

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

14.

T. A. No. 662 of 2009  
Writ Petition (Civil) No. 6901 of 2000

Lt Col Mohd Azam

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Mr. N.L. Bareja, Advocate.  
For respondents: Mr. Mohan Kumar, Advocate.

CORAM:  
HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.  
HON'BLE LT. GEN. S.S.DHILLON, MEMBER.

ORDER  
19.07.2012

1. Petitioner by this writ petition has prayed that the promotion policy dated 26.02.1996 is arbitrary and unconstitutional and consequently it may be quashed so far as the same relates to the promotion from the rank of Lt. Col. to that of Col. He has also prayed that the bifurcation of vacancies in the rank of Col. in the so called Adm. Cadre and Spl. Cadre is wrong, arbitrary, untenable and same may be declared ultra vires in the Army Medical Corps (AMC). He has further prayed that ACRs for the years 1994-95 and 1995-96 may also be quashed and likewise the rejection of his statutory complaint by the Respondents may also be quashed. This writ petition was transferred from Hon'ble Delhi High Court to this Tribunal after its formation.

2. The Petitioner was commissioned in the AMC on 14<sup>th</sup> February 1972 while studying in MBBS from King George's Medical College, Lucknow and he was promoted to the post of Captain on 14<sup>th</sup> February 1973 and thereafter as a Lt. Col. on 14<sup>th</sup> February 1987. He has a good ACR throughout and he was

also given an opportunity to serve as Assistant Director Health of 21 Corps from November 1990 to June 1993. It is alleged that unfortunately he was served with a 'severe reprimand' in April 1995 on account of some lapses which was challenged in the Hon'ble Madras High Court and was set aside by the decision dated 9<sup>th</sup> October 1996 of the Hon'ble Madras High Court. It is also alleged that his ACRs for the intervening period of 1994-95 and 1995-96 must have been prejudiced by the so-called 'severe reprimand' which was already set aside by the Hon'ble Madras High Court. His case was considered for promotion from Lt. Col. to Col. but he could not make it and he filed a statutory complaint in 1999 which was rejected in 2000 and then in the review also he could not make it and ultimately he retired in 2005.

3. Now the grievance of the Petitioner is that in fact the policy which has been laid down for promotion in the AMC, is discriminatory especially with reference to Lt. Col. and Col. as he has tried to make out that the persons with 4 years ACRs are compared with persons with 14 ACRs which is discriminatory. So far as the policy is concerned, we have gone through the policy dated 26<sup>th</sup> February 1996 and it lays down that "all ACRs in the present rank will be taken into account for purposes of promotion from Lt. Col. to Col. (and equivalent), Col. to Brigadier (and equivalent) and Brigadier to Maj. General (and equivalent). In case two ACRs are available for a particular assessment year, their average will be taken as 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." This policy, in any manner, does not appear to us discriminatory and arbitrary. Persons with four years of ACRs of a Lt. Col. is

required for consideration for the rank of Col. This is the minimum qualification laid down which is uniformly applicable to all, and a person who has put in four years of ACRs, he will be considered for promotion from the post of Lt. Col. to Col. This will also depend upon the availability of vacancy and persons who are senior to him and who are already available in the cadre will also be considered. If the persons of the earlier batches are available then they will naturally be considered and they will have a first right for consideration than the incumbent. This is the minimum qualification for consideration for promotion from Lt. Col. to Col. i.e. four years of ACRs and it is not discriminatory as it has been uniformly laid down for all Lt. Cols. Therefore, we are not impressed with the arguments of the learned counsel for the Petitioner that for promotion from Lt. Col. to Col. the policy is arbitrary. In this connection, our attention was invited by learned counsel for the Respondents that we have already upheld the policy in the case of **Lt. Col. Shrawan Kr. Jaipuriyar v. Union of India & Ors. (T.A. No. 428 of 2009) decided on 28th February 2012.** Hence, we do not find any merit in this submission of learned counsel for the Petitioner.

4. Next learned counsel for the Petitioner submitted that his ACR for 1994-95 and 1995-96 must have been prejudiced on account of the 'severe reprimand' which was issued to him in 1995. We called for the original records and considered his ACRs for both these years and we find that he has been rated 'Above Average' for both these years and, therefore, it is only the misapprehension of the Petitioner that his ACR was actuated by the so-called punishment of 'severe reprimand' in 1999 which was expunged by the Hon'ble Madras High Court. We have seen his ACRs and he had 'Above



Average' ACRs but unfortunately he could not make it and he also could not make it in the review DCP also. Hence, there is no merit in this submission also. We have also considered the submission of the learned counsel that there is no proper consideration of persons with four ACR has been considered with 11 and 12 ACRs. We examined the DPC minutes of DPC held in 1998 with persons of his batch and in that all of them have received 11 to 12 years ACRs and Petitioner's 11 years ACRs were considered with the batch and he could not make it. Therefore, there is no merit in the petition filed by the Petitioner. Hence, the petition is dismissed with no order as to costs.

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

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

**New Delhi**  
**July 19, 2012**  
**dn**