

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

13.

T.A. No. 412 of 2009

Writ Petition (Civil) No. 240 of 1999

Col. Viresh Kumar

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Mr. S.S. Pandey, Advocate.

For respondents: Mr. Ankur Chhibber, Advocate.

CORAM:

HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.

HON'BLE LT. GEN. S.S.DHILLON, MEMBER.

ORDER

12.01.2012

1. Petitioner by this petition has prayed that the order dated 28th November 1997 (Annexure-P/4) and letter dated 17th December 1997 (Annexure-P/5) be quashed and the records of the Number 02 Selection Board held at Army HQ between 15th and 18th September 1997 for promotion of officers of RVC to the rank of Brigadier may be called and directions be issued to the Respondents for grant of promotion to the Petitioner to the rank of Brigadier in his original batch seniority of 1969 batch and he may also be given all consequential benefits.

2. The Petitioner was commissioned in the Remount Veterinary Corps ('RVC') of the Army on 22nd December 1969. Petitioner has over 30 years long unblemished record of service and he has been adjudged to be an outstanding officer of his department by most of his Initiating Officers, Reviewing Officers and other technical officers. Petitioner with the passage of time reached to the position of Colonel and the case of Petitioner was

considered for the promotion to the post of Brigadier during the meeting of Selection Committee between 15th and 18th September 1997 but he could not make it. Therefore he filed a representation but without any result and ultimately filed the present petition before the Hon'ble Delhi High Court which was transferred to this Tribunal after its formation.

3. A reply has been filed by the Respondents and the Respondents has taken a position that the case of the Petitioner was considered and he was not found suitable as such he could not be promoted to the post of Brigadier. Learned counsel for the Petitioner has strenuously urged before us that he has also challenged the selection of Respondent No. 4 Col. K.S. Rao and submitted that his ACR for 1993 was not available and his ACR for 1996 was also not properly received by the Respondents. Respondents in their reply pointed out that so far as 1993 ACR of Respondent No. 4 is concerned it was not available in the MS Branch as the Officer who has to write the ACR has already retired in 1997 therefore it could not be filled up. So far as ACR of 1996 is concerned it was pointed out that it was received and IO portion has been reproduced and he submits that the RO could not endorse it because he was not available to supervise him for more than 90 days and SRO has pleaded inadequate knowledge. Therefore case of Respondent No.4 was considered along with the case of Petitioner without ACR of 1993 but still he had made it. Learned counsel for the Petitioner submitted that in fact his information is that he has been recommended by Selection Committee but he has not been still promoted. In order to dispell out the doubt of the Petitioner we called the original record. Learned counsel for the Respondents produced before us the original record which bears the minutes of the Selection

Committee and the signatures of all the members of Selection Committee. The selection list has been placed as Annexure-G and in that Petitioner has been found unfit along with the other four persons. Total seven persons were considered for promotion to the post of Brigadier and out of that only two were found fit. One was Col. B.S. Panwar and another was Col. K.S. Rao. Petitioner has been specifically found unfit. We have also seen 11 ACRs of Petitioner along with 11 ACRs of Respondent No. 4 Col. K.S. Rao and in that Rao has better career as his numbers are more than 7 always whereas in case of Petitioner he has got number 6 number of the time. Selection Committee after due consideration of the matter found Col. K.S. Rao and Col. B.S. Panwar better than the Petitioner and hence they were recommended for promotion. Learned counsel for the Petitioner submitted that as per the instructions on the constructions of the ACRs normally whenever the ACR is not available the MS Branch has to take necessary steps within 90 days but no steps were taken in case of Col. K.S. Rao for reconstructing his 1993 ACR. Be that as it may, so far as the present case is concerned 11 ACRs of the Petitioner along with 11 ACRs of Col. K.S. Rao were considered and after comparative assessment the Petitioner was not found suitable. However the MS Branch should be vigilant in cases where ACR is not received in time, they must take appropriate steps. However nothing turns out of this in the case of Petitioner because no prejudice has been caused to him as 11 years of ACRs of the Petitioner and Respondent No. 4 have been considered. Therefore 1993 ACR of Col. K.S. Rao which was not taken into consideration as it was not available does not make any difference in the matter.

4. Consequently, we do not find any merit in this petition and same is dismissed with no order as to costs.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
January 12, 2012
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