

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

13.

O. A. No. 27 of 2011

Col. H.C. Goswami (Retd.)

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Dr. Shyamliha Pappu, Sr. Advocate with Mr. R. Krishnaamorthy, Advocate.

For respondents: Mr. Ankur Chhibber, Advocate.

CORAM:

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

HON'BLE LT. GEN. S.S. DHILLON, MEMBER.

ORDER
23.04.2012

1. Petitioner vide this petition has prayed to quash the order dated 06.10.2009 of Lt Col Pradeep Bist, GSO1, RTI for CPIO, Indian Army rejecting the petitioner for promotion to the rank of Brigadier. It is also prayed that respondents be directed to give the petitioner notional promotion as Brigadier with all consequential benefits. It is further prayed that petitioner's case has long litigating history and for convenient disposal of this case, it may be summarized.

2. Petitioner entered into the services on 30.06.1963. In the year 1989, petitioner was tried by GCM and cashiered. He challenged the said GCM and subsequent punishment of cashiering before the Hon'ble High Court of Delhi by filing a petition. Hon'ble High Court of Delhi vide order dated 28.05.1992 quashed the court martial proceedings and subsequent orders of punishment against the petitioner. Respondents challenged the order of the Hon'ble Delhi High Court dated 28.05.1992 in the Hon'ble Supreme Court by filing SLP.

The Apex Court vide its order dated 28.04.1999 dismissed the appeal preferred by the respondents.

3. Thereafter respondents without any reason disqualified the petitioner for being selected for the rank of Brigadier as intimated to him vide their letter dated 25.10.1999. Petitioner filed a petition bearing no. 7391 of 2000 before Hon'ble Delhi High Court contending that order of Hon'ble Delhi High Court dated 28.05.1992 had not been complied with by the respondents. Hon'ble Delhi High Court vide its order dated 07.08.2008 directed that the petitioner's case be considered afresh reference to the officer of 1963 batch to which the petitioner belongs. Against the said order of Hon'ble Delhi High Court dated 07.08.2008, respondents preferred an appeal before the Hon'ble Supreme Court which was ultimately dismissed by the Hon'ble Supreme Court vide its order dated 13.07.2009.

4. Thereafter petitioner moved an application dated 18.09.2009 to the Central Public Information Officer, Indian Army (RTI Cell) seeking certain information regarding his consideration for the rank of Brigadier. The concerned authority vide their letter dated 06.10.2009 informed the petitioner that meeting of the Board was held on 30.03.2009 to reconsider his case for promotion to acting rank of Brigadier and the competent authority had intimated to MS Branch by Ministry of Defence on 06.07.2009. Respondents challenged the order dated 30.09.2009 of the Central Information Commission before the Hon'ble Delhi High Court and the said order dated 30.09.2009 was confirmed by the Hon'ble Delhi High Court vide its order dated 30.11.2009.

5. Petitioner filed SLP bearing no. 8863 of 2010 against the order dated 06.10.2009 before the Hon'ble Supreme Court which was dismissed as withdrawn on 08.07.2010. Hence, the petitioner filed the present OA before this Tribunal seeking aforesaid reliefs.

6. Learned counsel for the respondents submitted that record pertaining to the petitioner for promotion from Col to Brig has been destroyed, however now they have somehow retrieved some record from here and there. In that context, they pointed out that in the petitioner's batch of 1963, 22 persons were approved for promotion out of which record of 19 persons are available with them and among 19 persons, lowest percentage of marks were obtained by Col S.S. Chauhan who was found fit for promotion.

7. Looking to the old record and after hearing both the parties, we are of the opinion that it will be proper to direct the respondents to consider the case of the petitioner viz. Col. S.S. Chauhan who obtained the lowest percentage of marks and was found fit for promotion. After considering the case of the petitioner viz. Col. S.S. Chauhan, if petitioner is found suitable then all consequential benefits will follow. This exercise will be done by the respondents within three months from the date of this order.

8. With these observations, petition is disposed of. No order as to costs.

**A.K. MATHUR
(Chairperson)**

**S.S. DHILLON
(Member)**

**New Delhi
April 23, 2012
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