

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

T.A.No. 191 of 2010

Col. A.P. Padhi

...Petitioner

Versus

Union of India & Ors.

...Respondent

For the Petitioner :
For the Respondents:

Shri Rajiv Sharma, Advocate
Shri R. Balasubramanian, Advocate

C O R A M:

**HON'BLE MR. JUSTICE A.K.MATHUR, CHAIRPERSON
HON'BLE LT.GEN. M.L.NAIDU, MEMBER (A)**

ORDERS

1. This Writ Petition has been field in Delhi High Court which has been transferred to this Tribunal after its formation. Brief facts which are necessary for disposal of this petition are:
2. Petitioner vide this writ petition has prayed that by appropriate direction the respondent may be directed to consider the petitioner for promotion to the rank of Brigadier by exposing him to the parameters of the Board held on December 9, 2002

and as per promotion policy dated 26.2.1996. The petitioner was considered for promotion from the rank of Lt. Colonel to Colonel by the Selection Board held in April, 1998 but he was not found fit for promotion to the next rank of Colonel on account of low grading in one ACR for the year 1986. Subsequently, in June, 2000, the said ACR was expunged and a review Selection Board was held in August, 2000 and the petitioner was promoted to the rank of Colonel on December 11, 2000 with notional seniority reckonable w.e.f. 16th June, 1998. Thereafter, a Selection Board was held in December, 2002 for promotion to the rank of Brigadier. However, the case of the petitioner was deferred on the ground that he had not earned minimum three ACR's in the rank of Colonel as per the policy of 1996. The petitioner was informed that his seniority would remain protected on selection by the next Selection Board after having earned the minimum number of ACRs.

3. The petitioner earned three ACRs by the year 2003.

Meanwhile, a new policy came on 14th January, 2004 and, therefore, his case was considered under that policy and

his case was not found suitable for the post of Brigadier. Therefore, he filed present Writ Petition before Delhi High Court and sought a direction for consideration of case of petitioner as per the old policy of 1996.

4. A reply was filed by the respondent contesting the position and it was pointed out that since the petitioner had not completed three ACRs which was required as per the policy of 1996 his case was deferred in 2002. But a new policy came on 14th January, 2004 and as per the new policy his case was considered and he was not found suitable for the post. In that connection they have referred to the clarification issued by the government and submitted that as per the direction of the government the case of petitioner was considered under the new policy by the Selection Committee and he was not found suitable and accordingly was not promoted to the post of Brigadier.

5. Learned Counsel for the petitioner has submitted that it is not fault of the petitioner that he could not earn three ACRs. It is submitted that the ACR of 1986 which was expunged in the June, 2000 and he was promoted after expunging of that ACR

by Selection Board on 11.12.2000 as a full Colonel and his seniority has been restored with his original batch. The new policy has come on 14.1.2004 but his case should have been considered with reference to the policy of 1996 because he has served three years as Colonel and earned three ACRs by 2003. If the review DPC had taken place prior to 14.1.2004, he would have been considered with reference to the old policy along with his batchmates.

6. As against this Learned Counsel for the respondent contested the position and taken resort to the policy of the government that cases who have become eligible will only be considered under the new policy of 14.1.2004 and in pursuance of that the case of the petitioner was considered and he was not found suitable, hence he could not be promoted.
7. We have considered the rival submissions of the parties and perused the record. The fact remains that petitioner's ACR of 1986 was expunged in the year 2000, therefore, he cannot be blamed for non promotion to the rank of Colonel. Government has rectified the mistake by expunging the remarks of 1986 in

2000, therefore, he should have been deemed to be restored in his original position. Apart from that the petitioner has already earned three ACRs by December 2003 and his seniority having been restored with the old batch, in normal course his case should have been considered by a review Selection Committee under the provisions of the 1996 policy. The petitioner has the inherent right to be considered because wrong done to him in 1986 have been rectified in the year 2000. It is not fault of the petitioner, it is a fault of the respondents that they took a belated decision in passing the order of expunging the ACR in 2000. Therefore, petitioner cannot be put to disadvantageous position vis-a-vis his batchmates. Once his seniority has been restored with his batch of 1998 and he has earned three ACRs by December, 2003, he should have been considered by a review Selection Committee as per the old policy and not as per the new policy which has come into force w.e.f. 14.1.2004.

8. Learned Counsel for the petitioner also pointed out that petitioner has been singled out whereas in such similar matters, wherever there has been shortage of requisite ACRs,

a special report has been sought in number of the cases and matter has been considered. In that connection he has invited our attention to the case of other medical officer. Be that as it may, the fact remains, in the present case, the petitioner has right to be considered along with his batch under the old policy of 1996 because he has by this time earned three ACRs in December, 2003 and a new policy has come on 14.1.2004, therefore, his case should have been considered under the policy of 1996 because he has acquired requisite eligibility for consideration for promotion to the post of brigadier. Therefore, the consideration of petitioner's candidature under the new policy of 14.1.2004 was not correct and same is set aside and we direct the respondents that the case of the petitioner shall be considered by a review Selection Committee under the policy of 1996 and if he is found suitable all consequential benefits should be given to him as was given to person junior to him within a period of three months.

9. As a result of above discussion, petition is allowed. No order as to costs.

[Justice A.K. Mathur]
Chairperson

[Lt. Genl. ML Naidu]
Member (A)

New Delhi
4th January, 2011