

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

19.

O. A. No. 231 of 2010

Col. L. S. Sundaram, SM

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Sh. K. Ramesh, Advocate.

For respondents: Sh. R. Balasubramanian, Advocate.

CORAM:

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

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

ORDER

10.3.2011

1. The petitioner by this petition, has prayed that the Army M. S. Policy letter dated 13.1.2009 may be construed retrospectively qua the petitioner in the light of the decision given by Hon'ble Supreme Court in the cases of Government of Andhra Pradesh and others, Vs. Sri. D. Janardhana Rao and another, AIR 1977 Supreme Court 451 = 1977 LAB. I. C. 3, Sheshrao Jangluji Bagde Vs. Vs. Bhaiyya, S/o Govindrao Karale and others AIR 1991 Supreme Court 76 and M. Venkateswarlu and others Vs. Govt. Of A. P. and Others (1996) 5 Supreme Court Cases 167 and thereby consider the case of the petitioner for promotion by No. 2 Selection Board expeditiously before 31.5.2010 to meet the ends of justice.

2. The petitioner was granted permanent regular commission on 11.6.1977 and he was promoted to the rank of Colonel and commanded 126, Infantry Battalion

(Territorial Army) twice. Despite being a Permanent Low Category, he commanded the Battalion in field area as also in Kargil war and was awarded a Sena Medal (Distinguished) but the petitioner could not be considered for promotion as the tenure of command of a Territorial Army Battalion was not then considered as an adequately exercised tenure i. e. that was not considered as a criterion for appointment to the post of Brigadier. The M. S. Branch issued a policy letter on 13.1.2009, as per which the command at territorial appointment could be considered as an adequately exercised tenure and the policy letter shall be applicable from the date of issue of the letter. The petitioner, aggrieved by this policy letter being applied prospectively filed this petition with the prayer that though the COAA appointment has been calculated for the purpose of appointment to the post of Brigadier and the petitioner has already held this appointment from 15.7.1997 to 22.2.2007 and in the second time, between 18.10.2003 to 5.12.2005 and that may be construed as a criterion of appointment and his case may be considered for the purpose of Brigadier.

3. Reply was filed by the respondents and the respondents have taken the position that since the policy letter has given from 13.1.2009, no benefit can be given to the petitioner for the command post held by him in Territorial Army as this was included in the criteria appointment prior to the policy of 13.1.2009.

4. Learned counsel for the petitioner extensively argued before us that the petitioner was commanding a Territorial Army Battalion prior to coming into force the policy letter dated 13.1.2009 though at the relevant time, it was not considered for

promotion to the post of Brigadier but since it has now been included on 13.1.2009 and that should be considered for the post of Brigadier.

5. The contention of learned counsel for the petitioner is that the policy letter dated 13.1.2009 should be considered retrospectively so as to enable the petitioner to get the benefit of command posting for Territorial Army.

6. In this connection, learned counsel for the petitioner placed reliance on the decision given by Hon'ble Supreme Court in the case of Government of Andhra Pradesh and others, Vs. Sri. D. Janardhana Rao and another, AIR 1977 Supreme Court 451 = 1977 LAB. I. C. 3. This is a case in which Rule 47 of the Andhra Pradesh State and Subordinate Services Rules came in for consideration. Rule 47 gives full power to the Governor for relaxation of a rule retrospectively and in that context, their Lordships have held that if the Governor exercises this power for giving benefit of the Rule retrospectively, then it is permissible. Rule 47 has been quoted by the Hon'ble Supreme Court which reads as under:-

"47. Relaxation of rules by the Governor.—No rule made under the proviso to Article 309 of the Constitution of India or continued under Article 313 of the Constitution shall be construed to limit or abridge the power of the Governor to deal with the case of any class or category of person for being appointed to any civil post, or of any person serving in a civil capacity under the Government of Andhra Pradesh in such manner as may appear to him to be just and equitable.

Provided that, where any such rule is applicable to the case of any person or a class of persons, the cases shall not be dealt with in

any manner less favourable to the person or class of persons than that provided by that rule."

7. This Rule gives full power to the Government over and above the rule framed under the proviso to Article 309 as well as Rule 313 of the Constitution and in that context, their Lordships have said that since the Governor has full power to exercise then in that case, the benefit of the rule can be given retrospectively. Therefore, this case does not provide any assistance for deciding the present case. Similarly our attention is invited to the decision in the case of Sheshrao Jangluji Bagde Vs. Vs. Bhaiyya, S/o Govindrao Karale and others AIR 1991 Supreme Court 76. In this case, their Lordships have upheld the judgment given in the case Government of Andhra Pradesh and others, Vs. Sri. D. Janardhana Rao and another, AIR 1977 Supreme Court 451 = 1977 LAB. I. C. 3 (supra). In this case, the question was counting of the practical experience for promotion. Their Lordships observed that

'Normally when we talk of an experience, unless the context otherwise demands, it should be taken as experience after acquiring the minimum qualifications required and, therefore, necessarily will have to be posterior to the acquisition of the qualification. However, in the case of a promotion the same interpretation may not be just or warranted. It would depend on the relevant provisions as also the particular type of experience which is required.'

However, that is not possible in this case in the face of policy decision dated 13.1.2009. In the case of M. Venkateswarlu and others Vs. Govt. Of A. P. and Others (1996) 5 Supreme Court Cases 167 also, their Lordships upheld the decision of Government of Andhra Pradesh and others, Vs. Sri. D. Janardhana Rao and another, AIR 1977 Supreme Court 451 = 1977 LAB. I. C. 3. This case was also on the identical lines with that of Janardhana Rao's case (supra). In this view of the matter, the policy is prospective and it cannot be construed retrospectively. The principle of law is well settled that the policy or rules cannot be construed retrospectively unless specifically intended in the policy of the rules. The policy dated 13.1.2009 is a prospective policy and therefore, it cannot be construed retrospectively so as to give the benefit to the petitioner.

8. Consequently, we do not find any merit in the petition. The same is accordingly dismissed. No orders as to costs.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
March 10, 2011