

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Reserved on: February 18, 2011
Judgment Delivered on : March 28, 2011

+ W.P.(C) 831/2008

J.S.SHAHI Petitioner
Through: Mr.Anil Gautam, Advocate

versus

UOI & ORS. Respondents
Through: Ms.Preeti Dalal, Advocate with
Tanu Goswami, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE SURESH KAIT

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J.

1. The writ petitioner who has been superseded for promotion at the DPC held on 14.3.2007 has questioned his supersession alleging that the adverse remark in the ACR for the period 1.4.2003 to 31.3.2004, which was considered by the DPC and is responsible for petitioner's supersession be quashed and a direction be issued to the respondents to convene a Review DPC to re-consider the candidature of the petitioner by ignoring the adverse remark entered in the ACR. The adverse remarks are as under:-

"A young and smart officer. Needs more exposure to border duties. Should inculcate the value of

physical fitness and mental robustness to lead the men with professional competence.”

2. It may be noted that for the year in question the Initiating Officer graded the petitioner ‘Very Good’ which was scaled down to ‘Average’ by the Reviewing Officer and which downgrading was accepted by the Accepting Officer.

3. We may highlight at the outset that the petitioner has not questioned his ACR grading being ‘Average’ as finally recorded. He only questions the adverse remarks entered in the ACR.

4. As per the petitioner his performance in the previous years as also the subsequent years was always either ‘Good’ or ‘Very Good’ and never was any adverse comment or remark communicated to him. The petitioner asserts being a good sportsperson having earned awards in competitive tournaments where members of the Central Para Military Forces have participated.

5. The petitioner asserts that the adverse remarks are the probable result of his Reviewing Officer being annoyed with the fact that the team of the frontier concerned headed by the petitioner stood 6th in position in the Inter Frontier Obstacle Competition. These assertions are to be found in para 22 of the writ petition.

6. The petitioner claims in the alternative that the remarks are not adverse and have been treated as advisory evidenced by the fact that he was granted the senior time scale on 16.11.2005 and urges that had the remark been treated as adverse, petitioner could not have earned the senior time scale. Thus petitioner claims that the ‘DPC’ which

met on 14.3.2007 could not have considered the remark in question.

7. It is not in dispute that the adverse remark was communicated to the petitioner and he submitted a representation there against, which representation was rejected vide order dated 5.4.2005.

8. Denying that the adverse remark was occasioned due to the team headed by the petitioner not performing very well at an Inter Frontier Competition, it is asserted that the Reviewing Officer had noted slackness in the mental and the physical condition of petitioner and had found him wanting in border duties. It is asserted, in para 7 of the counter affidavit that petitioner performed border duties by remaining at the border outpost only from 25.11.2003 to 30.11.2003 and thereafter from 7.1.2004 till 14.1.2004 and remained at the battalion headquarters for the remainder period.

9. In the rejoinder filed, the petitioner states that he remained at the border outpost for 3 months.

10. The adverse remark in question has been penned on 7.5.2004 and justifying the opinion, in the counter affidavit filed it is pleaded that what was recorded as an opinion of an superior officer qua petitioner's lack of mental and physical agility and lack of exposure to border areas, proved to be true when on 20.6.2004 the petitioner strolled into the border area in his PT dress without arms and an escort and was dragged by civilians into Bangladesh and handed over the Bangladesh Rifles. At a flag meeting held with Bangladesh Rifles' Officials, the petitioner was brought back and the incident had caused embarrassment.

11. Relevant would it be to note that in the rejoinder filed the incident has not been denied and the plea taken is that the date of the incident is beyond the period for which ACR is recorded and hence could not be accounted for in the ACR for the period 1.4.2003 – 31.3.2004.

12. Pertaining to the incident dated 20.6.2004, suffice would it be to state that it is not the case of the respondents that the adverse remark was the result of the incident in question. The respondents have highlighted the incident to bring home the point that much prior to the incident, the Reviewing Officer had noted callousness in the mental attitude of the petitioner and his falling physical standards. With reference to the incident it has simply been highlighted that the attendant circumstances enwombing the incident establish the mental callousness of the petitioner who would stroll into a border area without his arms and without escorts. He would not even take care to wear his uniform. He would stroll like a civilian in PT dress. He invited trouble for himself by so acting. He could not even physically resist civilians dragging him across the border.

13. Thus, the stand of the petitioner that the incident in question could not form the basis of the ACR adverse entry is ex-facie misplaced and suffice would it be to state that rarely one comes across instances of a behavioral tendency or an attitudinal deficiency recorded by a superior officer being subsequently proved to be true through an incident which is a living proof of the truth.

14. That apart, lack of physical fitness and lack of mental robustness is a matter of perception and can only be

perceived by the superior officer watching a junior officer and can never be a subject matter of a judicial debate. Unless mala-fides are shown against the officer concerned, it would be difficult for any judge to comment upon the wisdom of the superior officer. After all, sloppiness is a matter of observation. Be that as it may, in the instant case, the respondents have prima facie, objectively proved what stands recorded by way of the adverse comment in the ACR concerned.

15. The submission that the petitioner was granted senior time scale on 16.11.2005 and there from it could be inferred that the department did not treat the adverse remark to be adverse but a mere advisory, has been countered by the respondents by pleading that fitness for being granted senior time scale is on a different parameter than a promotion. It is justified that the different parameter of fitness for being granted senior time scale and for being promoted is premised on the basis that a senior time scale does not require responsibilities of a higher post to be discharged and therefore a lower standard of fitness to be determined.

16. We find merit in the submission urged by the respondents and would simply highlight that by conveying the adverse remark to the petitioner informing him that the same was being treated as adverse and being entered in the service book and thus seeking a response from the petitioner is proof enough that the respondent treated the remark to be adverse and even the petitioner understood the same to be adverse.

17. It is pleaded by the petitioner that where the Reviewing Officer records anything which is contrary to the opinion of the Initiating Officer, reasons have to be recorded.

18. Now, as we have already opined herein above, qua mental slackness and physical sloppiness, except for so observing, it would be very difficult for any officer to record objective facts. But it is not that the Reviewing Officer has not justified his remarks for the reason we find that the ACRs of the petitioner have been written on the prescribed proformas and pertaining to Part IV of the proforma various parameters have been listed. 20 parameters have been listed till the year 2006 – 07 and for the years 2007 – 08 and the year 2008 – 09, 6 more. Marks have to be awarded between 1 to 5. If the appraisee did not meet the requisite qualification, 1 mark has to be awarded. If the appraisee just meets the quality, 2 marks have to be awarded. If the appraisee fairly meets the quality, 3 marks have to be awarded. If the appraisee fully meets the quality, 4 marks have to be awarded and if the appraisee more than fully meets the quality, 5 marks have to be awarded.

19. The petitioner has been appraised, post completion of his training, for the periods 29.11.2001 till 31.3.2002; 1.4.2002 till 31.3.2003; 1.4.2003 till 31.3.2004; 1.4.2004 till 31.3.2005; 1.4.2005 till 31.3.2006; 1.4.2006 till 31.3.2007; 1.4.2007 till 31.3.2008 and 11.10.2008 till 31.3.2009.

20. The Initiating Officer and the Reviewing Officer have separately awarded the marks, and in a tabular form, the same would be as under:-

S. No.	QUALITIES	IO	RO
1.	Appearance and bearing	(2001-02): 5 (2002-03): 5 (2003-04): 5 (2004-05): 4 (2005-06): 4 (2006-07): 5 (2007-08): 4 (2008-09): 4	5 5 4 4 4 - 4 4
2.	Temperature in crisis	(2001-02): 4 (2002-03): 4 (2003-04): 4 (2004-05): 4 (2005-06): 4 (2006-07): 5 (2007-08): - (2008-09): -	4 4 3 4 4 - - -
3.	Physical fitness and stamina	(2001-02): 4 (2002-03): 5 (2003-04): 4 (2004-05): 5 (2005-06): 3 (2006-07): 5 (2007-08): 5 (2008-09): 5	4 4 2 4 4 - 5 5
4.	Courage both Physical and Moral	(2001-02): 4 (2002-03): 4 (2003-04): 4 (2004-05): 5 (2005-06): 4 (2006-07): 5 (2007-08): 3 (2008-09): 5	4 5 2 4 4 - 3 5
5.	Initiative, drive and determination	(2001-02): 3 (2002-03): 4 (2003-04): 4 (2004-05): 5 (2005-06): 5 (2006-07): 5 (2007-08): 4 (2008-09): 4	4 4 3 4 4 - 4 4
6.	Dedication to the organization and service and selflessness		

	determination	(2001-02):	5	5
		(2002-03):	4	4
		(2003-04):	4	3
		(2004-05):	5	4
		(2005-06):	4	4
		(2006-07):	5	-
		(2007-08):	4	4
		(2008-09):	4	4
7.	Sobriety and maturity	(2001-02):	4	4
		(2002-03):	5	4
		(2003-04):	3	2
		(2004-05):	3	3
		(2005-06):	4	4
		(2006-07):	4	-
		(2007-08):	3	3
		(2008-09):	4	4
8.	Discipline	(2001-02):	4	4
		(2002-03):	5	5
		(2003-04):	4	3
		(2004-05):	4	4
		(2005-06):	5	5
		(2006-07):	5	-
		(2007-08):	4	4
		(2008-09):	5	4
9.	Dependability	(2001-02):	5	5
		(2002-03):	4	4
		(2003-04):	3	3
		(2004-05):	5	5
		(2005-06):	5	4
		(2006-07):	5	-
		(2007-08):	3	3
		(2008-09):	5	5
10.	Communication skills	(2001-02):	5	5
		(2002-03):	4	4
		(2003-04):	3	3
		(2004-05):	4	4
		(2005-06):	4	4
		(2006-07):	5	-
		(2007-08):	4	4
		(2008-09):	4	4
11.	Creativity	(2001-02):	5	5
		(2002-03):	4	4
		(2003-04):	4	3
		(2004-05):	4	4
		(2005-06):	4	3
		(2006-07):	5	-
		(2007-08):	3	3

		(2008-09):	4	4
12.	Professional readings, Contributions and knowledge of current affairs	(2001-02):	4	5
		(2002-03):	4	4
		(2003-04):	4	2
		(2004-05):	4	4
		(2005-06):	4	3
		(2006-07):	4	-
		(2007-08):	4	4
		(2008-09):	5	5
13.	Professional knowledge and application to assigned duties	(2001-02):	4	4
		(2002-03):	4	5
		(2003-04):	4	3
		(2004-05):	5	4
		(2005-06):	4	4
		(2006-07):	5	-
		(2007-08):	4	4
		(2008-09):	5	5
14.	Ability to lead and motivate subordinate	(2001-02):	4	4
		(2002-03):	5	5
		(2003-04):	4	2
		(2004-05):	5	4
		(2005-06):	3	3
		(2006-07):	5	-
		(2007-08):	-	-
		(2008-09):	-	-
15.	Ability to train	(2001-02):	3	4
		(2002-03):	4	4
		(2003-04):	3	2
		(2004-05):	4	4
		(2005-06):	4	4
		(2006-07):	5	-
		(2007-08):	-	-
		(2008-09):	-	-
16.	Ability to work in a team	(2001-02):	4	4
		(2002-03):	4	5
		(2003-04):	4	2
		(2004-05):	5	4
		(2005-06):	5	4
		(2006-07):	5	-
		(2007-08):	4	4
		(2008-09):	5	5

17.	Decisiveness	(2001-02):	5	4
		(2002-03):	4	4
		(2003-04):	4	3
		(2004-05):	4	4
		(2005-06):	4	4
		(2006-07):	4	-
		(2007-08):	-	-
		(2008-09):	-	-
18.	Resource management of men and materials	(2001-02):	5	5
		(2002-03):	4	4
		(2003-04):	4	3
		(2004-05):	4	4
		(2005-06):	4	4
		(2006-07):	5	-
		(2007-08):	-	-
		(2008-09):	-	-
19.	Interpersonal skills, liaison with sister organizations	(2001-02):	4	4
		(2002-03):	4	4
		(2003-04):	4	3
		(2004-05):	3	3
		(2005-06):	4	4
		(2006-07):	5	-
		(2007-08):	-	-
		(2008-09):	-	-
20.	Man management & Welfare	(2001-02):	4	4
		(2002-03):	4	5
		(2003-04):	5	3
		(2004-05):	3	3
		(2005-06):	4	4
		(2006-07):	5	-
		(2007-08):	3	3
		(2008-09):	5	5
21.	Office Management and resource utilization	(2007-08):	4	4
		(2008-09):	4	4
22.	Thoroughness and efficiency of work	(2007-08):	4	4
		(2008-09):	5	4
23.	Ability to display foresight and plan beyond immediate requirements	(2007-08):	3	3
		(2008-09):	5	4
24.	Quality of noting, drafting and reports	(2007-08):	3	3

	(2008-09):	5	5
25.	Provides frank and important advice	(2007-08): 3 (2008-09): 3	3 4
26.	Relationship and rapport at all levels and ability in team building and resource utilization	(2007-08): 3 (2008-09): 3	3 4

21. If we look at the marks given by the Reviewing Officer vis-à-vis those given by the Initiating Officer for the year in dispute we find that the Reviewing Officer, has more than fully justified the adverse remark, with reference to the marks awarded by him to the petitioner.

22. We would terminate our decision by highlighting that the incident of 20.6.2004 has more than amply proved the Reviewing Officer to be correct. The remarks have been justified by the gradings.

23. An interesting facet of the marks earned by the petitioner in the preceding and the subsequent years needs to be highlighted. Earning marks justifying an ACR grading 'Very Good' in the preceding years, we find that when the petitioner was given a wrap on his knuckles for the year in question, his performance has again earned a quantum jump. The ACR gradings and the marks do bring home the point that people become complacent when they perform well and this complacency becomes their nemesis. The downfall awakes the person from his slumber and hence the improvement.

24. Since the point was not argued we do not deal with the issue of delay and laches. The adverse remarks were conveyed to the petitioner on 14.9.2004. He represented against the same on 14.10.2004. The rejection was

communicated to him on 5.4.2005. The writ petition was filed on 29.1.2008.

25. The writ petition is dismissed.

26. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

MARCH 28, 2011
dk/ mm