

(2007) 03 DEL CK 0064

In the Delhi High Court

Case No : Writ Petition (C) 17742 of 2006

Brig. S.B. Chail

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 19-03-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2007) 03 DEL CK 0064

Hon'ble Judges : T.S. Thakur, J;S.N. Aggarwal, J

Bench : Division Bench

Advocate : S.M. Dalal, for the Appellant; Rekha Palli, for the Respondent

Judgement

T.S. Thakur, J.—The petitioner is working as a Brigadier in the Indian Army. He presently holds the appointment of Deputy Director

General (Inspector of Records) which oversees and administratively controls 51 Record Offices all over the country. These record offices are

responsible for implementation of policies and maintenance of records relating to career management, adjustment of pay and allowances, grant of

pension and other welfare measures of the serving regular Indian Army personnel below the officers rank numbering approximately 13 lacs apart

from more than 30 lacs ex-servicemen, widows and their next of kins. The petitioner's grievance in the present writ petition is primarily directed

against the failure on the part of the respondents to allot a post of Major General to the PC(SL) Record Office cadre to which he belongs despite

recommendations of senior officers of the army made at different levels to that effect. The recommendations made from time to time upon which

the petitioner places reliance may be enlisted for facility of reference as under:

(i) Recommendation made by Major General B.N. Kaul, Additional Director General (MP) on 13th March, 2002 stating that PC(SL) Record

Officers cadre provides less promotional avenues to the officers holding the higher ranks which directly affects the efficient functioning of the

Record Offices. The recommendation endorsed the justification for upgradation of various PC(SL) Record Officers cadre including the creation/up

gradation of a post of Major General for the said cadre.

(ii) Recommendation made by Lt. General N. Chatterjee, Director General (MP & PS) dated 21st March, 2002 for upgradation of the

appointments enlisted in the same including the creation/ upgradation of a post of Major General for the said cadre.

(iii) Recommendation by Lt. General S.S. Grewal (Adjutant General) dated 21st March, 2002 endorsing the recommendation for creation/up

gradation of a post of Major General/PC(SL) Record Officers.

(iv) Recommendation made by Lt. General A.S. Jamwal dated 21st August, 2006 for creation of a post of Major General and an Additional

Brigadier for the cadre of PC(SL) Record Officers.

2. The petitioner has submitted, through the proper channel, a proposal for upgradation of the post and appointment of Deputy Director General

MP8 (Inspector of Records) to the rank of Additional Director General (Records) Major General. A copy of the said proposal has been placed

on record as Annexure-P4 in which the petitioner has inter alias pointed out that the proposal for upgradation of the appointment has been

supported at various levels in the military hierarchy when forwarded for their consideration. The proposal identifies at length the reasons which

justify the proposed upgradation of the existing post of Brigadier to that of Major General. Apart from the over all increase in the strength of the

Indian Army which has touched 13 lacs, the proposal cites the increase in the number of ex-servicemen, widows and their dependents numbering

approximately 30 lacs as a ground for creation of a post of Major General at the top of the pyramid. The proposal draws a comparison between

the PC(SL) Record Officers cadre and other cadres in the Army, and tabulates the result of the comparative study as under:

Arms Service Lt. Gen Maj. Gen. Brig. Col. Lt. Col. & below Total

PC(SL) Record Officer - - 1 7 492 500+12 CGOs

Army Postal Service - 1 3 8 138 150

Remount Veterinary Corps - 1 3 19 249 272

Army Education Corps - 1 4 27 380 412

Intelligence Corps - 2 12 29 262 305

Judge Advocate General - 1 6 13 81 101

Army Dental Corps 1 2 6 19 348 376

Corps of Mil Police - 1 1 24 197 223

Army Provost Marshal (CMP) - 1 2 25 151 179

3. The petitioner's case now is that despite the submission of the proposal and the support that it has received from senior officers holding the

ranks of Major General and Lt. General who are familiar with the working of the records office, the Government have not favorably viewed the

issue nor taken any steps for either creation of a post of Major General for PC(SL) Officer Cadre nor considered the proposal for appointment

against the same. A mandamus directing the respondents to consider the proposal for upgradation of the post of DDG MP-8 (IOR) to Major

General ADG (Records) has, Therefore, been prayed for apart from other incidental directions including a writ of prohibition restraining the

respondents from retiring the petitioner on 31st March, 2007 and to retain him in service against supernumerary strength till such time the issue

regarding creation/up gradation of the post is finally decided at the appropriate level.

4. Appearing for the petitioner, Mr. Dalal strenuously argued that even when PC(SL) officers cadre is the largest cadre in terms of the number of

officers who are working in the same, the Government had ignored the recommendations made for the creation of a post of Major General in the

same and turned a deaf ear to the request made by the petitioner from time to time. He submitted that with 500 Gazetted army officers out of

whom 492 hold the rank of Lt. Colonel and below, PC(SL) Record Officers cadre was one of the largest in the Indian Army which does not

despite its size and the colossal volume of work, turns out a post of Major General at the top. In comparison cadres which have much lesser

strength like the Judge Advocate General's Cadre with only 101 gazetted officers, Army Postal Service Cadre with only 150 gazetted officers out

of whom only 138 were of the rank of Lt. Colonel and below and Army Provost Marshal (CMP) with a total of 179 gazetted officers out of whom

only 151 are Lt. Colonels and below, had a Major General at the top of the pyramid. Similarly in the case of Corps of Military Police with less

than half the strength of gazetted officers in its cadre and Remount Veterinary Corps with just about 249 officers in the rank of Lt. Colonel and

below had one Major General at the top. So much so, Intelligence Corps with only 305 gazetted officers in all out of whom 262 were Lt. Colonels

and below had two Major Generals as in the case of Army Dental Corps which had a total strength of 376 gazetted officers only. It was argued

that the disparity in the creation and allotment of the vacancies in the Cadre of Major General was evident from a comparative study of the cadre

strength of all these cadres. This, contended Mr. Dalal, signified that there was a deep rooted bias against the PC(SL) Record Officers cadre

which was being given a step-motherly treatment even when the facts and figures given in the proposal for upgradation submitted by the petitioner

clearly justified an immediate upgradation of the post of Brigadier to that of a Major General.

5. Mr. Dalal further argued that the two Committees which the Government had appointed, namely, A. ` Singh Committee and Major General

V.K. Negi Committee had also failed to address the issue or make any worthwhile recommendation not because the proposal for creation of a

post of Major General was not on merits justified but because of a total indifference towards the need and the requirement of the said cadre. The

Government had also, according to Mr. Dalal, taken no decision on the subject even when the matter deserved to be examined closely and

disposed of at an early date lest the petitioner who would benefit from any favorable decision was deprived of any such benefit only because of the

inaction of the authorities at the helm of Government affairs. He drew our attention to a communication dated 20th September, 2006 produced as

Annexure-P6 to the petition in which the issue regarding upgradation has been deferred for a review to be undertaken in May, 2008 and submitted

that instead of taking a quick decision in the matter, the respondents were simply avoiding a decision by endlessly putting off the same.

6. On behalf of the respondents, it was on the other hand argued by Ms. Rekha Palli that two Committees appointed by the Government one

headed by A.V. Singh and the other by Major General V.K. Negi had not found favor with the demand for creation of a post of Major General by

PC(SL) Record Officers cadre. She urged that although the report submitted by the two committees did not specifically address the question

whether there was any need for the creation of any such post, yet the absence of recommendation was in itself sufficient to show that there was no

immediate necessity for creation/up gradation of the post held by the petitioner to that of a Major General.

7. We have given our anxious consideration to the submissions made at the bar and perused the record. The legal position regarding the need for

providing promotional avenues to those serving under the State is fairly well settled by the decisions of the Supreme Court. Even so, the question

whether the avenues of promotion for officers belonging to a given cadre satisfy their legitimate expectations in terms of the guarantees contained in

Article 14 and 16 of the Constitution is a matter that would have to be judged in the context of the facts of each case and the promotional avenues

of other officers similarly situate and serving in other disciplines of any organization. Certain administrative angles and inputs are bound to become

relevant in any such process of evaluation. What is the total cadre strength in a particular cadre, what is the normal time span within which the

officers serving in the cadre pick up their next rank/promotion, what is the nature of the duties which the officers in the higher echelons of the cadre

discharge, are some of the issues that assume importance. In the present case, the position of the officers in PC(SL) Record Offices cadre vis-à-vis

other officers holding similar ranks in other disciplines would similarly assume significance in any such exercise, which may not be possible

within judicially manageable dimensions. Inevitably the exercise may have to be left to be undertaken at the administrative level. If the government

had already examined the matter and taken a decision, we may have taken the matter as settled in the absence of any palpable perversity in the

decision. But Ms. Palli was unable to refer to us any decision of the Ministry of defense addressing the issue raised by the petitioner or taking a

decision on the precise question whether there was any need or justification for the addition of a post of Major General to PC(SL) Record

Officers cadre either by fresh creation or by upgradation of the existing post of Brigadier held by the petitioner. This would only imply that the

entire controversy lies in a grey area on which there has been till date no serious consideration at the Government level. It is also not in dispute that

neither A.V. Singh Committee nor the Committee headed by Major General V.K. Negi have made any recommendations regarding the proposed

creation of the post of a Major General for the PC(SL) Record Officers cadre. There is in any case no rejection of the said demand by either one

of those two committees. Such being the position, we see no reason why the Government cannot examine the proposal submitted by the petitioner

which has the support of senior officers in the hierarchy referred to earlier for the addition of the post of Major General to the cadre of PC(SL)

Record Officers by fresh creation or by upgradation.

8. We are conscious of the fact that any exercise aimed at taking a decision on the subject would require time which we would have had no

difficulty in granting provided the petitioner was not hard pressed for the same on account of his impending retirement on superannuation. There is

no gain saying that the exercise must prove meaningful for the petitioner who has been agitating the matter in this Court and at the Government

level. A decision taken after the petitioner superannuates may be meaningless at least from his point of view. It is in that spirit that we are

compelled to fix a tight time schedule for the Government to take a decision in the matter.

9. We are also of the view that if cutting short administrative red tape and as a special case, the petitioner is given a hearing/interview by the

defense Secretary to present his point of view, it would promote the cause of justice and help the latter take a view that would be objective not

only from the standpoint of the establishment but also sound just and fair even the petitioner who would then have satisfaction of having been heard

at the highest level.

10. In the result, we allow this petition but only in part and to the following extent:

(i) The Govt. shall examine within two weeks from today the proposal submitted by the petitioner for addition of a post of Major General to the

PC(SL) Record Officers cadre either by a fresh creation or by upgradation of the existing post held by the petitioner.

(ii) As a part of the consideration in terms of (i) above, the Secretary, Ministry of

defense, Govt. of India shall hear the petitioner in person to enable him to explain his point of view in support of the proposal on such date and time as the defense Secretary may fix for that purpose.

(iii) In case the Government decide to add a post of Major General to the PC(SL) Record Officers cadre, it may also consider the petitioner's

request for continuance in office beyond 31st March, 2007 on a supernumerary basis and on such further terms as to pay and allowances as the

Government may stipulate in that regard.

11. The decision taken by the Govt. on the above shall be communicated to the petitioner who shall have liberty to seek appropriate redress

against the same, if so advised, in separate proceedings.

No costs.