

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

**T.A. No. 321OF 2010  
(Delhi High Court W.P (C) No. 4845 of 2008)**

**IN THE MATTER OF:**

**Col OP Sharma** .....**Applicant**  
Through Mr. Sunil Jha, counsel for the applicant

Versus

**The Union of India and others** .....**Respondents**  
Through: Ms Jyoti Singh, counsel for respondents

**CORAM :**

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

**Order**

**Date: 8-3-2010**

1. The applicant Colonel OP Sharma had submitted a writ petition (civil) No. 4845 of 2008 in the Hon'ble Delhi High Court. The same was transferred on creation of tribunal under the Armed Forces Tribunal Act 2007.

2. The applicant was commissioned in the Army Medical Corps on 30.11.1975. He acquired a post graduate degree in Preventive and Social

Medicine in March 1986. He was promoted to the rank of colonel on 7.1.2001. The applicant was considered twice for the rank of brigadier by No. 2 Selection Boards on 25.6.2005 and 7.12.2005 but not empanelled. The applicant filed a statutory complaint against non empanelment on 5.2.2006 (**Annexure A-2**). The respondents vide order dated 4.12.2006 (**Annexure P-5**) expunged the adverse numerical grading of reviewing officer in Interim Confidential Report of 2004 on grounds of inconsistency with the direction to reconsider the applicant for promotion by an appropriate promotion board.

3. It is further stated that on 27.11.2006 the applicant was considered for the third and final time for promotion by No. 2 Selection Board, without any revised input. This was in gross violation of the order of relief dated 23.11.2006 by the Ministry of Defence. The applicant again filed a statutory complaint on 11.6.2007 (**Annexure A-8**) against non empanelment by the Selection Board held on 27.11.2006 since this promotion board had not taken into account the relief granted on 23.11.2006 by Ministry of Defence. His changed profile had not been taken into consideration. The statutory complaint was rejected on 18.2.2008 (**Annexure A-9**).

4. The applicant contends that after grant of partial relief on 23.11.2006 three fresh considerations should have been given to him with his changed profile. This was not done but matter was clubbed and he was considered by a single review board on 2.2.2007.

5. The applicant has prayed for a writ of certiorari to set aside the impugned proceedings of No. 2 Selection Board held on 27.11.2006 and 2.2.2007 and he be considered for a third time for promotion to rank of brigadier. He has also prayed for a writ of certiorari quashing the order dated 18.2.2008 rejecting his statutory complaint.

6. The respondents have brought out that the applicant was considered thrice by selection boards on 25.6.2005, 7.12.2005 and 27.11.2006 but not empanelled in all three. The applicant was granted partial redress on 23.11.2006. In pursuance of this order review by three promotion boards were done separately on 2.2.2007. The applicant's position in merit improved slightly because of the change of profile due to relief given on 23.11.2006. He however remained very low in the merit position and was not selected in all the three respective promotion boards. The respondents in reply have submitted charts indicating the applicant's position before and after review. He still remained low in

comparative merit. The applicant had five reports in the rank of colonel when he was considered by the review promotion boards. Only minimum one report is mandatory as per amended policy of 14.1.2004. The applicant thus was eligible for consideration by the promotion board. No separate special confidential report was necessary. His statutory complaint was properly considered and rejected by a speaking order. A prayer was made to dismiss the application.

7. The applicant in his rejoinder has brought out that there cannot be just and fair review if three selection boards are held by one single review board. Also a fresh input was necessary before an officer was considered for review.

8. We have perused the documents, including confidential report dossier and selection board files, and heard the arguments at length. From the perusal of records it is revealed that the applicant was considered for promotion on 25.6.2005, 7.12.2005 and he was not empanelled, again he was considered for third and final time on 27.11.2006 and at that time fresh input in the form of Non Initiation Report 2005 as provided in the promotion policy dated 14.1.2004 was taken into consideration, but he was not empanelled also for the third

time. Thus the contentions of applicant are not having legal force. Redress was given to the applicant on 23.11.2006 to his statutory complaint dated 5.2.2006. The same was factored in during his three separate reviews held on 2.2.2007 in accordance with amended policy dated 14.1.2004. The officer despite some improvement in overall marks in service profile still remained low in the comparative merit to justify selection. The contentions of the applicant are based on his own assumptions, but the records shows otherwise. There was no infirmity in the review selection process. The statutory complaints have been properly dealt with. The applicant has not been able to convincingly show that he has not been given a fair look by review boards. No grounds for interference are made of. Application is dismissed. No orders as to cost.

**MANAK MOHTA**  
**(Judicial Member)**

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

**Announced in the open court**  
**Dated: 8-3-2010**