

COURT NO. 2
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA 276 / 2011

Brig P. S. Gill ... Applicant

Versus

Union of India & Ors. ... Respondents

For Applicant : Mr. K Ramesh, Advocate

For Respondents : Mr. Anil Gautam, Sr. CGSC

CORAM :

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

The applicant No. IC-30375N Brig P S Gill vide the present OA makes the following prayers:-

“A. Issue directions to the Respondents to declassify the results of Special Selection Board held on 07 April 2006 qua the Applicant officer is concerned and if approved he be promoted immediately to the rank of Major General with ante dated seniority, inherent pay and allowances to meet the ends of equity, justice and fair play.

B. Issue directions to the Respondents to post the Applicant officer in the appointment tenable by Major General immediately and permit the Applicant officer to fulfill the criteria to earn the ACRs in the rank of Major General so as that the Applicant officer could be fairly considered for promotion to the rank of Lieutenant General as the delay in litigation for five years is not the fault of the Applicant and he being highly meritorious be the governing factor for promotions vis a vis the total

apathy and injustice caused by the Army authorities without application of mind, per se.

C. Pass such other and further orders/directions in the form of an adequate compensation for the untold sufferings and misery as may be deemed just and proper by the Hon'ble Armed Forces Tribunal in the attendant genuine circumstances of the case."

2. The applicant was commissioned in the Indian Army on 16.06.1974 and was subsequently promoted to the rank of Brigadier. He was considered by a Special Selection Board on 07.04.2006 for the rank of Major General. However, his results were not declassified in view of a pending disciplinary case.

3. The Selection Board of No. 1 SB ASC 1974 Batch in April 2006 had considered the applicant as a fresh case and the Selection Board had recommended him to be fit for promotion and the Board proceedings were forwarded for approval of the competent authority. However, the applicant being on DV Ban Type 'D' on 06.07.2006, the MoD directed the resubmission of the case of the applicant after lifting of the DV Ban as per procedure during the pendency of the disciplinary proceedings. The applicant however retired from service wef 31.5.2009.

4. The applicant filed OA 147 of 2010 challenging the charges framed against him against the convening order of the General Court Martial, submitting to the effect that the charges framed could not be sustained against him on the basis of the Summary of Evidence. Vide

order dated 24.05.2011 in OA 147 of 2010, the said appeal of this Tribunal, the said appeal was allowed and the charges framed against the applicant were quashed. The respondents assailed the said order by filing a Criminal Appeal No 404 of 2013 before the Hon'ble Supreme Court and vide judgment dated 27.11.2019, the Criminal Appeal No 404 of 2013 filed by the respondents was dismissed.

5. The respondents filed a Review Petition against this judgment which was also dismissed by the Hon'ble Supreme Court vide order dated 19.01.2021. The said aspects are not refuted and are rather brought forth through the short affidavit dated 02.01.2024 filed on behalf of the respondents to the present OA. It has been submitted by the respondents that pursuant to the dismissal of the Review Petition, the DV Directorate issued directions for lifting of the DV Ban imposed on the applicant and accorded DV clearance vide Note no A/22971/2021(1050)/AG/DV-2 [MS(i)] pursuant to which the case of the applicant was processed to the competent authority which approved the grading of 'FIT' awarded by No. 1 SB held in April 2006. The respondents further submitted through their short affidavit dated 02.01.2024 that as a result thereof, the applicant was empanelled to the rank of Major General and was granted *notional promotion* to the acting rank of Major General with effect from 01.08.2006 and substantive rank with effect from 01.10.2008. The

respondents have also placed on record as an Annexure CA-2 to their short affidavit, a fresh retirement order no A/46001/Retd/30375/MS (X) issued vide letter dated 15.02.2023 wherein the applicant was shown to be deemed to have notionally retired from service in the rank of Maj Gen on 31.05.2011 on superannuation at the age of 58 years. (DOB: 14.05.1953). The earlier retirement order in r/o IC-30375 Maj Gen PS Gill, ASC issued vide letter No. A/46001/344/Addendum/MS(X) dated 18 Nov 2008 was stated as being treated as cancelled.

6. The respondents have submitted further through the short affidavit that this aspect has already been submitted by them during the course of the proceedings of the present OA on 19.04.2023, wherein it had been submitted that the applicant had been granted the Notional Promotion to the acting rank of Major General with effect from 01.08.2006 and that the Notional Promotion was granted to the substantive rank of Major General with effect from 01.01.2008 and all that remained was the issuance of the PPO.

7. On 06.09.2023 the respondents had sought time for issuance of the PPO. Likewise, on 20.12.2023 the respondents sought time for issuance of the PPO apart from placing on record the affidavit to put forth the present status in relation to the grant of the notional promotion to the

applicant which has since been placed on record vide the short affidavit dated 02.01.2024.

8. The PPO qua the applicant in relation to his notional promotion to the acting rank of Major General with effect from 01.08.2006 and the substantive rank with effect from 01.10.2008 and notional retirement from service in the rank of Major General on 31.05.2011 on attaining the age of superannuation has, however, till date not been issued by the respondents. The respondents have thus prayed vide their short affidavit dated 02.01.2024 to the effect that the Tribunal may dispose of the OA with appropriate directions for publication of the PPO for grant of pensionary benefits to the applicant for the rank of Maj General from the date of notional retirement of the applicant with effect from 31.05.2011.

9. In view of the statement on the record in the short affidavit dated 02.01.2024 filed on behalf of the respondents , the **OA 276 of 2011** is thus disposed of with directions to the respondents for issuance of the original PPO in the name of the applicant for grant of pensionary benefits to the applicant for the rank of '**Major General**' from the date of Notional Retirement with effect from **31.05.2011** within a period of two months and to pay the arrears also of the pensionary benefits within the said period of time, failing which, the respondents would be liable to pay interest @6% p.a. on the arrears due from the date of this order.

10. No order as to costs.

Pronounced in the ~~Open~~ Court on the 17th day of May, 2024.

~~[REAR ADMIRAL DHIREN VIG]~~
~~MEMBER (A)~~

[JUSTICE ANU MALHOTRA]
MEMBER (J)

/AP/