

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

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OA 1334 of 2012

Col Chander Ballabh Sharma,	Petitioner(s)
VrC,SM		
Vs		
Union of India and others	Respondent(s)

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For the Petitioner (s) : Mr.M.S.Khaira, Sr. Advocate, for
Mrs Sunita Sharma, Advocate

For the Respondent(s) : Mr. SK Sharma, Sr. PC.

Coram: Justice Prakash Krishna, Judicial Member.
Air Marshal (Retd) SC Mukul, Administrative Member.

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ORDER
27.01.2014

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1. The petitioner by this petition prays for the following reliefs:

(a) To set aside Order dated 3.12.2011 passed by GoI MoD, dismissing statutory complaint of applicant.

(b) Issue an appropriate order quashing para 9 of Annexure A-9 of promotion policy dated 04.01.2011 which states that gallantry award will be given weightage for two Selection Boards after the award.

(c) To quash and set aside promotion policy dated 04.01.2011 as arbitrary and discriminatory.

(d) To direct respondents to grant weightage for gallantry awards Sena Medal and Vir Chakra and consider the applicant afresh for promotion to Brigadier (No.2 Selection Board) and for subsequent selection boards.

(e) In the alternative to direct that promotion policy dated 31.12.2008 as revised and superseded by promotion policy dated 04.01.2011 is prospective in nature and cannot be made applicable to applicant retrospectively.

2. The facts of the case are that the petitioner was commissioned in the Indian Army on 18th June, 1983. On 26th January,

1986, the President of India was pleased to award Sena Medal (Gallantry) to the petitioner for act of exceptional devotion to duty and courage. Further the petitioner was awarded Vir Chakra on 26th January, 1991 for conduct during IPKF Operation. The petitioner was promoted as Lt Colonel in May 1999 after being cleared by No.4 Selection Board. The petitioner was considered for the rank of Colonel by No.3 Selection Board in Jul –Aug 2001 and was cleared for the next rank on 21st August, 2002. The petitioner was promoted to the rank of Col on 21 Aug 2002 and assumed Command of 13 SIKH LI. The Unit at that time was located in Bikaner, Rajasthan. Performance of the applicant as Commanding Officer has been duly reflected in the ACRs and the petitioner was considered by No.2 Selection Board for promotion to the rank of Brig as per the details given below:-

TYPE OF CONSIDERATION	Date of No.2 SB	Result
Fresh Case-1983 Batch	October 2009	Not approved
Special Review (Fresh Case-183 Batch	Sep 2010	Not approved
First Review -1983 Batch	April 2011	Not approved
First Review- 1983 Batch	Jul 2011	Not approved.

3. Aggrieved the petitioner filed non statutory complaint dated 16th March, 2010 as well as a statutory complaint dated 18th March, 2011 against non-empanelment. This was duly considered by the Central Government and rejected vide order dated 13 Dec 2011 as it lacked merit. The petitioner was considered by the No.2 Selection Board as per his entitlement and in accordance with the policy applicable uniformly and across the board. In fair considerations given thrice by the No.2 Selection Board, he was not found fit for empanelment by the Selection Board on account of comparative merit and limited number of vacancies based on policy on “Conduct of Selection Boards by Quantification System” adopted vide policy letter dated 31 Dec 2008.

4. As per the averments of the petitioner he was commissioned in 13th Sikh LI on 18 Jun 1983 and has put in 27 years of service out which 60 -65% has been in the field / intense counter insurgency / line of control / war like situation. That he has an unblemished record and an outstanding career. On 26th January, 1986, the President of India was pleased to award Sena Medal (Gallantry) to the petitioner for act of exceptional devotion to duty and courage. Further the petitioner was awarded Vir Chakra on 26th January, 1991 for conduct during IPKF Operation. The petitioner was promoted as Lt Colonel in May 1999 after being cleared by No.4 Selection Board. The petitioner was considered for the rank of Colonel by No.3 Selection Board in Jul –Aug 2001 and was cleared for the next rank on 21st August, 2002. The petitioner was promoted to the rank of Col on 21

Aug 2002 and assumed Command of 13 SIKH LI. The Unit at that time was located in Bikaner, Rajasthan. Petitioner was considered by No.2 Selection Board for promotion to the rank of Brig and was not empanelled. Aggrieved the petitioner filed non statutory complaint dated 16th March, 2010 as well as a statutory complaint dated 18th March, 2011 against non-empanelment. This was duly considered by the Central Government and rejected vide order dated 13 Dec 2011 as it lacked merit. The applicant is filing the present OA challenging the order dated 13.12.2011 passed by the Central Govt dismissing his statutory complaint.

5. In the written reply the respondents bring out that the applicant was commissioned in Army on 18 Jun 1983 in 13 SIKH Light Infantry and was awarded Sena Medal (Gallantry) on 26 Jan 1986 in the rank of 2 Lt and Vir Chakra in the rank of Capt on 26 Jan 1991 for his devotion to duty and acts of gallantry. It is denied that the petitioner has 60%-65% of his service in field / counter Insurgency/Operational Areas. The petitioner was empanelled for the rank of Lt Col on the basis of his overall profile and comparative batch merit. The petitioner was promoted to the rank of Col on 21 Aug 2002 and assumed Command of 13 SIKH LI. The Unit at that time was located in Bikaner, Rajasthan. Performance of the applicant as Commanding Officer has been duly reflected in the ACRs and the petitioner was considered by No.2 Selection Board for promotion to the rank of Brig and was not empanelled. The cause of action, if any arose on 01 Jan 2009. The application is, therefore barred by limitation. Further the Policy dated 4th Jan 2011 on quantified Selection System does not supersede the policy letter dated 06th May, 1987. The policy letter dated 06 May 1987 is a detailed policy letter covering various aspects of Selection System. The quantification policy letter has quantified the parameters of selection to the extent possible.

6. In the replication the petitioner relied upon the judgments of the Hon'ble Supreme Court in **F.S.Gandhi v. CWT 1990(3) SCC 624** and **Harbhajan Singh v. Press Council of India and others 2002 (2) SCC 722**.

7. Heard the learned counsel for the parties and gone through the record of the case and also the record produced by the officers from MS Branch.

8. The learned counsel for the petitioner during the hearing reiterated the stand taken in his OA emphasising that quantification system of conduct of Selection Board has been adopted w.e.f. 1.1.2009. Earlier there was no defined weightage for gallantry awards. Officers were value judged for their performance preamble of the policy in

categorical terms stated that policy is being adopted w.e.f. 1.1.2009 and further para 7 states gallantry awards will be given weightage for two SB's after the award. Therefore, the Policy has not been interpreted in its true perspective. The consideration has to be in the context of the new policy with no reference to the earlier policy as such the Selection Board No.4 which existed prior to AV Committee report has been abolished. Therefore, as per the new policy the board which has been abolished cannot be considered for any purpose whatsoever. The petitioner was considered by now existing policy only once and the present board is 2nd one and as such even under the new policy weightage has to be given while quantifying the merit of the applicant. It cannot be said for denying the weightage of gallantry awards applicant would be considered for No.2 Selection Board under the old policy and for all other purposes new policy would be applied.

9. The learned counsel for the respondents in his arguments, after detailed arguments as per his written reply, relied upon the judgment of the Hon'ble Supreme Court in **Hardev Singh v. Union of India and others (2011) 10 Supreme Court Cases 121.**

10. It is not in dispute that petitioner was commissioned in the Indian Army on 18th June, 1983 and awarded Sena Medal (Gallantry) for act of exceptional devotion to duty and courage and subsequently awarded Vir Chakra for conduct during IPKF Operation. The petitioner was promoted as Lt Colonel in May 1999 and Col on 21 Aug 2002. The petitioner was considered by No.2 Selection Board for promotion to the rank of Brig as per the details given below:-

TYPE OF CONSIDERATION	Date of No.2 SB	Result
Fresh Case-1983 Batch	October 2009	Not approved
Special Review (Fresh Case-183 Batch	Sep 2010	Not approved
First Review -1983 Batch	April 2011	Not approved
First Review- 1983 Batch	Jul 2011	Not approved.

11. The petitioner has been considered by No.2 Selection Board held during Sep 2010, April 2011 and Sep 2011 as Special Review (Fresh), First Review and Final Review case of 1983 Batch. He has not been empanelled. The statutory complaint dated 13 Dec 2011 against non-empanelment was considered and rejected vide order dated 13 Dec 2011. On scrutiny of the record submitted by the MS Branch brings out before the Tribunal, it emerged that the course profile of the petitioner ranges from Average ('C' grading) to High Average ('B' Grading)/ The petitioner has not done any competitive courses eg Staff College, or merit based courses i.e. HC/HDMC etc. The performance of the applicant has been duly reflected in the Confidential Reports and the applicant has 'Above Average' profile. It is submitted that

gallantry awards of Sena Medal and Vir Chakra formed part of profile of the applicant placed before the Selection Board. The petitioner was considered by the No.2 Selection Board as per his entitlement and in accordance with the policy applicable uniformly and across the board and was not found fit for empanelment by the Selection Board on account of comparative merit and limited number of vacancies.

12. We find that the gallant acts of the petitioner during 1984 and 1991 in the ranks of 2nd Lt and Capt respectively resulting in awards of 'Sena Medal' and Vir Chakra' were given weightage while considering him for promotion to the rank of Lt Col and Col under value judgment system of selection. While adopting the Quantified System of Selection with effect from 01 Jan 2009, quantified weightage for gallantry awards has been restricted to two Selection Boards after the award, which the petitioner has already been given. The awards given in distant past cannot be considered forever, more so, when the promotion is based strictly on merit. In this regard the judgment of the Hon'ble Supreme Court in **Hardev Singh v. Union of India and others (2011) 10 Supreme Court Cases 121** at paras 12, 13 & 22 are relevant and it reads as under :

12. It was observed that so far as Kirti Chakra is concerned, it was submitted that the appellant was awarded Kirti Chakra in 1985 when he was working in the rank of Major. The said fact cannot be considered forever. While giving promotion to the higher ranks, the foretasted fact was duly considered by the Selection Board earlier. The said fact was considered while considering the appellant's case for giving him four promotions i.e. up to Major-General. The award/honour cannot be considered forever as per normal promotion policy. As per the new policy, marks for awards are allotted only for two times after receipt of the award/honour. In the circumstances, in the case of the appellant, award of Kirti Chakra had rightly not been considered by the SSB when it had convened its meeting in January 2009.

13. The case of the appellant was considered twice by the SSB along with other officers of 1973 batch. His case was considered when the SSB convened its meeting on 9.1.2009 and his case was again considered by way of a second chance, by the SSB in December 2009 but the appellant was not empanelled for promotion on both the occasions for the reasons that there were many other more meritorious officers and, therefore, the appellant could not be promoted to the rank of Lieutenant-General."

22. "We also find substance in the policy that if a person has performed his duty excellently a particular stage in his career, then that performance of excellence cannot be considered for the entire life. When an officer has to get his promotion strictly on merits, his performance should be commendable throughout and especially during the last few years. The case of the appellant was considered in 2009 for his promotion to the rank of Lieutenant-General and, therefore, the achievements of the appellant in 1985 could not have been ordinarily considered by the SSB. In the circumstances, the submissions relating to not considering Kirti Chakra award would not help the appellant."

13. The only argument of the petitioner is that benefit of awards be given to petitioner under the new policy, if accepted, would be against the above quoted decision of the Hon'ble Apex Court. Having availed the advantages attached to awards on two promotions granted earlier, the No.2 Selection Board for promotion to the rank of

Brig was rightly not obliged to award any additional marks for the awards.

14. A look at the policy dated 4th Jan 2011 on quantified Selection System brings out that it does not supersede the policy letter dated 06th May, 1987. The policy letter dated 06 May 1987 is a detailed policy letter covering various aspects of Selection System. The quantification policy letter has quantified the parameters of selection to the extent possible.

15. The petition is devoid of merit and is dismissed. Parties to bear their own costs

(Justice Prakash Krishna)

(Air Marshal (Retd) SC Mukul)

27.01.2014

raghav

Whether the judgment for reference is to be put on internet? Yes