

+ W.P.(C)No.7141/2009Date of Decision : 23rd December, 2010

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JAI PAL SONI Petitioner
Through : Mr. L.K. Garg, Adv.

versus

UOI & ANR. Respondents
Through : Ms. Anjana Gosain,
Mr. B.V. Niren and
Mr. Abhishek Goyal, Advs.
along with Asstt. Comdt.
Bhupinder Sharma, BSF.

CORAM :-**HON'BLE MS. JUSTICE GITA MITTAL****HON'BLE MR. JUSTICE J.R. MIDHA**

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

GITA MITTAL, J. (Oral)

1. The writ petitioner is a serving officer with the Border Security Force. On 24th March, 2001 was appointed as Assistant Commandant (direct entry). The petitioner has contended that his service record contains no adverse entry till by a communication dated 29th December, 2003, he was informed of adverse remarks in the Annual Confidential Report ('ACR' hereafter) for the period from 1st April, 2002 to 31st March, 2003. The petitioner also assails the order dated 18th June, 2004 and 30th August, 2006 whereby the respondents

rejected the petitioner's representations against the adverse remarks. The petitioner's representations for expunging the adverse remarks were not favourably considered.

2. Amongst others, the petitioner has assailed the adverse remarks on the ground that the Reviewing Officer had not completed 90 days prior to 31st March, 2003 in the appointment and was therefore not competent to review the ACR of the petitioner.

3. The writ petition has been necessitated for the reason that as a result of the said adverse remarks, the petitioner has been brought down in the gradation list as on 1st January, 2008. The petitioner contends that he was required to have been placed between Serial Nos.1505 and 1506 but finally has been placed at serial No.1613.

4. It is an admitted position that for the period in question, the Initiating Officer had given 'very good' remarks in the petitioner's ACR which was brought down to 'good' by the Reviewing Officer.

5. So far as the recording of ACR is concerned, our attention has been drawn to the 'ACRs Procedures and Instructions, 2003' which lay down admittedly binding instructions on recording of the ACR. The relevant instruction which would guide consideration of the present case stipulates as follows:-

"32 Where the reporting officer had acquainted with the work of an officer under his command for at least three months (90 days) during the relevant period he is competent to initiate the ACR of that officer. Similarly, the reviewing officer who had

acquainted with the work of the officer for at least three months (90 days) is also competent to review the ACR of the officer. Where there is no reporting officer for a period of report who has been acquainted with the work of the officer for three months (90 days) but the reviewing officer has been acquainted with the performance of the member of the Force for at least 3 months (90 days) during the period for which the confidential report is to be written, the confidential report of such member of the Force for which period shall be initiated by the reviewing officer provided that he is in a position to fill in columns to be filled in by the reporting officer and where the reporting officer and the reviewing officer have not been acquainted with the work and conduct of an officer for three months (90 days) but the accepting authority has acquainted with the performance as aforesaid of any member of the force during any such period, the confidential report shall be written by the accepting authority."

6. In view of the above guidelines, it is evident that in order to be competent to effect a meaningful review of the performance and work of an officer under his command, the Initiating and Reviewing Officer ought to have scrutinized the same for a period of at least three months (90 days).

7. The petitioner has also assailed the adverse remarks in his ACR for the year ending 31st March, 2003 on the ground that Rule 22(b) of the aforesaid instructions of 2003 mandates that every warning or caution is required to be issued to an officer in writing. However, such warning is not to be automatically placed in the ACR of an employee officer. It is only if the officer has not improved despite issuance of such warning, etc. that mention of the same may be made in the ACR.

8. The petitioner submits that so far as his service record is concerned, he was never cautioned and issued a warning, etc. so far as his performance for the relevant period was concerned. There is no dispute that no deficiency or shortcoming was pointed out to the petitioner.

9. We find that no deficiency or shortcoming is even mentioned in the demonstrated performance report of the petitioner dated 30th April, 2003.

10. The petitioner has made a grievance that no reasons at all are available for the review which was effected by the Reviewing Officer of the grading given by the Initiating Officer.

11. In view of the categorical stand of the petitioner so far as the period for which the Reviewing Officer would have observed the work of the petitioner, we had issued directions to the respondents to place before this court the effective date of assumption of charge by respondent No.2, Shri S.A. Alvi who was the Commander Sector at the Border Security Force Headquarter at Tripura (North) and had effected the subject review. The respondents have placed before us the handing and taking over charge report dated 2nd January, 2003 whereby the said Shri S.A. Alvi has taken over charge as the Sector Commander. Therefore there can be no manner of doubt that the officer who had effected a review of petitioner's ACR for the period ending 31st March, 2003 had not completed the period of three months (90 days) and was therefore not competent to effect the review and to downgrade the petitioner's ACR and

bring the same to 'good'. Such review is, therefore, not sustainable. The said ACR, therefore, cannot be looked or considered for evaluating the fitness of the petitioner for promotion.

12. The respondents have stated that a Departmental Promotion Committee was convened which held its meeting on 14th March, 2007 for consideration of cases of Assistant Commandants for promotion as Deputy Commandants for the vacancy year 2007-2008. The petitioner could not secure the required benchmark due to his confidential report which resulted in his being overlooked.

13. In view of the above narration of facts, the adverse remarks contained in the ACR of the petitioner for the period ending 31st March, 2003 cannot stand. As a result, the orders dated 18th June, 2004 and 30th August, 2006 are also not legally sustainable.

14. The learned counsel for the respondents has also pointed out that displeasure was awarded to the petitioner by an order dated 12th/14th June, 2004 which was affirmed by the order dated 30th August, 2006 rejecting the petitioner's representation against the displeasure.

15. So far as the displeasure which was awarded to the petitioner is concerned, an objective review thereon is to be taken by the Departmental Promotion Committee on a consideration of the nature of acts or omissions attributed to the petitioner which resulted in the award of displeasure.

16. In view of the above discussion, we direct as follows:-

- (i) The adverse remarks communicated to the petitioner dated 29th December, 2003; the orders dated 18th June, 2004 and 30th August, 2006 are hereby set aside and quashed.
- (ii) The respondents are directed to convene a Review Departmental Promotion Committee for consideration of the case of the petitioner for promotion to the post of Deputy Commandant as on 14th March, 2007 when cases of his junior were considered for the said promotion.
- (iii) Needless to say, the Departmental Promotion Committee shall not take into consideration the ACR of the petitioner for the period ending 31st March, 2003. A considered objective view shall also be taken with regard to the effect of the award of displeasure to the petitioner.
- (iv) The Departmental Promotion Committee shall be convened within a period of three months from today.
- (v) The result of the consideration by the Review Departmental Promotion Committee on the case of the petitioner shall be informed to him.

(vi) In the event, the petitioner is found fit for promotion, the petitioner shall be entitled to notional seniority and all consequential benefits from the date when his immediate juniors were promoted.

This writ petition is allowed in the above terms.

GITA MITTAL, J

DECEMBER 23, 2010
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J.R. MIDHA, J