

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A.No.04 of 2013

Friday, the 16th day of August, 2013

THE HONOURABLE JUSTICE V.PERIYA KARUPPIAH
(MEMBER-JUDICIAL)

AND

THE HONOURABLE LT GEN (RETD) ANAND MOHAN VERMA
(MEMBER-ADMINISTRATIVE)

Brig V.Jai Kumar (Retd)
(IC-31644F)
19, Sylan Greens
Yapral, Secunderabad- 500087

... Applicant

By Legal Practitioner:
M/s. V.Vijay Shankar &
N.Balamuralikrishnan

vs.

1. The Secretary to Government of India
Ministry of Defence
South Block, DHQ PO
New Delhi-110 011.

2. The Military Secretary
Military Secretary's Branch/MS (X)
Integrated HQ of MOD Army
DHQ PO, New Delhi-110 011.

... Respondents

By Mr. B.Shanthakumar, SPC

ORDER

(Order of the Tribunal made by
Hon'ble Lt Gen (Retd) Anand Mohan Verma
(Member-Administrative)

1. Petitioner seeks relief to quash respondents' letters No.A/47063/R/1SB/SIGNS/MS(X), dated 27th July 2010, even No. dated 4th January 2011 vide which the petitioner was informed he had not been selected for promotion and even No. dated 10th August 2011 vide which he was informed his case had been 'Withdrawn' , No. A/45501/107/2010/SC/MS(X)/276/SE/2010-D(MS), dated 15th March 2011, vide which his Statutory Complaint against non-empanelment was rejected and No. A/45501/107/2010/SC/MS(X), dated 31st March 2011 vide which request for a waiver of CR gap was rejected, and consequently direct the respondents to promote the petitioner to the rank of Major General at par with his batch mates with all attendant benefits and pass such other order or orders as may be deemed fit.

2. The facts of the case are that the petitioner was considered for promotion by No.1 Selection Board in October 2010 and was not empanelled. He was considered by two subsequent Selection Boards, as review case and in both instances, his name was withdrawn as

there was a gap in his CR. The petitioner retired on 31st July 2011 from service.

3. The petitioner would through his application, arguments and pleadings of his learned counsel Mr. Vijay Shankar and written submissions would submit that he was commissioned on 13th June 1976 and rose to the rank of Brigadier. He would claim that he had an exemplary record of service and held varied regimental, extra-regimental, instructional, staff and command tenures and was totally devoted to his profession and was regarded highly by his superiors, peers and subordinates. He has been consistently graded Above Average or Outstanding in all his reports and there has not been any blemish or negative comment on his performance. Given his dedication and demonstrated performance, the petitioner expected to be promoted to the rank of Major General, but was not so promoted due to the errors of omission and commission on the part of the MS Branch and failure of the Government of India, Ministry of Defence to grant him relief on his complaint. His Statutory Complaint was rejected and his name was withdrawn from the Selection Board in two subsequent reviews. He was considered for promotion in May 2010, but was not empanelled by the Selection Board due to a new selection policy adopted by the respondents. The petitioner would submit that

the quantification method of selection adopted in 2009 drastically changed the order of merit. He would give an illustration of the changes in the order of merit by providing a summary table of marks awarded due to the new Policy applicable with effect from January 2011 and as per the 2009 Policy which he would claim shows that his order of merit gets adversely impacted due to the latest policy in which two marks have been awarded for DSSC and only half mark for M.Tech. The earlier policy did not specifically award any marks for such courses. Since the difference in aggregate CR scores works out to decimal point, a difference of 1.5 marks turned the table in favour of officers who have attended DSSC. The petitioner's Statutory Complaint against this policy high-lighted that the MS branch did not exercise diligence in implementing the policy which affects the entire cadre of officers. In the Statutory Complaint, the petitioner had brought out that the policy of quantified method of selection adopted in January 2009 had not been pre-tested on readily available historical data. He would claim that the policy underwent a change consequent to a study. In the revised policy, the essential heart of the quantification model was totally changed. In the 2009 policy, there was a single table of only six rows whereas in the 2011 policy, there are eight tables and two appendices and award for marks on courses have been linked to actual grade therein unlike the award of full marks

irrespective of grades in the 2009. Quantification method of selection for promotion policy led to an abnormally high reduction in rank of brilliant M.Tech qualified officers which made the top decision-makers of the Army realise that a monumental mistake had been made and review was ordered. The new policy was implemented in January 2011 and the petitioner's Complaint was rejected in March 2011. Therefore, the respondents' contention that no injustice is done is incorrect. The injustice has been further compounded by MS Branch by blocking his consideration for promotion by Selection Boards in October 2010 and April 2011 in which he was Withdrawn due to a gap in CR which was caused due to lack of a report from Major General S.K. Bharadwaj who was the Initiating Officer(IO) of the petitioner when he was posted in National Security Guard(NSG). The petitioner was on deputation with NSG where he got an outstanding report from his first IO, Major General Abhay Gupta. On 31st July 2009, Major General S.K. Bhardwaj took over the appointment of IG (Ops) and secretly initiated proceedings to have the petitioner prematurely posted out on flimsy grounds, i.e., availing of excessive temporary duties and leave without realising that these were granted by him that is Maj Gen Bhardwaj himself. The covert reason the petitioner would claim was that the petitioner did not extend undue favour to a crony of Major General Bharadwaj. The petitioner would further state that owing to a written

complaint against him in a matter of misappropriation, Major General S.K. Bharadwaj was summarily removed and repatriated to Army on 23rd April 2010. The petitioner was reverted to the Army on 17th May 2010. The petitioner submitted a blank CR form through NSG to the IO on 10th May 2010. As per extant policy, time limit for IO to initiate report is 20 days. Since the petitioner did not receive any communication from the IO, i.e., Major General S.K. Bharadwaj, he sent reminders in July, August and September 2010. The petitioner would produce these letters to support his claim. Since the CR was not initiated and there was a gap in the CR, the petitioner applied for waiver to cover up the gap. This was refused vide MS Branch letter dated 31st March 2013 despite the facts that the gap in the CR was not due to the fault of the petitioner and waivers have been granted by the MS branch. Due to this gap in the CR profile, the petitioner was withdrawn for the second time during Selection Board considerations in April 2011 despite the fact that the petitioner had an interview with the MS. Had it not been for this gap in the CR, the petitioner could have served for two more years in the rank of Major General. Insistence on the CR from the IO by respondents appears to be on a flimsy ground. The fault was with the IO and even if the CR was lost, he could have initiated a CR on his own as per policy. The MS Branch gave no instruction to the IO to this effect. The petitioner would claim

that Lt Col Vishal Dubey was granted a waiver of CR under similar circumstances. In the light of the above pleadings, the petitioner would request that he be granted relief sought for.

4. The respondents in their reply-statement and arguments and pleadings by Col MS (Legal) Col Nawal Ohri would state that the Army has a pyrimidical structure and number of vacancies in the higher ranks is limited. All officers of a particular batch are considered for promotion with a cut-off ACR and while considering an officer for promotion, the Selection Board takes into consideration a number of factors such as war/operational reports Course reports, ACR performance in command, honours and awards and so on. It is up to the Selection Board to assess the suitability of the petitioner for promotion. The assessment of the Selection Board is recommendatory in nature and not binding until approved by the Central Government or COAS, as the case may be. The respondents would submit that it has been held by the Hon'ble Supreme Court that the Courts should not substitute the findings of the Selection Board by its own judgments and citing the following judgments of Supreme Court:

(a) Union of India vs. Lt Gen RS Kadyan, (2000 AIR SCW 2692);

(b) Maj Gen IPS Dewan vs. UOI and Ors.(JT 1995 (II), Part 15, SC 654);

(c) AVM S L Chabbra, VSM vs. UOI, (JT 1989 (4) 487);

(d) Dalpat Appa Sahib Solunke vs. BS Mahajan, (JT 1989 (4) 487;

(e) Lt Col Amrik Singh vs. UOI, (2001) 10 SCC 424;

(f) Major Surinder Shukla vs. Union of India and Others, (2008) 2 SCC 649.

The respondents would object to the allegations against Major General S.K. Bhardwaj as these are not substantiated as also Major General S.K. Bhardwaj has not been impleaded as a party in this case and therefore the application is bad for non-joinder of parties. Formulation of policy to be followed for promotion is in the realm of executive function of Government and the COAS and can be changed by them as held by the Supreme Court in **(2011) 10 SC 121**. The quantified system has been adopted to bring in more objectivity and transparency after wide-ranging consultations and interactions within the Army and with Central Government. A Study Group headed by Lt Gen Sushil Gupta, based on empirical analysis and various issues connected with promotion, submitted its report which was

implemented on 1st January 2009 and it was not implemented in haste as alleged by the petitioner. The report before being implemented was considered at various levels and by the Army Commanders during Army Commanders' Conference over a period of two years and finally this policy was approved by the Central Government. For further refinement of this Policy, a Study Group headed by Lt Gen KR Rao was constituted which introduced a system to further refine the policy. While maintaining primacy of CRs., the Quantified Model allocates appropriate weightage to performance on courses and honours and awards, besides keeping aside certain marks for value judgment. The weightage for courses have been arrived at after detailed analysis and M.Tech courses have been given suitable weightage vis-à-vis DSSC. The respondents would submit that the weightage of M.Tech and DSSC reduced considerably in selection for higher ranks. The respondents would state that overall, introduction of Quantified System for Selection has substantially enhanced objectivity in the selection process and this policy adopted on 4th January 2011 will be reviewed after a period of five years. The respondents would argue that this Tribunal has no jurisdiction to adjudicate a policy matter as held by Supreme Court in **Virender Singh Hooda vs. State of Haryana (1999) 3 SCC 696** and **AVM SL Chhabra vs. Union of India & Ors. (1993) Supp (4) SCC 441**.

The respondents would state that the policy has been uniformly applied throughout the Army and as held by the Hon'ble Supreme Court in ***Hardev Singh vs. Union of India & Ors. (2011) 10 SCC 121*** it is always open to an employer to change his policy of promotion. On the issue of petitioner being withdrawn, the respondents would submit that as per policy, review cases are considered with additional CR inputs beyond CRs already considered by earlier Selection Board. Any gap in the CR or lack of additional CR leads to 'withdrawn' status and it is the responsibility of the officer to take immediate steps to cover the gaps as laid down in Paragraph 106 of AO 45/2001/MS. The petitioner was informed about the loss of blank CR form and was asked to resubmit the form. He did not contact his IO nor did he resubmit his blank CR for initiation. Instead, the applicant vide his letters dated 21st September 2010 and 1st October 2010 sought waiver of CR gap by the MS Branch. The respondents would plead that the petitioner never intended to get a CR from Major General S.K. Bhardwaj and tried his level best to seek dispensation and waiver. He cannot be absolved of his responsibility towards covering the gap in his CR. The respondents would plead that the petitioner has already retired and therefore, he is not entitled to any further consideration by a Selection Board and therefore, the application may be dismissed being devoid of merit.

6. The petitioner in his Rejoinder would state that the respondents have attempted to project that it is and not the MS Branch that selects or rejects officers. While the petitioner would state that this is technically true that the Selection Board does the selection, the MS Branch plays vital role in the selection process. On the issue of relief, the petitioner has not sought the relief that the Selection Board's results be substituted, but he has raised issues of deep flaws in the policy in which awarding excessive weight to DSSC and the revised policy which was adopted on 4th January 2011 was not a refinement but a total overhaul of the policy. Therefore, he would submit that the judgments quoted by the respondents are not relevant.

6. Having heard both sides, the following points emerge for determination:

(1) Whether or not the Quantified System for selection for promotion can be challenged ?

(2) Whether or not the Order rejecting the Statutory Complaint issued by the respondents can be set aside?

(3) Whether or not the petitioner is entitled to a waiver of his CR gap?

(4) Whether or not this Tribunal can interfere with the selection process?

7. Point No.1: In the matter of policy on promotions, we note that the Quantified System of Selection for promotion was not adopted in haste, but after long process of interactions within the Army and Central Government. Also this policy has been applied uniformly throughout the Indian Army, primacy of CRs has been maintained while quantifying performance on courses, honours, awards and so on. The respondents have produced merit list based on Selection Board proceedings of 19 May 2010 in which the petitioner was considered for promotion . The merit list is based on quantified marks and Value judgment(VJ) by members of the Selection Board. We find that the VJ marks awarded by the members largely conforms to the overall merit of each candidate and VJ marks do not alter the merit based on quantified marks. Out of nine officers considered by the Board two were found fit for promotion. The difference between marks obtained by No.2 in the merit, who had been selected, and the petitioner is over 3 and there are more candidates higher in merit compared to the petitioner and who have been found 'unfit'. The quantified system appears to be fair and has been uniformly applied and merits no

interference. We are further guided by the Hon'ble Supreme Court in judgment in **Hardev Singh vs. Union of India & Ors. (2011) 10 SCC 121** in which it was held:

" It cannot be disputed that no employee has a right to get promotion; so the appellant had no right to get promotion to the rank of Lieutenant-General but he had a right to be considered for promotion to the rank of Lieutenant-General and if as per the prevailing policy, he was eligible to be promoted to the said rank, he ought to have been considered. In the instant case, there is no dispute to the fact that the appellant's case was duly considered by the SSB for his promotion to the rank of Lieutenant-General.

The necessary exercise for collecting the data and putting it in a proper form was done in 2008 but, in fact, the said data was considered by the SSB only when it convened its meeting in January 2009, i.e., after a new policy had come into force. The cases of the appellant and others were never considered by the SSB in 2008 or prior to 1.1.2009. It means that the cases were considered as per the new policy and, therefore, all submissions made on behalf of the appellant that the policy was changed after the process of selection had been started are not correct and, therefore, they are to be discarded.

.....

25. *In our opinion, it is always open to an employer to change its policy in relation to giving promotion to the employees. This Court would normally not interfere in such policy decisions. We would like to quote the decisions of this Court in Virender S. Hooda v. State of Haryana (1999) 3 SCC 696 where this Court had held in para 4 of the judgment that;*

'4.When a policy has been declared by the State as to the manner of filling up the post and that policy is declared in terms of rules and instructions issued to the Public Service Commission from time to time and so long as these instructions are not contrary to the rules, the respondents ought to follow the same. '

26. *Similarly, in Balco Employees Union v. Union of India, it has been held that a court cannot strike down a policy decision taken by the Government merely because it feels that another policy would have been fairer or wiser or more scientific or logical. It is not within the domain of the court to weigh the pros and cons of the policy or to test the degree of its beneficial or equitable disposition. "*

It is always open to the employer to change the policy in giving promotions to his employees. In the case of **Virender S. Hooda v.**

State of Haryana (1999) 3 SCC 696, the Supreme Court held "*Policy decision is binding if not contrary to the rules*", and in **Balco Employees Union v. Union of India, (2002) 2 SCC 333**, the Supreme Court held that unless decision is contrary to any statutory provisions and Constitution, Courts cannot interfere with it. In *K. Jagadeesan vs. Union of India and Others (1990) 2 SCC 228*, the Supreme Court held:

" 3. Strong reliance was placed by the learned counsel for the appellant on the decision of this Court in T.R. Kapur v. State of Haryana where it was held that right to be considered for promotion is a condition of service. This decision is, however, of no assistance to the learned counsel in support of his argument because the bench which rendered the said decision has stated as follows: (SCC p.595, para 16)

"It is well settled that the power to frame rules to regulate the conditions of service under the proviso to Article 309 of the Constitution carries with it the power to amend or alter the rules with a retrospective effect..... It is equally well settled that any rule which affects the right of a person to be considered for promotion is a condition of service although mere chance of promotion may not be. "

It was further held that: (SCC p. 595, para 16)

"an authority competent to lay down qualifications for promotion, is also competent to change the qualifications. The rules defining qualifications and suitability for promotion are conditions of service and they can be changed retrospectively.

"

It was, however, clarified that : (SCC p, 595, para 16)

" unless it is specifically provided in the rules, the employees who are already promoted before the amendment of the rules, cannot be reverted and their promotions cannot be recalled. "

The above mentioned positions held by the Supreme Court cement the authority of an employer to frame rules governing selection process as also to amend such rules.

8. The petitioner raised the issue of allocation of marks for M.Tech vis-à-vis DSSC in the quantified system. On the issue of M.Tech qualification, the Principal Bench, Armed Forces Tribunal in the case **Lt Col Shobhit Rai vs. UOI & Ors** held in its order dated 17.10.2011 in **O.A.No.374 of 2010:**

" It is true that one prepares his service profile keeping in view exigencies of service. Sometimes changes may not be according to the expectation of the person and his hopes may

not fructify. This is what has happened in the present case. He did his M. Tech with the hope that this technical/academic excellence may give him an advantage. But to his misfortune, that was not given due weightage in the 2008 policy. The same had been given due weightage only in the policy which was brought about on 4.1.2011. Unfortunately, in July 2011 also, he could not make it. Therefore, the contention, which the petitioner has raised, is not justified. Courts have powers to strike down the policy and that too only in cases where it violates Article 14 of the Constitution of India; if it is discriminatory or arbitrary. Since criteria keeps changing from one policy to another, just because the criteria in the 1987 policy was not included in the new policy does not mean that the policy is arbitrary or discriminatory. Therefore, just because certain criteria of the 1987 policy was not reflected in the new policy of 2008, it does not mean that the policy of 2008 or 2011 is discriminatory or arbitrary, in any manner. "

The Principal Bench of Armed Forces Tribunal decided in the order dated 30.5.2011, in **O.A.No.87 of 2010** with **O.A.No.199 of 2010** (Col BB Singh and UOI & Ors.) as follows:

" It is true that rules have to be framed by the State looking into the exigency of the services. In the present case at one point of time one set of rules prevailed and

subsequently another set of rules were promulgated for promotion from the post of Colonel to Brigadier Signals. Therefore, this is the prerogative of the State and it cannot be declared to be ultra vires or invalid just because it does not suit a particular petitioner. It may be that prior to the framing of the rules of 31st December 2008 the qualification of M.Tech and study college were treated equally but subsequently it was realized that a person who has studied in staff college has greater employability and, therefore, more importance has been given to him. Subsequently in 2011 they have made it transparent on the recommendations of the Selection Committee and quantified the marks as mentioned above. Therefore, it is a matter of policy decision for the government and we do not find that the policy which has been laid down in Circular dated 31st December 2008 is in no way discriminatory so as to be violative of Articles 14 and 16 of the constitution. "

Above judgments amply establish that the employers have the requisite authority to frame rules, policies and procedures for promotion of their employees as long as no statutory provisions are infringed. Also, the employers have the authority to make suitable changes in such policy. We find no cause for interference in the promotion policy of January 2009 and revised policy adopted in

January 2011 and the same is not liable to be challenged. Point No1 is answered accordingly.

9. Point No 2. We examined the Statutory Complaint dated 15th August 2010 against non-empanelment in which redress the petitioner sought is as follows:

"Redressal Sought

13. Having full faith in the system, I request that:-

(a) Any aberrations in my records, may be reviewed and my OAP be reassessed.

(b) Due benefit be given to me due to my being put at a disadvantage due to the anomalies in the Quantification System.

(c) My case be re-considered by a Special Review Board of No. 1 SB and if found fit for promotion, my candidature be considered against the originally allotted vacancies for Signals to enable me to be promoted along with my batch. "

In this complaint, the petitioner leveled certain allegations against the IO and stated that he was given a written counseling by the IO four days after he, that is the petitioner, received promotion-cum-posting order. While processing the Complaint comments of the IO were

asked for and the IO, inter alia, said that the officer had crossed all boundaries of decency, personal conduct and revealed his malicious decision to get his impugned CR expunged. He went on to say that the complaint was totally baseless. The complaint was duly examined by MS Branch and CAB before it was sent to the Central Government. The analysis revealed that the assessment by IO and RO were justified and accordingly, the complaint was recommended to be rejected. The Government of India vide its letter dated 15th March 2011 rejected the complaint relevant part of which is:

"3. The statutory complaint of the officer has been examined in details along with his overall profile, previous complaint and other relevant documents. After consideration of all aspects of the complaint and viewing it against the redress sought, it has emerged that all the CRs in the entire reckonable profile including the impugned CRs are well moderated, corroborated and performance based. There being no evidence of any bias or subjectivity, none of the CRs merit any interference.

4. All other issues averred by the officer are a matter of policy and uniformly applicable to all officers. No injustice has been done to the officer.

5. The officer has not been empanelled for promotion to the rank of Maj Gen on account of his overall profile and comparative merit.

6. The Central Government, therefore, rejects the Statutory Complaint dated 15 August 2010 submitted by IC-31644F Brig V Jai Kumar, Sigs, against non-empanelment, being devoid of merit. "

10. The respondents have produced the decision making process in this Complaint. The Complaint had been analysed in detail and objectively and all relevant issues had been considered by the respondents before rejecting the Complaint and therefore, we are not inclined to interfere with the decision of the respondents in rejecting the Statutory Complaint. Point No.2 is answered accordingly against the petitioner.

11. Point No.3: Admittedly the petitioner had submitted a blank form to his IO for initiation of CR covering the period from 31st July 2009 to 26th April 2010 and since he did not receive any intimation with regard to initiation, he sent reminders in July, August and September 2009. Major General S.K. Bhardwaj vide his letter No.27698/SKB/ACR dated

6th September 2010 informed HQ NSG that the blank CR forms submitted by Brig V. Jai Kumar, the petitioner herein, and Lt Col Vishal Dubey were misplaced and asked that the officers be intimated to resubmit blank CR Forms. A copy of this letter was sent by HQ NSG to the petitioner vide their letter dated 4th October 2010. The petitioner would claim that the notice was too short on receipt of this letter to take action to get his CR initiated and consequently he was withdrawn by the Selection Board held in October 2010. In the meantime, the petitioner vide his letter dated 30th September 2010 addressed to the Military Secretary requested for a waiver of the CR gap on the ground that he had done everything for getting this CR initiated. This request of the officer was rejected by the MS Branch on the ground that both the IO and the officer were serving officers and therefore, the report for the period that the petitioner served under Major General SK Bhardwaj be insisted upon. Since this was not done, the officer's name was withdrawn by two Selection Boards.

12. It is undisputed that the petitioner submitted his blank CR form and therefore the contention of the respondents that the petitioner did not intend to get a CR initiated by Major General S.K. Bhardwaj fails. It is also on record that the petitioner did send reminders to his IO for initiation of the CR. The responsibility of initiation of CR is given in

paragraphs 105 and 106 of Army Order 45/2001/MS. Undoubtedly, the responsibility of getting the CR gap covered is that of the officer concerned. However, in the event the IO does not receive a blank CR form, it is also the duty of the IO to initiate a CR *suo motu*. In this case, the IO failed to do so. We note with a sense of surprise that during this period from May 2010 to date, the petitioner did not correspond directly with his IO, but did so through his own HQ and through HQ NSG. Also, the IO did not correspond with the petitioner intimating him that his blank CR form had been misplaced. Had this simple basic communication link been functional, perhaps the gap in the CR could have been avoided, thus obviating the need for a waiver. The MS Branch is expected to manage the career of all officers of the Indian Army which includes promotion. In the instant case, the petitioner's promotion was involved and he was getting 'withdrawn' from the selection process on account of CR gap. Therefore, it was the duty of the MS Branch too to ensure that the CR gets initiated. They could have written to the IO to initiate the CR immediately so that the officer does not get withdrawn from the Selection Board. The MS Branch did not do so and injustice was done to the petitioner since his name was 'withdrawn' on two occasions. In the interest of justice and fair play therefore, we are inclined to grant relief to the petitioner on

the issue of CR waiver. Point No.3 is answered accordingly in favour of the petitioner.

13. Point No.4: The petitioner has sought the relief requesting us to direct the respondents to promote him to the rank of Major General. However, in the Rejoinder he says that he does not seek that the results of the SB be substituted. There is thus lack of clarity in what the petitioner seeks. We will analyse the relief that he has asked for in the application. The job of selection of officers for promotion to a higher rank is that of a Selection Board in the Indian Army which is a body of experts who are provided with requisite inputs such as records of all the candidates, comparative merit and so on by MS Branch to arrive at their decision. Most importantly, members of the selection Board impart their Value Judgment to each candidate, a function which can only be performed by experts in this field. A Court or Tribunal is in no position to substitute its opinion with that of the Selection Board. There are several Supreme Court judgments which are to the effect that the Courts should not substitute the findings of the Selection Boards. In the case **AVM SL Chhabra vs. Union of India & Ors.** reported in **(1993) Supp (4) SCC 441**, it is held:

" The court cannot encroach over this power, by substituting its own view and opinion. According to us, there is no scope to interfere with the decision of the Selection Board of 1987 merely on the ground that adverse remarks, in the Appraisal Report of 1986, which were placed before the Selection Board in the year 1987, were later expunged. "

In **Union of India & Others vs. Lt Gen RS Kadyan, (2000) 6 SCC 698**, it is held:

" Prima facie, we cannot say, having gone through those records, that these notings are baseless. Critical analysis or appraisal of the file by the Court may neither be conducive to the interests of the officers concerned or for the morale of the entire force. May be one may emphasize one aspect rather than the other but in the appraisal of the total profile, the entire service profile has been taken care of by the authorities concerned and we cannot substitute our view to that of the authorities. It is a well-known principle of administrative law that when relevant considerations have been taken note of and irrelevant aspects have been eschewed from consideration and that no relevant aspect has been ignored and the administrative decisions have nexus with the facts on record, the same cannot be attacked on merits. Judicial review is permissible only to the extent of finding whether the process in

reaching decision has been observed correctly and not the decision as such. In that view of the matter, we think there is no justification for the High Court to have interfered with the order made by the Government. "

In the light of these judgments, we are not inclined to interfere with the proceedings of the Selection Board. Point No.4 is answered accordingly against the petitioner.

14. Though the petitioner has retired from service, he is entitled to a fair consideration for promotion in view of the fact that he was 'withdrawn' during considerations by two Selection Boards. Accordingly, we are of the view that he is entitled to a consideration for promotion with his revised profile, consequent to the CR waiver intended to be given by this Tribunal as a review case by comparing his profile to the Brigadiers who had been considered for promotion in October 2010 when petitioner's name was 'withdrawn'. Should the petitioner be found 'fit' he may be notionally promoted with effect from 31 July 2011 for a period of two years and would be entitled to benefits of Major General rank on retirement.

15. In fine, the application is partly allowed in that, the waiver of CR sought by the petitioner is granted. In respect of other reliefs, the application is dismissed. We therefore direct the respondents to grant waiver of CR for the period of 31st July 2009 to 26th July 2010 to the petitioner and consequently consider him for promotion to the rank of Major General with his revised profile within three months of this order. It is entirely up to the Selection Board to examine the case of the petitioner. We are laying down no directions to the Selection Board in this regard. In the event the petitioner is found 'fit' for promotion by the Selection Board, he would be notionally promoted to the rank of Major General with effect from 31st July 2011 till 31st July 2013 and will be entitled to pay and allowances of a Major General during this period. In the event he is notionally promoted on 31 July 2011, he will be deemed to retire with effect from 01 August 2013 and will be entitled to pension of a Major General with effect from 1st August 2013. No costs.

Sd/
LT GEN (Retd) ANAND MOHAN VERMA
(MEMBER-ADMINISTRATIVE)

Sd/
JUSTICE V.PERIYA KARUPPIAH
(MEMBER-JUDICIAL)

16.08.2013
(true copy)

Member (J) – Index : Yes / No
Member (A) – Index : Yes / No

Internet : Yes / No
Internet : Yes / No

Vs

To

1. The Secretary to Government of India
Ministry of Defence
South Block, DHQ PO
New Delhi-110 011.

2. The Military Secretary
Military Secretary's Branch/MS (X)
Integrated HQ of MOD Army
DHQ PO, New Delhi-110 011.

3. M/s. V. Vijay Shankar &
N. Balamuralikrishnan
Counsel for Petitioner.

4. Mr. B. Shanthakumar, SPC
For respondents.

6. OIC, ATNK & K Area HQ, Chennai.

7. Library, AFT, Chennai.

HON'BLE JUSTICE V.PERIYA KARUPPIAH
MEMBER (J)
AND
HON'BLE LT GEN (RETD) ANAND MOHAN VERMA
(MEMBER (A)

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