

(2011) 07 DEL CK 0427

Delhi High Court

Case No: Writ Petition (C) 3578 of 2010

Brig.

APPELLANT

Vs

Sukhdial Vs Union of India (UOI)
and Others

RESPONDENT

Date of Decision: July 8, 2011

Hon'ble Judges: Sunil Gaur, J; Pradeep Nandrajog, J

Bench: Division Bench

Advocate: Diljit Singh, for the Appellant; Anjana Gosain, for the Respondent

Final Decision: Dismissed

Judgement

Pradeep Nandrajog, J.

Before the Armed Forces Tribunal, the Petitioner had prayed that his CR for the period June 1992 till July 1993 be expunged and similarly the confidential record for the period July 2000 to July 2002 should also be expunged. He alleged bias and inconsistency in the confidential record prepared for the said periods. He prayed that directions be issued to consider afresh his promotion to the rank of Major General, after expunging as aforesaid.

2. After noting the fact the Tribunal has dismissed the claim before it. The reasons of the Tribunal, are as under:

"We have heard learned Counsel for the parties. Original record was also placed before us and we perused the record. We find that adverse entry of 1992-93 was expunged in the year 1994 and ACR for the year 2000-01 was expunged on 16.06.2004. After expunging all the remarks his case was again considered by the Selection Board and the Selection Board did not find him suitable to be promoted to the post of Major General. After going through the original record, we are of the opinion that view taken by the Selection Board in the given circumstances appears to be justified and there is no reason for us to set aside the same as comparative assessment made by the Selection Board has to be accepted unless it is vitiate being

mala fide of the member of Selection Board. Therefore, we do not find any merit in the petition. Same is dismissed. No order as to costs."

3. It strikes the reader at the first blush, and at the outset, that under the garb of giving reasons, the Tribunal has simply stated its conclusions. We find no reasons given by the Tribunal. Merely to state that having perused the record as per which adverse entries were expunged and finding nothing more to be expunged, sans the reason, is no reasons.

4. We are constrained to write once again, and we use the expression "constrained" for the reason we have written at least 20 orders, highlighting that, as the primary adjudicator of facts, it is the duty of the Armed Forces Tribunal to cull out the relevant facts and give findings with respect to issues raised thereon by penning its mental process by which the conclusion is arrived at. This would facilitate the Constitutional Courts when the decisions of the Tribunal are brought before them for a judicial review. The shoddy work done by the Tribunal results in the work of the Constitutional Courts being increased, for the reason the Constitutional Court would then have to re-appreciate the facts in detail.

5. We do so.

6. The bias which the Petitioner alleges is the box office grading as awarded by the Reporting Officer. During arguments learned Counsel for the Petitioner was at pains to refer to what had happened by urging that notwithstanding the same being admittedly expunged, the bias would remain for the reason the members of the DPC would be colored by the fact that the Reviewing Officer had awarded a grading which was set aside upon a representation being made.

7. To understand the argument, we refer to the ACR for the period July 2001 till November 2011. The ACR proforma is in 4 parts and the most important is Part II and Part IV. In Part II the Initiating Officer and the Reviewing Officer have to give box grading by awarding marks between 1 to 9 on as many as 11 attributes listed at serial No. 12(a) to (j). In Part IV, 5 attributes have to be marked under Serial No. 19(a) to (e) and under serial No. 20 the potential of the officer for promotion has to be listed.

8. The ACR shows that the Reporting Officers box grading pertaining to the attribute at serial No. 19(a), (b) and (c) have been expunged. It is apparent that the marks recorded by the Reporting Officer stand expunged and the ones given by the Initiating Officer have been retained. We note that on 4 out of 5 attributes the Initiating Officer has graded the Petitioner by awarding him 9 marks i.e. "Outstanding" and on one 8 marks. We also find that at serial No. 20 pertaining to the potential of the officer, the Initiating Officer has ticked the column "Should Promote". We find that the Reporting Officer opined by ticking the next below column i.e. "May Promote". This has been expunged.

9. Since 3 out of 5 attributes at serial No. 19 by the Reviewing Officer have been expunged, nobody can ascertain as to what marks were given by the Reporting Officer, but the fact of the matter remains that not only were they expunged, but when they existed they were not of such low numeral, evidenced by the fact that the Reporting Officer opined that the Petitioner may be promoted.

10. Be that as it may, the issue would be, whether bias can be inferred from said fact.

11. Now, Petitioner urges that bias would ooze from the fact that the members of the DPC would be conscious of the fact that Reviewing Officer had downgraded marks given by the Initiating Officer and notwithstanding they not knowing as to what were the marks given by the Reviewing Officer, would be colored as aforesaid.

12. The argument is tenuous. The procedure to record the AC Rs and consider post ACR recording representations would reveal a self-corrective mechanism. As in the instant case, and as highlighted hereinabove, the Competent Authority, to whom the representation was made, found that the Reporting Officer was not justified in assigning the marks in the box grading, contrary to the one given by the Initiating Officer and thus expunged the same. The self corrective mechanism undid a wrong to the Petitioner. To infer there from bias against the members of the Departmental Promotion Committee would be farfetched. Would it mean that no self correction needs to be done? We leave it at that, but clarify that probably learned Counsel intended to urge that members of the DPC would be influenced by the fact that the Reviewing Officer had given less marks and used the expression "bias" rather loosely.

13. When we peruse the ACR grading for the other periods, we likewise find that the authority to whom the statutory petition was made, made corrections to be effected, it did so by expunging the lesser marks assigned in the box grading by the Reviewing Officer and for parity of reasons which we have given while highlighting with reference to the ACR of the Petitioner for the period 1st July, 2001 to 27th November, 2001 would hold that nothing adverse remains in the AC Rs of the Petitioner. The bias sought to be urged with reference to what has been noted hereinabove, is tenuous and has no legs to stand on.

14. We conclude by noting that promotion to the rank of Major General is purely based on comparative merit. For the benefit of the Petitioner, we may note that his ACR grading rate him "Above Average" and the only grading above is "Outstanding". We note that the hierarchy of the grading is (i) "Outstanding", (ii) "Above Average", (iii) "High Average", (iv) "Average", (v) "Low Average" and (vi) "Below Average". The Petitioner is at the second notch. Higher you go up in the ladder, more intense would be competent for the obvious reason the best move up the ladder. Only one of over one million Army men reaches the post of the Chief of the Army Staff. A mere hundred reach the post of Major General. It is apparent that competition at

the top is razor sharp. It is obvious that the Petitioner could not make the grade inasmuch as notwithstanding the he being rated as "Above Average", there were others who were at the top slot being "Outstanding".

15. The writ petition is dismissed.

16. No costs.