

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
NEW DELHI.

T.A.No. 466 of 2009

[Arising out of WP(C)No. 13779 of 2006 of Delhi High Court]

Maj. Gen. NB Singh

...Petitioner

Versus

Union of India & Ors.

...Respondents

For the Petitioner : Brig(Retd.) Anil Srivastava, Advocate

For the Respondents: Col.(Retd.) R. Balasubramanian, Advocate.

C O R A M:

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

HON'BLE LT.GEN. M.L.NAIDU, ADMINISTRATIVE MEMBER

JUDGMENT

1. This Writ Petition has been transferred from Delhi High Court.
2. Petitioner by this Writ Petition has prayed for issuing Writ of Mandamus to quash the orders dated 27th April, 2006, 6th

June, 2006 and 21st August, 2006 being arbitrary, illegal and violative of Articles 14 and 21 of the Constitution.

3. Petitioner has further prayed that respondent may be directed to consider ACR for the period 1st July, 2001 to January, 2003 in accordance with the ACR already available with MS branch. He may be considered against the vacancy of April, 2005 and then promoted him to the rank of Lt. General.
4. Brief facts which are necessary for disposal of the petitioner are that the petitioner joined the Indian Army with the Infantry (Rajputana Rifles) on 15th June, 1969. He was deployed in 1971 Indo-Pak war. Petitioner was also participated in counter insurgency & counter terrorist operations in Nagaland and Jammu & Kashmir and also held an assignment to IMTRAT (Bhutan). Petitioner has given his career profile and submitted that he had at no point of time had any adverse record.

5. Petitioner assumed charge as Military Attache in Moscow on 15th December, 1999. During the initial period the ACR was written by the Ambassador to Russia and his two ACRs pertaining to the period 15th December, 1999 to 30th June, 2000 and 1st July, 2000 to 30th June, 2001 were initiated by Shri S.K. Lamba, the then Ambassador. The petitioner was assessed as 'outstanding'. In August, 2001, Shri K. Raghunath was appointed as the new Ambassador to Russia. Petitioner was handed over his ACR forms for the period 1st July, 2001 to 30th June, 2002 to his Initiating Officer, the Ambassador, for initiating and further processing the same through Army Headquarter and through Ministry of External Affairs. They were not duly forwarded because of endorsement of the Ambassador. Petitioner reminded the Ambassador and he was given to understand that the same will be forwarded as early as possible.

6. Petitioner submitted a letter to the MS Branch on 4th January, 2003 and prayed that in case his ACRs are not received in time, then, the Reviewing Officer could process the Part-II of the document. Accordingly, the MS branch revised the policy for initiating the ACRs in respect of Military Attaches.
7. The petitioner was posted back to India. Upon his posting, petitioner handover the ACR form, for the effecting period 1st July, 2002 to 23rd January, 2003, to the Ambassador for initiating the same.
8. Petitioner was posted as a Divisional Commander of Infantry Division headquartered at Sri Ganganagar, on promotion to the rank of Major General. On a query by the petitioner's office, about the fate of his ACR, to the Embassy of India at Moscow, the Embassy replied that ACR forms for initiating confidential report for the period 1st July, 2001 to 30th March, 2002, 2002-2003 was submitted by them for endorsement of

the Ambassador. However, these ACRs were not made available to MS Branch.

9. On 9th March, 2005, the Military Secretary intimated the petitioner that there was a gap in his ACR for the period 1st July, 2001 to 30th June, 2002 and 1st July, 2002 to 23rd January, 2003. He directed that, in his own interest he must get that gap filled-up. By that time the Special Selection Board met for the consideration of the rank of Lieutenant General during the end of March / April beginning of 2005.
10. Petitioner appraised the MS branch that he is making efforts to process the ACRs, which were held by the concerned Ambassador at the relevant time. He also requested that the gap period may be waived off. However, finally petitioner could get his relevant ACRs endorsed by Shri K. Raghunath, former Ambassador to Russia.
11. However, the petitioner was informed that since his two ACRs were not available, therefore, his consideration for promotion

to the post of Lt. General was withdrawn. Since his name was withdrawn, he could not be considered for promotion in that Special Selection Board. Subsequently it came to the light that seven officers of his batch (1969 batch) and eleven officers of his junior batch (1970 batch) were recommended and sent for approval to the Government.

12. Petitioner filed a Non-Statutory complaint making grievance of withdrawing his name. Later on he was informed that his case was considered as a fresh/withdrawn case by the Special Selection Board held on 30th September, 2005 and he was not recommended for the post of Lt. General. His non-statutory complaint was dismissed. Aggrieved against this order, the petitioner filed the present writ petition.
13. Respondents in their reply submitted that the case of petitioner was considered by the Special Selection Board as a withdrawn case vis-à-vis the officers of his batch, on the basis of the record available and he was not found suitable for promotion. Therefore, no prejudice was caused to the

petitioner as his all ACRs, updated, were duly considered by the Special Selection Board.

14. The submission of learned counsel for the petitioner was that petitioner's case should be sent for review vis-à-vis persons of his batch with the record which was available at the relevant point of time, as his ACRs for the relevant period was not made available, not ^{on} account of his fault, but, because of the fault of the system. His case was withdrawn on account of non-submission of the relevant two years ACRS, but, having completed all ACRs and given to the MS branch his case could have been reconsidered along with officers of batch with the recording existing at that time.
15. We have considered the rival submissions and perused the record. We directed the respondents to produce the original minutes of the record and ACRs. Counsel for the respondent produced all the ACRs and minutes of Selection Board. We perused the same. We would have granted the prayer of the petitioner for reconsideration, but, perusing all the ACRs of the

officers, who were selected at the relevant time, and that of the petitioner we find that those persons who have been selected are having a better record than the petitioner. The petitioner's ACRs were good but he has not attended the National Defence Course and he was not given any award during his service career. Whereas, other officers attended the National Defence Course and they have been highly decorated with many awards.

16. The Special Selection Board, after review of the petitioner's overall performance, including ACRs and other decorations, did not find him suitable and found other persons fit and accordingly recommended them to the supersession of the petitioner. The petitioner's case was again considered vis-à-vis the officers of his batch, with the record which was existing at that time but he did not made the grade. Therefore, he could not be recommended for appointment.
17. After going through the record and hearing the petitioner and counsel at length, we are satisfied that no injustice has

done to the petitioner. The selection of the respondent is objective and no fault can be found with the consideration of the petitioner for promotion to the post of Lt. General. Consequently, we do not find any merit in this case and same is accordingly dismissed. No order as to costs.

[Justice A.K. Mathur]
Chairperson

[Lt. Genl. ML Naidu]
Member (A)

New Delhi
19th January, 2010