

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT  
NEW DELHI**

O.A. No. 169/2010

Col. S.S. Dhanoa

.....Applicant

Versus

Union of India & Others

.....Respondents

For applicant: Maj. (Retd.) K. Ramesh, Advocate.

For respondents: Ms. Jyoti Singh, Advocate.

**CORAM:**

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

**JUDGMENT  
08.10.2010**

1. Applicant by this petition has prayed that the impugned order of Ministry of Defence dated 22.09.2008 may be quashed and respondents may be directed to consider the applicant for promotion to the post of Brig as he stands approved vide Army HQ MS Branch letter dated 16<sup>th</sup> March, 2006 with all consequential benefits.

2. Applicant was first posted as a second in command and thereafter as a Commanding Officer in an intense counter insurgency area in J&K from August, 1996 to November, 1999. He has received commendation from the Army Staff and GOC for bravery. However, due to stress and strain he was hospitalised because he had some infection in the Kidney. He was operated and a donor kidney was transplanted. He developed a cataract infection also and he was placed in medical category S1H1A1P2E2 at the time of filing of statutory complaint. But he was upgraded for eye factor from E-2 to E-1, therefore, the present medical category comes to S1H1A1P2E2 with F2 in Employment Management Index.

3. Applicant was duly considered for promotion to from Colonel to Brigadier. He was approved for the post of Brigadier but on account of medical embargo, he was not given promotion to the post of Brigadier. The Army was of the view that applicant is ineligible for promotion because of the MS Policy letter dated 17<sup>th</sup> November, 2005 read with the Government of India, Ministry of Defence letter dated 06<sup>th</sup> May, 1972 as modified by the order dated 18<sup>th</sup> July, 1974. It is alleged that some people who had

medical problem like in the cases of Sepoy Hyat Mohammed and Rifleman Jagdeep though they were having a war injury but they were promoted with disability. Some people who are mountaineers and having sports expedition were also promoted with the poor medical category. Applicant suffered a kidney problem and debarred from promotion. He made a statutory complaint that he may be promoted from the Colonel (Selection Grade) to Brigadier that was rejected on 26<sup>th</sup> September, 2008. Hence, applicant filed the present petition with aforesaid prayers.

4. In this connection, learned counsel for applicant submits that a person can be promoted upto the rank of Colonel who is Battalion Commander with the same medical problem but a Brigadier who is a Brigade Commander is not found fit to be appointed as a Brigadier. Learned counsel for applicant further submits that this is nothing but discriminatory.

5. Petition was contested by respondents by filing the reply and respondents in their reply have pointed out that it is true that applicant belonged to 1978 batch of Infantry and he was empanelled for promotion to the rank of Brigadier by Selection

Board but because of his low medical category with Employment Management Index F2, F3 and F4 for renal transplant and P-2 (Temporary-T-24) for Bifrontal Meningioma (Optd.) with Employment Management Index Restrictions, he was not found eligible for promotion. It is pointed that the policy for the promotion to the post of Brigadier had been promulgated by MS Policy dated 17.11.2005 as amended by letter dated 24<sup>th</sup> August, 2009. In that category it is mentioned that the promotion for the post of Brigadier and above the officer is required to be in F1A or F1B. There is no provision for promotion of an officer to the rank of Brigadier with EMI of F2, F3 or F4. It is pointed out that intention behind this policy is officer of the Flag rank should be eligible for such higher appointments who do not seek shelter appointment/posting due to medical category. This policy has been uniformly followed in all the cases. It is pointed out that as per the medical proceedings applicant was placed in low medical category P-2 (Temporary-T-24) for Bifrontal Meningioma (Optd.) and P2 (Permanent) for Renal Transplant with employment restrictions F2, F3 and F4. Hence, as per the permissible medical category, he was not found fit to be promoted to the post of Brigadier.

6. We have heard learned counsels for the parties and perused the record.

7. As per the policy that in such a Flag rank appointment man should be 100% fit and should not carry F2, F3 and F4 employment restrictions. Now according to applicant's own category, he is having F2, F3 and F4, therefore, he was not made eligible for this appointment. But learned counsel for applicant has pointed out that so far as the promotion to the rank of Colonel is concerned, this has not been held as a medical disability and the appointment of a Colonel, Battalion Commander is a far more rigorous than that of the Brigadier. Therefore, a person who is fit as a Battalion Commander why cannot be fit for Brigade command. Learned counsel for applicant submitted that this is a discriminatory. In this connection, learned counsel for the respondents has placed before us policy with regard to why a Brigadier who has not been made eligible with this disability and why Colonel has been made eligible. She produced before us a Study Report on Review of Existing Policy on Promotion Prospects of LMC Officers to rank of Brigadier and above and highlight of the policy is that promotion to the rank of Brigadier and

above, the requirement is man should be in Shape-I or equivalent.

Para 23 to 27 of this policy reads as under :-

**“Building of Morale of LMC Officers**

23. Some officers feel that making the higher select ranks of Brigs and above available and tenable by LMC officers will be a very positive welfare measure, having extremely good effect on the general morale of the officers in the entire IA. It is contended these LMC officers will have something positive to look forward to, as despite their medical disability, they still have avenues of promotion open to them.

24. Other officers feel that acceptance of such a step would grossly undermine the morale of the vast majority of officers in the IA, who are not LMC and who very anxiously look forward to their promotion to the higher select ranks. They feel that with time, LMC offices will occupy the plum appointments, thus restricting the number of posts available, and clog the avenues of promotion of the peer group, who have continuously braved the rigours of service, hazardous terrain and difficult climatic conditions. This set of officers who form the majority of the Army in any rank, will feel considerably let down by the system.

25. It also needs to be noted that but for the laxity of promotion of LMC officers upto Cols. Most of them would retire as Majs/Lt Cols (TS) at 50/51 years respectively. As a welfare and humanitarian measure, the Service carries these officers upto the rank of Cols, or for an additional one/two years. This is within the norms of acceptability. However, promoting these officers to higher ranks and enable them to serve till 54/56/58 years or an additional 3 to 4/6/8 years, would be unfair to the organisation, besides flouting the basic tenet of the selection system to ensure paramouncy of the organisational interests.

**Ability to Withstand Physical and Mental Stress and Strain**

26. There is a general feeling that the physical and mental stress of officers at the rank of Lt Col and col is much more than at the higher select ranks. It is at these ranks that physical command of troops exists. As one goes higher in the hierarchy of Army ranks, the physical contact reduces and an officer deals with his command through a set of experienced Staff Officers. The argument is that if we can accept certain grades of LMC Officers to the select ranks of Lt. Cols and Cols, there is no viable reason to deny them the higher ranks of Brigs and above. If LMC officers can effectively command field units in field areas, then surely officers with similar LMC can also command formations such as brigades, divisions and corps. The physical and mental stress required at the higher ranks and to command these formations is considerably less.

27. An analysis in depth will reveal that this is not strictly true, because though the physical stresses in command of a unit may be considerable, the mental stresses at higher select ranks cannot be discounted. It is also for consideration that there is a requirement of a brigade commander being physically fit, especially when he commands a formation in the hilly and high altitude areas. Furthermore, a divisional or brigade commander who is physically fit will inspire greater confidence from his command and will be definitely a better leader than his counter-part, who is a LMC. Furthermore, formation commanders do not sit in their offices. For better grasp of the situation and better control, they do move to the ground. A LMC officer, under similar circumstances, will have both physical and mental inhibitions to move to the ground and his command of the formation will ultimately suffer. It may also be pertinent to mention that medically the resilience of body reduces with age – a Brig with the same medical problem is not likely to be as physically or

*mentally efficient as a Lt Col. Lastly, it is for consideration that though certain grades of LMC officers are promoted to the select ranks of Lt Col and Col, very few of them are actually given command of field units. Statistically speaking, only three officers out of a total of 96 LMC offices were approved for command of a unit by the SRMBs in the last three years.*

It was observed finally in Para 40 and 41 (wrongly mentioned as 36) as under :-

**“Availability of Adequate Number of Competent Officers**

*40. It is generally seen that there are adequate number of qualified and competent officers available to hold the higher select ranks in the IA. There has never been any shortage of potential commanders in higher ranks. On the other hand, at a various stages in the past three decades, we have tried to evolve certain methods of reducing the number of officers approved for the higher ranks with the primary aim of reducing the age of the officers in command. With this situation available, there seems to be no justifiable reasons to dilute the medical standards and make a many more officers available for the higher ranks. By doing so, we will only dilute the quality of the senior offices and commanders and reduce their effectiveness. As a side issue, by exposing these LMC offices to the rigours of command, we may inadvertently aggravate their medical disability.*

**Pyramidal Structure of the IA**

*36. In a total authorised establishment of 45, 045 officers in the IA, the authorisation of Brigs, Maj Gens and Lt Gens is 795, 195 and 53 respectively. This constitutes a bare 2.3% of the total authorisation. For a present holding of 32,784 officers, this constitutes about 3.81% of the held strength of the IA. The pyramid in the higher ranks is quite narrow. It is for consideration that*



*only fittest officers, both professionally and medically, should be thrown up by the system to occupy the higher echelons in the IA.*

It was finally concluded which reads as under :-

*“45. The existing policy on promotion of LMC officers (other than war wounded) in the IA restricts their promotion to the rank of Cols only. Promotion beyond that is given to only medically fit officers (SHAPE-1 of equivalent).*

*46. When this policy is examined, especially with relation to that in other two Services of the Armed Forces and the DGMS, it seems a little unfair and biased. However, when considered with relation to its drastic effect and fall out on the career management and functioning of the IA, a change is not considered appropriate. It is also the considered view of the study team that the existing policy is detrimental to the interests of only a minuscule percentage of officers, approved for selection to the higher ranks. To change a time tested policy for the benefit of only a few, however appropriate the cause, to the detriment of the entire system and organisation may not be a wise step.*

*47. There is a distinct need to ensure a better and more visible physical and mental fitness profile amongst our service norms and policy directions on promotions show a preference for medically fit officers. Undue concern for steady enhancement of promotion prospects for LMC officers should not undermine or compromise, however remotely, our operational readiness.”*

8. This detailed analysis was undertaken and after that it was concluded that the existing policy not promoting the person who is not fit in all respects to the position of Brigadier, is well

nurtured policy and there is no reason why physically sound man should not be at the helm of affairs. Since all aspects have been considered in this policy and after considerable discussion on the subject the present policy has been formulated depriving the person with the disability which the present incumbent has it. He has been made ineligible on medical grounds to be promoted to the post of Brigadier. We cannot find any fault with this policy. At one place it was also observed that for small percentage of officers the policy should not be changed, there is no reason why an officer who is fit in all respects should not be given a Brigade Command as against a person who has disadvantages in performance because of the medical restrictions that he cannot be posted on the Field Area or place of high altitude. He has to live with certain restrictions; therefore, he will not be able to give good leadership to Battalions under him. Secondly, if large number of persons fit in all respects are available then why sacrifice them for small number of people who suffer medical disability. We do not find any fault in the policy nor we find any discrimination. It is no doubt true that the person with some disability can continue as a Battalion Commander but when he reaches to the higher position of Brigade Command then naturally his responsibility increases

and more ability is required. Therefore, after considering all aspects in its full magnitude the Authorities have recommended the person with aforesaid disability should not be made a Brigade Commander, we cannot say that the consideration was irrelevant or motivated with any malafide. After taking into consideration all relevant factors, the policy has been formulated and we do not find any reason to be discriminatory or arbitrary so as to declare it invalid nor is the prayer in the petition to declare policy to be illegal or bad. The only prayer is depriving the applicant promotion to the post of Brigadier. Hence, we do not find any merit in the petition. Same is dismissed. No order as to costs.

**A.K. MATHUR**  
**(Chairperson)**

**M.L. NAIDU**  
**(Member)**

**New Delhi**  
**October 08, 2010.**