

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

8.

O.A. No. 363 of 2010

Brig. Paramjit Singh Dhot, VSM

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Mr. S.S. Pandey, Advocate

For respondents: Mr. Mohan Kumar, Advocate

CORAM:

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

HON'BLE LT. GEN. M.L. NAIDU, MEMBER.

ORDER
07.09.2012

1. Petitioner, by this petition, has prayed to quash the order dated 16.07.2008 as well as the order dated 09.12.2009 along with the result of the review promotion board held on 29.07.2009. He further prayed for quashing of the promotion policy issued by the respondents in 2006 to the extent it has adversely affected the chances of promotion of the petitioner. He also prayed that the respondents be directed to consider the petitioner for promotion and promote him to the rank of Major General with the seniority as on 24.11.2007 when the batch-mates of the petitioner were approved for such promotion.

2. Petitioner was commissioned in the Indian Army in the Medical Corps on 31.08.1975 and with the passage of time he raised to the rank of Brigadier in the year 2007. He had requisite qualifications and experience for consideration for promotion to the post of Major General. He is a super specialist and has done his post doctoral fellowship in Haematology from

AIIMS, New Delhi and trained in U.K., U.S.A., and Canada in Stem Cell Cryopreservation and Transplantation. On 02.11.2007 he was posted as DDMS, HQ 10 Corps and his case for promotion to the post of Major General was taken up by the selection board on 24.11.2007, but he could not make it. He filed representation but without any result. Then his case was again taken up by the second selection board on 17.10.2008, but still he could not make it. Then the petitioner filed a representation, but without any result. He came to know that his ACR for the period 01.09.2006 to 31.12.2006 was not taken into consideration, therefore, he made a representation and his representation was answered by the respondents that since his I.O. had not completed 90 days, his ACR, for this purpose, sent by I.O. is in violation of the rules and the petitioner is entitled to initiate delayed ACR and the officers in the rank are already on the strength of the unit, therefore, his delayed ACR for the period 01.09.2006 to 23.01.2007 has been declared technically invalid by the competent authority and the ratee was informed accordingly and the concerned unit should be asked to get ACR for the period of 01.09.2006 to 31.12.2006 initiated by the R.O. if feasible under the rules or else submit NIR in lieu of that period. Thereafter, it appears that the ACR was sought from the R.O. for the said period i.e. 01.09.2006 to 31.12.2006 and then the same was sent by the GOC-in-C to the Deputy DGMS, IHQ, which reached on 02.11.2007. Therefore, it was submitted that at least[†] when the selection committee met on 24.11.2007 this ACR could have been taken into consideration, but that was not done, may be because of the administrative lapse. However, same was considered on 29.07.2009 by Review Board as the first chance and original record has been placed before us.

3. By this input the petitioner's position improved in his average marks by the Board. Previously it was given 1.22, but after this input it increased to 1.49. His final marks at the stage was 88.30 and by adding 1.49 it became 89.79, but the cut off marks at relevant time was 89.53, therefore, he could not make to the promotion and likewise in subsequent boards he was considered and he could not make it in all the three considerations i.e. 2008 and 2009.

4. Learned counsel for the petitioner submitted that since his revised ACR for the aforesaid period by the GOC was received on 27.11.2007 by the authorities and the first Board was held on 24.11.2007, it would be placed at the relevant time and it has improved his value judgment.

5. We have bestowed the best of our considerations to this aspect also, but since the petitioner's case has been reviewed by the same selection board, after getting this input on 02.11.2007 and it has marginally improved his case, but still he was below the cut off marks. Therefore, the delayed sending of the ACR for this period has not seriously prejudiced his case. The matter was taken up again in review by the first board and it has marginally increased in view of input. Therefore, we do not think that it has seriously affected the consideration of the petitioner. Even thereafter, in second and third time, he could not make it. Therefore, the net result is that the petitioner has received due consideration in all the three chances but he could not make it. Therefore, we do not think that any interference is required by us.

6. The petition is, accordingly, dismissed. No orders as to costs.

✓ A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
September 07, 2012
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