

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

09.

O.A. No. 115 of 2011

Col. Tej Ram & Ors.

.....Petitioners

Versus

Union of India & Ors.

.....Respondents

For petitioner: Sh. Anil Srivastava with Sh. Amit Sachar, Advocate.

For respondents: Sh. Ankur Chhibber, Advocate.

CORAM:

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

HON'BLE LT. GEN. S.S.DHILLON, MEMBER.

ORDER

22.09.2011

1. Petitioners by this petition have prayed that the order dated 1st March 2011 be set aside being arbitrary, illegal and discriminatory and respondents may be directed to hold the Promotion Board of 1979 batch Review Officers by No. 2SB independently without clubbing with 1982 batch cases, as was done in the case of Brigadier Shri Kant Sharma. They have also prayed that the para 6 of policy letter for calculation of pro rata vacancies be struck down being discriminatory, unfair and against the principle of equity.

2. Both these petitioners belong to Remount Veterinary Corps ('RVC') and both were recruited in Indian Army on 3rd September 1979 and with the passage of time both were promoted in the rank of Lt. Col. on various dates but they could not be empanelled by the Selection Board for the post of Brigadier. Therefore both these

petitioners have approached this Tribunal by filing the present petition with the aforesaid prayers.

3. It is also alleged that on account of non selection by the respondents for the post of Brigadier both the petitioners had some grievance with regard to ACR and they filed non-statutory complaint and a redress was given to them by expunging some portion of the ACRs. Thereafter their cases were again considered by the Special Review Board in September 2010 but they could not make it. Now the limited grievance of both the petitioners is that since they belong to 1979 batch and a vacancy in the cadre of Brigadier has fallen vacant on 23rd February 2011 therefore their cases should be considered for promotion de hors the other persons belonging to other batches i.e. up to 1982 batch. In this connection as learned counsel for the petitioner has tried to rely on the decision given by this Tribunal today in the case of **Maj. Gen. Sh. Kant Sharma v. Union of India & Ors. (O.A. No. 161 of 2011)**.

4. A reply has been filed by the respondents and in the reply it has been pointed out that it is true that petitioners' special review took place after the expunging of certain remarks from the ACRs but still they could not make it. It has been pointed out that this special review was the first consideration though they were considered earlier in September 2009 and not empanelled along with original ACR but subsequently when certain portion of their ACRs were expunged, their cases were reviewed again and therefore these are the first consideration of the petitioners. It is also pointed out that during 1980-81 there was no batch and only batch was in 1982 in the Corps of RVC and when the vacancy arose on 23rd February 2011, persons of

1982 batch became eligible for consideration and therefore they were to be considered along with the petitioners being the first review.

5. Learned counsel for the petitioners submitted that this will amount to making unequal equal and petitioners should have been considered without 1982 batch and if they are considered against the vacancy of 2011 de hors the 1982 batch then their prospects of promotion will certainly be brighten.

6. We have bestowed our best of the consideration and we regret that this argument of learned counsel for the petitioner cannot be acceded to. It is true that the consideration is batch wise and if one person is not found suitable and not empanelled then he is entitled to first review along with the next batch and if he still is not found suitable and empanelled then he is entitled to be considered for second review along with the next batch. This is the system followed by the respondents. So far as system is considered there is nothing wrong about it. Only question is that whether contention of learned counsel for the petitioner that he should be considered against the vacancy of 2011 de hors the 1982 batch. But this cannot be done. The batch which has become eligible by this time is of 1982 batch. In 1980 and 1981 there was no recruitments in the Corps of RVC therefore no persons of batch of 1980 and 1981 were available for consideration. Recruitment only took place in 1982 in this Corps and persons who were recruited in 1982 by this time have become eligible for consideration. To deny these persons who have become eligible for consideration to the exclusion of 1982 batch would be unfair as these persons have become eligible for consideration for a vacancy which is now available in February-March 2011. This will amount to a reverse discrimination that persons who have

become eligible are being sought to be ignored on account of the fact that the persons of 1979 batch who were not found suitable for first consideration and they should alone be considered to the exclusion of 1982 batch. This will be discriminatory denying the persons equal opportunity for consideration for the post. Therefore this contention of learned counsel for the petitioner cannot be countenanced.

7. Learned counsel for the petitioner next submitted that the petitioners' ACRs from 1997 till 2011 will be considered whereas the ACRs of 1982 batch will be of lesser duration and this will not be a fair consideration. Had the petitioners been found suitable they could have been empanelled along with their own batch. Since they were not found suitable they could not be empanelled and they are getting second consideration and second consideration is only possible along with the persons of next batch who are eligible for consideration. Therefore the contention that one will get more number of ACRs and other will get lesser number of ACRs is no ground to impeach consideration. It is exigency of service. We do not find any merit in the contention of learned counsel for the petitioners. Learned counsel for the petitioners has next submitted that Army HQ policy letter dated 19th February 2010 which lays down allocation of pro rata vacancies for General cadre but same is not applicable to RVC being minor corps due to low batch strength and limited accrual of vacancies. Learned counsel further submitted that same procedure which has been followed for General cadre should be followed for this cadre also. Para 6 of this circular reads as under:

"6. Minor Corps. The block method of calculating of vacancies is not applicable for minor corps due to low batch strength and limited accrual of vacancies. The vacancies for minor corps is

worked out based on functional requirements and are mainly dependent on the actual retirement/chain promotions.”

8. The minor corps like RVC, education or legal, there are limited vacancies therefore general principle applicable to main stream has not been made applicable. It is a matter of policy, the respondents who are well aware of their requirements and the availability of the officers and vacancies in their wisdom have thought that principle of main stream will not be conducive in minor corps then no exception can be taken. Therefore we do not find any apparent discrimination so as to strike down Clause 6 of this circular. Consequently, we do not find any merit in this petition and the same is dismissed with no order as to costs.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
September 22, 2011
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