

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI
05.

T. A. No. 428 of 2009
Writ Petition (Civil) No. 6453 of 1998

Lt. Col. Shrawan Kr. Jaipuriyar

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Petitioner in person.

For respondents: Mr. R. Balasubramanian, ASG

CORAM:

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

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

ORDER
28.02.2012

1. This petition was filed by the Petitioner before the Hon'ble Delhi High Court which was transferred to this Tribunal after its formation.

2. Petitioner vide this petition has prayed to issue order or direction to quash the orders dated 25.08.1998 and 14.09.1998 and issue writ of mandamus directing the respondents to conduct a fresh Medical Selection Board No. 3 for considering the petitioner for promotion from Lt Col to Col.

3. Petitioner joined Indian Army as an MBBS in the Armed Medical Corps in the year 1971 and was declared as 2nd All Round best officer during his training. Before joining the Army, he was highly active in NCC in school and college. After his selection in Army in 1971, he did M.S. in Surgery as well as in orthopaedics and was serving as a surgical specialist in Army Medical Corps since 1978 i.e. even before completing Medical Officers Junior

Command Course he was selected for M.S. (Surgery) in A.F.M.C. Pune. He has also been presenting scientific papers in various Indian orthopaedic conferences and won commendation from Chief of Army Staff in 1983. It is pointed out that through out his career spanning more than 26 years, he has received good grade points and has achieved higher academic qualification and has pioneered in the field of Joint Replacement Surgery.

4. In the year 1986-87, weak remarks were endorsed in the ACR of the petitioner by the Initiating Officer/FTO on the basis of a DO letter dated 04.04.1987 written by Maj. Gen. A.S. Chahal and contents of this D.O. letter was not even disclosed to the petitioner. This was about allegedly an improper discharge remark written by petitioner on the discharge slip of a patient who was being treated for "cerebral concussion and multiple abrasions". The said discharge was approved by the Commandant of the Hospital Brig. S.K. Deyasi. After completing M.S. (Ortho) from A.F.M.S., Pune, petitioner was posted at Military Hospital Secundrabad in 1989 where he underwent observation for classification in orthopaedics for one month under Col. V. Chattopadhyaya, Sr. Advisor Surgery and received very good recommendation.

5. On 05.01.1991, Col. B.P. Mathur, officer-in-charge of surgical division humiliated the petitioner in the operation theatre and threatened to spoil his ACR while the petitioner was treating an orthopaedic case. The Officer-in-charge collected few past instances within a week and issued a letter to the petitioner labelling his treatment as not up to mark. Petitioner apprehending this unjust counselling is an attempt to ruin his ACR requested the R.O. (Commdt.) T.K. Roy to protect him from malafides and petitioner also wrote a

letter to Officer-in-Charge to clarify things but no action was taken. However, ACR of the petitioner was spoiled by giving such pen picture which was neither elaborate nor objective. Petitioner was not considered for promotion in the Medical Selection Board No. 3 held on 01.05.1996 wherein his juniors were considered and promoted depriving the petitioner's right for promotion which was violation as per Article 14 and Article 16 (1) of the Constitution of India.

6. Petitioner according to the Army rules made statutory complaint against his supersession and against ACRs for the period of 1986-87 and 1990-91 which was rejected without giving any reasons. Thereafter petitioner filed statutory complaint against another Medical Selection Board No. 3 which was held on 07.03.1997 wherein petitioner was declared in category 'R' i.e. unfit to be promoted without assigning any reason. Being aggrieved from this arbitrary and malafide actions of the respondents, petitioner filed the present writ petition before the Hon'ble Delhi High Court seeking quashing of the orders dated 25.08.1998 and 14.09.1998 whereby his statutory complaint was illegally and arbitrarily rejected without giving speaking order.

7. During the course of arguments, petitioner has made the submission that person like Col H.K. Sharma who was junior to him has been promoted to the rank of full Col. whereas he has been overlooked despite being senior. He has also pointed out names of other officers, Col. K.B. Kumar and Col R.K. Bal. In view of these oral submissions, direction was given to the respondents to explain the position and thereby an additional affidavit has been filed by the respondents explaining the position which will be referred hereinafter.

8. A reply has been filed by the respondents and they have pointed out in their reply that promotion upto and including the rank of Lt. Col. in the Armed Forces Medical Services (AFMS) is by time scale. Promotion to the rank of Col. and above is by selection and is based on the principle of merit-cum-seniority. There are two separate cadres viz Specialist and Administrative Cadres in the AFMS upto the rank of Col. Therefore, the officers of two different streams are considered in their respective cadres for promotion to the rank of Col. Petitioner being specialist officer was considered for promotion to the rank of Col. in Specialist Cadre as per his seniority by the Medical Selection Board No. 3 held on 13.03.1997, however he could not make it on the basis of average of his ACR earned in the rank of Lt. Col. He did not find a place in the merit for selection for promotion to the rank of Col. in the Specialist Cadre and was, therefore, graded "R" i.e. unfit for promotion. An ACR is a document wherein the demonstrated performance of an officer during the period of a particular report as assessed by the reporting officers is recorded. Medical Selection Board No. 3 did not find petitioner suitable for promotion, therefore, he could not make it and not recommended for promotion.

9. It is pointed out that petitioner made a statutory complaint dated 16.09.1997 against his ACRs for 1986-87 and 1990-91 and supersession for promotion to the rank of Col. in the Specialist Cadres. The complaint was examined in detail and was finally rejected by Government vide order dated 25.08.1998 since the impugned CRs were found well corroborated and the petitioner was rightly considered alongwith his batch-mates in the Specialist Cadre in his turn and had failed to make the grade for promotion on relative merit.

10. Petitioner who is present in person submitted that as per the earlier policy which was in vogue, five years' ACR were to be considered for promotion from Lt Col to Col. As per new policy dated 26.02.1996, all ACRs in the present rank are to be taken into account for purposes of promotion from Lt. Col. to Col (& equivalent), Col to Brigadier (& equivalent) and Brigadier to Maj. General (& equivalent). In case two ACRs are available for a particular assessment year, their average will be taken of final average of the particular period. A minimum of two/three/four ACRs should be available for consideration for promotion to Major General/Brigadier/Colonel respectively in the present rank. The relevant portion of the said policy dated 26.02.1996 reads as under;

“8. Number of ACRs taken : all ACRs in the present rank will be taken into account for purposes of promotion from Lt. Col. to Col (& equivalent), Col to Brigadier (& equivalent) and Brigadier to Maj. General (& equivalent). In case two ACRs are available for a particular assessment year, their average will be taken of final average of the particular period. A minimum of two/three/four ACRs should be available for consideration for promotion to Major General/Brigadier/Colonel respectively in the present rank.

11. Petitioner submitted that prior to this policy, five years ACRs were to be considered for promotion but as per new policy, the entire ACRs in the present rank are required to be taken into account for consideration for promotion. If the five years' ACR were to be taken into account then perhaps he would have made it and ACRs for 1986-87 and 1990-91 would not have come in his way. It is true that previous policy could have benefited to the petitioner but policies are being changed from time to time. It is the privilege of the Government. The policies are changed from time to time looking to the

new inputs coming in with experience of service. Some persons stand to benefit and some persons stand to lose. Policy cannot be held bad on this count.

12. In this connection, learned counsel for the respondents has invited our attention to a decision given by the Hon'ble Supreme Court in the case of **Union of India and Others Versus S.L. Dutta and Another (1991) 1 SCC 505**. Our attention has specifically been drawn to the paragraph no. 14 of the said decision which reads as under;

“14. In connection with the question as to whether the conditions of service of respondent no. 1 could be said to be adversely affected by the change in the promotional policy, our attention was drawn by learned Additional Solicitor General to the decision of this Court in “State of Maharashtra v. Chandrakant Anant Kulkarni”, There it was held by a bench comprising three learned Judges of this Court that mere chances of promotion are not conditions of service, and the fact that there was reduction in the chances of promotion did not tantamount to a change in the conditions of service. A right to be considered for promotion is a term of service, chances of promotion are not. (See SCC p. 141, para 16.) Reference was also made to the decision of this Court in “K. Jagadeesan v. Union of India” where the decision of this Court in the State of Maharashtra v. Chandrakant Anant Kulkarni was followed.”

13. This is exigency of service that by virtue of change of policy, some persons stand to benefit and some persons stand to lose. Policy cannot be held to be wrong on that count. Policy can only be declared bad if it is in violation of Article 14 and 16 of the Constitution of India. It is privilege of the Government to amend the policies on the basis of new development taken place in the service. Keeping in view the new developments, policies are

amended. Therefore, as per policy dated 26.02.1996 which was in vogue at the relevant time, petitioner was considered for promotion vis-a-vis persons similarly situated. But unfortunately petitioner could not make it on the basis of his ACR criteria, therefore, it cannot be said that policy is bad on that count.

14. Petitioner has pointed out the names of three officers, Col H.K. Sharma, Col K B Kumar and Col R.K. Bal. It has already been pointed out that there are two separate cadres viz Specialist and Administrative Cadres in the AFMS upto the rank of Col. Specialist officer is considered among the Specialist Cadre and Administrative officer is considered among the Administrative Cadres. Petitioner belongs to Specialist Cadre being specialist officer, therefore, he was considered among other specialist but he could not make it due to his ACR profile. Though the above said persons as named by the petitioner have not been made party before us, however in the interest of justice, we directed the respondents to file additional affidavit to explain the positions of these three persons.

15. So far as, Col H.K. Sharma is concerned, he belongs to Administrative Cadre and junior to petitioner. But he was empanelled in the Administrative Cadre that does not in any manner prejudice the case of the petitioner. Petitioner belongs to Specialist Cadre and Col. H.K. Sharma belongs to the Administrative Cadre. Therefore, there was no comparison between the Specialist Cadre and Administrative Cadre.

16. Now coming to the case of Col K B Kumar. He has a seniority of 20.08.1970. He was withdrawn from Specialist Cadre due to non fulfilling parameters as per para 11(b), 21 & 22 of the TGC Rules 1992. He was taken

out from the Specialist Cadre and put in Administrative Cadre. He was promoted in Administrative Cadre. His case is also distinguishable.

17. As far as the case of Col R.K. Bal is concerned, he was considered in his first chance for promotion to the rank of Col. by the Promotion Board (Medical) No. 3 held on 13.03.1997 but he could not make it. He was also considered on 13.04.1998 and 30.08.2000 but he was graded 'R' & 'U' i.e. unfit for promotion.

18. Now coming to the ACR of the petitioner for the period 1986-87 and 1990-91. Petitioner filed his statutory complaint challenging these ACR only on 16.09.1997 after almost six years. However Government considered the same but did not find persuaded and rejected the statutory complaint. Therefore, in these circumstances, we cannot sit over order of the authorities dated 25.08.1998. We are of the opinion that no injustice has been done to the petitioner.

19. Hence, we do not find any merit in the case. The petition is accordingly dismissed. No order as to costs.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
February 28, 2012
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