

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

**T.A. No. 607 of 2009
(Delhi High Court W.P (C) No. 1652 of 2000)**

IN THE MATTER OF:

Lt Col R.K Goswami

.....Applicant

Through Mr. R.P. Gupta, counsel for the applicant

Versus

Union of India and Another

.....Respondents

Through: Col R Balasubramanian, counsel for respondents

CORAM :

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

Order

Date: 16-4-2010

1. The applicant filed a writ petition (civil) No. 1652 of 2000 in the Hon'ble Delhi High Court challenging the policy letter dated 26.2.1996 (Annexure P-2) pertaining to selection criteria by which he has been

denied promotion to the rank of colonel and for quashing the letter 13.5.1999 (Annexure P-4) informing him that he was not empanelled for promotion to the next higher rank. The same was transferred to the Armed Forces Tribunal on 14.10.2009.

2. The applicant, a medical graduate, joined the Army Medical Corps (AMC) in Short Service Commission as officer on 20.3.1972. He was given a permanent regular commission on 23.12.1981 and was promoted to Lieutenant Colonel on 29.12.1986. The applicant has stated that while serving at 326 Field Ambulance he was under rated in his annual confidential reports (ACR) by his commanding officer (Col PK Saha) for the years 1987 – 1988 and 1988 – 1989. Since As per policy 26.9.1991 (Annexure P-1) only last five ACRs were to be considered for promotion to the rank of colonel by a promotion board the applicant did not represent against the lukewarm ACRs because he was under the impression that the impugned ACRs would not be considered and thus have no detrimental effect on his future promotion. The applicant adds that on 26.2.1996 a revised policy was introduced (Annexure P-2) and as per the policy instead of ACRs of the last five years all ACRs in the rank of Lt Col were to be considered.

3. It is stated that this revised policy was to the detriment of the applicant. He was not empanelled in 1998 on the basis of said revised guidelines where in all his ACRs in the rank of Lt Col were taken into consideration. These also included the lukewarm ACRs for the period 1988 to 1989 initiated by Col PK. Saha. The applicant contends that as soon as he became aware of this revised policy he submitted a statutory petition against this impugned ACRs for the years 1988 and 1989 clearly stating that he had not challenged the said ACRs because he knew that the same would not be considered by the selection board as per earlier policy (Annexure P-1). He also made allegation alleging bias by his CO (Col PK Shah). The statutory representation in this respect was rejected on 8.2.1999 (Annexure P-3). The applicant was informed on 13.5.1999 (Annexure P-4) that he had not been empanelled for promotion to colonel.

4. The applicant has prayed that since the revised promotion policy (**Annexure P-2**) was arbitrary and unfair and violative of Articles 14 & 16 of the Constitution in as far as it related to ACR criteria. That policy is liable to be quashed thus his non selection for promotion based on 1996 revised policy is not sustainable in law and the orders of the

respondents at (**Annexure P-4**) conveying his non selection for promotion to the rank of colonel be quashed and he be considered for promotion.

5. The respondents in their counter affidavit have stated that the applicant was considered in April 1998 for promotion to the rank of colonel in accordance with prevailing promotion policy dated 26.2.1996 (Annexure P-2) under which all ACRs in the rank of Lt Col were to be considered by the selection board. This policy was applied equally for all officers under consideration. A merit list was prepared and promotions made accordingly. The applicant was not promoted based on relative merit. He submitted a belated statutory representation dated 24.1.1998 against the ACRs 1987 – 1988 and 1988 – 1989 which was rejected on merit. The revised policy was given validity of three years with provisions for review thereafter. All promotion policies are subject to revision from time to time and universally applicable to all officers figuring into zone of consideration. The respondents have recommended that the petition be rejected.

6. The applicant in his rejoinder has reiterated the points mentioned earlier.

7. We have perused the records and heard the arguments at length. During the course of argument learned counsel for the applicant contended that revised policy dated 26.2.1996 is unjust unfair and unreasonable and liable to be quashed. This policy was transitory as it had to be reviewed after three years. Due to applicability of this policy his junior had been promoted and he had been superseded. During the course of arguments he also challenged ACRs of 1987-1988 and 19888 – 1989 and submitted that his representation had been wrongly rejected. A prayer was made to grant relief claimed. On the contrary learned counsel for respondents relied on the policy and rebutted the contention put forward against it. Further he submitted that remarks in ACRs for said periods were in the knowledge of applicant but no attempt was made to challenge the same in a reasonable timeframe. The issue cannot be raised at this late stage. The applicant was considered on merits for promotion and found not fit. No prejudice has been caused and the application deserves to be rejected. We have considered the rival submissions. The main contention of the applicant that the revised policy (Annexure P-2) is discriminatory unfair and arbitrary is not having force of law. It was not meant for any particular person but was

applicable to all. The revised policy for consideration all ACRs does not make the policy unreasonable. We have considered the contentions placed with regard to policy but we are not convinced that the policy is unfair and arbitrary. The contentions are thus not sustainable. Further mere provision of review after three years does not make the policy defective as all such policies are revised from time to time. An attempt was also made to challenge the ACRs of 1988 to 1989 after an inordinate delay in January 1998. This challenge too is on baseless grounds. The reasons assigned for late challenge are also not tenable. The applicant was considered by the promotion board wherein all his ACRs in the rank of Lt Col were taken into account as per revised policy dated 26.2.1996 which was applicable to all officers being considered. The applicant was not empanelled because of this relative merit. There are no grounds for redress. Application is dismissed. No costs.

MANAK MOHTA
(Judicial Member)

Z.U. SHAH
(Administrative Member)

Announced in the open court
Dated: 16-4-2010