IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

O.A.No. 555 of 2010

Lt. Col. Rajesh Kumar .....Petitioner

Versus

Union of India & Ors. .....Respondents

For petitioner: Sh.D.S.Kauntae, Advocate.
For respondents: Ms. Anjana Gosain, Advocate for Respondents 1, 5 & 7.
None for Respondents 2, 3, 4 & 6.

CORAM:

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

O R D E R
29.03.2011

1. This appeal has been preferred by the petitioner against the decision of the respondents not to detail him on the Long Gunnery Staff Course (Officers) ('hereinafter referred to as 'LGSC') Serial No. 1603 from 27th October 2005 to 19th July 2006. It was alleged that the respondents have deliberately ignored his seniority and detailed an officer 5 years junior to him for the said course. The LGSC being an important career course also impacts on subsequent promotion and since he was unable to do this course, because of an omission on the part of the respondents, he has not been empanelled for promotion to the rank of Colonel.

2. The brief facts of the case as given by the petitioner are that he was granted permanent commission in the regiment of artillery of the Indian Army on 11th December 1993. From February 1998 to September 2001 he was posted

in the presitigious NSG. Thereafter he was posted back to his regiment i.e. 194 Medium Regiment. Counsel for the petitioner stated that the LGSC is a very important course and considerable credit is given for all postings, appointment and promotion in case an officer qualifies on the LGSC. Till April 2004 the LGSC was a competitive course for which all officers of the Regiment of Artillery could compete and the best were selected. The rules at that point in time for selection on LGSC were governed by Special Army Order 14/S/85. The criteria was essentially that an officer had to be in the service bracket of 4 to 12 years and should have the requisite medical category and was afforded a total of three chances to compete for this competitive examination. While serving with the NSG, the petitioner applied once for the competitive examination in 2000 but was not successful. Thereafter he planned to appear in 2004 so that he was well prepared. However, the Government of India vide its letter of 22nd April 2004 made the LGSC a mandatory course for all officers. Therefore, there was no question of sitting for a competitive examination and all eligible officers of the Artillery were to be nominated by Army Headquarter for this course. In accordance with the rules specified in the letter of 22nd April 2004, the petitioner applied for the course commencing in November 2004 as he was fully eligible to attend this course, since on 1st July of that year he had less than 12 years of service. Since inadequate number of applications were received for this course commencing in November 2004 the respondents cancelled this course and decided that all such officers who had applied for this course would be detailed for the subsequent courses in 2005 and 2006. The petitioner was, therefore, surprised when in the detailment order of Army Headquarter for the LGSC

dated 15th April 2005 he did not find his name in the list of officers nominated to attend this course. He was even further surposed to see that Maj. Vivek Bhardwaj of his Unit who was 5 years junior to the appellant was detailed to undergo the same course i.e. LGSC Serial 1603 from 27th October 2005 to 19th July 2006. Furthermore Maj. D.S. Shekawat, again from his regiment, was detailed to undergo LGSC Serial 1604 from December 2005 onwards. The respondents have ignored the service and seniority of the appellant by detailing a person 5 years junior to him thereby hampering his promotional and other professional opportunities.

3. The petitioner argued that respondents vide their letter of 15th April 2005 had laid down the criteria for detailment on such courses which was as under:

> "4. Following parameters have been taken into acct while detailing offrs on mandatory LGSC(O) Sers Fd-1603 and Fd-1604:
>
> (a) Offrs who had qualified LGSC(O) entrance exam held in Nov 2003 but could not be nominated due to org constraints on LGSC(O) courses during trg yr 2004-05 have now been detailed.
>
> (b) Offrs above 7 yrs of service who had sent to applications for LGSC(O) entrance exam of Nov 2004 (which was cancelled due to poor response) have been incl and nominated. In view of more than one offr from same unit applying for LGSC(O) and keeping in mind the state of offrs in the units/fmns such affected offrs will be detailed inn subsequent courses.
>
> (c) All offrs of 1997, 1998 and 1999 batches were considered and one/two eligible offrs per unit have been

detailed based on seniority of offrs and Fd/peace profile of units. Balance eligible offrs of 97 and 98 batches will be nominated in subsequent courses based on availability."

4. The petitioner argued that his case falls squarely in paragraphs 4(b) of this letter and he should have been legitimately detailed for this course. It was also argued that vide Army Headquarter letter of 2nd August 2005 it was clearly stated that 20% vacancies on all courses up to the year 2009 and 2010 were to be set aside for the officers in the service bracket of 7 to 12 years and even if he had not been detailed on this course i.e. Serial No.1603 from October 2005 to July 2006, he should have been detailed on the subsequent courses. The petitioner argued that his non approval in the Selection Board from Lt. Col. to Col. was primarily because he lacked the numerical credit for doing the LGSC. Had the petitioner been detailed on the said course by the respondents he would in normal course have been promoted to the rank of Col. and, therefore, his non-detailment on the LGSC has caused irrepairable loss to the petitioner and required to be rectified by the respondents.

5. Counsel for the respondents sought to bring out the facts of the case by stating that the grounds on which the petitioner was appealing were redundant because if there was any genuine ground then the petitioner would not have waited for 5 years to represent against his non-detailment. The petitioner is challenging his non-detailment for a course in 2005, in 2010, which clearly shows that he was convinced that there were genuine reasons for not detailing him in 2005. Respondents also contended that the petitioner has not alleged

any bias or malafide in his non-detailment on the LGSC. They also argued that between 1998 to 2004 the petitioner had a total of 6 chances (not considering 2002 when due to Op PARAKARAM no course was conducted) available to him to compete for the said course, but he availed only one such opportunity in 2000 in which he failed to qualify for the competitive examination.

6. Counsel for the respondents pointed out that in the policy letter of 15th April 2005 it was categorically stated at paragraph 4(c) that officers of 1997, 1998 and 1999 batches would be detailed for the LGSC Serial Nos. 1603 and 1604. Since Maj. Vivek Bhardwaj fell in this category of offices who mandatorily had to be detailed for this course, he was detailed and there is no question of overlooking petitioner's service. The petitioner himself has stated that he fell clearly in paragraph 4(b) of this letter which clearly states as under:

> "(b) Offrs above 7 yrs of service who had sent to applications for LGSC(O) entrance exam of Nov 2004 (which was cancelled due to poor response) have been incl and nominated. In view of more than one offr from same unit applying for LGSC(O) and keeping in mind the state of offrs in the units/fmns such affected offrs will be detailed inn subsequent courses."

7. Accordingly since more than one officer from his Unit were affected i.e. Maj. D.S. Shekhawat and the petitioner, Maj. D.S. Shekhawat being senior, was detailed for LGSC Serial 1604. Correspondingly Maj. Vivek Bhardwaj has been detailed since batches of 1997, 1998 and 1999 had to be mandatorily detailed. From among the officers above 7 years of service, Maj. D.S. Shekhawat of his

Unit was detailed as the policy letter clearly stated that if more than one officer from a unit applies for such courses they would have to keep in mind the state of officers in that unit before such detailment. Therefore, there was no illegality whatsoever in the detailment of Maj. Vivek Bhardwaj and Maj. D.S. Shekhawat. Regarding detailment on subsequent courses, the respondents vehemently argued that there was no question of detailment on subsequent courses as because of various administrative, organisational and functional reasons such mandatory detailment on LGSC was stopped vide MoD letter No. 17th April 2006 and LGSC was once again made competitive. Accordingly, there were no grounds by which the petitioner could be detailed for any course after 17th April 2006. All in all, while it is unfortunate that the petitioner could not be detailed on LGSC, it was not due to any omission or illegality on the part of respondents who have strictly adhered to the policy, rules and guidelines for such detailment.

8. As regards to the impact of not doing the LGSC in the promotion board was concerned, respondents argued that the first and the foremost fact was that it had been clearly established that the petitioner did not do the LGSC on account of his own inadequacies and not because of any omission on the part of the respondents. Therefore, it was premature and inappropriate of him to suggest that had he done the LGSC he would have been approved for the rank of Col. This is hypothetical which does not merit any response. However, to set aside all doubts counsel for the respondents clarified that the maximum marks that the petitioner may have earned if he had done the LGSC was '1' and the gap in the marks between the last officer approved for promotion and the

petitioner was more than ‘3’ marks. Therefore, even if he had done the LGSC and been given ‘1’ mark he would not have been empanelled for the rank of Col.

9. Keeping in view the above aspects, we do not find any justification in the petition, accordingly, it is dismissed with no order as to costs.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
March 29, 2011