

**COURT NO. 3, ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

T.A. 241 OF 2009

W.P.(C) No.840 of 1988 of Delhi High Court

IN THE MATTER OF:

Lt. Col. Jogi Ram Dahiya**Applicant**
Through : Mr. J. S. Manhas, counsel for the applicant

Versus

The Union of India and others**Respondents**
Through : Mr. R. Balasubramanian, counsel for the respondents

CORAM:

**HON'BLE MR JUSTICE MANAK MOHTA, JUDICIAL MEMBER
HON'BLE LT GEN Z.U.SHAH, ADMINISTRATIVE MEMBER**

JUDGMENT

Date: 15.04.2011

1. The applicant had filed WPC 840/1988 in the Hon'ble Delhi High Court. The same was transferred to this Tribunal on 1 September 2009. The applicant has prayed that he be granted substantive rank of Lt. Col (selection grade) with ante date seniority alongwith officers of his seniority and this rank also be restored to him for the period 4 October 1982 to 24 May 1983. The applicant has also prayed that he be granted the rank of Col w.e.f. Nov 1984 and to set aside the retirement

order dated 31.12.89 (Annexure BB) by which he has been retired w.e.f. 31.12.88 on attaining the age of 51 in the rank of Lt. Col (Time Scale).

2. The applicant was commissioned in the Army on 30 June 1963 and subsequently was approved for the rank of acting Lt Col (Selection) on 24 March 1980. The applicant states that he continued to hold this rank and was employed in appointments tenable by Lt Col (Selection) till his retirement on 31 December 1988 in the rank of Lt Col Time scale (TS).

3. The applicant states that his retirement in the rank of Lt Col (TS) was unfair since Lt Col (TS) performs duties of the rank of Major whereas he was selected for the rank of Lt Col (Selection) by DPC. Lt Cols (Selection) superannuate at the age of 52 whereas the applicant was superannuated at the age of 51, applicable for Lt Col (TS). The applicant contends that since he was Lt Col (Selection) his status cannot be reduced in rank to Lt Col (TS). The applicant has also contended that there is no concept of "Acting" rank or "Substantive" rank after deletion of Army Rule 2 (d-II) since 1988. He further contends that Government of India vide Office Memorandum (OM) dt. 28 March 1988 (Annexure CC) issued by department of Personnel and Training (page 182) have clarified that confirmation is only required at an initial stage of entry into service at the time of commission.

4. The applicant avers that Army Head Quarter Policy dated 31 July 1984 (Annexure H page 63) also stipulates that officers holding appointment of Lt Col (Selection) will be made substantive on completion of 21 years service without waiting for any other instructions. The appellant states that the respondents have confirmed him as a Lt Col (TS) which is a lower rank than what he was holding and this amounted to a punishment. Subsequently the applicant was not considered for promotion to the rank of Col. The applicant states that he was deferred twice for promotion and forced to retire at the age of 51 in the rank of Lt Col (TS) while still holding the rank of Lt Col (selection) where the retirement age is 52. He has also been denied consideration by DPC for select rank of Col.

5. The applicant states that he was attached on disciplinary grounds and illegally brought down to the rank of Major from Lt Col during disciplinary proceedings from 04.10.1982 to 24.05.1983. On 3 March 1982 President's sanction was accorded for the applicant to continue to hold the rank of Lt Col whilst he was on attachment during investigation period on the posting of his relief, whichever was earlier. Subsequently the applicant was tried by GCM during the period 26 April 1982 to 25 May 82 and he was awarded "severe reprimand". The Officer appealed against the sentence of GCM on 28 May 82 and subsequently submitted

statutory complaint dated 27 November 1983, which was rejected on 05.04.1986. The applicant contends that on 3 November 1982 officers junior to him were granted the rank of Substantive Lt Col(Selection). The applicant however was not granted the substantive rank of Lt Col (Selection). In support of this contention the applicant has cited Hon'ble Supreme Court judgment given in the case of **Major K D Gupta v/s Union of India** (AIR 1983/SC 1122) and submitted that an officer can not lose rank of Lt Col during attachment on the plea that he has not performed the duties of Lt. Col.

6. The applicant contends that after his GCM he continued to hold appointments tenable by Lt Col (Selection) i.e. OC 36 BIHAR NCC Bn and CO 8 SIKH in 1984.

7. The applicant further contends that he was considered for promotion to the rank of Col three times in 1984, 1985 and 1986 and each time informed that he had been "Deferred" because he was lacking ACRs in a command assignment (Page 150, 151 and 152). The officer subsequently submitted a statutory complaint on 15 Jan 1987 against his ICR for the period 1984 and 1985. The COAS on 3 Feb 1987 expunged the adverse remarks in the ICR for 1985 and passed orders that the applicant be considered for promotion to selection to the rank of Col by special review board. It is further alleged that he was granted

substantive rank as Time Scale Lt. Col instead of Selective grade rank. His statutory complaint was also rejected on 02.11.1987 (Annrxure K) without applying discretion and his retirement order was made effective on attaining age of 51 in Dec 1988. Hence, this writ is filed.

8. The respondents in their counter affidavit have stated that on 24 May 1980 the applicant was appointed CO 3 SIKH in the rank of acting Lt Col (Selection). During the period of command the applicant, on 23 July 1981 criminally assaulted and abused an NCO of his unit. A Court of Inquiry was held between the period 9 Aug 1981 to 16 Oct 1981. The applicant was attached on disciplinary ground under Army Instructions 106/60 w.e.f. 04.12.1981 and a summary of evidence was recorded from 7 December 1981 to 27 Dec 1981.

9. The applicant relinquished the acting rank of Acting Lt Col (Selection) in view of disciplinary proceedings against him in accordance with Special SAI 1/S/74 (Appendix – B). This SAI 1/S/74 has been superseded since 1992.

10. The applicant was tried by GCM during the period 21 April 1982 to 25 May 1982 wherein he was found guilty of using criminal force against a subordinate. The applicant was awarded “forfeiture of 6 months seniority of rank” (which was subsequently remitted) and “severe reprimand”. The disciplinary case was finalised on 17 Sep 1982 and

the contention of the applicant that he remained attached till 24th May 1993 is incorrect.

10. On 3 Nov 1982 officers of the applicant's batch were granted the rank of Substantive Lt Col (Selection). The officer was not granted the same substantive rank since a serious view had been taken of his disciplinary background. The applicant was subsequently posted as OC 36 BIHAR Bn NCC on 25 May 1983 and thereafter appointed CO 8 SIKH on 27 February 1984 in the rank of Acting Lt Col.

11. The applicant on 5 Oct 1986 submitted statutory complaint against non-grant of substantive rank of Lt Col. The same was rejected by the Central Govt. on 2 Nov 1987 (Page 89).

12. The applicant superannuated in the rank of Lt Col (TS) on 31 Dec 1988 vide Army HQ letter dt. 31 Dec 1987 (page 172). The Chief of Army Staff on 30 Jan 1987 approved the grant of the rank of Lt Col (TS) to the applicant to enable him to retire at the age of 51. The order in original was produced by the respondents and perused by us.

13. The respondents have stressed that Substantive rank is governed by Regulations of the Army Paras 67 & 68 (Page 29) and policy circular dated 23 Feb 1966 (page 30). The grant of Substantive rank is not automatic and an officer has to render the minimum laid down service,

be in acceptable medical category and fit in all respects for such promotion. The grant of substantive rank of Lt Col is also dependent on the availability of vacancies in the Substantive rank. Since the applicant, because of his disciplinary background, did not meet these conditions of Substantive Lt Col, the applicant, was not approved for the rank of Substantive Lt Col. He was, however, given the benefit of grant of rank of Lt Col (TS) and allowed to serve upto 51 years of age against 50 years applicable for substantive Major.

14. The respondents state that the applicant was deferred by Selection Board 3 for promotion to Col in December 1984 and 1985 as he did not have the requisite ACRs in the rank of Lt Col. He was considered again in August 1986 but not empanelled for the rank of Col. Thereafter his case was “withdrawn” in Promotion Board held in April 1987 and Nov 1987 as the applicant’s complaint against ACR 84/85 was pending. Subsequently since the applicant was not approved for grant of substantive rank of Lt Col (Selection) he became ineligible for the next rank of Col. The applicant was not considered by No. 3 Selection Board in June 1988. The Respondents maintained that the citation of **Maj K D Gupta vs Union of India (Supra)** is not applicable.

15. In support of the contentions the respondents have cited the following judgments :

- a. LPA (SW) No 285/2004 titled Brig Niranjan Pal Singh Vs UOI decided on 09.02.05 by a DB of J &K High Court.**
- b. Civil Appeal 359-360 titled UOI Vs Lt Gen R S Kadyan decided on 20.07.2000 by the Supreme Court. (2000) 6 SCC 698.**

16. In reply to the counter affidavit the applicant has repeated his earlier contentions. The applicant has also stated that the Govt. of India vide the letter dated 3 March 1982 had created the supernumerary post of Lt Col in 3 SIKH “for a period of 6 months effective from the date the new officer assumes charge of the post or till the date of finalisation of disciplinary case against him whichever is earlier” (page 89).

17. We have heard the arguments and perused the record including the judgments cited. The applicant was approved by a DPC and promoted to the rank of Acting Lt Col (Selection) on 24 March 1980 while in the substantive rank of Major. The applicant was appointed CO 3 SIKH on 24 March 1980 in the rank of acting Lt Col (Selection). The applicant on 23 July 1981 criminally assaulted and abused an NCO of his unit. He was attached on disciplinary grounds from 9 August 1981 to 16 October 1981 for a Court of Inquiry and subsequently from 7 December 1981 to 27 December 1981 for recording summary evidence. The applicant relinquished the Acting rank of Lt Col on 4 March 1982

and reverted to Substantive rank of Major under the authority of Special Army Instruction 1/S/74 which reads as under :

An officer who ceases to carry out the duties of his appointment through being placed under open or closed arrest, or by suspension from duty under para 346 of the Regulations for the Army 1962 or by being attached to another unit for disciplinary purposes, will vacate his appointment and relinquish any acting rank after 21 days, subject to the provision that, in case of an officer holding a first grade staff appointment (or above), the sanction of Army Headquarters, will be obtained before the relinquishment of the appointment and of any acting promotion is carried out.

18. The judgment cited by the applicant in case of K D GUPTA (supra) does not help the contention of the applicant as in that case placement was made due to a lower medical category. In this case revision to substantive rank was due to a disciplinary case on the basis of above mentioned policy which has not been challenged.

19. The applicant was tried by GCM from the period 21 April 1982 to 25 May 1982 and was awarded the punishment of “forfeiture of 6 months seniority of rank” and “severe reprimand”. The confirming authority only confirmed the award of “severe reprimand” and the sentence of forfeiture of 6 months seniority of rank was remitted.

20. Subsequently, the officer held the appointments of OC 36 BIHAR Bn NCC and CO 8 SIKH in the rank of Acting Lt Col. He was however not approved for the rank of Substantive Lt Col. Army HQ Policy dated 31 July 1984 (Annexure page 63) cited by the applicant only stipulates that officers holding appointment of local (Selection) “may be made substantive” (and not “must be made substantive” as averred by the applicant) provided they are considered fit in all respects. Looking at the special requirement of the Armed Forces the case is to be reviewed from various instructions from time to time with regard to substantive rank. The contention raised with regard to OM of 1988 (*supra*) does not help the case of the applicant and this policy was not with retrospective effect. This conclusion finds support from the judgment cited by the Respondents in the case of **Brig Niranjan Pal Singh v/s Union of India (*supra*)** in which it was held that selection from “acting” to “substantive rank” is not automatic. This view also finds support from the judgment given by Hon’ble Court No. 1, AFT in the case of **Col G S Kadian (TA**

532/2010). The applicant on 5 Oct 1986 represented against the non-grant of substantive rank of Lt Col. The representation was rejected on 2 Nov 1987. In view of the fact that the applicant functioned in the rank of Acting Lt Col the Chief of Army Staff on 30 Jan 1987 approved the grant of rank of Lt Col TS to the applicant to enable him to serve for one additional year up to the age of 51. The officer was considered by Number 3 Selection Board in 1984, 1985 and 1986 but was deferred as he did not have the requisite command report, ACRs in the rank of Lt. Col. The Central Govt. did not approve the officer for the grant of substantive rank of Lt Col because of his poor disciplinary record. The grant of this rank was not automatic and was dependent on the criteria laid down, which the officer did not meet. In view of the above, we feel that no injustice has been done to the officer. Application is rejected. No costs.

Z. U. SHAH
(Administrative Member)

MANAK MOHTA
(Judicial Member)

Announced in the open court
On 15 April 2011