

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

O.A. No. 11 of 2010

IN THE MATTER OF:

Brigadier Kapil Dev Arya**Applicant**
Through Maj (Retd) S.S Pandey Counsel for the Applicant.

Versus

Union of India & Ors**Respondents**
Through: Ms Jyoti Singh Counsel for the Respondents.

CORAM:

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

JUDGMENT

Date: 03/12/2010

1. The applicant filed O.A 11/2010 before this tribunal praying that the order dated 05/11/2009 (Annexure A-1) rejecting his statutory complaint be quashed and the respondents be directed to allot vacancies for promotion to the rank of Major General from unutilised vacancies released by Phase II of AV Singh Committee Report on pro rata basis and decide his merit in selection board without giving weightage for NDC Course. The applicant has also prayed that Army HQ policy of quantified system of promotion which retrospectively allotted marks for NDC be quashed.

2. The applicant was commissioned in the Army (Signals) on 17/12/1977 with two years ante date seniority from 22/12/1975. During his service he was awarded Army Commander's Commendation Card and was approved for promotion to Brigadier in December 2004. The applicant avers that his batchmates started getting promoted in June 2005 and his chance for promotion came up in December 2005. He was thus placed at a disadvantage because his batchmates, who were promoted in June 2005, were detailed for NDC Course in December 2006. The applicant was not so detailed as he became overage for the same.

3. The applicant states that in 2008 the second phase of AV Singh Committee recommendations was implemented. Vacancies for promotion were allotted on pro rata basis based on the number of candidates available. On 21/01/2009 the respondents changed the policies and method of selection. Selection henceforth was to be according to quantification method (Annexure A-3) which gave an advantage to officers who had done the NDC Course. The applicant avers that he was thus disadvantaged.

4. The applicant was not empanelled for promotion to the rank of Major General by No 1 promotion board held on 09/01/2009 and he was informed of the same on 10/02/2009. The applicant states that only

three officers of his batchmates were empanelled; whereas in the earlier batch of 1973 six out of ten officers were empanelled and subsequently eight were promoted out of twelve considered.

5. The applicant submitted a statutory complaint on 05/08/2009. The same was rejected on the grounds that vacancies were calculated for a period of twelve months subsequent to expiry of previous panel. No explanation was given why the method of selection had been changed to give advantage to his batchmates who had done the National Defence College (NDC) Course. The applicant states that the policy of allotting of vacancies in twelve months cycle is regardless of the strength of the batch considered and based on erratic calculation dependent on number of retirements in a twelve months period. This gives rise to inequitable distribution of vacancies to various batches. The applicant avers that this policy, based purely on wastage on retirements, defeats the system of selection on merit.

6. The applicant further states that only one vacancy was allotted to 1975 batch whereas the 1974 and 1976 batches had eight and nine retirement vacancies respectively. These vacancies should have been equitably shared. Vacancies should also have been allotted according to profile of the batch. A stronger batch should have been allotted more vacancies. This inequitable distribution of vacancies led to disadvantage

of 1975 batch compared to 1973, 1974 and 1976 batches. In 1975 batch only three officers were promoted out of twelve considered. If AV Singh Committee vacancies had not been allotted only one officer would have been promoted, based on retirement pattern in the next one year.

7. The applicant states that no change in selection criteria should be implemented after a person has joined the service. The applicant contends that the change in policy was applied to the disadvantage of his batch for the purpose of promotion.

8. In the counter affidavit the respondents have stated that the applicant was promoted in his turn within his batch in June 2006. Some batchmates of the applicant, who were senior to him, were promoted in June 2005 and were detailed for NDC because they met the criteria. The applicant did not meet the requirement of requisite ACRs and subsequently was not found fit to be nominated for NDC Course. No prejudice was thus caused to the applicant.

9. When the applicant's batch was considered for promotion the vacancies were calculated on the basis of projected retirements over a period of 12 months period after expiry of the previous panel. The vacancies at that time were not based on a three years cycle but based on retirement vacancies for the next one year. There could not be equitably distribution amongst various courses. This was a pattern

which was being applied earlier also and there was no inconsistency in allocating vacancies, by this method, for the applicant's course. The applicant's request for pro rata vacancies, based on vacancies allotted to previous two batches, is thus devoid of merit. The respondents further state that only one officer was retiring in 1975 and only one vacancy was available for allocation to 1975 batch. Three vacancies were however allotted on account of implementation of AV Singh Committee Report. Earlier batches had got greater number of vacancies because of greater number of impending retirements.

10. During the course of arguments the respondents stated that the quantification method was promulgated vide Army HQ, AG's Branch letter dated 21/01/2009 and approved for implementation with effect from forth coming No 1 Selection Board to be held on 26-27 November 2009 onwards. (The respondents also produced original documents for our perusal in this respect). The respondents stressed that this pro rata vacancy (PRV) method was not applied in respect of 1975 and earlier batches. Vacancies for earlier boards were calculated on the earlier system of calculation of vacancies based on likely retirement and chain vacancies for a period of 12 months. The respondents brought out that the applicant stood at merit position 8 in the selection board main data sheet and even if 6/7 vacancies had been made available (according to

PRV system) the applicant would still not have been empanelled. The respondents state that the applicant was not empanelled based on his overall profile and relative merit within his batch. The officers empanelled had better profiles. The nonempanelment of the applicant was not solely due to non detailment for NDC Course but due to his relative profile. The respondents have recommended that the application be rejected.

11. In a rejoinder to the counter affidavit the applicant has averred that two additional vacancies for his batch were released subsequent to AV Singh Committee. The method of calculating vacancies should therefore have been based on retirement pattern for a period of three years and calculation on the basis of twelve months period is incorrect and unfair. In any case the PRV system should have been implemented from 21 Jan 2009 when it was promulgated. It was thus apparent that it was applied in part. The applicant avers that the vacancy of earlier 1974 batch was not based on the policy of 12 months but calculated on pro rata basis to extend undue advantage to 1974 batch. This adversely affected and reduced the vacancies available to 1975 batch. The applicant has submitted that vacancies for various courses were as under:-

Ser No	Batch	No of Brigs	Retirement vacancies available	Additional vacancy	Total Maj Gen approved	% success	Remarks
(a)	1973	10	06	-	06	0.60	Pre AVSC II
(b)	1974	12	08	-	08	0/67	Pre AVSC II
(c)	1975	12	Nil*	02**	03	0.25	Post AVSC II
(d)	1976	03	09	-	-	1.00	Post AVSC II
(e)	1977	06					

12. The applicant avers that the respondents adopted the quantification method w.e.f 01/01/2009 but applied it retrospectively by giving weightage for NDC Course which was done before the policy came into effect. This amounted to change in the service conditions and promotion prospects of the applicant without prior intimation to him.

13. The applicant has reiterated that the respondents have admitted that NDC qualified officers were given additional points. The respondents were required to follow the pro rata pattern which was not done by them. The respondents also implemented the PRV system before taking approval of Chief of Army Staff.

14. We have heard the arguments and perused the record. The pro rata vacancies (PRV) system for allotment of vacancies was approved by the Chief of Army Staff on 25/03/2009 as per the noting sheet signed

by the COAS produced by the respondents. The relevant Para 3 is as under:-

***“In order to ensure even distribution of vacancies to different batches, the under mentioned policy for calculation of vacancies for promotion in the rank of Major General is recommended to be adopted from the forth coming No 1 Selection Board to be held on 26-27 Mar 2009 onwards*”**

The promotion board of the applicant was held on 09/01/2009 before the pro rata vacancies system was adopted. The applicant's contention is based entirely on PRV system which was not applicable when No 1 selection board was held in respect of the applicant who was informed of the same on the RTI inquiry (Annexure A-6). The respondents had calculated the number of vacancies as per the method then being followed i.e vacancies were calculated based on vacancies due to likely retirements and chain vacancies for a period of 12 months. During the course of arguments the respondents had brought out that since only one retirement vacancy was available for 1975 batch and there were 11 officers under consideration the COAS had approved the allocation of two additional vacancies, making it a total of three. We consider that this was in keeping with the spirit of AV Singh Committee report. The applicant's batch has thus not been prejudiced by this decision and the

applicant has not been able to establish the implementation of PRV policy at the time when the promotion board was held on 09/01/2009. We have considered the contention of the applicant that there is some variation in the pleading by the respondents. These contentions do not have force as we have ascertained the correct facts from the original records produced by the respondents. The applicant cannot claim for implementation of the system which was approved by the Chief of Army Staff on 25/03/2009 whereas his board was held earlier on 09/01/2009 when the PRV policy had not been implemented. The applicant was not considered for NDC as he did not meet the required criteria for the same and thus became overage for detailment and cannot blame the system for that. The weightage given by the respondents for various factors like NDC cannot be lightly ignored as it is in the interest of Army to select the best officers for promotion and policy is uniformly applied. No injustice has been caused to the applicant who has already superannuated. No interference is warranted. Application is dismissed. No costs.

Z.U.SHAH
(Administrative Member)

MANAK MOHTA
(Judicial Member)

Announced in the open Court
on the day of 03rd December, 2010