

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

09.

O.A. No. 161 of 2011
With M.A. No. 306 of 2011

Maj. Gen. Sh. Kant Sharma

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Ms. Jyoti Singh, Senior Advocate with Sh. Amandeep Joshi
and Ms. Tinu Bajwa, Advocates.

For respondents: Sh. Ankur Chhibber, Advocate for R-1 to R-4.
Sh. S. S. Pandey, Advocate for R-5.

CORAM:

HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.
HON'BLE LT. GEN. S.S.DHILLON, MEMBER.

ORDER
22.09.2011

1. Petitioner by this petition has prayed that the order dated 22nd October 2010 passed by the Central Government on the statutory complaint of the Petitioner dated 29th August 2009 may be quashed and set aside. It is also prayed that the proceedings and result of No.1 Selection Board held in August 2009 may be quashed and set aside the consequent promotion of Respondent No. 5 to the rank of

Major General. It is also prayed that the proposal to hold the scheduled Board of 28th April 2011 for RVC to the rank of Lt. Gen. may be quashed and set aside if the same does not include the petitioner. It is further prayed that Respondents 1 to 4 may be directed to hold a fresh Board including the Petitioner for consideration to the rank of Lt. Gen. and not include Respondent No. 5 in case his promotion to the rank of Maj. Gen. itself is found to be bad in law.

2. Petitioner was commissioned in Indian Army in the Remount Veterinary Corps ('RVC') on 22nd November 1976. He was promoted with the passage of time to various ranks and in August 2008 he was promoted to the post of Brigadier. Respondent No. 5 was also recruited and commissioned in the Indian Army in RVC on 2nd September 1974. He became a Brigadier on 1st November 2006 and his case also came up for consideration to the post of Maj. Gen. in August 2008 but he could not be selected. Respondent No. 5 became Maj. Gen. in 2009. Then a vacancy arose for the cadre of Lt. Gen. in 2011 and the case of Respondent No.5 was considered and he is said to have been empanelled but no orders have been issued because of the pendency of this petition before this Tribunal.

3. In this background the Petitioner has filed this petition challenging the consideration of Respondent No. 5 for promotion to the post of Lt. Gen and his selection for the post of Maj Gen. The contention of the Petitioner is that normally consideration for promotion is done batch wise and since there was no batch of 1975 eligible for consideration for the post of Maj. Gen. in August 2009 therefore the Respondent No.5 should not have been considered in isolation without batch consideration and as such he is not eligible for consideration for further post of Lt.

Gen. Therefore Petitioner has challenged the Promotion Board of August 2009 and submitted that new Board, which is going to be held for the promotion to the post of Lt. Gen, should not be declassified.

4. A reply has been filed by the Respondents and Respondents in their reply have said that in normal course it is a batch wise consideration and they have said that one additional vacancy of the rank of Maj. Gen. was created on 24th March 2009 and vacancies in minor corps are filled in accordance with functional requirements of the Army. The then Brigadier M.L. Sharma having already been promoted, there was no other officer in the waiting panel for filling up the additional vacancy. Special Selection Board for all Arms and Services was scheduled during August 2009 and at the relevant time there was no officer in the rank of Brigadier in 1975 batch of RVC for fresh consideration by No. 1 Selection Board. Although eight officers were commissioned in the 1975 Batch of RVC but none of them had reached the rank of Brigadier also there was no Brigadier of 1973 RVC Batch. The Petitioner who belongs to 1976 Batch, could not have been considered. In the circumstances, the then Brigadier S.S. Thakral, the first review case of 1974 Batch, had constituted the 1975 Batch for consideration for promotion to the rank of Maj. Gen. in accordance with policy on the subject. Respondent No. 5 was promoted to the rank of Maj. Gen. on 16th October 2009. It is also pointed out in the reply with reference to a communication Annexure A-1 that a reply to this representation of Col. Tej Ram and Col. T.S. Sachdeva of RVC of 1979 Batch. Both of them were considered for promotion to the rank of Brigadier, as first review cases of 1979 Batch were considered along with fresh cases of 1982 Batch as in 1980 and 1981 no recruitment was done. It is also admitted that hence that consideration is batch wise. The

contention of the Respondents is that normally the consideration is done batch wise and they have explained in para 7 and para 5(b) that as per the existing policy, consideration for promotion is batch wise and a batch for consideration for promotion and sequence to select ranks, is as under:

“(a) Final Review Case (e.g. 1973 batch).

(b) First Review Cases (e.g. 1974 batch).

(c) Fresh Case (e.g. 1975 batch).”

5. Therefore they normally go for batch wise consideration but in the present case the question is when there is one post available and persons of the next batch are not available then how such vacancy is to be filled. Learned counsel for the Petitioner has strenuously urged before us that since the consideration is batch wise and a person from the batch is not available then Respondents are under obligation to wait till the new batch becomes eligible for consideration. She tried to emphasise time and again that if there is no batch available then the person cannot be considered and the person will only be considered when the fresh batch becomes eligible. We bestowed our best of consideration to the submission of learned counsel for the Petitioner. We regret to say that we cannot accept this proposition. This will violate Article 14 of the Constitution that is, unequals cannot be made equal. It may be an isolated incident that there is one post available in August 2009 of the rank of Maj. Gen. and no person of a batch of 1975 was eligible for promotion to the post of Maj. Gen. Since it is an isolated incident that there is a single post available and the Respondent No. 5 alone who was of 1974 batch was eligible then there is no prohibition for the Selection Board to consider the incumbent and if he is found

suitable then he can be promoted. The contention of learned counsel for the petitioner that they have to wait for other persons to become eligible so that he can be considered and comparative merit can be seen otherwise this will facilitate selection of one person against one post. It is true that sometimes when there is single vacancy and no competitor is available then Selection Board can certainly consider and if he is suitable then there is no prohibition to promote that incumbent. If it is not done, then it will be a serious violation of Article 14 of the Constitution that unequals have been made equal so as to have a competitive merit consideration. There is no prohibition for the Selection Board, if they find that incumbent is not suitable then they may not select him. To promote person who is eligible to be considered with other persons who are yet to become eligible means denying him his due consideration. This will vitiate the consideration of the incumbent who has already become eligible. We do not find any merit to quash the order of promotion of Respondent No. 5 to the post of Maj. Gen. on the argument of learned counsel for the Petitioner that he should have waited for another batch to be eligible for consideration. In our view the selection of Respondent No. 5 on the post of Maj. Gen. was just and proper and does not suffer from any illegality. It will be open for the Respondents to proceed for consideration of Respondent No. 5 for promotion to the post of Lt. Gen. in accordance with law. Learned counsel for the Petitioner has also pointed out that the ACR for the period 1st July 2010 to 23rd February 2011 was written by the IO after he has left the office and as such that could not have been written by the IO. But this ACR was filled by the IO on the same day when he demitted the office. There is no illegality in it.

6. Consequently, there is no merit in this petition and the same is dismissed with no order as to costs.

7. The application is disposed of.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
September 22, 2011
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