

**ARMED FORCES TRIBUNAL, CHANDIGARH
REGIONAL BENCH AT CHANDIMANDIR**

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TA 262 of 2011 (arising out of CWP 15242 of 1991)

Maj (Retd) Ram Kishan **Petitioner(s)**

Vs

Union of India and others **Respondent(s)**

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For the Petitioner (s) : Mr. Surinder Sheoran, Advocate

For the Respondent(s) : Mr Gurpreet Singh with Mr. Umesh P
Wadhvani, CGC

Coram: Justice Prakash Krishna, Judicial Member.

Air Marshal (Retd) SC Mukul, Administrative Member.

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ORDER

21.02.2014

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Punjab and Haryana High Court has transferred the file of CWP No. 15242 of 1991 for adjudication to this Tribunal in view of Section 34 of the Armed Forces Tribunal Act, on its commencement.

The aforesaid writ petition has been instituted on the pleas *inter alia* that the petitioner was granted commission on 16.12.1967 in the Corps of Signals of the Army and was put in the rank of Second Lieutenant and thereafter promoted to the rank of Lieutenant and then to the rank of Captain. He while holding the rank of Major, was tried by General Court Martial in the year 1979. The General Court Martial awarded the sentence of loss of seniority for two years coupled with severe reprimand. The verdict of the General Court Martial has been challenged in the present writ petition. In addition to the above, further case of the petitioner is that promotion up to the rank of Major is Time Scale promotion and is granted after completion of particular years of service irrespective of merit. The petitioner having completed the requisite period in the rank of Major, is entitled to be promoted to the rank of Lieutenant Colonel (Time Scale).

By means of the present petition, the petitioner has prayed for the following two main reliefs:-

“(a) issue a writ, order or direction commanding the respondents to promote the petitioner to the rank of Lt Colonel(Time-Scale) on completion of 21 years of reckonable service wef December 1990.

(b) issue a writ, order or direction quashing the proceedings of the court martial held, finding and the sentence awarded thereby and the confirmation/promulgation thereof, the same being illegal and without jurisdiction;”

The other reliefs being peripheral need no mention.

On notice, the respondents have filed a detailed written statement on the pleas *inter alia* that the writ petition is not maintainable on the ground of laches as the order of General Court Martial proceedings was passed on 16.8.1979 whereas the present writ petition has been filed in the year 1991. That the petitioner has not availed the alternate remedy available under Section 27 of the Army Act. On merits, it is pleaded that the petitioner is not entitled for promotion to the rank of Lt Colonel either by selection or by time scale. Even for promotion to Lt Colonel in Time Scale, certain criteria is required to be fulfilled, which the petitioner lacks. A copy of the criteria and guidelines for grant of substantive rank of Lt Colonel (Time Scale) has been annexed as Annexure R-1 to the written statement. The case of the petitioner for promotion was considered and he was not found suitable and was rejected. The proceedings of Court Martial have been sought to be justified and the contrary allegations have been denied.

Heard Mr Surinder Sheoran, Advocate, learned counsel for the petitioner and Mr Gurpreet Singh, Sr.P.C learned counsel for the respondents.

At the very out-set, it may be placed on record that the relief (b) for quashing the proceedings of the court martial held, finding and sentence awarded thereby and confirmation/promulgation thereof, has not been pressed. The learned counsel for the petitioner submits that he does not want to press relief (b) and has confined his arguments with regard to relief (a) i.e. for promotion of the petitioner to the rank of Lt Colonel(Time Scale) on completion of 21 years of reckonable service with effect from December, 1990.

The learned counsel for the petitioner submits that the petitioner has been illegally denied the promotion to the rank of Lt Colonel as the petitioner has completed the requisite number of years of service i.e. 21 years of service for promotion to the rank of Lt Colonel. Elaborating the argument, he submitted that the respondents wrongly took into consideration the punishment awarded by the Court Martial in refusing to grant the promotion to the rank of Lt Colonel. The submission is that the said incident had taken place long ago and even if two years service is not taken into account in terms of sentence awarded even then the petitioner is entitled for promotion to the rank of Lt Colonel(TS).

In reply, the learned counsel for the respondents has placed reliance upon the promotion policy. He submits that the length of service is not the sole criteria for promotion to the rank of Lt Colonel. In addition to requisite number of years of length of service in the rank

of Major, an officer is required to fulfil the other criteria laid down in the promotion policy, even in Time Scale.

Considered the respective submissions of the learned counsel for the parties and perused the record. It is not in dispute that court martial proceedings were held against the petitioner, wherein he was punished. In order to appreciate the impact of said court martial proceedings on the right of the petitioner for promotion to the rank of Lt Colonel(Time Scale), it would be appropriate to have the charge-sheet and the sentence passed by the court martial. Annexure P-1 is the copy of the charge-sheet. The charge is of serious nature. The petitioner was charged being an officer behaving in a manner unbecoming his position and the character expected of him. He was charged with regard to an incidence which took place on 10.2.79, while answering 'Military History' paper in the promotion examination Part-D was in improper possession of a manuscript answer book for the purpose of using the same to answer the said paper. The said charge has been found to be proved by the court martial. The following sentence was awarded :-

“Sentence”

The court sentence accused IC-19316F Captain

(A/Major) Ram Kishan, 166 Signal Regiment:-

(a) To forfeit two years service for the purpose
of promotion, and

(b) To be severely reprimanded.”

Noticeably the said sentence was passed on 16th day of August, 1979 but the petitioner at no point of time, earlier to the present writ

petition filed in the year 1991, could dare to challenge the sentence awarded to him. For the first time, the quashing of the aforesaid sentence and the court martial proceedings was sought for, through the writ petition. However, as noticed herein before, the learned counsel for the petitioner stated that he is not seeking any writ, order or direction for quashing the proceedings of court martial held. Meaning thereby, the verdict given by the Court Martial, sentenced the petitioner to forfeit two years service for the purpose of promotion and severe reprimand, is an accepted fact and it has attained finality. In this background of the facts, the question which arises is whether the denial of promotion to the rank of Lt Colonel (Time Scale) to the petitioner is justified or not?

At this juncture, it is apt to examine the scheme for promotion in Time Scale. We were taken through the 'Criteria and Guidelines for grant of substantive rank of Lt Colonel(Time Scale)'. The emphasis was laid by the learned counsel for the respondents on its Clause 4 which relates to disciplinary criteria. According to him, the petitioner does not fulfil the said criteria and that is the reason, he is not entitled for promotion to the rank of Lt Colonel(Time Scale). For the sake of convenience, the said clause 4 of the Promotion Policy is reproduced below :-

“Discipline

- (a) The gravity and nature of the offence will be examined and promotion will not be recommended if the disciplinary case involved moral turpitude, gross negligence, acts of cowardice or un-officer like behaviour.
- (b) The service level at which the offence was committed will be kept in view.

- (c) Where an officer has been a subject of disciplinary case on more than one occasion, his record will be carefully examined to ensure that he has not aided into a tendency toward indiscipline and apathy to profession.”

Before proceeding further, we may also take note of one fact which is even admitted to the petitioner, in para 3 of the writ petition as also submitted by the counsel for the parties, promotion upto the rank of Major is Time Scale promotion and granted after completion of particulars years of service irrespective of merit. The policy of promotion so far as up to the rank of Major is concerned on Time Scale basis finds mention in paragraph 3 of the writ petition itself. Meaning thereby, the petitioner like other Army officials, was promoted to the rank of Major irrespective of merit, on completion of requisite number of years of service in a particular rank. For the first time, for promotion to the rank of Lt Colonel, the promotion policy which is applicable to Time Scale promotion also, provides, principle of criteria which are required to be fulfilled by an officer. To put it simply, promotion from the rank of Major to Lt Colonel even in Time Scale, is not solely depend upon the length of service in the rank of Major. In addition, on completion of 21 years of reckonable condition of service, an officer is required to fulfil the following conditions as is envisaged under the said policy :-

“2. Personal Qualities:

- (a) The officer should not have obtained less than average marks more than twice in any of the following personal qualities in last six ACRs/ICRs:-

- (i) Dependability
- (ii) Integrity
- (iii) Loyalty
- (iv) Decisiveness

(b) The officer should not have been adversely commended more than once in last six ACRs/ICRs in any one of the traits such as financial management, drinking habits and personal morale

(c) Reports earned during operations will be specially taken note of.

3. Professional/Demonstrated, Competence

(a) An officer should have earned atleast two ACRs in the substantive rank of Major. In case, he has not earned two ACRs in the rank of Major, his case will be deferred and will be considered on receipt of next ACR/ICR. Major who qualify on promotion Exam Part 'D' in their 19th/20th year of service will be considered on receipt of two ACRs after grant of substantive rank of Major. In the case of such officers the concept of cut-off ACR on completion of 21 years of reckonable service will not be applicable.

(b) If an officer does not earn recommendations for promotion to the rank of Lt Col(TS) from majority of reporting officers in the last two ACRs/ICRs, he will be rejected.

(4) Discipline:

(a) The gravity and nature of the offence will be examined and promotion will not be recommended if the disciplinary case involved moral turpitude, gross negligence, acts of cowardice or un-officer like behaviour.

(b) The service level at which the offence was committed will be kept in view.

(c)Where an officer has been a subject of disciplinary case on more than one occasion, his record will be carefully examined to ensure that he has not aided into a tendency toward indiscipline and apathy to profession.”

Medical Classification:

5. The following medical classifications are acceptable for grant of substantive rank of Lt Col by Time Scale.

(a) SHAPt-1 or S1H1A1P2E1 (P2 dental only) or S1H2A1P1E1 or S1H1A1P1E2 or S1H2A1P1E2

(b)S1H1A2P1E1 or S1H1A1P2E1 or S1H2A2P1E1 S1H1A1P2E2 or S1H1A2P1E2 or S1H2A2P1E1

© S2H1A1P1D1 or S1H3A1P1E1 or S1H1A3P1E1

Or S1H1A1P3E1 or S1H1A1P1E3 provided they have earned consistently High Average ACRs.

(d)War wounded officers placed in low medical classification will not be precluded for such promotion provided ‘S’ factor is not below ‘S2’ and they have good record of service.

6. Officers placed in Temporary Low Medical Classification

(a) an officer in temporary low medical category may be considered for the rank of Lt Col (TS) on the same lines as an officer in permanent low medical classification at present. The SHAPE factors which are valid for the promotion of an officer in permanent classification should be applicable here also, subject to the condition stipulated in sub-para ‘b’ (iv) below.

(b) The officer is placed in temporary low medical classifications will be screened by a Board of Officers composed as under for purpose of grant substantive rank of Lt Col (TS):-

(i) Chairman – Dy MS(SB&C) – Brig

- (ii) Members – One Officer(Col/Brig)
each from Medical &
Surgical/disciplines of AMC.
- (iii) Secretary – Col MS (C&SR)
- (iv) Cases, wherein due to the nature of
ailment stabilisation of temporary medical
classification considered necessary by the
Board, will be graded ‘withdrawn’.

Rules regarding Substantive Promotion by Time Scale.

7. Officers who are granted the rank of Lt Col(TS) but have not been finally superseded for promotion to the acting rank of Lt Col by selection will continue to remain eligible for promotion to the rank of acting Lt Col by selection even after the grant of substantive rank of Lt Col(TS).

8. Majors granted the rank of Lt Col (TS), after completion of 21 years reckonable commissioned service, on final supersession for promotion to the acting rank of Lt Col by selection will continue to be governed by the terms and conditions as applicable to Lt Col(TS) held against the authorisations of Majors.

9. Officers in the rank of Lt Col (TS) on promotion to the acting rank of Lt Col by selection, will be governed by terms and conditions as applicable to Lt Cols by selection. Such officers will hold substantive rank of Lt Col (TS) against the authorisation of Lt Cols. Their inter-seniority in the rank of Lt Col (TS) held against the authorisation of Lt Col will be determined in accordance with the sequence of selection in which

they had been approved to the rank of acting Lt Col.

10. An officer, already holding the appointment of Lt Col by virtue of having been selected for and granted that rank in an acting capacity before completion of 21 years reckonable commissioned service, may also be made substantive Lt Col (TS) under the rules on completion of 21 years reckonable commissioned service till he is granted the substantive rank of Lt Col (Selection). Such an officer will continue to be held against the authorised appointment of Lt Col. However, if such an officer is not granted the substantive rank of Lt Col by selection subsequently, his inter-seniority in the rank of Lt Col will be determined in accordance with the sequence of selection in which he had been selected to the rank of acting Lt Col.

11. Grant of substantive rank of Lt Col (TS) to officers holding ranks of A/Lt Col is normally considered under the following conditions :-

(a) In case the officer has been denied substantive rank of Lt Col by selection.

(b) The officer is in unacceptable medical classification for grant of substantive rank of Lt Col by selection but is eligible for time scale rank of Lt Col.

12. An Officer who has not been placed in acceptable grade for Time Scale rank of Lt Col, will not be given further looks for consideration of his case for promotion to this rank.”

We have already reproduced Para 4 of the Promotion Policy which relates to discipline. It says that the gravity and nature of the offence will be examined and promotion will not be recommended if the disciplinary case involved moral turpitude, gross negligence, acts of cowardice or un-officer like behaviour.

Section 45 of the Army Act 1950 defines unbecoming conduct of any officer, junior commissioned officer or warrant officer. It says that who behaves in a manner unbecoming his position and the character expected of him. Certain forms of disgraceful conduct are mentioned in Section 46 of the Army Act. It reads as follows :-

“46. Certain forms of disgraceful conduct. – Any person subject to this Act who commits any of the following offences, that is to say, -

(a) is guilty of any disgraceful conduct of a cruel, indecent or unnatural kind; or

(b) malingers, or feigns, or produces disease or infirmity in himself, or intentionally delays his cure or aggravates his disease of infirmity; or

(c) with intent to render himself or any other person unfit for service, voluntarily causes hurt to himself or that person,

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.”

Coming to the facts of the case, the petitioner was found using unfair means in the departmental examination and he was charge-sheeted and has been punished also. The fact that the petitioner adopted unfair means in the promotion examination is beyond pale of

any doubt. There is no challenge to this part of the case. The petitioner appeared in the said departmental examination while holding the rank of Captain(A/Major). It is not expected from an Army personnel holding the rank of Captain or of acting Major to adopt unfair means in the examination held for promotion. Such an act is disgraceful and indecent conduct what to say Army Captain even to a civil servant. A high degree of character is expected from a commissioned officer. It is also useful to take into account Regulation 66 of the Regulations for the Army which is reproduced below :-

“66. Substantive Promotion by Time Scale to the Rank of Lt Col. – (a) All officers (other than Military Nursing Service, Army Medical Corps, Army Medical Corps (Non-Tech), Army Dental Corps, Remounts and Veterinary Corps, Military Farms and Special List) :-

- (i) Substantive promotion, to the rank of Lt Col, of officers not promoted by selection against the authorised establishment of Lt Cols. may be made, **subject to their being considered fit in all respects**, by time scale on completion of 21 years reckonable commissioned service but not more than 26 years reckonable commissioned service provided they have not become due for retirement on the basis of the age of superannuation prescribed for the rank of time scale Lt Col. Officers so promoted will not be reckoned against the authorised establishment of Lt Cols but will be held in a separate ‘non-selection’ list. The number of officers held on the ‘non-selection’ list will

count against the authorised establishment of officers in the rank of Major.

- (ii) An officer already holding the appointment of a Lt Col. by virtue of having been selected for and granted that rank in an acting capacity, before completion of 21 years reckonable commissioned service may also be made substantive under this rule on completion of 21 years reckonable commissioned service. However, such an officer will continue to be held against the authorised appointment of a Lt Col.

(b) Military Nursing Service. – Substantive promotion to the rank of Lt Col. of officers not promoted by selection against the authorised establishment of Lt Cols. may be made, subject to their being considered fit in all respects, by time-scale, on completion of 21 years' reckonable commissioned service provided they have not become due for retirement on the basis of the age of superannuation prescribed for the rank of time scale Lt Col. Officers so promoted will not be reckoned against the authorised establishment of Lt Cols. but will be held in a separate non-selection list. The number of officers held on this non-selection list will count against the authorised establishment of officers in the rank of Major.

- (c) Army Medical Corps. – An officer of AMC is eligible for promotion to the substantive rank of Lt Col on completion of 14 years reckonable service or on completion of 14 years from the date of eligibility for permanent medical registration, whichever is later.

(d) Army Medical Corps (Non-Technical).-

Substantive promotion to the rank of Lt Col of officers not promoted by selection against the authorised establishment of Lt Cols may be made, subject to their being considered fit in all respects, by time scale on completion of 21 years reckonable commissioned service, provided they have not attained the age of compulsory retirement. Officers so promoted will not be reckoned against the authorised establishment of Lt Cols, but will be held in a separate 'non-selection' list, except that an officer selected to act as Lt Col before completing 21 years service and made substantive under this rule on completing 21 years service, will be held against the authorised Lt Col's appointment. The number of officers held on the non-selection list will count against the authorised establishment of officers in the rank of Major and below.

(e) Army Dental Corps. – Substantive promotion to the rank of Lt Col will be granted after completion of 16 years of reckonable commissioned service provided that the officer is recommended for such promotion.

(f) Remount and Veterinary Corps.- (i) Remount Officers.

(aa) Substantive promotion to the rank of Lt Col will be made by selection to fill vacancies in the substantive cadre and subject to the officer having to his credit a minimum of 18-1/2 years reckonable commissioned service and being fit in all respects.

(ab) Officers not selected for promotion under (aa) above may be promoted to the substantive rank of Lt Col by time scale, subject to their being considered fit in all respects, on completion of 24 years reckonable commissioned service provided they have not attained the age of compulsory retirement. Officers so promoted will not be reckoned against the authorised establishment of Lt Cols. but will be held in a separate non-selection list except that an officer selected to act as Lt Col before completing 24 years service and made substantive under this rule on completion of 24 years service will be held against an authorised Lt Col's appointment. The number of officers held on the non-selection list will count against the authorised establishment in the ranks of Major and below.

(ii) Veterinary Officers (Veterinary Graduates)

To Lt Col

18 years

(g) Military Farms. – Substantive promotion to the rank of Lt Col of officers not promoted by selection against the authorised establishment of Lt Cols may be made, subject to their being considered fit in all respects, by time-scale, on completion of 24 years reckonable commissioned service provided they have not attained the age of compulsory retirement. Officers so promoted will not be reckoned against the authorised establishment of Lt Cols but will be held in a separate 'non-selection' list except that an officer selected to act as Lt Col

before completing 24 years service and made substantive under the rules on completing 24 years' service, will be held against an authorised Lt Col's appointment. The number of officers held on the 'non-selection' list will count against the authorised establishment of officers in the rank of Major and below.

(h) Special List Officers. – Substantive promotion to the rank of Lt Col. of officers not promoted by selection against the authorised establishment of Lt Cols. may be made, subject to their being considered fit in all respects, by time scale on completion of 21 years reckonable commissioned service but not more than 26 years reckonable commissioned service provided they have not become due for retirement on the basis of the age of superannuation prescribed for the rank of time scale Lt Col. Officers so promoted will not be reckoned against the authorised establishment of Lt Cols, but will be held in a separate 'non-selection' list. The number of officers held on the 'non-selection' list will count against the authorised establishment of officers in the rank of Major.”

The above quoted regulation is complete reply to the arguments of the petitioner that the only criteria for promotion to the rank of Lt Colonel by Time Scale is completion of 21 years reckonable commissioned service. It, besides other things also provides that the promotion shall be subject to officer being considered fit in all

respects. Meaning thereby, the expression 'fit in all respects' will include that the conduct of the officer concerned should not be as that of unbecoming conduct of the officer in past. The rank of Lt Colonel is of very high degree and status and only such person whose conduct has been spotless, will be considered fit in all respects for the grant of promotion to the rank of Lt Colonel. It cannot be said that the career of the petitioner as an Army officer was unblemished. Having regard to what has been said above, the contention of the petitioner that he should be promoted to the rank of Lt Colonel only on the ground of completion of 21 years reckonable commissioned service is untenable.

Before parting with the case, we may note down the two judgments – Brij Mohan Singh Chopra Vs. State of Punjab, AIR 1987 SC 948 and Baidyanath Mahapatra Vs State of Orissa and another, AIR 1989 SC 2218 relied by the petitioner's counsel. None of these cases have any application and are distinguishable on facts and law. In Brij Mohan Singh Chopra(Supra), the Apex Court was considering the case of civil Government employee who was compulsorily retired. In that connection, it was held that adverse entries prior to promotion cannot be taken into consideration. The observation made by the Apex Court should be read and understood in the light of those statutory provisions which were before it therein. Suffice it to say that the Apex Court was not examining the promotion policy with regard to Army officer. For the same reasoning, the decision in the case of Baidyanath Mahapatra (Supra), is not at all attracted on the facts of the present case and is distinguishable.

On the basis of the regulations for the Army and the Promotion Policy itself, we do not find any error in not giving the rank of Lt Colonel(TS) to the petitioner. There is no merit in the writ petition. The writ petition is dismissed. No order as to costs.

(Justice Prakash Krishna)

(Air Marshal (Retd) SC Mukul)

21.02.2014

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Whether the judgment for reference to be put up on website – Yes/No