

**COURT NO. 3,**  
**ARMED FORCES TRIBUNAL,**  
**PRINCIPAL BENCH, NEW DELHI**

**T.A. NO. 358 OF 2009**  
**(WP(C) No. 4806 OF 1997 of Delhi High Court)**

**IN THE MATTER OF:**

Col M.P. Sharma .....Applicant  
Through Col (Retd) K Digamber Singh, Counsel for the applicant

Versus

The Union of India and Another .....Respondents  
Through: Col (Retd) R Balasubramanian, counsel for respondents

**CORAM :**

**HON'BLE JUSTICE MANAK MOHTA, JUDICIAL MEMBER,**  
**HON'BLE LT GEN Z.U.SHAH, ADMINISTRATIVE MEMBER**

**JUDGMENT**

**Dated: 17-12-2009**

1. The applicant had filed a Writ Petition (Civil) No. 4806 of 1997 seeking directions for promotion to the rank of brigadier with further prayer of extension in service. He has highlighted the facts that although he had been empanelled by a selection board No. 2 for promotion to the rank of brigadier vide Army

Headquarter Military Secretary (MS) Branch letter No. A/47043/DP/MS(x) dated 5.8.1997 but he was not promoted as brigadier and subsequently he was superannuated wef. 31.12.1997.

2. The applicant contends that he had been approved for promotion to the rank of brigadier because of his exemplary record of service. On being informed of his approval he had submitted an application to the MS branch vide his letter No. 27436/MPS/Pers dated 9.8.1997 requesting for grant of extension of service to enable him to get promoted and subsequently submitted statutory complaint with same request citing the examples of Lt Gen B.S. Malik, Maj Gen HS Bagga and Col Balbiar Singh.

3. The applicant has also cited Para 70 of Defence Services Regulations (DSR) concerning early advancement in the interest of service, Para 73 DSR concerning **"Promotion in exceptional circumstances"** and Para 74 DSR **"Removal from the cadre of a Regiment/ Corps/ Unit"**.

4. The applicant requests for directions to respondents that he should be given two years extension or promoted in vacancies outside his corps roster and for that he has cited the examples of Lt Gen Vijay Kumar, Maj Gen MNK Nair and Brigadier Randine.

5. The applicant has prayed that he may be promoted to the rank of brigadier before his superannuation ie. on 31.12.1997 or alternatively he may be granted extension of service till he picks up rank of brigadier within or outside his corps (ASC).

6. The respondents in their reply stressed that mere empanelment in promotion list does not confer any right for promotion. Empanelled officers are physically promoted on seniority and on occurrence of a vacancy. The applicant stands at seniority at number ten in the approved panel of ASC officers and there are nine officers above him who have to be promoted as per terms of the order. He thus cannot be promoted over his seniors. The applicant's turn would have come up for promotion around January 1999 before which he would have retired in the rank of colonel on 31.12.1997. A number of similarly situated officers have retired in their substantive rank because of non availability of vacancies.

7. The respondents have stressed that extension of service beyond the age of superannuation rests with the Central Government which has already rejected the officer's statutory complaint praying for the same.

8. After perusing the records and hearing the arguments we find that the applicant has not been able to justify any reasons for grant of extension of



service which the Govt of India has extended to a rare number of officers in the past. He also could not have been promoted ahead of others senior to him before his superannuation as there was no vacancy. A perusal of Army Headquarters letter No. A/47054/25B/ASC/MS(x) dated 25.6.1997 by which the applicant stood empanelled clearly stipulated that **"the officers mentioned in the appendix will be promoted in their turn subject to availability of vacancy, continued satisfactory performance and medical fitness"**. In the appendix attached to the above said letter the applicant name has been shown at Serial No. 10.

9. No ground for interference is made out. Hence the application is dismissed.

10. No orders as to costs.

**MANAK MOHTA**  
(Judicial Member)

**Z.U. SHAH**  
(Administrative Member)

**PRONOUNCED IN THE OPEN COURT**  
**Today on Date: 17-12-2009**