

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

O.A.No. 267 of 2010

Air Cmde Praduram Singh

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Sh. Karan Singh Bhati, Advocate.

For respondents: Ms. Jyoti Singh, Advocate for Respondents 1, 2 and 4.
Sh. V.S. Tomar, Advocate for R-3.

CORAM:

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

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

ORDER
01.02.2011

1. Petitioner by this petition has prayed to set aside/quash results of the Promotion Board held on 14th January 2010 for considering the officers of the rank of Air Cmde to Air Vice Marshal of the Logistics Branch in the Indian Air Force. He has also sought relief by setting aside/quashing the K. Broadcast Signal No. PO/2666 dated 5th February 2010 issued by the Air HQ containing the list of names of officers approved to the rank of Air Vice Marshal in the Logistics Branch. Further he has sought to direct the respondents to hold a Review Promotion Board immediately before the incumbent's retirement on 31st May 2010 and consider the petitioners eligibility by awarding discretionary weightage by the Promotion Board consistent with the demonstrated performance vis-a-vis the petitioner who have already been selected.

2. The brief facts of the case are that the petitioner was commissioned in the Logistics Branch of IAF on 16th June 1976. His performance throughout his career was commendable, so much so, in 1995 when the Promotion Board was held for the selection of Wing Commander and he was approved in the first look. The Air HQ also provided him with a feedback wherein the officer was informed that his average performance during the period from 1989 to 1993 was 7.6 against the group average of 7.0 and the highest in the group being 7.6. The petitioner was awarded Commendation by Chief of Air Staff for his outstanding dedication to duty and performance. He was further approved for Gp. Capt. In the first look. He was selected to attend the prestigious National Defence College Course in 2004. This clearly indicated his very high profile which the petitioner was maintaining right from the beginning. The applicant was also assigned very important command appointments like command of 54 Air Support Park at Air Force Station, Gurgaon. He was also selected to work as Command Logistics Management Officer at HQ Maintenance Command, Nagpur. In January 2008 he was awarded 'Vishist Sewa Medal' for his outstanding dedication and devotion to duty. In February 2003 he was approved for promotion to the rank of Air Cmde on the basis of his comparative merit in the batch. He was selected to assume an important command assignment at Equipment Depot, Air Force Station, Devlali. On 15th March 2009 an ACR was initiated on his posting to command the Equipment Depot in Devlali. A Promotion Board was held in January 2010 to select officers to the rank of Air Vice Marshal in the Logistics Branch from amongst the Air Cmdes. He was not selected while Respondents 3 and 4 were empanelled for promotion.

3. It is the apprehension of the petitioner that the ACR of 2009 has not been properly moderated by the Air HQ because it is inconceivable that an officer who had amongst the highest rating in his batch in 1995 and who consistently performed commendably and was promoted in each rank during the first look was not selected to the rank of Air Vice Marshal in January 2010.

4. Learned counsel for the petitioner argued that apparently something has gone wrong during the ACR of 2009. Perhaps the ACR which was initiated on 15th March 2009 prior to his posting to the Equipment Depot at Devlali and/or the report initiated on 30th September 2009 was much below than his demonstrated performance. The petitioner was also not appraised of his weakness and no adverse report was shown to him. He further argued that the AHQ should have moderated the ACR of 2009 on the basis of his past performance and record, which apparently has not been done in his case.

5. The marks by ACR constitute 95% of weightage in the Promotion Board result. While 5% marks are allocated by the Board Members. 95 marks are required to be governed by the guiding principles as laid down in the policy letter of 20th February 2008 which at para 16 lays down:

“The guiding principle for Board marks will be based on the following features as discerned from reports raised on the officer in various field and staff appointments held by him in the past:-

- (a) Employability
- (b) Leadership
- (c) Persnoality
- (d) Potential to hold the responsibility of the next higher rank.”

Therefore, his request is that his past record in terms of ACR be examined which has commensurate value. The Board marks are added to make out the merit list.

6. Learned counsel further argued that as per the policy letter of 20th February 2008, the Board is required to assemble “once a year or more, depending upon the specific requirement. The first assembly of the Board will normally be during January to March preceding the promotion year.” Para 9 of the same promotion policy also lays down that “promotion year shall be from 1st April of the year to 31st March of the next year, both dates inclusive.” He averred that there was a vacancy which arose on 1st February 2010. No Board was held in October 2009 as was done for another Branch. By this methodology the Board considered two vacancies in 2010 and thus put the petitioner at a disadvantage as junior officer Air Cmde Y. Negi (Respondent No.4) was brought into consideration and was so approved. Learned counsel emphasised on the legal malafide in holding the Board in January 2010 thus putting the petitioner at a disadvantage. He also pleaded that the Board results were thus vitiated and the petitioner needs to be given a fresh look.

7. Learned counsel appearing for the respondents argued that there was a Board held in January 2009 in which one vacancy which was anticipated was taken into account and one officer was selected. To substantiate their argument they produced, in original, Board Proceedings of 5th January 2009. It is clear that this aspect has not been brought out clearly in the counter affidavit. Be that as it may, the relevant extracts of the proceedings read as under:

“1. Promotion Board No. 1/2009 assembled on 5th January 2009 to draw up a merit panel of Air Cmdes for promotion to the rank of AVMs in the Lgs Branch. The Board proceeded with its

deliberations in accordance with the promotion policy for Air ranks issued vide Air HQ letter No. Air HQ/C-22030/48/PO 2(D) dated 20th February 2008. Details of forecast vacancies during the promotion year 2009-10 and consideration panel as decided by the Board are placed at Appendix 'A'.

2. The Board observed that the consideration panel was viable only for the first vacancy (AVSC Phase-II vacancy being released). After approval of one Air Cmde for promotion against the first vacancy, the remaining Air Cmdes were all due to retire before the second vacancy accruing on 1st February 2010. Hence, the Board decided to restrict the consideration panel to the first three Air officers for the first vacancy only. Hence, only first three Air officers appearing in the consideration panel were considered by the Promotion Board. The Promotion Board for the second vacancy would be held when a viable consideration panel is available.”

8. Learned counsel for the respondents claimed that the marks awarded by the Members were consistent with the performance of the individual candidate. So much so the petitioner was awarded more marks than one of the officers who was finally approved. To substantiate this argument, the respondents produced the original record of the Board Proceedings. Learned counsel further argued that the ACR of 2009 in respect of the petitioner was reviewed by the AHQ as per the norms and since it was in keeping with his best profile no interference was made. He also brought out that the merit list of the Selection Board is based on certain norms. 95% weightage is awarded to the ACRs for the last ten years. The Board proceeds to give its own marks. In this particular case, the original Board Proceedings of 14th

January 2010 were produced. It is evident from the marking of the Board that the petitioner was low in the overall order of merit and, therefore, was not selected.

9. Learned counsel for the respondents further submitted that there is no legal malafide in the case since a Board was convened in January 2005 but in their wisdom a conscious decision was taken to only approve one Air Cmde for the vacancy accruing in 2009 while the vacancy accruing on 1st February 2010 to be considered by the next Board when a viable panel is available.

10. Learned counsel appearing for Respondent No. 3 submitted that all these allegations made by the petitioner has brought disrepute to Respondent No.3 and petition needs to be struck down for making incorrect allegations.

11. Having heard learned counsel for the parties at length and examining the documents produced by the respondents in original, we are of the opinion that the ACR of the petitioner as initiated on 15th March 2009 and 30th September 2009 have been consistent with his past performance and, therefore, there are no legitimate reasons for the Air HQ to have interfered or moderated the same. Further, it is evident from the records that a Board was held on 5th January 2009 which approved only one officer for the vacancy of Air Vice Marshal and in a conscious decision based on the realties on ground, decided to carry forward the vacancy which was anticipated to come up on 1st February 2010 to the next year so as to have a viable panel for selection. In this manner, full consideration on the issue has been bestowed by the Board and the decision taken cannot be construed as malafide.

12. Having examined the Board Proceedings, we also observe that the petitioner had obtained more marks awarded by the Board compared to one of the officers who has finally been selected. Despite this, the petitioner has not made the grade in the merit list. This being comparative merit, it is evident that the petitioner though a very good professional could not come up in the comparative merit in the batch.

13. In view of the foregoing discussion, we dismiss the petition with no order as to costs.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
February 01, 2011