

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 1860/2001

Subedar Virendra Singh

...Petitioner through
Mr. E.J. Varghese, Adv.

Versus

Union of India & Ors.

...Respondent through
Ms. Manisha Dhir, Adv.

Date of Hearing : August 16, 2007

Date of Decision : August 31, 2007

CORAM:

HON'BLE MR. JUSTICE VIKRAMAJIT SEN

HON'BLE MR. JUSTICE S.L. BHAYANA

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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? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

: VIKRAMAJIT SEN, J.

1. The Petitioner had earned the rank of Subedar in the Indian Army and is aggrieved by the fact that he has not been promoted to the rank of Subedar Major and thereby has been denied the privileges of an Honorary Rank together with all other consequential benefits.

2. For the relevant years 1993-1997 the Petitioners gradings in the ACRs are as follows:

1993 -	Above Average
1994 -	Outstanding
1995 -	Outstanding
1996 -	Average
1997 -	Above Average

3. In order to be eligible for promotion to the rank of Subedar Major the Petitioner should have earned three Above Average gradings and two High Average gradings. It is palpably clear that had the Petitioner received Above Average grading for the year 1996 he would have been eligible for consideration for promotion to the rank of Subedar Major. The Petitioner has asseverated that 'Average' grading had not been communicated to him; this assertion is not controverted by the Respondents. The submission made on their behalf is that "average" grading cannot be construed as an adverse Report and therefore need not be conveyed to the Petitioner.

4. Over a decade ago in *Karnail Singh -vs- State of Punjab*, JT 1994(6) SC 583 :1994 Supp (3) SCC 724 it has been laid down that a bad record, if not communicated, cannot be taken into consideration. Some years later this question again came up for consideration in *UP Jal Nigam -vs- Prabhat Chandra Jain*, AIR

1996 SC 1661. Their Lordships were considering a progression where an employee receives a grading of Very Good, followed by a grading of Good, both of which cannot but be seen as positive gradings. Nevertheless, it was opined that even in a case of “going a step down” reason should be recorded and the officer concerned should be informed so that he could once again improve his work. What is of importance is that the Court further emphasised that “even a positive confidential entry in a given case can perilously be adverse and to say that an adverse entry should always be qualitatively damaging may not be true”. These observations are indeed pithy to the present Petition. Even though a grading may not be negative or below average one, it may have the effect of rendering the officer/employee concerned ineligible for further promotion. We are in no manner of doubt that wherever this happens it is the bounden duty of every employer to convey the adverse or debilitating grading to the concerned officer.

5. In the present case the Petitioner required three Above Average and two High Average gradings. So far as promotion is concerned, therefore, an 'average grading' would *per se* partake the character of an adverse grading since the consequence would

be the person's disqualification for consideration for promotion. Every employer, regardless of whether it is an Armed Force, such as the Indian Army or Navy or the Air Force, should deeply and earnestly cogitate upon the ACR where the grading given therein has the effect of closing the promotional avenues of the concerned employee. It is an exceptional case where an employee is unmindful of his promotional prospects. In this analysis it appears to us that the Petitioner ought to have been informed of the fact that in 1996 he had received an 'Average ACR'. He would then have been in a position to file a Representation against the grading or resign himself to his fate. We need not speculate upon what the fate or outcome of such a Representation would be.

6. The morale and cohesive competence of an Armed Force is best served when every personnel can rest assured that his interest shall be carefully considered by his superiors. In the present case the Petitioner was enrolled in the Army Education Corps in August, 1970. On the basis of the pleadings before us we must come to the conclusion that the Petitioner has 28 years of unblemished service to his credit. Despite this fact, he has been passed-over for promotion to the rank of Subedar Major.

This would have come to him as a rude shock because he was unaware that for the intervening year 1996 he had received only an Average ACR which put paid to his promotional prospects. From his prospective such a grading can only constitute an adverse grading. It ought to have been conveyed to him so that even if his promotional prospects could not be salvaged or improved upon, he would have been able to prepare himself for what fate had in store for him. We are not called upon nor do we propose to make any observations on the correctness of the 'Average' grading for 1996.

7. The question which now remains is what relief should be granted to the Petitioner. It is legitimate expectation for non-commissioned personnel in the Armed Forces to aspire to earn their Commission even if it is only an Honorary Rank. The Petitioner has retired from the Indian Army. Since it is our view that the Respondents have committed a grievous error in not conveying to him his average ACR for the year 1996, the question whether this grading would have been altered favourably towards the Petitioner is wholly irrelevant. The personal glory and honour that the Petitioner would have enjoyed had he been promoted to the rank of Subedar Major cannot be bestowed upon

him by a judicial fiat. What we can do, and what direction should be given effect to, is to grant the rank of Subedar Major to the Petitioner with effect from the date on which the Recommendations of the Departmental Promotion Committee (DPC) held in August 1997 came into effect, assuming in favour of the Petitioner that he had been found suitable for promotion to the rank of Subedar Major by that DPC. We favourably note that the Petitioner had been granted the Honorary Rank of Subedar Major with effect from the date of his retirement, that is, 1.9.1998, on the occasion of Republic Day in 1998 as per letter dated 18.9.2000. The Petitioner will, therefore, be only entitled to pecuniary benefits that would result from his notional promotion to the rank of Subedar Major from the date on which the Recommendations of the DPC held in August, 1997 would be implemented.

8. Petition along with other applications is disposed of. There shall be no orders as to costs.

(VIKRAMAJIT SEN)
JUDGE

(S.L. BHAYANA)
JUDGE

August 31, 2007
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