

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
NEW DELHI.

T.A.No.182 of 2009

In

Writ Petition (C) No.1925 of 1996

Lt. Col. P.S.K. Nair

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For the Petitioners: None.

For the Respondents: Col. R. Balasubramanian, Advocate.

C O R A M:

HON'BLE MR. JUSTICE A.K.MATHUR, CHAIRPERSON
HON'BLE LT.GEN. M.L.NAIDU, MEMBER.

ORDER

1. Petitioner by this petition has prayed by appropriate orders for quashing of the ACR of the petitioner for the period 1989-90 and also for setting aside the order rejecting petitioner's statutory complaint and a mandamus may be issued to respondents to

consider the case of the petitioner for the promotion to the rank of Colonel w.e.f. November, 1991 with all consequential benefits.

2. The brief facts which are necessary for disposal of this petition are that petitioner was commissioned in the Army w.e.f. 15th June, 1969 as a second Lieutenant and continued to serve in Indian Army with periodical promotions. However, when the case of the petitioner for promotion from Lt. Colonel to Colonel came for consideration, petitioner could not be selected as Colonel. Therefore, petitioner filed the present writ petition after rejection of his statutory complaint.

3. One of the important contentions raised by the petitioner was that the ACR for the year 1989-90 was written by the officer who was not competent to initiate his ACR i.e. Brigadier (now Major Gen.) Inderjit Kashyap who was the then DDST, MP and BO Area in contravention of the Army Headquarters Instructions No. 31741/4/MS-4 D (Channels) dated 23.01.1990 which provides for initiation of ACR of Army Services Core, officers serving with supply units. It is contended that this ACR should have been initiated by

Sub-Area Commander and not by the DDST, MP, BO, therefore, main question is the initiation of ACR of petitioner by a person not competent to do, therefore, same be set aside and his case be reconsidered. A reply was filed by the respondents and respondents have pointed out that petitioner's case is not governed by the aforesaid Circular dated 23.01.1990. It will be governed by Circular dated 20.11.1978 and in that Circular it is mentioned that in case of OC Unit i.e. in case of petitioner who was OC, his ACR will be initiated by the DDST, Area and therefore that has been rightly written by the DDST i.e. the then Brig. Inderjit Kashyap. It is also pointed out that the ACR in dispute of the year 1989-90 which covers the period from 26th June, 1989 to 04th May, 1990 and this period is covered by the Circular dated 20.11.1978 and not by the Circular dated 23.01.1990.

4. We have bestowed our best consideration and after going through the Circular dated 23.01.1990, it clearly says that this procedure will be applicable for writing ACR w.e.f. 01.06.1990. Therefore, so far as the petitioner is concerned, his period is covered from 23rd June, 1989 to 04th May, 1989. Thus, petitioner shall be governed by the Circular dated 20.11.1978 and not by the Circular

dated 23rd January, 1990. As per the Circular, ACR of the period 23rd June, 1989 to 04th May, 1989 has been rightly initiated by the then Brigadier who was DDST of the Area, petitioner's case has been considered on successive occasions and he has not been found suitable. Therefore, there is no ground for us to interfere in the matter. Accordingly, the petition is dismissed. No order as to cost.

[Justice A.K. Mathur]
Chairperson

[Lt. Genl. ML Naidu]
Member

New Delhi
04th November, 2009