article 226

Citation : (2007) 09 DEL CK 0168

Hon'ble Judges : Vikramajit Sen, J;S.L. Bhayana, J

Bench : Division Bench

Advocate : Party-in-Person, for the Appellant; Gaurav Duggal, for the Respondent

Final Decision : Dismissed

Judgement

S.L. Bhayana, J.—By way of this Writ Petition, the Petitioner prays for issuance of a Writ of Mandamus to direct the concerned Authorities to promote the Petitioner to the rank of Master Warrant Officer w.e.f. August, 1992 with all consequential benefits inclusive of Honorary rank of Flying Officer.

2. The brief facts, culminating into the filing of the present Writ Petition, are that the Petitioner on 15.04.1961 was appointed in the Indian Air Force as a Medical Assistant. The Petitioner rose to the higher rank as Warrant Officer II in the Air Force. In the year 1992, the Petitioner was posted to No. 3 Casualty Air Evacuation Unit (CAEU) at Leh. According to the petitioner, he was neither permitted to retain the Service Married Quarters (SMQ) nor was he provided with the alternate Separate Family Quarters (SFQ).

3. On 3.06.1992, the Petitioner was posted at Leh. On reaching at Leh on 13.06.1992, the Petitioner received instructions from the Authority to return to his previous unit in Bangalore from Leh in order to take possession of the ?SFQ?. The Petitioner thereafter reported to Bangalore but was later informed that the said quarter had been allotted to somebody else. Under the circumstances, the

Petitioner was directed to report at Leh. On 26.10.1992, the Petitioner was directed to return to Bangalore in order to face Disciplinary Proceedings, which were initiated against him on the charge of unauthorized occupation of ?SMQ?. In March 1993, Court Martial proceedings were initiated against the Petitioner on the charge of unauthorized occupation of ?SMQ? and on appreciation of the evidence brought before the Court Martial proceedings the Petitioner was found "Not Guilty". On 24.04.1993 by way of Revision, the Court Martial was re-conducted for reconsideration of its previous Order. The same Court assembled for revision and without adducing any fresh evidence, the acquittal of the Petitioner was converted into conviction. Therefore, the Petitioner was found guilty of the charge of unauthorized occupation and was reduced to the rank of Junior Warrant Officer and was also severely reprimanded.

Aggrieved of the said Order, the Petitioner filed Writ Petition in the High Court of Karnataka for setting aside the order-dated 22.03.1993 passed by the Court Martial. The High Court quashed the Order of the Court Martial and restored the Petitioner to the original rank of Warrant Officer with all subsequent benefits. The High Court further directed Respondent No. 3 to dispose of the application u/s 161 of the Air Force Act. The Petitioner during the process of his redressal was met by undue harassment and inaction on the part of the Respondent for not promoting him to the rank of Master Warrant Officer and for granting immediate discharge from service, which was rejected by the Authorities.

4. The Petitioner, who appears in person, submitted that the acquittals and later conviction by the same authority without production of any fresh evidence speaks about the arbitrariness of the Respondents and it violates the principles of natural justice.

5. The Petitioner further contended that he faced harassment and was compelled to stay at Leh without his family in spite of completion of his posting tenure. He submitted that his family was put to great hardship at the behest of the Air Vice Marshal P.C. Sharda. He applied for immediate discharge from service to avoid further confrontation and humiliation at the hands of the Respondents. His request for discharge from service was also not acceded to by the Authorities.

6. The Petitioner further submits that in February 1995 he was assured that he would be posted to the station of his choice, i.e., Bangalore but he was posted to Burmoli, Allahabad. He submitted that he was directed to report on completion of his en route leave to Hindon or Delhi as his posting to Burmoli was cancelled. He filed various applications before the concerned Authorities in this regard, but the same were of no avail as no reply was received. The Petitioner argued that the Respondents' inaction not to respond to the petitioner's grievance on several occasions violates the provisions of Section 26 of the Air Force Act.

7. The Petitioner also submitted that with the faint hope of justice he filed an application for his discharge from service as the same was moved as per the existing policy of the Air Force.

8. The Petitioner further argued that he was denied promotion from the post of Warrant Officer to the Master Warrant Officer on vague and flimsy grounds without assigning any reason.

9. Learned Counsel for the Respondents, on the other hand, contended that it is an admitted case that the Petitioner held the rank of Warrant Officer and all his grievances were considered and redressed in accordance with law. On the question of promotion of the Petitioner to the rank of Master Warrant Officer, Learned Counsel submitted that the Petitioner was initially considered for promotion to the rank of Master Warrant Officer during promotion years 1992-93 and subsequently in 1993-94, 1994-95 and 1995-96 but he failed to attain the required minimum grade as per the existing policy.

10. Learned Counsel for the Respondent vehemently argued that the promotions in Air Force are based on seniority-cum-merit. The Petitioner was duly considered for promotion to the next higher rank based on his substantive seniority, during the promotion years 1992-93, 1993-94, 1994-95, 1995-96. However, the Petitioner had failed to make the minimum required grade and thus placed ? Below Grade? during these promotion years. The Petitioner's discharge application violated the Air Force Rules as the application was not in accordance with the existing policy on discharge from service and hence the said discharge application of the Petitioner did not merit consideration. Learned Counsel further submits that the Petitioner was advised to put up a proper application as per the existing policy.

11. Learned Counsel for the Respondents submitted that the period of service of the Petitioner weren't unblemished as the Petitioner had on numerous occasions attempted to surpass proper channels for addressing his grievances. The Petitioner deliberately left Bangalore and went to Leh with a mala fide intention not to vacate the ?SMQ? which was allotted to him during his posting at Bangalore. Despite repeated instructions from the concerned Authorities, the Petitioner failed to vacate the ?SMQ? and shift over to ?SFQ?, which was thereafter allotted to him by the Authorities, thereby violating existing policies and attracting disciplinary proceedings. It was further submitted that the findings of the concerned Authorities by declaring the Petitioner ?Not Guilty? was against the weight of evidence, Therefore, confirming Authority ordered Revision to reconsider the said findings, which it is empowered under the Air Force Act, 1950 and Rules 1969. The Court Martial reversed its earlier findings vide its Order dated 24.09.1993, thereby reducing the rank of the Petitioner and severely reprimanding him. Hence, the Order of the Revision Authority is legal, valid and not arbitrary.

12. Learned Counsel for the Respondents also submitted that in considering the choice of posting to Bangalore on completion of his tenure at Leh as per the existing policy, would not by itself guarantee the Petitioner that he would be posted only to a unit in Bangalore as postings in respect of Airmen are authorized by the Air Force Record Office subject to availability of vacancies and

not as per the whims and fancies of the Authorities. Therefore, the Petitioner was not posted to the station of his choice due to the unavailability of vacancies and not at the behest of the Authorities or any individual.

13. We have heard Learned Counsel for both the parties and perused the documents available on records.

14. Having heard Learned Counsel for the parties, we are of the considered opinion that the Petitioner's conduct during his tenure in the Indian Air Force was not satisfactory. The Petitioner had repeatedly violated the Rules of the Indian Air Force by not following the proper channel for redressal of his grievances.

15. We find substance in the contention of the Learned Counsel for the Respondents that the promotion in the Indian Air Force is based on certain requisite qualifications and one of them is the Annual Confidential Report (ACR). As per the promotion policy, an Airman has to score a minimum grade in the preceding 5 years of his ACR to become eligible for promotion, which the Petitioner was unable to obtain and hence he was ineligible for the next promotion. It is also mentioned in the said promotion policy that all Airmen who fail to meet the minimum grade are to be placed as Below Grade i.e. 'BG' in that promotion year. The policy for promotion was based on seniority-cum-merit, Therefore, the Petitioner could not be promoted to the higher rank of Master Warrant Officer due to his low grade.

16. The aim of ACR is to have an objective assessment of an officer's professional and personal qualities, his comprehension, employability and his potential as observed during the period covered by the report. All Reporting Officers must, Therefore, be fair, impartial and objective in their assessment. We may also notice that during the course of hearing, the Respondents had produced the original records and as per these records the Petitioner had not scored the minimum required grade in the concerned five-year period. The grading as obtained by the Petitioner was stated to be Below Grade and consequently the selecting Authority found the Petitioner unfit for promotion to the rank of Master Warrant Officer. On perusing the ACR's of the Petitioner, we observe that the Petitioner was considered for promotion to the next higher rank of Master Warrant Officer as per the Policy during the promotion years 1991-92, 1992-93, 1993-94, 1994-95, 1995-96 and 1996-97. However, on each of these occasions the Petitioner had failed to make the minimum required ACR grade and, Therefore, he was marked as 'BG'. The marking of 'BG' would not mean that the individual had any adverse report in his ACR. The Indian Air Force cannot be expected to promote Officers whose performance is below grade. The promotion of the Petitioner was not done on the ground of not meeting the merit standard as per the requirements. It is only a right of an employee to claim consideration for promotion but the Petitioner has no legal indefeasible right to be promoted. Of course, the process of selection has to be fair and according to the established principles of service jurisprudence.

17. It is now well settled that the mere general statements will not be sufficient for the purpose of indication of ill will. There must be cogent evidence available on record to come to the conclusion whether, in fact, there existed a bias or a mala fide move, which resulted in the miscarriage of justice.

18. In order to attach credence to the process of exercise of administrative powers, fairness in the decision making process would be sine qua non. It may be proper and even somewhat obligatory upon the Authorities concerned to spell out or give some kind of expression to the processing of thought, which ultimately culminates into the final decision.

19. Before parting with the case we need to observe that considering the nature and the sensitivity of the post involved each individual officer should not in any manner feel as though they were being discriminated against or the procedure followed is arbitrary and illegal. Therefore, the standards to be adopted and applied by the Authorities should be of the highest order so as to avoid such an impression of arbitrariness in the Air Force. At all levels, it should be borne in mind that justice should not only be done but also appear to have been done. It will be in the administrative interest and would help in inspiring confidence in the process of fairness in the action of the Respondents that record indicates proper application of mind in relation to the various contentious issues raised by the Petitioner. The post of Master Warrant Officer is of higher rank and the Petitioner was not eligible for next promotion as the Petitioner failed to make the minimum required score as per existing policy of Air Force.

20. We cannot lose sight of the fact that under Article 226 of the Constitution, this Court does not sit as an Appellate Authority over the process of selection but it examines from the point of its limited jurisdiction whether the process of selection was just, fair and was in accordance with the existing Rules. As already noticed, promotion Rules read in conjunction with the relevant guidelines clearly provide for a criteria which has been uniformly applied by the selecting authority with reference to the service records of the candidates falling within the zone of consideration.

21. In view of the above, the writ petition being devoid of any merits is dismissed. All pending applications shall also stand dismissed.