
(2006) 08 DEL CK 0022

Delhi High Court

Case No: WP (C) . No. 10182 of 2006

Bhm Rampal Singh

APPELLANT

Vs

Union of India (UOI)
and Others

RESPONDENT

Date of Decision: Aug. 31, 2006

Acts Referred:

- Border Security Force Act, 1968 - Section 26, 27
- Constitution of India, 1950 - Article 226

Hon'ble Judges: Swatanter Kumar, J; G.S. Sistani, J

Bench: Division Bench

Advocate: Ramesh, for the Appellant; T. Parshad, Dy. J.A.G., for the Respondent

Final Decision: Dismissed

Judgement

G.S. Sistani, J

1. In this writ petition under Article 226 of the Constitution of India, the petitioner has prayed for issuing a writ, order or direction, directing the respondents to amend the annual confidential report or alternatively issue a writ of certiorari to quash and set aside the entire annual confidential report for the year 2001 and directing the petitioner to be considered de novo and if promoted then retrospective seniority be granted.

2. The facts of the case as set out in the petition are that in March 1982 the petitioner was enrolled in the rank of Sepoy in Army. He was promoted to the rank of Lance Naik in 1986 and thereafter to the rank of Naik in 1989. Thereafter petitioner was promoted as Havildar in October, 1994 and then appointed as Battery Havildar Major in April, 2004. Around June 2004, the petitioner was expecting to be promoted to the next rank of Naib Subedar, but when the annual confidential report profile was made out, it was observed that the petitioner had received 2/4 points in the annual confidential report for the year 2001 when he was posted in 1 Jammu and Kashmir Artillery Battalion NCC, Poonch. As

per the rules in the last 5 years of service of all candidates due for promotion should get above average report i.e. at least 3/4. It is not in dispute that the petitioner having got 2/4 points for the year 2001 he was not promoted. In February, 2005 based on the dedicated performance of the petitioner the Commanding Officer suo moto took up the case of the petitioner to verify the circumstances as to how the petitioner was awarded 2/4 and not recommended for promotion. It is averred that the Commanding Officer Colonel N.S. Jadhav wrote to Colonel A.K. Madhok, who was the Commanding Officer in the NCC Battalion at the relevant time when the petitioner was awarded 2/4 and not recommended for promotion. In terms of the letter dated 21.2.2005, said Colonel A.K. Madhok had replied vide his letter that on introspection the impugned ACR needs to be amended and the overall grading of the petitioner be amended from 2/4 to 3/4 and the NR (not recommended be amended to R (recommended). The matter in controversy did not end at that stage as on 9.9.2005 the Artillery records, Nasik intimated that the amendment in the ACR did not meet the requirement instead the Commanding Officer should justify as to why he had awarded his NR (not recommended) for promotion. In October, 2005 the Commanding Officer Colonel N.S. Jadhav again wrote to Colonel A.K. Madhok to settle the outstanding observation in the ACR in the year, 2001 of the petitioner. Vide letter dated 25.10.2005 Colonel A.K. Madhok wrote back to the respondents wherein he described the petitioner as under:

professionally sound NCO (Non Commissioned Officer, who took adequate interest in all NCC activities. The NCO is capable of independently carrying out tasks assigned to him.

3. It is pleaded that even the box gradings of the petitioner were amended to 3/4 and he was recommended for promotion. On 29.11.2005 Colonel A.K. Madhok again wrote to the respondents observing as under:

The NCO (Non Commissioned Officer) was inadvertently given NR (not recommended for promotion) in the pen picture. No counselling/warning in writing was given to the NCO.

4. The respondents did not amend the ACR of the petitioner pertaining to the year 2001. Show cause notice in the matter was issued. The respondents entered appearance but no counter affidavit was filed. The parties were heard at length.

5. The main thrust of the argument of learned Counsel for the petitioner is that it is only the ACR for the year 2001 where the petitioner has been granted 2/4 besides which the petitioner has had an excellent record. The counsel has further argued that 2/4 granted to the petitioner in the year 2001 by Colonel A.K. Madhok was a pure mistake and in reply to letters dated 3.2.2005 as well as letters dated 9.9.2005 and 17.10.2005, Colonel A.K. Madhok had realized his mistake as clearly mentioned in his letters dated 21.2.2005, and 29.11.2005 that he had inadvertently given NR in the pen picture. The counsel for the petitioner has submitted that based on these documents respondents had no choice but to amend the ACR of the petitioner for the year 2001 and 2/4 and not recommended should be read as 3/4 and recommended. The action of the respondents of not carrying

out the amendment is resulting in serious prejudice and loss of promotion.

6. The learned Counsel for the respondents on the other hand has submitted that the present petition is completely devoid of merits and the same be dismissed. She has placed reliance on letter dated 21.2.2005 fair typed copy of which has been filed at page 14 (Annexure P.2 of the writ petition), which give the reason of awarding 2/4 in the ACR. It is submitted that the ACR for the year 2001 reflected a correct and true picture. It is not a fit case where the ACR of the petitioner for the year 2001 should be amended.

7. We have heard learned Counsel for the parties and have given our thoughtful consideration to the matter. It would be relevant to reproduce copy of letter dated 21.12.2005 at this stage:

No. 48, 27th Main
1st Cross, BTM Stage - 1
Bangalore-560068
21 Feb 2005
34799/AK
72, Med Regt
C/o 56 APO
ACR NCO: 2001

1. Ref your letter No 306103/22/A dated 03 Feb 2005.

2. Hav Rampal Singh was posted to 1 J&K Artillery Battery NCC, Poonch. Since no officer to the Battery, the Annual Confidential Report (ACR) was initiated by Group Commander.

3. Tenures in NCC are very sensitive and especially so in the Disturbed area of Poonch, being insurgency area. The tenure involves training and handling of young children from Schools/colleges. A very high standard of personal discipline is essential/mandatory.

4. During Hav Rampal Singh's tenure with 1 J&K Artillery Battery, the performance and discipline of the NCO was not satisfactory. He refused orders from Associate NCC Officers looking after the Battery and put many an impediment in the smooth functioning. Besides he would most of the time be under influence of liquor. Accordingly he was graded.

5. It seems from the record of ACRs from 2000-2004, the NCC has improved being in his own Regiment. With the same in view the following amendments are being made and attached with his duplicate ACR.

(a)	Para 13 (b) Box grading	:	3
(b)	Para 15 (b)	:	R

Sd/xx

8. In the aforesaid letter although it is not disputed that Colonel A.K. Madhok has recorded that after looking at the ACRs of the petitioner from 2000 to 2004 wherein the petitioner has showed improvement being in his own regiment the amendments were made. What cannot be lost sight of the fact is that even in February, 2005 Colonel A.K. Madhok had clearly mentioned that the tenures in NCC are very sensitive and especially so in the disturbed area of Poonch, where the petitioner was posted being an insurgency area. The tenure involves training and handling of young children from schools and colleges and very high standard of personal discipline as mentioned are mandatory. Colonel A.K. Madhok goes on to state that during the petitioner's tenure with 1 Jammu and Kashmir Artillery Battalion the performance and discipline of the petitioner was not satisfactory. He refused orders from associate NCC officers looking after the battery and put many impediment in the smooth functioning. Besides he would most of the time be under influence of liquor. Accordingly he was graded. A very relevant fact, which does not find mention in the writ petition and seems to have been intentionally suppressed is that at the time when the entire correspondence was being carried out with the said Colonel A.K. Madhok, was at a time when he had already retired. Counsel for the petitioner has been unable to show us any provision under which the retired Colonel could have amended an ACR after 4 years of retirement. We also find it very strange that while on the one hand in the first half of the letter of 21.2.2005 the said Colonel A.K. Madhok has vividly described the petitioner as a person who refused orders created impediment in the smooth functioning and would be under the influence of liquor most of the time and in the same letters he goes on to say that the petitioner has now improved. In the letter dated 25.10.2005 the pen picture is changed as under:

No. 48, 27th Main
1st Cross, BTM Stage - 1
Bangalore - 560068
Artillery Records
C/O.56 APO
347999/AKM/01

25 00

OBSERVATION ON ANNUAL

CONFIDENTIAL REPORT

1. Refer your letter No. 1241/Med -I/12/RA -1 (A) dated 09 Sep 2005.
2. Amended pen picture along with Box gradings are enclosed as desired.

PEN PICTURE - No. 1436314 A BHM
Rampal Singh

A professionally sound NCO (Non Commissioned Officer) who took adequate interest in all NCC activities. The NCO is capable of independently carrying out tasks assigned to him.

Sd/xx
Colonel A.K.Madhok
Group Commander
25 Oct 2005

Para 13 (b) Box grading 3

Para 15 (b) R (recommended for promotion)

Sd/xx
Colonel A.K.Madhok

9. Similarly, in the subsequent letter dated 29.11.2005 Colonel A.K. Madhok says that the ACR of 2001 was given inadvertently. Copy of letter dated 29.11.2005 is reproduced below:

6. Col AK Madhok (Retd)
No. 48, 27th Main
1st Cross, BTM Stage-1
Bangalore-560068
1799/AKM/ACR

29 Nov

Records Officer

Topkhana Abhilekh

Artillery Records

C/o 56 APO

Annual Confidential Report NCO-2001

1. Ref your letter No. 1242/Med-I/D/14363214A/72 MR/RA-I (A) dated 19 Nov 2005.

2. Justification of NR (Not Recommended) in Pen picture Column 66 of ACR 2001 is as under:

The NCO (Non Commissioned Officer) was inadvertently given NR (Not Recommended) in the pen picture. No counselling warning in writing was given to the NCO. (Non Commissioned Officer)

3. You are requested to make necessary endorsements in the ACR.

Sd/xx
AK Madhok

10. Keeping in view the correspondence exchanged, we feel that no credibility can be given to the subsequent letters of Colonel A.K. Madhok who has since retired. Even otherwise at no stage the petitioner has made any grievance against the ACR of the year 2001 under the provisions of Section 27 or 26 of BSF Rules.

11. Keeping in view the above facts we are of the considered view that the letters from Colonel A.K. Madhok had no force of law. Once the petitioner had been described as some one whose discipline was not found satisfactory, refused orders put impediments in the smooth functioning and was under the influence of liquor most of the time, after span of 4 years the person cannot become professionally sound.

12. It was argued before us by the learned Counsel for the petitioner that the petitioner has got 2/4 in his ACR for the year 2001 for which the petitioner was not promoted. Strong reliance has been placed on the fact that this is the only ACR wherein the petitioner has got 2/4 while the ACRs for the other years he has been getting 4/4 in the year 1999, 4/4 in the year 2000, 9/9 in the year 2002 and 8/9 in the year 2003. We are unable to agree with the submissions of the learned Counsel for the petitioner that this itself is a ground for amendment in the ACR for the year 2001. The Hon"ble Supreme Court of India in the case of [Amrik Singh Vs. Union of India \(UOI\) and Others](#), while considering a case of a single adverse remark in the ACR has held that the non promotion on account of such a remark cannot a subject matter of judicial review nor can the Court examine the correctness of such a remark and has held as under:

In the result, we are not inclined to grant any relief to the appellant in spite of the fact that his performance in the subsequent years has been shown to be very good and his ratings were very high. Ultimately the single adverse remark of 1985-86 by the Reviewing Officer had stood in his way, not only at the time of original consideration but also when the matter was considered afresh pursuant to the directions of the High Court. The result may be unfortunate. But the scope of the jurisdiction of the High Court being very limited, we cannot go into the correctness of the adverse remarks nor into the assessment made by the Selection Board on the two occasions.

13. While writing the Annual Confidential Report heavy duty and responsibility is cast upon the reporting/reviewing officer and this duty is to be carried out accurately, with utmost sincerity and dispassionately without any bias, as the same is likely to have an effect both on the officers as well as the institution where he is employed. While on the one hand an irresponsible ACR in favor of the officer can saddle an organization with an incompetent person, on the other hand a deserving person, who has not been given a good ACR due to a bias cannot only be disheartened but the institution may not get benefit of such a responsible person.

14. We find no merit in this petition and the same is dismissed leaving the parties to bear their own costs.