

IN THE HIGH COURT OF DELHI
Writ Petition (Civil) No.649/2010

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Date of decision: 29th October, 2010

OM PRAKASH YADAV Petitioner
Through MR Pardeep Dahiya, Adv.

versus

UOI & ANR Respondent
Through Mr. Anil Gautam, Adv.

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

1. Whether reporters of local papers may be allowed to see the Judgment?
 2. To be referred to the Reporter or not?
 3. Whether the judgment should be reported in the Digest?
-] NO

GITA MITTAL, J(Oral)

1. The petitioner lays a challenge to the memorandum dated 27th February, 2009 issued by the Director General of the Indo Tibetan Border Police Force ('ITBP' hereafter) rejecting the petitioner's request for a review of the offer of grading assigned to him upon expunction of all adverse remarks in the annual confidential report for the period 27th July, 2004 to 31st March, 2005. The petitioner also challenges the rejection of his request of a review departmental promotion committee for consideration of his promotion to the post of second in command from the date his immediate juniors have been promoted with effect from 21st April, 2008.

2. The factual matrix giving rise to the present writ petition is largely undisputed and is within a narrow campus. The petitioner who was serving with the ITBP stood promoted on 24th April, 2003 to the post of Deputy Commandant. On account of acts of torture and threats

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physical file have been compared and
the digital data is as per the physical
file and no page is missing.
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received by him from Sh. S.S. Mishra, Commandant while posted in Assam as Deputy Commandant, the petitioner made a representation dated 21st March, 2005 to his superiors. The petitioner had complained that the said Commandant had threatened the petitioner that he would endorse adverse entries in his annual confidential report for the period 2004-2005 so as to ruin the petitioner's career prospects. Vide a letter dated 25th April, 2005, the petitioner was however advised to send his resume to the said Commandant, for the reason that there was no other prescribed method of writing an annual confidential report of a personnel,.

3. The petitioner has complained that his apprehensions came true inasmuch as, in the annual confidential report for the period 27th July, 2004 to 31st March, 2005, the said Commandant endorsed that the petitioner's work attitude and example was merely average, even though it was remarked that his verbal power of expression was very good. In addition, the Commandant endorsed twelve adverse entries in the administration report and fourteen adverse entries in the operations report. These adverse remarks were communicated to the petitioner under cover of a letter dated 21st November, 2005. The petitioner made a representation against the adverse entries which came to be processed and resulted in an order dated 25th April, 2006 issued from the Director General of the ITBP. The petitioner was thereby informed that after taking into consideration all the relevant facts, instructions and evidence on record, the competent authority had directed expunction of all adverse remarks in the petitioner's ACR for the period 27th July, 2004 to 31st March, 2005.

4. The petitioner has expressed a grievance that despite the expunction of the adverse remarks, the instructions of the Department of Personnel and Training on the issue were not complied with and the

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consequential corrections in the appropriate columns in the ACR were not effected. It is urged that for this reason the respondents cannot place any reliance on the said annual confidential report for the purposes of consideration of the petitioner's eligibility and entitlement to any promotion or for any other purpose.

5. The petitioner's woes however did not come to an end here for the reason that the same Commandant made certain complaints which resulted in an order dated 27th October, 2006 vesting the punishment of severe reprimand on the petitioner.

6. The petitioner submitted a representation dated 11th April, 2007 against the charges which were levelled against him as well as the said punishment. Even though the petitioner sent reminders dated 31st January, 2008; 17th April, 2008 and 21st April, 2008 this representation, however, remained pending with the respondents for a long period of one year,

7. While the representation was pending with the respondents, the matter proceeded for consideration of eligible candidates for promotion to the post of second in command. In this behalf, a departmental promotion committee was appointed which conducted its proceedings on 20th March, 2008 and made recommendations on a consideration of the eligible persons for promotion to the post of second in command. Needless to say, the petitioner fell within the zone of consideration and his candidature was also considered for promotion by the said departmental promotion committee. However, for the reason that the petitioner's grading had not been changed despite the expunction of the adverse remarks as well as the punishment dated 27th October, 2006 imposed upon the petitioner, the departmental promotion committee did not recommend the petitioner's name for promotion.

8. The above discussion would show that the apprehensions of the

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petitioner had been held to be well founded. Any remark by the said Commandant or his negative evaluation or assessment of the petitioner's service ought not to have been relied upon or weighed with the departmental promotion committee.

9. As a consequence, by an order dated 21st April, 2008, nineteen deputy commandants were recommended for promotion to the post of second in command. The petitioner has complained that several of these persons were junior to him in the order of seniority.

10. The petitioner is stated to have made a representation dated 9th May, 2008 even against the recommendations made by the departmental promotion committee and the order of promotion which was consequentially issued.

This representation of the petitioner was finally considered and culminated in a favourable order dated 2nd February, 2009.

11. Our attention has been drawn to the findings of the Director General of the ITBP who had passed the order on 30th January, 2009 which was communicated to the petitioner on 2nd February, 2009, the relevant portion whereof deserves to be extracted and reads as follows:-

"3. Whereas on going through the case, it appears that the then Commandant, 3rd Bn was biased and prejudiced against Shri O.P. Yadav, DC, due to which he was not given the charge of DC(Ops) or OC, TAC, HQR. and an Assistant Commandant, against the system of hierarchy of command structure in vogue in the Armed Forces, was given charge of DC(Ops)/OC, Tac.HQ. Not only this, while initiating the ACR, the then Commandant, 3rd Bn has endorsed as many as 30 adverse remarks in various columns of the ACR due to being biased and prejudiced against the officer and said adverse remarks were expunged by the D.G. with an advice to the officer to be more careful while writing the ACRs of officers in future vide letter dated 5.5.2006. Under these circumstances, it is natural for the officer to get aggrieved by such orders which he had not complied forthwith and submitted a representation against the same. Besides, as regards non-acceptance of official communication by the officer, no substantial evidence has come on record."

12. At this stage, we may refer to the directions contained in DG.

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P&T Letter No.27-2/83-Vg.II dated 9th January, 1984 which instructs the authorities about the manner in which they must proceed upon expunction of adverse entries in an ACR. Learned counsel for the petitioner has heavily relied upon these instructions which read as follows :-

"26. Column of report should not be kept blank after expunction of adverse remarks – It has been observed that in a few cases, after the expunction of the adverse remarks, the relevant column(s) was/were left blank, i.e., without any remarks, thus making the report incomplete. It may be appreciated that an incomplete report cannot be relied upon for a fair and objective assessment of the officer concerned for his confirmation, promotion, etc. It is essential that the annual confidential reports are complete in all respects. In the circumstances, where on consideration of a representation against adverse remarks, the competent authority comes to the conclusion that the remarks deserve to be expunged, it should see whether total expunction of the remarks will leave the relevant column(s) blank; and if it finds the position to be so, it should order modification of the relevant remarks in a suitable manner so that the column(s) in question does/do not remain blank."

13. It appears that despite the order dated 26th April, 2006 and 2nd February, 2009 as well as the aforementioned factual findings, the petitioner was not considered favourably for promotion. The petitioner was considered for promotion only in the next departmental promotion committee and by the order dated 9th April, 2009 was promoted to the post of second in command alongwith several other persons. The petitioner was however aggrieved by the failure of the respondents in not promoting the him with effect from 21st April, 2008, the date when his immediate juniors have been promoted after setting aside of the punishment of severe reprimand.

14. It is undisputed that other than grading in the ACR for 2004-2005 which was based on the adverse entries in the ACR and the punishment imposed upon the petitioner by the order dated 27th October, 2006, there is no complaint so far as the petitioner's eligibility for

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consideration for promotion to the post of second in command by the two departmental promotion committees is concerned. The adverse entries having been expunged, the respondents would ought to have proceeded to fill up the columns in the annual confidential report by appropriate remarks. The same not having been done, the respondents cannot fairly base consideration of the petitioner on the overall grading which was awarded to the petitioner in such a ACR.

15. In this background, there is substance in the petitioner's grievance that he was entitled to consideration for promotion by a departmental promotion committee without taking into consideration, the grading or the remarks in the annual confidential report for the period 27th July, 2004 to 31st March, 2005. The respondents were so required to act in terms of the aforesaid DG, P&T Letter No. 27-2/83-Vg.II dated 9th January, 1984. Having failed to do so, certainly the ACR of the petitioner for the said period could not have been considered by the departmental promotion committee.

16. In view of the above discussion, we find force in the petitioner's contention that he has not been appropriately considered for promotion and a relook requires to be taken so far as his consideration as on 20th March, 2008 is concerned.

Accordingly, it is directed as follows :-

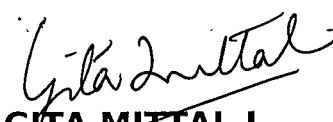
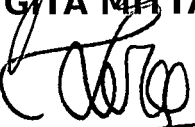
- (i) The respondents shall conduct a review DPC which shall consider the petitioner's case for promotion to the post of second in command on 20th March, 2008. The review DPC shall not take into consideration the annual confidential report for the period 27th July, 2004 to 31st March, 2005 and shall proceed in the matter in accordance with law.
- (ii) It shall be ensured that the review DPC is positively convened within a period of ten weeks from today which shall complete its

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proceedings and consideration within a further period of six weeks thereafter.

(iii) In case the petitioner is found fit for promotion, the respondents shall proceed in the matter in accordance with law. In such eventuality, the petitioner would be entitled to all consequential benefits.

This writ petition is allowed in the above terms.


GITA MITTAL, J

J.R. MIDHA, J

OCTOBER 29, 2010

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