
(2022) 04 AFT CK 0015
In the Armed Forces Tribunal
Case No : O.A No. 661 Of 2022

Brig Khushi Ram Rathi

APPELLANT

Vs

Union of India and Ors

RESPONDENT

Date of Decision : 27-04-2022

Acts Referred:

Armed Forces Tribunal Act, 2007 — Section 14

Citation : (2022) 04 AFT CK 0015

Hon'ble Judges : Rajendra Menon, Chairperson, (J); P.M. Hariz, Member (A)

Bench : Division Bench

Advocate : S.S. Pandey, Rajesh Kumar Das

Final Decision : Disposed Of

Judgement

1. Issue notice to the respondents. Mr. Rajesh Kumar Das, Sr. CGSC accepts notice on behalf of the respondents. Let counter affidavit be filed within six weeks. Rejoinder, if any, be filed within two weeks thereafter.
2. On the question of interim relief, we pass the following order.
3. This application under Sec 14 of the Armed Forces Tribunal Act 2007 has been filed by the applicant, who is a serving Brigadier in the Army Medical Corps (AMC). He is aggrieved by the fact that his Review PB (AFMS) -1 was delayed and that having held the Review PB, the delay in declassification of the result would result in the applicant having to retire on 30.04.2022. Apart from the various issues prayed for, the applicant has made an interim prayer that his retirement on 30.04.2022 be stayed pending declassification of the Review PB (AFMS)-1 held in Mar 2022. Notice was issued on 08.04.22 and confirmation was sought from the Respondents on the likely date by which the results would be declassified. During the subsequent hearing on 18.04.2022, the Respondents brought certain facts to our notice. The Respondents were then directed to file an affidavit with the facts and records mentioned. Requisite affidavit was filed by the Respondents and the matter was further heard on 20.04.2022.

4. The Counsel for the applicant took us through the essential details of the case and mentioned that the applicant had been considered as a fresh case by PB (AFMS)-1 on 23.04.2021 and had not been empanelled. The applicant then submitted a statutory complaint dated 18.05.2021, which was disposed of on 14.09.2021, and partial redressal was granted to the applicant. The Counsel then vehemently stated that while the 2021 Review PB (AFMS)-1, which at the latest, ought to have been held by Dec 2021, was held only on 07.03.2022. The Counsel further stated that in the intervening period, officers junior to the applicant, who had been granted redressal, were promoted. The Counsel concluded by asserting that, had the Review PB (AFMS)-1 in his case been held on time as mandated by the policy, then he stood a fair chance of being approved for promotion; however, since the Respondents had deliberately delayed the Review Board and its declassification, it was imperative that the applicant is granted the interim prayer and his retirement due on 30.04.2022 is stayed.

5. The Counsel for the Respondents stated that while it was the fundamental right of the applicant to a fair consideration, promotion itself was not a right. He further elaborated on the sequence of events which had led to the delay in conducting the Review PB (AFMS)-1 in respect of the applicant and added that consequent to certain issues related to the conduct of Review SPB (AFMS) 2020 and SPB (AFMS) 2021, the MoD on 10.09.2021 had issued instructions that Review SPB (AFMS) will not be held before the results of SPB (AFMS) 2021 held on 02.03.2022 are fully declassified. The Counsel further added that it was only after the declassification of Review SPB (AFMS) 2020 results on 02.03.2022 that the MoD allowed convening of further PBs vide their letter dated 04.03.2022 and accordingly Review PB-1 in respect of 12 officers, including the applicant, was held on 07.03.2022. The Counsel further added that of the 12 officers considered, 07 officers were senior to the applicant and that if any of them are empanelled, they will be promoted first.

6. Both parties were heard at length on 20.04.2022, after which the Respondents were directed to submit the Board Proceedings of Review PB (AFMS)-1 held in Mar 2022 at the next hearing. Accordingly, the proceedings of the Review PB (AFMS)-1 held on 07.03.2022 and other connected records were produced before us.

7. The applicant was considered as a fresh case for promotion to the rank of Maj Gen by PB (AFMS)-1 held on 23.04.2021, as per the promotion policy letter dated 05.02.2016. The total vacancies available for this Board were 18. The Board considered a total of 48 eligible officers, of whom 36, including the applicant, were fresh cases (twice the number of vacancies as per Para 5(a) of the promotion policy) and the remaining 12 were review cases. The applicant was at serial 26 in the order of seniority. The first 18 officers in the order of merit were recommended for promotion and the applicant, who was at serial 21 in the merit list, was not recommended. The officers recommended included one officer who was considered on his final chance and two officers who were being

considered for their second chance. The Board results were declassified vide letter dated 11.05.2021.

8. It is also seen that the promotion orders issued vide letters dated 05.10.2021 and 17.12.2021 (Annexure A-1) are in respect of those who were empanelled in the Board held on 23.04.2021. The applicant has no case to state that the promotion of those empanelled should not have been promulgated prior to his Review Board being held. The Counsel for the applicant had also referred to another Review Board held in Aug 2021. The records show that this Review PB (AFMS)-1 was held on 26.08.2021 which reviewed an officer against PB (AFMS)-1 held on 15.10.2020 and 23.04.2021. The officer had submitted a statutory complaint dated 05.01.2021 against his non-empanelment on the Oct 2020 Board, and he was granted partial redressal vide MoD letter dated 18.08.2021. The officer was, however, NOT empanelled in the review.

9. It has been the applicant's case that since he had been granted redressal in Sep 2021, his review consideration should have been held by Dec 2021. However, it is pertinent to note that alongside the applicant, the following officers had also filed statutory complaints against their non-empanelment.

Ser

Particulars of

officer

Date/ Complaint

against

Seniority

Date of

Govt order

Redressal

(a)

Brig DN Karan

18.05.2021

PB-1 Oct 2020

01.01.1987

21.02.2022

Partial redressal

(b)

Brig BK Goyal

03.11.2020

PB-1 Oct 2020

01.12.1987

09.08.2021

Partial redressal

(c)

Brig G Himashree

10.06.2021

PB-1 Apr 2021

01.12.1987

24.02.2022

Partial redressal

(d)

Air Cmde A

Agarwal

12.05.2021

PB-1 Apr 2021

01.12.1987

16.02.2022

Partial redressal

(e)

Surg Cmde

Ravindrajeet

17.05.2021

PB-1 Apr 2021

01.12.1987

16.02.2022

Partial redressal

(f)

Singh Air Cmde VV

Joshi

13.05.2021

PB-1 Apr 2021

01.12.1987

16.02.2022

Partial redressal

(g)

Brig

Kushi Ram Rathi

18.05.2021

PB-1 Apr 2021

01.01.1988

14.09.2021

Partial redressal

(h)

Brig Satya Ranjan

Das

12.05.2021

PB-1 Apr 2021

06.01.1988

14.09.2021

Partial redressal

(i)

Air Cmde Ramraj

Ravi

17.05.2021

PB-1 Apr 2021

17.04.1988

16.02.2022

Partial redressal

(j)

Brig Ashwin

Galagali

24.05.2021

PB-1 Apr 2021

01.12.1988

16.02.2022

Partial redressal

(k)

Brig SS Jaiswal

18.05.2021

PB-1 Apr 2021

01.12.1987

27.09.2021

Partial redressal

(l)

Brig R Setlur

19.05.2021

PB-1 Apr 2021

01.06.1988

24.02.2022

Partial redressal

10. It will be seen from the above table that, along with the applicant, 11 other officers, who were also not empanelled in PB-1 Apr 2021, had submitted their statutory complaints in May/Jun 2021. The redressal came in two batches, four officers, including the applicant, who were given redressal in Aug/Sep 2021 and all others in Feb 2022. Thus, the organisation being aware that 12 officers have submitted statutory complaints against the same PB, awaited the outcome of all the complaints so that the Review of all officers of PB Apr 2021 could be done together, than doing them piece meal as the redressals came in. The Respondents may have had their own administrative reasons for examining and disposing of all the statutory complaints pertaining to PB (AFMS)- 1 of Apr 2021

in this manner.

11. With reference to the assertion that prejudice had been caused to the applicant by not conducting the Review PB latest by Dec 2021, the following issues are relevant. As per Appendix A to DGAFMS letter dated 11.05.2021 (Annexure A-2), 18 officers were empanelled for promotion to the rank of Maj Gen. The vacancies available till 01.12.2021 were utilised to promote the first 16 officers out of the 18 empanelled officers. The 17th and 18th officer were promoted against the vacancy which subsequently accrued on 01.02.2022 and 24.03.2022. It is seen from the records that the 18 vacancies that accrued between 01.02.2021 and 24.03.2022 were all utilised to promote those approved for promotion in the PB (AFMS)-1 Apr 2021. Subsequently, two vacancies came up on 01.04.2022; one clear vacancy due to the retirement of a Maj Gen on 31.03.2022 and the second arising from a chain vacancy from the retirement of a Lt Gen, also on 31.03.2022. However, this chain vacancy will only come about once the results of SPB (AFMS) 2022 are declassified.

12. For an interim injunction, an applicant must satisfy three things, namely, that prima facie he has a case, balance of convenience is in his favour and that he is going to suffer irreparable loss if the interim order is not passed. Having heard both parties and having examined the records in detail, we are of the opinion that the balance of convenience is not in favour of the applicant and that prima facie he does not have a case.

13. Accordingly, the interim prayer is denied. However, the final outcome of this case will be subject to the decision in this O.A.

14. List the matter again on 15.07.2022.

Pronounced in open Court on this the 27th day of April, 2022.