

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH  
NEW DELHI.**

**O.A.No.268 of 2010**

**Major Gen. S.G. Chatterji, AVSM, VSM ...Petitioner**

**Versus**

**Union of India & Others**

**...Respondent**

**For the Petitioner : Mr. Karan Singh Bhati, Advocate**

**For the Respondents: Ms. Anjana Gosain, Advocate with  
Major Alifa Akbar**

**C O R A M:**

**HON'BLE MR. JUSTICE A.K.MATHUR, CHAIRPERSON  
HON'BLE LT.GEN. Z.U.SHAH, MEMBER (A)**

**JUDGEMENT**

**14.09.2011**

1. Petitioner by this petition has prayed that the communication of MS Branch dated 07.05.2008 and 12.08.2009 informing the petitioner of non-selection to the rank of Lt. General may be quashed as unjust and unfair. Similarly, he has prayed that rejection of the statutory complaint by order dated-

10.12.2008, 29.06.2009 & 05.04.2010 declaring it untenable be quashed. He has also prayed that respondent may be directed to hold Review Promotion Board before his retirement i.e. 31.05.2010 and, if he is found suitable, promote the petitioner to the rank of Lt. General after reconciling the two ACRs initiated as on 30.06.2006 & 30.06.2007 respectively.

2. The petitioner was commissioned in Army on 14.11.1971 and with the passage of time he rose to the rank of Major General. His grievance as argued by the Counsel is primarily with regard to the ACR pertaining to period from 29.09.2007 to 30.6.2008. However, since petitioner was not found suitable by the Selection Board for the rank of Lt.General, therefore, he filed a statutory complaint and ultimately filed the present petition. Petitioner had a good record and held various posts during his service career. It is alleged that on 18.02.2006, the petitioner was appointed as General-Officer-Commanding of a Rapid Division (Strike) and his performance was commendable. His first Confidential Report during the period when he was

commanding a Rapid Strike Division was initiated by his I.O. Lt. General D.S. Shekhawat, the Corps Commander under which this Division was placed. Though he earned excellent report from his initiating Officer (IO), however, Lt. General Daljeet Singh his R.O. for reasons best known did not endorse the grading of the IO as it is. However, no malafide allegation has been levelled against Lt. Gen. Daljeet Singh. It is pointed out that at the relevant time grading of '7' though it was above average was known as rejection criteria. His next ACR was due on 01.07.2007 and this time also he got grading of '7'. In October, 2007, he was posted as a Director General, Resettlement, R.K. Puram, New Delhi and this organisation was placed under the Ministry of Defence. Then again the case of petitioner was considered in third week of April, 2008 but he could not make it. Therefore, he filed a non-statutory complaint however it did not meet with any success.

3. Then by letter dated-28.04.2008 & 07.05.2008, petitioner was informed that he was considered by a Special Selection Board held on 04.12.2007 for promotion to the rank of



Lieutenant General as a fresh/ deferred case of 1971 Batch but he could not be selected. Then he filed a statutory complaint on 29.09.2008 which was duly forwarded, however without any success. It was pointed out that on 31.12.2008, respondent issued a fresh policy regarding conducting of Selection Board which was known as "quantified system" and the earlier system which was in force and known as "value judgement" was superseded. The petitioner again submitted second statutory complaint after quantification system was introduced praying for reconciling of all his confidential reports in the light of averments made in his complaint, setting aside and quashing the grading of '7', if any, and considering him afresh by a Special Promotion Board as a special review fresh, but without any result. It is further submitted that in meanwhile the petitioner became due for another ACR as on 01.07.2008. This report was to be initiated by Secretary (ESW), however, the two consecutive Secretaries could not technically initiate this ACR. Therefore, his ACR should have been initiated by Defence Secretary but the same was

initiated by the Additional Secretary to whom the Applicant was not reporting and, therefore, technically, it was an invalid ACR.

4. It is pointed out that on 24.04.2009, a Memorandum was issued stating the channel of reporting for DGR, ACR was to be initiated by Secretary, ESW as I.O., Raksha Rajya Mantri as R.O. and Raksha Mantri as S.R.O. Therefore, the grievance of the petitioner was that initiation of this ACR was not proper and should not have been taken into consideration. As such his consideration of promotion stands vitiated. The second submission of learned counsel for the petitioner was that since the petitioner was of 1971 batch and all batches require three considerations, his first consideration took place in the December, 2007 though his batch of 1971 batch was considered in 2006 but his case was deferred. As such his first consideration was taken with the deferred cases of 1971 batch in the December, 2007 and in that he was not empanelled. Then second time review, the fresh review of 1971 took place in January, 2009 but his case was withdrawn as his ACR was not available. Then

third review took place in December, 2009 along with the batch of 1973. In that his case was considered on the basis of the criteria laid down in the memorandum dated- 24.04.2009. The case of the petitioner is that his case should have been considered in the year December, 2009 on the fresh criteria which had come into force on 24.04.2009 and by not considering that his case stands prejudice because of that infamous grading '7'.

5. Now coming to the first question, which has been agitating the petitioner with regard to his ACR of 19.10.2007 to 30.17.2007 is that according to the learned counsel for the petitioner this ACR was written by the Additional Secretary who was not competent to do so as he was not in the reporting channel. In order to appreciate this contention it may be relevant to mention that previously the Ex-Servicemen's welfare department was under the Ministry of Defence but subsequently in the year 2004 this department became an independent department by notification dated- 24.09.2004 under the Ministry of Defence known as the



Department of Ex-Servicemen Welfare. The notification reads as under:

File No.10(02/ID/(Res)/2007  
Government of India  
Ministry of Defence  
(Department of Ex-Servicemen Welfare)

Dated: 24<sup>th</sup> April, 2009

OFFICE MEMORANDUM

Sub: Functional linkage between Department of Ex-Servicemen Welfare (ESW) and Directorate General of Resettlement (DGR)

Consequent to the office of Directorate General Resettlement being re-designated as an Attached Office of the Department of Ex-servicemen Welfare, Ministry of Defence, it has been decided with the approval of Raksha Mantri that the following procedure will be followed with regard to the Command and Control of Directorate General Resettlement vis-a-vis Department of ESW/MoD with a view to ensure effective control, monitoring & coordination of all ex-servicemen related welfare activities being undertaken by the Directorate General Resettlement.

2.
  - (i) xxxxxxxxxxxxxxxxxxxxxxxx
  - (ii) xxxxxxxxxxxxxxxxxxxxxxxx
  - (iii) xxxxxxxxxxxxxxxxxxxxxxxx
  - (iv) xxxxxxxxxxxxxxxxxxxxxxxx
  - (v) xxxxxxxxxxxxxxxxxxxxxxxx
  - (vi) xxxxxxxxxxxxxxxxxxxxxxxx
  - (vii) Annual Confidential Report: Annual Confidential Report (ACR) of the Director General Resettlement will be initiated by Secretary (ESW) reviewed by Raksha Rajya Mantri and accepted by Raksha Mantri
3. Miscellaneous
4. These orders are issued with the approval of Raksha Mantri and supersede all earlier orders in this regard.

(Sd/-)  
(MM Singh)  
Deputy Secretary to Government of India

6. Since it became an independent department and full fledged Secretary was not appointed, therefore, an Additional Secretary working in the Ministry took over as the Secretary of the department. Though no hierarchy was laid down with

regard to writing of the ACRs, but the circular which governed earlier for writing the ACR continued to govern till the new memorandum was issued by the Government. The earlier circular which governed for writing this ACR of the DG, Resettlement was dated 23.08.1974 issued by the Ministry of Defence and in that the channel of writing the ACR was - Additional Secretary would be I.O., Defence Secretary would be R.O., and Raksha Mantri would be A.O.(Accepting Officer). This channel was changed and revised by the Ministry of Defence on 24.04.2009 and same was communicated by the MS branch in May, 2009. Under the new dispensation, the Secretary(EWS) was I.O., Raksha Rajya Mantri was R.O. and Raksha Mantri as an A.O.. In the case of petitioner the ACR for the period 29.10.2007 to 30.06.2008 was initiated by the Additional Secretary as per the existing channel, whereunder petitioner had worked more than 90 days. When the full-fledged subsequent Secretaries who took over did not complete over 90 days under whom petitioner worked, therefore, they could not initiate his ACR. The subsequent Secretaries who were



appointed were Mr. Dass and Deepa Jain and both did not complete more than three months in the appointment. One got superannuated and the other was transferred. Therefore, petitioner's work was overlooked by Ms. Neela Nath, Additional Secretary, Ministry of Defence who continued to hold the Charge of Department of Ex-Servicemen Welfare at the relevant time. Therefore, in the present case, the ACR was written by Ms. Neela Nath, Additional Secretary, Ministry of Defence.

7. The grievance of the petitioner is that the Army Order 45/2001 issued by the MS Branch was not adhered to. It was submitted that if any full-fledged Secretary(ESW) was not posted, then the impugned ACR was to be written by the Secretary, Ministry of Defence instead of the Additional Secretary who was holding the charge of the Secretary, (ESW). In this connection learned counsel has invited our attention to the paragraph 16, 19, 24, 70, 107, 135, 137, 144 of Army Order 45/2001. We need not go into all these guidelines issued by the MS Branch for writing the ACRs. Suffice it to say that at the relevant time the Additional

Secretary in the Ministry of Defence was looking after the charge of the Secretary (ESW) and petitioner worked for more than 90 days under her, therefore, she was competent to write the ACR of the petitioner. The grievance of the petitioner that this department came into existence on 23.09.2004 and no guidelines were laid down for writing the ACR for this department. Therefore, Ms. Neela Nath was not competent to write his ACR and the same should be expunged. It may be relevant to mention here that prior to the notification dated 22.08.2004 by which this new department was created, the post of DG, Resettlement was already there and the channel of writing the ACRs was also already prescribed in 1974 which governed it. After the creation of new department under the Ministry of Defence and when no separate notification for channel of writing ACRs was promulgated in 2004 then obviously the notification which was in existence till it was superseded continued to govern the channel of writing the ACRs of the petitioner. In fact this notification of 1974 and the channel of writing the ACRs automatically stood superseded after new

channel was laid down in the 24.04.2009. The contention of the petitioner is that the notification issued by the Ministry of Defence dated 23.08.2004 cannot govern the new department which had been created under the Ministry of Defence. We regret to say that we cannot accept this contention. When 23.08.2004 circular of writing the post of DGR was in force and it became to be changed for the first time on 24.04.2009 till that time it continued to govern as that was the only available notification governing the post of DG, Resettlement and creating an independent organisation under the Ministry of Defence does not mean that the entire department of Resettlement has become outside the purview of the Ministry of Defence. The notification clearly says that it has been created under the Ministry of Defence. It was for the administrative convenience that independent organisation had been brought under the aegis of the Ministry of Defence. That does not mean that circular and notification issued by the Ministry of Defence would not govern this department. It is true that new Secretary had been appointed, nonetheless it was under the aegis of the



Ministry of Defence. The relevant circular for writing the ACR for DGR in existence on 23.08.2008 would continue to govern till it was superseded by an order of Ministry of Defence. It was superseded on 24.04.2009, therefore, at the relevant time the Additional Secretary, Ministry of Defence who was looking after the work of Secretary, EWS was competent to initiate the ACR of the petitioner and the channel which was in existence would govern the petitioner and it would not have effect of leaving the organisation of Resettlement without any channel till notification dated 23.08.2004 was not superseded, it would continue to govern this organisation which was under the Ministry of Defence. And as such the circular of Ministry of Defence for writing the channel of ACR was rightly applied for writing the ACR of the petitioner and the ACR written by the then Additional secretary was correctly written and no grievance can be made by the petitioner on this count.

8. Now coming to the next question with regard to the consideration of the case of petitioner vis-a-vis his batch.

The contention of learned counsel of the petitioner was that so far as case for the first consideration is concerned, there is no grievance i.e. December, 2007. His case was first considered as a fresh case (deferred case of 1971 batch) in December, 2007 as per the criteria which was in existence as per the policy letter dated 06.05.1987 and he has no grievance. But subsequently, the new criteria for selection was introduced by the policy letter dated 31.12.2008 and it became effective from 01.01.2009 that was known as "quantified selection". The new criteria was evolved and as per the new criteria new norms were laid down. This was with a view to bring more objectivity and transparency in the selection process. So far as valued judgement which was in existence from 06.05.2007 and the new system which was introduced on 31.12.2008 and became effective w.e.f. 01.01.2009 are concerned there is no challenge to the criteria which was laid down for the selection. The grievance of the petitioner is that when his case came up for second consideration i.e. in the August, 2009 the new criteria was brought into force which did away with the earlier criteria of

1987 and new consideration has been laid down and in that the infamous grading of '7' was not consequential. Therefore, his case should have been considered according to the new criteria along with the batchmates instead of 1987 criteria. He alleged that if he had been considered with his batchmates then perhaps he could have made it. In view of these submissions by the counsel for the petitioner, we asked counsel for the respondent to file an affidavit explaining as to why he was not considered with his batchmates with the old criteria of 1987. Respondent has filed an additional affidavit and explained the position. It is pointed out that for purposes of promotion, an officer is given three considerations. Fresh consideration, first review and final review. According to the criteria of the 06.05.1987 the Selection Board takes into consideration a number of factors such as war/operational reports, course reports, ACR performance in Command and Staff appointments, honours and awards, disciplinary background etc. The selection is based upon the overall profile of an officer and comparative merit within the Batch as evaluated by the Selection Board.



But w.e.f. 01.01.2009, in order to bring objectivity and transparency in the selection system, the parameters taken into consideration by the Selection Board were quantified and the policy letter dated 31.12.2008 was issued which became effective from 01.01.2009. It was pointed out that so far as petitioner is concerned he is a 1971 Batch Officer. For promotion to the rank of Lt.General, Officers of 1971 Batch were first look during December, 2006. At the relevant point of time, his application was not adequately exercised and accordingly he was deferred. After being adequately exercised, the applicant was given his first consideration by the Selection Board held during December, 2007. Since it was fresh consideration of the applicant, he was required to compete with the batch merit of his batchmates i.e. batch merit of officers of 1971 Batch Officers, who had earlier been given fresh consideration during December, 2006. Therefore, the Applicant was considered as per the rules applicable during December, 2006 i.e. Value Judgement with the comparative merit of his batchmates.

9. It is pointed out that if an officer is not empanelled in first look, he is entitled to First Review (Second consideration) with atleast one additional Confidential Report and now he competes with batch merit of the next batch. The first review of officers of 1971 Batch (who were not empanelled in the first consideration) took place during December, 2007 along with Fresh consideration of 1972 Batch officers under the Value Judgement System as provided vide 06.05.1987 policy. The applicant was considered as First Review case of 1971 Batch during August, 2009. Although, the petitioner was considered during August, 2009, he was required to compete with the merit of officers of 1972 Batch, considered and approved by a Special Selection Board (SSB) during December, 2007. Therefore, the Applicant was considered as per the policy applicable during December, 2007 i.e. value judgement based selection. Thereto also he did not make it and he was not empanelled for promotion to the post of Lt.General. When his Final Review (Third consideration) of 1971 Batch Officers took place during January, 2009

along with the officers of 1973 Batch (Fresh consideration), since the policy letter dated 31.12.2008 became applicable w.e.f. 01.01.2009, officers of 1973 batch were considered in accordance with the said policy and, therefore, Final Review cases of 1971 batch were required to compete with merit of 1973 batch officers, and accordingly, the applicant was also considered in accordance with the policy dated 31.12.2008 under quantified merit based selection.

10. This detailed explanation explains the case of the petitioner as to why he was considered in August, 2009 along with the criteria of valued judgement system and in December, 2009 when new policy had come into force his case was considered with 1973 batch under the new system known as quantified system. This explanation makes it crystal clear that there is no case of discrimination with the petitioner.
11. In this connection, learned counsel has invited our attention to the various judgements given by the Apex Court as given below:

1. *Ms. Maneka Gandhi Vs. Union of India & Others* (1978 1 SCC 248)
2. *Union of India & Anr. Vs. Hansraj Singh Chauhan & Ors.* (20104 SCC 290)
3. *Union of India & Ors. Versus E.G. Nambudiar* (1991 2 SCC 38)



4. *Maharashtra State Board of Secondary & Higher Secondary Education Vs. K.S. Gandhi & Ors.* (1991 2 SCC 716)
5. *Air Vice Marshal S.L. Chabra, VSM, Versus UOI & Anr.* (1993 Supp (4) SCC 441)
6. *Amrik Singh Versus Union of India & Ors* (2001 10 SCC 424)

12. All these cases laid down that Article 16 should be observed in the selection process and there is no quarrel with this legal proposition. As explained above, the petitioner has been given a fair consideration and he cannot make a grievance of any discrimination. He had been given three considerations. It is unfortunate that he could not make it, but by that it cannot be said that there was not fair consideration or violation of Article 16 of the Constitution.
13. Learned Counsel lastly submitted that a speaking order has not been passed in the statutory complaint submitted by the petitioner. It is true that whenever statutory complaint is disposed of that should have a speaking order and it should show that there was a proper application of mind of the contentions raised by the petitioner. But having considered the case of petitioner on merit nothing turns on the summary disposal of this statutory complaint, but at the time we want

to emphasise that statutory complaint made by the incumbents should be given due consideration and grievances should be properly addressed while disposing of the statutory complaint.

14. In this view of the matter, we don't find any merit in the petition and the same is dismissed. No order as to costs.

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[Justice A.K. Mathur]  
Chairperson

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[Lt. Genl. Z.U. Shah]  
Member (A)

New Delhi  
14<sup>th</sup> September, 2011