

\$~2

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on : 09.07.2015

+

W.P.(C) 2825/2012, C.M. NO.11/2013

ANIL KUMAR AKARNIA

..... Petitioner

Through : Sh. Sreenivasa Rao. K, Advocate.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through : Sh. Abhay Prakash Sahay, CGSC.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

%

1. The petitioner's complaint is that his Annual Confidential Report (ACR) grading for the period 01.04.2005 to 24.10.2005 was wrongly recorded by the then Reporting Officer, i.e. the third respondent Sh. Ishwar Singh Duhan, who held the rank of Commandant, and that he was actuated by malice which vitiated the "below average" ACR grading, recorded and affirmed by the Reporting Officer and the Reviewing Officer.. He seeks appropriate directions for the quashing of such ACR.

2. The petitioner was, at the relevant time, an Assistant Commandant. He had joined that post in the Indo-Tibetan Border Police (ITBP) on 25.10.1997. During the period 2004 onwards he was posted as an Assistant Commandant in the 18th Battalion of ITBP. The third respondent was his

superior officer, i.e. the Commandant. It is stated by the petitioner that on 31.10.2005, he wrote to the DIG, Sector Headquarters at Himachal Pradesh, bringing to light serious irregularities on account of practices of the third respondent. This apparently led to issuance of warning/advisory on 12.01.2006 when the ITBP found the complaint to be substantiated. A copy of the said letter – addressed to the third respondent/Commandant has been placed on the record. It is submitted that in these circumstances, when the third respondent initiated and wrote ACR for the period he was petitioner's superior officer, he intentionally graded him to be "below average" to his detriment. The petitioner's representation against the said below benchmark grading was not heeded – the Reporting and Reviewing Officers rejected his requests. It is further submitted that the petitioner complained to the Chairman, National Commission for the Scheduled Castes (hereafter "the Commission") on 15.02.2007, stating that the adverse remarks recorded by the third respondent were motivated and, therefore, should be expunged. The petitioner in this regard relies upon the said Commission's view on 01.09.2011 to the effect that the allegations levelled by him were true. In other words, the Commission required the ITBP to expunge the adverse remarks. It is in these circumstances that this petitioner has approached this Court for relief.

3. The respondents contend that the ACR grading was correctly recorded. Learned counsel for the respondents submitted that the petitioner was issued with a warning on account of lapse and deficiency in his discharge of duties on 18.10.2005 and that he consequently complained against the Commandant later. The respondents further submit that the petitioner is a habitual trouble-maker and has addressed several complaints

against different officers; most of which, if not all, were unsubstantiated and frivolous. Learned counsel has relied upon a document detailing each complaint levelled and the comments received from the respondents in that regard. He, therefore, urges that the present petition is devoid of merit and that the allegation of bias deserves to be rejected.

4. This Court has carefully considered the submissions. The petitioner relies upon a letter dated 12.01.2006 which in substance encapsulates the advisories and directions by the superior authorities to the third respondent, who, at the relevant time between April and October 2005 was the petitioner's superior officer and, therefore, entitled to initiate his ACRs. The petitioner had levelled about 11 allegations in his letter dated 31.10.2005. The respondents found that 7 of those allegations were correct and that the third respondent had in fact indulged in several irregularities. The letter required correction of each of those deficiencies. The said document/advisory itself facially substantiates the petitioner's allegation that the initiation of ACR by the third respondent was not warranted as he has every reason to be biased in the recording of the ACRs. The ITBP does not deny that the third respondent initiated the process of ACR grading on 29.03.2006.

5. The authorities on the question of bias are clear and decisive; every public functionary or organization is not only expected to be fair but in circumstances which might lead to conflict of interest or bias, take decisions or actions which are free from bias and ensure that the concerned person or authority who is likely to be biased, has not involved himself or herself in the process (see *Manak Lal v. Dr. Prem Chand* 1957 (1) SCR 575 and *Badri Nath v. Govt. of Tamil Nadu* AIR 2000 SC 3243). In the present case, there

was every likelihood of bias on the part of the third respondent – in the opinion of the Court. The ITBP's contention that the allegation of bias is without foundation or merit cannot be accepted. The petitioner, in this context, establishes that his complaint dated 31.10.2005 was not only attended to but remedial action was recommended in respect of substantial majority of allegations levelled against the third respondent (7 out of 11). Such being the case, there was every likelihood that the third respondent had reasons to display animosity and bias against the petitioner; in other words, the expectation of his objectivity was suspect. That his representations to the higher authorities, i.e. the Reporting and Reviewing authorities were considered is of little consequence because clearly a tainted and fatally suspect ACR recording was not clothed with any greater legitimacy. In these circumstances, it is hereby held that the ACR grading recorded by third respondent for the period 01.04.2005 to 24.10.2005 cannot be sustained. It is accordingly quashed.

6. The result of the above direction would not mean that all the petitioner's ACR gradings would be in accord with any subsequent period. All that can be done in the circumstances is that the records would have to be re-examined and fresh ACR gradings written by the competent authority in place of the third respondent. We are informed that the subsequent superior officer - Commandant - was one Sh. Ashish Chakraborty, who is no longer in the services of the ITBP. The Commandant for the later period, i.e. 01.04.2006 to 31.03.2007 and also the initiating officer of the petitioner was one Sh. Sanjeev Raina. The said officer is still in the service of ITBP. The ITBP is accordingly directed to ensure that Sh. Sanjeev Raina is furnished with all the relevant records pertaining to petitioner's services for the period

01.04.2005 to 24.10.2005; he would then examine them and record the ACR for the concerned period. The entire process shall be completed within two months. The petitioner has no objection to this procedure. It is also clarified that in case there is an upgradation for the said period, the respondents shall review the records of the petitioner and make such consequential orders as are warranted in the circumstances. The writ petition and the pending application are allowed in the above terms.

S. RAVINDRA BHAT
(JUDGE)

DEEPA SHARMA
(JUDGE)

JULY 09, 2015
ajk

