

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ WP (C) No.9686 of 2007

% Date of decision: 23.04.2008

BRIGADIER SREEDHARAN VIJAY KUMAR ...PETITIONER
Through: Mr. Rajiv Manglik, Advocate.

Versus

UNION OF INDIA & ORS. ...RESPONDENTS
Through: Mr. Sanjeev Sachdeva,
Advocate.

CORAM:
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE MOOL CHAND GARG

- | | | |
|----|---|----|
| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. | To be referred to Reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

SANJAY KISHAN KAUL, J. (Oral)

1. Rule DB.
2. At the request of the learned counsel for the parties, the petition is taken up for final disposal.
3. The petitioner was commissioned in the Armed services on 3.12.1972 and was promoted to the rank of Brigadier in February 2005. The comments of the petitioner were sought on 23.6.2006 in respect of the allegation that the

petitioner was bringing pressure/influence to seek posting of his choice which was replied to by the petitioner. A show cause notice was issued on 31.7.2006 to which the petitioner also submitted a reply. The petitioner was awarded 'Severe Displeasure (Recordable)' by GOC 10 Corps on 31.8.2006.

4. It may be noticed that in the mean time the confidential reports of the petitioner for the period 03-06 to 07-06 came up for consideration and was reviewed by the same officer being the GOC 10 Corps who awarded the punishment to the petitioner. The petitioner submitted a statutory complaint against the displeasure recorded against him on 21.9.2006 and in November 2006 also submitted a statutory complaint against review of the ACR by the same officer on account of alleged bias.
5. The petitioner was considered for promotion to the rank of Major General in December 2006 by the Selection Board and was informed on 11.4.2007 about his non-selection.
6. The representation of the petitioner against the recording of displeasure was considered by the Army Commander (GOC-in-C) South West Command and in terms of the order dated 23.5.2007 the punishment was commuted to severe displeasure (non-recordable) but made effective from the date of the said order and not w.e.f. the date of

the award of the punishment. The petitioner also submitted a supplementary statutory complaint against non-empanelment for the rank of Major General and filed WP(C) No.4318/2007 regarding non-disposal of statutory complaint. The writ petition was disposed of with the direction to the respondents to decide the statutory complaint. The statutory complaint was rejected on 24.8.2007.

7. The petitioner approached this Court with the grievance that the statutory complaint dated 21.9.2006 regarding the illegal punishment awarded to the petitioner has still not been disposed of and sought quashing of the impugned order in that behalf and for a direction to decide the statutory complaint along with other consequential reliefs seeking review of his case by the Selection Board since the petitioner was attaining the age of 56 years which would result in his superannuation on account of his holding the post of only a Brigadier while in case the petitioner was promoted he would superannuate at the age of 58 years.
8. Notice to show cause was issued on the writ petition on 24.8.2007 and on the interim application a specific order was passed that the retirement of the petitioner on 31.12.2007 would not come in the way of the promotion

of the petitioner to the post of Major General if he was found eligible.

9. The case of the petitioner was considered and the statutory complaint dated 21.9.2006 was disposed of on 31.12.2007, the last date of service of the petitioner. The Chief of Staff granted full relief to the petitioner, as prayed for. The result was that the petitioner succeeded departmentally in respect of his statutory complaint but only on the last date of his service.
10. In view of the aforesaid facts and circumstances the question which arises is as to the nature of reliefs which can be granted to the petitioner in the present case.
11. Learned counsel for the petitioner contends that the Selection Board is scheduled to be held shortly and learned counsel for the respondents confirms the same. However, learned counsel for the respondents states that there is an impediment for consideration of the case of the petitioner on account of the fact that in the mean time the petitioner has superannuated on 31.12.2007. Learned counsel, however, cannot seriously dispute the fact that the interim order dated 28.12.2007 in the present case protected the rights of the petitioner for such consideration and thus it cannot be seriously contended that the petitioner cannot be considered by the Selection Board. The natural consequence would be

that if the petitioner is found fit and meritorious for such promotion by the Selection Board, the petitioner would be entitled to the extended period of service and all consequential benefits.

12. There is, however, another aspect to the matter which arises on account of the grievance of the petitioner about the ACRs written for the period 03-06 to 07-06. Learned counsel for the petitioner confines the grievance to the review carried out by the GOC 10 Corps who was the same officer who recorded the censure which has been set aside.
13. The original records have been produced before us and perused. We do find that there is difference in the recording of grading for personnel and demonstrated performance between IO and RO. Such differential is perceptible for certain traits of the petitioner. The comments of the officer also show a perceptible difference between the notings made by the IO and the RO though the overall grading given is the same. We have also had the benefit of perusing the past record of the officer which, in fact, tallies with what has been recorded by the IO for all those periods/years. There is definitely down-grading on certain aspects by the RO for the relevant CRs in question. In fact, for no individual trait has the person being granted a grading of seven (7)

after 1996 except by the RO for the relevant CR in question. All the gradings are 8 or above.

14. Learned counsel for the respondents contends that there are no specific allegations made of bias or *malafide* against the officer concerned.
15. We are unable to accept the plea of the learned counsel for the respondents for the reason that the officer is the same who has passed the censure. The period when the concerned officer was examining the case for censure is the same when the CR was being written. Both have happened almost simultaneously. It would be natural for the officer concerned who is endorsing a censure to make appropriate gradings while assessing the profile of the officer and that is what appears to have happened whereby the RO has given lower gradings for individual traits of the officer arising from his mental frame where he perceived that the officer deserved the censure. The said censure and all actions taken have been set aside departmentally by the Chief of Staff.
16. Learned counsel for the respondents fairly points out that in the last consideration of the petitioner before the Selection Board the factum of the censure was taken into account. The same does not exist now. Thus, the appropriate relief would be for the gradings of the petitioner written by the RO to be struck off the record as

also his comments and the case of the petitioner to be examined by the Selection Board afresh in its next sitting on the basis of the remaining profile of the petitioner. Needless to say that the censure having been struck off by the Chief of Staff the same would have no bearing for the case in question.

17. A writ of mandamus is issued in the aforesaid terms directing the respondents to put up the case of the petitioner before the next Select Board for consideration of promotion to the post of Major General without taking into consideration grading and notings of the RO for the period 03-06 to 07-06 and placing the order of the Chief of Staff and in case the petitioner is found meritorious on comparative merits, the petitioner would be entitled to all the consequential reliefs with continuity of service for the remaining period of service. The respondents would naturally pass all the necessary orders in this behalf in case such an eventuality arises.
18. The petition is allowed leaving the parties to bear their own costs.

SANJAY KISHAN KAUL, J.

APRIL 23, 2008
b'nesh

MOOL CHAND GARG, J.