

CASE NO.:  
Appeal (civil) 2631 of 2005

PETITIONER:  
Lt.Col.V.K.Pandey

RESPONDENT:  
Union of India & Ors

DATE OF JUDGMENT: 06/02/2007

BENCH:  
G.P. Mathur & A.K. Mathur

JUDGMENT:  
J U D G M E N T

A.K. MATHUR, J.

This appeal is directed against the order passed by the Division Bench of Allahabad High Court whereby the Division Bench of Allahabad by its order dated 22.9.2003 has dismissed the writ petition filed by the appellant.

The appellant was an Officer of the Indian Army. He challenged his order of punishment of reprimand passed on 17.3.1992 by the GOC UP Area " An Omission Prejudicial to Good Order and Military Discipline" allegedly committed by the appellant when he was Garrison Engineer at Air Force Station, Agra between November, 1986 and October, 1989. He also prayed that the order dated 16.11.1993, Annexure-4 to the writ petition, rejecting his statutory complaint against the reprimand should also be quashed. He also prayed for quashing of the order passed on his statutory complaint against his non-promotion dated 1.6.1994, Annexure 6 to the writ petition. He further sought for a writ of mandamus directing the respondents to promote him to the post of Lt. Col. (Selection Grade), Colonel and Brigadier with retrospective effect from the date from which his juniors were promoted. The appellant was 1973 batch Corps of Engineers Officer commissioned on the Indian Army on 17.6.1973. At the time of filing of the writ petition before the High Court he was a Time Scale Lt. Colonel with effect from 1994, which is considered as Major for all purposes. A selection Board for 1973 batch officers of the Corps of Engineers was held in May, 1992 for promotion to the post of Lt.Colonel (Selection Grade) and the result was declared on 4.6.1992. The appellant was found suitable for promotion by order dated 20.7.1992. The appellant was not promoted to the rank of Lt.Col.(Selection Grade) when his turn came for promotion whereas persons junior to him were promoted. The appellant was put through a Special Review Board in February, 1993 on account of the alleged punishment of reprimand awarded in March, 1992 by the GOC, UP Area. The appellant filed a representation against the order of reprimand by way of statutory complaint under Section 27 of the Army Act to the Government of India and the same was rejected on 16.11.1993. He also made a statutory complaint on 23.12.1993 against his non-promotion to the post of Lt.Col. (Selection Grade) and that was also rejected. The appellant filed two writ petitions before the Punjab & Haryana High Court but they were kept pending for 8 years and ultimately on 28.4.2003 those writ petitions were rejected by the Punjab & Haryana High Court on the ground that Punjab & Haryana High Court has no jurisdiction to

entertain the writ petitions as the cause of action has arisen to the appellant within the jurisdiction of Allahabad High Court when he was posted at Agra in the State of U.P. Therefore, the appellant filed the present writ petition before the Allahabad High Court. The charge against the appellant was that he while posted at Kheria, during April/May, 1989, as the Garrison Engineer and responsible for efficient execution of work relating to contract CA No.GE/CHR/02 of 88-89 for provision of hardstanding at Kheria, improperly omitted to ensure that the said work had been efficiently executed before it was taken over by the MES on or about 5.5.1989, resulting in subsequent surfacing of defects in the hardstanding. Prior to that a Defect Board constituted by the Chief Engineer, Bareilly Zone examined the defect and found that 40 to 50 per cent of the seal coat had come out and the pavement had undulation. It showed sign of unevenness and level differences. The job was delegated for planning and execution to Garrison Engineer, Kheria and the Board opined that poor workmanship was due to improper supervision by various executives. On the basis of the above finding, an enquiry was conducted, the appellant was given opportunity in the enquiry and ultimately the appellant was found guilty in the enquiry and awarded punishment of reprimand. The said order of reprimand was communicated to the appellant against which he filed objection before the higher authorities but the same was rejected. Meanwhile, the case of the appellant was also considered for promotion to the post of Lt. Colonel also but on account of this order of reprimand passed against him, his case was again reviewed and in the review he was found not suitable for appointment and accordingly he was not promoted. On the basis of these grievances, the present writ petition was filed by the appellant. The Division Bench of the Allahabad High Court after considering the matter dismissed the writ petition and held that the Court cannot sit as a court of appeal to reassess the evidence and the findings of fact recorded by the Army authorities. Hence the present appeal.

Learned counsel for the appellant submitted that the punishment of reprimand is based on no evidence and perverse. He also submitted that the enquiry was conducted in an unfair manner and in breach of principles of natural justice. Secondly, he submitted that even if the order of reprimand is valid, the reasoning given by the Selection Board on the performance of the appellant is also not correct and constitution of Review Board was unjustified. Learned counsel for the appellant lastly submitted that the punishment of reprimand cannot be permanent so as to debar the appellant for promotion for all time to come.

So far as first argument of learned counsel for the appellant that the order of reprimand passed against the appellant is in breach of principles of natural justice is concerned, we have gone through the proceedings filed on record. We find that the appellant was permitted to inspect the documents placed before the Technical Board Officers on which the appellant was served with the charge-sheet. He appeared himself and made his own statement. He also submitted that on the particular year there was heavy downpour and he also submitted that all the higher authorities from time to time examined the workmanship and no objection was raised. All these aspects were taken into consideration by the authorities and after considering all these facts the technical board authorities came to the conclusion that there was poor workmanship and the appellant was found lacking in supervision. It is wrong to state that the appellant

was not given hearing. The appellant had sufficient opportunity and after considering all the materials placed by the appellant before the authorities, the authorities found that there was poor supervision on the part of the appellant and it was also found that the appellant has changed the specification given by the Superintending Engineer. Therefore, we do not find any perversity in appreciation of evidence by the authorities, the finding of fact arrived at by the authorities cannot be faulted.

So far as the non-selection of the appellant for the post of Lt. Colonel ( Selection Grade) is concerned, the Selection Board which met for considering the case of the appellant, were not having the order of reprimand passed by the disciplinary authorities. Therefore, the selection board found the appellant suitable and accordingly the appellant was informed that he was found suitable and he would get his promotion in due time. But it was clearly mentioned in the communication dated 20.7.1992 that promotion shall be subject to continuing satisfactory performance. The order reads as follows:

" I am directed to inform you that your name had been considered by the appropriate Selection Board for promotion to the rank of acting Lt.Col as a Fresh 1973 batch. The Board has found you to be in an acceptable grade for such promotion by selection.

You will be promoted as per approved sequence. Promotion will be subject to continued satisfactory performance & remaining in acceptable medical classification."

This order was passed in total ignorance of the order of reprimand which was issued against the appellant on 17.3.1992. The Selection Committee considered the candidature of the appellant along with others in May 1992. At that time the punishment order was not before the Selection Committee.. However, the result was withheld due to disciplinary ban that had been imposed on him because of pendency of the disciplinary enquiry. The Selection Committee was communicated on 5.6.1992 with intimation that the appellant had been awarded reprimand on 17.3.1992 by the GOC, UP Area. On lifting of the ban the appellant was intimated about the result of the Selection Board on 20.7.1992. In fact this punishment of reprimand awarded to the appellant was not available to the Selection Board. Therefore, a Special Review Board was called and that fresh input placed before the Board, as a result of appraisal of performance, he was not found suitable for appointment to the post of Lt. Colonel. Therefore, he could not be promoted. In view of the sequence of these events, it is more than clear that the Selection Committee was not apprised of this punishment of reprimand. His case was submitted before the Review Committee on receipt of this finding and the Review Committee was of the opinion that he could not be promoted and accordingly he was not promoted. This action of the respondents cannot be said to be unjustified. In fact, the Selection Board which met in May, 1992, was not aware of the punishment which was awarded to the appellant on 17.3.1992 by the GOC but the same was communicated later on 20.7.1992. But before that the appellant was cleared for promotion. When this fact came to light, his case was reviewed

and on the basis of the drop of performance, he was not recommended for promotion. The action of the respondents, in our opinion, cannot be said to be bad though the punishment of reprimand which has been recorded in the service record of the appellant will continue to be part of the same but in future if there is improvement in his performance that can always be reviewed by the authorities. But so far as the present case is concerned, we are of opinion that the view taken by the Division Bench of the High Court of Allahabad cannot be said to be perverse so as to warrant interference by this Court and accordingly we do not find any merit in this appeal which is dismissed. No order as to costs.

JUDIS