

CASE NO.:
Appeal (civil) 4663 of 2001

PETITIONER:
MAJOR AROON KUMAR SINHA

Vs.

RESPONDENT:
THE UNION OF INDIA & ORS.

DATE OF JUDGMENT: 25/07/2001

BENCH:
K.T. Thomas & R.P. Sethi

JUDGMENT:

SETHI, J.

Leave granted.

Dejected by his successive failures in getting promotion to the rank of Lt.Colonel, the appellant resorted to judicial proceedings with the object of getting rid of his ACRs which, at all the times, came in his way while making selection on the basis of comparative merit with other eligible persons in the service of the Armed Forces. His ingenuity to overcome the hurdles, namely, his ACRs was prompted by the letter of Army Headquarters bearing No.32666 dated 22nd June, 1989 which, inter alia, provided that the cases of the officers who had put in complaints against their ACRs and were awaiting decisions in legal course shall be given a definite grading in the Selection Board. The appellant's venture of crossing over the stumbling block in the form of his ACRs was frustrated by judicial pronouncements by the High Court, firstly by the Single Judge and then by the Division Bench vide the order impugned in this appeal.

The appellant claimed to have been commissioned in the Army as Second Lieutenant on Short Service Commission in the month of September, 1977. He was absorbed as permanent Commissioned Officer as a Captain w.e.f. 1.5.1978 and was posted as Major on 1.5.1989. As he was not promoted to the post of Lt.Colonel, he made a representation to the respondent authorities which were rejected vide the order impugned in the writ petition. Apprehending that he was not promoted on account of the ACRs for the period 1989-90, the appellant made a statutory complaint on 19th March, 1996 which was rejected after examination of the relevant records. It was held that no injustice has been done to the appellant on account of the illegalities alleged in his statutory complaint. It may be mentioned that prior to filing of the statutory complaint, the appellant had availed of the remedy of a non statutory complaint which was partially allowed by way of expunction of complete assessment of the IO and SRO in CR 01/87-05/88 on grounds of subjectivity. It was also directed that the said aberrations be removed from the CR Dossier of the appellant and he be considered for promotion by any appropriate Selection Board in accordance with the policy.

Not satisfied with the expunction of the alleged adverse remarks, the appellant filed a writ petition in the High Court challenging the

said order purporting to have been passed in his favour on his complaint. In the reply affidavit filed by the respondents it was submitted that all officers of a particular batch were considered together with such cut off ACRs and inputs on the basis of individual profile of officers and the batch merit before making the promotion. It was further submitted that ACR alone was not the sole criterion for promotion to the higher post. Approved officers were empanelled and then promoted in order of their seniority. The case of the appellant was stated to have been considered thrice by the Selection Board, i.e., a fresh consideration, first review and final review and he was not found fit for promotion by the Board. The respondents categorically stated that there was no adverse entry recorded in the ACRs of the appellant for the years 1989-90. In the light of the counter affidavit filed and failure of the appellant to show the violation of any law or rule, the learned Single Judge of the High Court dismissed the writ petition whereafter the appellant filed the Letters Patent Appeal which was rejected vide the order impugned, hence this appeal.

Learned counsel appearing for the appellant has drawn our attention to various paras of "Instructions for rendering Confidential Reports on Officers" (hereinafter referred to as "the Instructions") to urge that the ACRs of the appellant for the years 1989-90 are liable to be quashed being adverse and the appellant eligible for promotion on the basis of the Government order dated 22nd June, 1989.

After hearing lengthy arguments from both sides and perusing the records shown to us by the learned counsel for the respondent, we find that the ACRs of the appellant cannot be termed to be adverse entitling him the filing of statutory complaint for the purpose of getting the benefit of the Government Order relied upon by him. Even though the ACRs, particularly paras 11, 12 and 18 of which the appellant is aggrieved, were conveyed to him on 28th December, 1990, the extract of which he returned to the authorities on 6th November, 1990, after duly signing the same, yet no complaint, much less a statutory complaint, was filed by the appellant till the year 1996. Even though the respondents were not bound to decide the non statutory complaint filed by the appellant, yet they disposed of the same by partially deciding in his favour by the order dated 7th February, 1996 which reads as:

"1. Reference your letter no.308/13/A(PC) dated 23 Aug 95.

2. Non statutory complaint dated 12 Apr 95 submitted by IC 37110 M Maj AK Sinha, Inf (GARH) against supersession has been examined against overall profile of the officer and other relevant documents. After consideration of all aspects of the complaint and viewing it against the redress sought by the complaint, the COAS has directed that partial redress be granted by way of expunction of complete assessment of the IO & SRO in CR 01/87 - 05/88, on grounds of subjectivity.

3. COAS has also directed that the said aberration be removed from the CR Dossier of the officer and he be reconsidered for promotion by the appropriate Selection Board in accordance with the policy.

4. Accordingly necessary expunctions has been carried out in the CRD of the office."

As again the appellant was not selected for promotion to the rank of Lt.Colonel in the final review case of 1978 batch, he carved out a ground for the litigation by filing the statutory complaint on 19th March, 1996. This complaint was also rejected on merits vide order dated 1st October, 1996. It may be noted at this stage that the

respondents were not obliged to decide the said complaint in view of paras 107 and 108 of the Instructions. The said paras 107 and 108 provide:

"107. An officer who considers himself wronged due to supersession or by any reporting officer in a CR may seek redress by making a representation to his superior military authorities, or a statutory complaint to the Central Government under Army Act Section 27 as the case may be in accordance with the procedure laid down in para 361 of the Regulations for the Army (as amended) and Army Order 132/77 & 119/80.

108. All representations and complaints will be submitted within 60 days after the date of communication of the remarks to the officer concerned. Under exceptional circumstances, this period may extend to 90 days. A representation or complaint submitted more than 60 days after the communication of the remarks to the officer concerned should be accompanied by reasons for delay. The intermediate authorities will not withhold a representation merely on account of delay in submission and will comment on the justification or otherwise of reasons for the delay. In case of time barred non-statutory complaints, if the reasons for delay are not convincing, such complaints can be rejected on this count by the competent authority."

It is conceded before us that the appellant had not filed any statutory or non-statutory complaint within the time prescribed under the aforesaid paras of the Instructions. We find that no injustice has been done to the appellant by the action of the respondents. There is no merit in the appeal which is accordingly dismissed but without any order as to costs.

.....J.
(K.T. THOMAS)

.....J.
(R.P. SETHI)

July 25, 2001