

Col. D. S. Sandhawalia v. Union of India and others
(M. M. Punchhi, J.)

Before : M. M. Punchhi & Ujagar Singh, JJ.

COL. D. S. SANDHAWALIA,—Petitioner.

versus

UNION OF INDIA AND OTHERS,—Respondents.

Civil Writ Petition No. 6333 of 1989.

18th May, 1989.

Constitution of India, 1950—Arts. 14, 16 and 226—Petitioner approved for promotion to acting rank of Brigadier—Such approval subject to continued satisfactory performance—Performance ceasing to be satisfactory—Selection for promotion cancelled—Writ Petition—Scope of interference stated.

Held, that it is ex facie patent from the confidential letters which regretfully have been made public, that the employment of the term 'unsatisfactory service' is not as if writing any adverse remarks concerning an officer but is rather relating to a standard required for promotion to the higher rank of service. Nothing apparently is wrong with such view. Besides in the disciplinary force of the Army, we express our reluctance to make inroads under Article 226 of the Constitution. We are unable to discern any ready willingness to interfere in matters all and sundry pertaining to the Armed Forces. Rather we, in the interest of nation, see a general hesitancy to enter this area of sensitivity, and more so, in a matter like the present one where the service of the petitioner has been viewed 'unsatisfactory service' i.e. not coming to the standard required for promotion. This would not call judicial review at our end.

(Paras 4 & 5).

Petition under Article 226 of the Constitution of India, praying that :

- (i) *That the records of the respondent-authorities be sent for*
- (ii) *That the service of the respondents with advance notice of motion may kindly be dispensed with ;*
- (iii) *that the filing of the certified copies of the Annexures may kindly be dispensed with ;*
- (iv) *Costs of the writ petition be awarded in favour of the petitioner ;*

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- (v) *Writ petition be accepted, and Annexures P.4, P.7 and P.8 may kindly be quashed ;*
- (vi) *the respondent authorities be directed to promote the petitioner to the rank of Brigadier with effect from May 1985 or the date when Colonel Shivpuri, who was junior to the petitioner was promoted ;*
- (vii) *that this Hon'ble Court may pass any order, writ or direction deemed fit in the circumstances of the case, granting all the consequential benefits to the petitioner in the nature of seniority, arrears etc. etc.*

J. L. Gupta, Sr. Advocate with T. S. Dhindsa, Advocate, for the Petitioner.

ORDER

(1) Col. D. S. Sandhawalia, the petitioner herein, seeks directions from this Court against the respondents, who are Union of India through the Ministry of defence, General Officer Commanding, HQrs Western Command and Lt. General Y. S. Tomar, Adjutant General, Army HQrs New Delhi, to promote him to the rank of Brigadier with effect from May 1985 or the date when Col. Shivpuri (not impleaded as a party) who was junior to the petitioner, was promoted.

(2) The claim of the petitioner is directly based on letter dated October 20, 1983, Annexure P-1, whereby he was informed by the Army Headquarters that he had been approved for promotion to the acting rank of Brigadier in his turn subject to continued satisfactory performance and medical fitness. On September 29, 1987,—vide letter Annexure P-2, he was informed that after the letter of October 20, 1983, afore-referred to, his performance had not remained satisfactory and his case for promotion to the acting rank of Brigadier was specially reviewed by the Selection Board held in September 1984, with the result that he had not been placed in an acceptable grade. He was also informed that his selection for promotion to the rank of Brigadier in the general cadre be treated as cancelled. Then a letter dated October 8, 1987, Annexure P-3, was sent to the petitioner as information, and in the context of the performance of the petitioner having not remained satisfactory, it was clarified that there is a difference between adverse remarks/assessment which are to be communicated as per the existing rules and the term

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'unsatisfactory service' related to the standard required for promotion. It necessarily did not mean adverse remarks or very low figurative assessment. Annexures P-2 and P-3 are confidential documents and yet have been placed on record. It is the claim of the petitioner that as deducible from the letter of professional counselling, Annexure P-4 dated October 10, 1983, he was given an adverse report which was never communicated to him and this had led to the cancellation of selection for promotion. His statutory complaint (again confidential) Annexure P-5, was dismissed,—*vide* order of the Central Government on October 7, 1988. His non-statutory complaint (again confidential) Annexure P-6, was dismissed on September 20, 1988, by the Army Authorities.

(3) These have given rise to this petition.

(4) Having heard Mr. J. L. Gupta, learned counsel for the petitioner, we regret our inability to interfere in a matter like this. His main claim is on the basis of Articles 14 and 16 of the constitution, more emphatically when, according to him, as yet no law has been passed by the Parliament so as to restrict or abrogate fundamental rights conferred in Part-III of the Constitution in their application to the members of the Armed Forces. The spirit of the Constitution is that if the Parliament so chooses it can, for the purposes of Armed Forces, restrict or abrogate any of the fundamental rights so as to ensure the proper discharge of the duties of the Armed Forces and the maintenance of discipline amongst them. He has referred to *Romesh Chander v. G.O.C. Northern Command and others* (1), a decision of a Single Bench of the Jammu and Kashmir High Court, which Mr. Gupta concedes, was upset by a Letters Patent Bench of that Court, though the judgment of that case is not available to us. He, however, says that this case was followed in *Lt. Colonel (Now Major) Surjit Singh v. G.O.C. 33 Mechanised Division and others* (2), holding that the protection of Article 16 of the Constitution is available to the members of the Armed Forces. Another case cited was *Major K. D. Gupta v. Union of India and another* (3), which led to *Lt. Colonel K. D. Gupta v. Union of India and others* (4), and finally a contempt petition in *Colonel K. D. Gupta v. Union of India and others* (5). All

(1) 1977 (2) SLR 865.

(2) 1988 (3) SLR 439.

(3) AIR 1983 S.C. 1122.

(4) AIR 1988 S.C. 1178.

(5) 1989 II SVLR. (L) 14.

these cases are cases on their own facts, but nowhere has it been ruled that in all events must the High Court enter the army thicket and intermeddle with their affairs. It is *ex facie* patent from the confidential letters Annexures P-2 and P-3, which regretfully have been made public, that the employment of the term 'unsatisfactory service' is not as if writing any adverse remarks concerning an officer but is rather relating to a standard required for promotion to the higher rank of service. Nothing apparently is wrong with such view. Besides in the disciplinary force of the Army, we express our reluctance to make inroads under Article 226 of the Constitution. Our view gets indirect support from *Lt. Colonel K. D. Gupta's* case (*supra*) where their Lordships have observed that the said case is not to be taken as a precedent and the Court would like the discipline of the Defence Department to be maintained by itself in the interest of nation.

(5) Mr. Gupta vehemently urged before us that the judicial precedents cited by him, and to which list he could add a lot many, the Courts in the higher echelons have been interfering and the fact that they have interfered is reflective of their willingness to interfere. We are unable to discern any ready willingness to interfere in matters all and sundry pertaining to the Armed Forces. Rather we, in the interest of nation, see a general hesitancy to enter this area of sensitivity, and more so, in a matter like the present one where the service of the petitioner has been viewed 'unsatisfactory service' i.e. not coming to the standard required for promotion. This would not call judicial review at our end.

(6) Not willing to enter the thicket, we dismiss the petition *in limine*.

P.C.G.

Before : M. R. Agnihotri, J.

DR. ASHUTOSH KAUSHAL,—*Petitioner.*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ Petition No. 4119 of 1989

30th May, 1989

Constitution of India, 1950—Articles 226, 227—Policy of the Government to reserve 2 per cent seats for "OUTSTANDING