

(2014) 07 P&H CK 0821
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 6487 of 2014

Col. Chander Ballabh Sharma

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 17-07-2014

Acts Referred:

Citation : (2014) 3 SCT 769

Hon'ble Judges : Hemant Gupta, J; Fateh Deep Singh, J

Bench : Division Bench

Advocate : Akshay Bhan, Senior Advocate and Amandeep Singh Talwar,
Advocate for the Appellant; Balwinder Singh Jolly, Advocate for the Respondent

Final Decision : Allowed

Judgement

Hemant Gupta, J.—The challenge in the present writ petition is to an order passed by Armed Forces Tribunal, Chandigarh Regional Bench at Chandimandir (for short "the Tribunal") on 27.01.2014 whereby an original application filed by the petitioner, inter alia, for quashing para 9 of Annexure A-9 of promotion policy dated 04.01.2011 restricting the weightage of Gallantry Awards after two Selection Boards was dismissed.

2. The facts in brief are that petitioner was Commissioned in Indian Army on 18.06.1983. The petitioner was awarded Sena Medal (Gallantry) for act of exceptional devotion to duty and courage on 26.01.1986. The petitioner was awarded Vir Chakra for conduct during Indian Peace Keeping Force in Sri Lanka on 26.01.1991.

3. On 06.05.1987, the Army Headquarters circulated a policy for selection of the Officers to the rank of Lieutenant Colonel and above. Five Selection Boards were contemplated which are as under:-

4. In the Guidelines of Assessment contained in para 10 of such policy, the performance during war forms an important fact of the overall record of the officer as also the Character Qualities Disciplinary background and decorations

form an important input of the overall profile of the officer.

5. The petitioner had completed the field postings and also qualified all courses and was therefore considered by the 4th Selection Board for selection to the post of Lieutenant Colonel from Major in May, 1999. The petitioner was again subjected to 3rd Selection Board for selection to the post of Colonel from the rank of Lieutenant Colonel in July-August, 2001. It is assumed that the Sena Medal and Vir Chakra conferred on the petitioner in the year 1986 and 1991 must have been considered at the time of his selection. It may be noticed that petitioner was considered for selection to the post of Brigadier in October 2009, September 2010, April 2011, July 2011 and was not approved.

6. A new comprehensive policy was circulated on 04.01.2011 (Annexure A-9) superseding the earlier policy on 06.05.1987 (Annexure A-4), 31.12.2008 (Annexure A-5) and 15.04.2009 (Annexure A-6). Learned counsel for the petitioner points out that in the policy dated 15.04.2009 (Annexure A-6) though the marks for the courses, honours and awards were specified but what marks are required to be given to each of the Gallantry Awards was not specified. Such marks were specified in the policy circulated on 04.01.2011. The relevant extract from the said policy (Annexure A-9) reads as under:-

Conduct of Selection Boards by Quantification System

xx xx xx xx

CR Profile

4. (c) Reckonable Profile. All CRs in reckonable profile being considered will be quantified. "Look-Two-Down" principle, by taking into consideration all CRs earned in the present rank and previous rank, will continue for No. 3SB, No. 2 SB, and No. 1 SB as hitherto, "Look/Three Down" principle by taking into consideration all CRs in previous to previous rank (i.e. Cols rk) will be adopted for SSB only.

xx xx xx xx

Honours and Awards (H & A)

9. Gallantry Awards (Mention-in-Despatches and above) have been maximum of two marks, which will be applicable for two SBs after the award. Thereafter the Gallantry awards shall be value judges by subsequent SBs. The Distinguished Service awards* will be value Judges for all SBs.

10. The weightage assigned for Gallantry awards are as follows:-

7. The challenge to para 9 of promotion policy dated 04.1.2011 remained unsuccessful before the Tribunal for the reason that the Gallant acts of the petitioner were given weightage while considering him for promotion from the rank of Major to Lieutenant Colonel and from Lieutenant Colonel to Colonel. The weightage for Gallantry Awards were restricted to two Selection Boards for the

award in terms of the policy w.e.f. 01.01.2009 in terms of policy dated 15.04.2009 and 04.01.2011. Since the petitioner has got the weightage for selection from the rank of Major to Lieutenant Colonel, later from Lieutenant Colonel to Colonel, he cannot be given weightage further for the post of Brigadier. While declining the challenge, the Tribunal relied upon judgment of Hon"ble Supreme Court in Hardev Singh Vs. Union of India (UOI) and Another,

8. Learned counsel for the petitioner has vehemently argued that in fact para 9 of the policy dated 04.01.2011 has been wrongly applied to the petitioners. In terms of para 4 (c), the principle applied for selection is "Look-Two-Down" i.e. the performance in two ranks to the rank in consideration will be taken into consideration. Therefore, for selection to the post of Brigadier, the performance of the petitioner in the rank of Colonel and Lieutenant Colonel is required to be taken into consideration.

9. The grievance is that Gallantry Awards have been restricted to two Selection Boards after the Award in terms of para 9 of the policy dated 04.01.2011. It is assumed that benefit of Gallantry Awards have been availed by the petitioner when selected to the rank of Lieutenant Colonel and Colonel and not entitled to further marks to the rank of Brigadier.

10. The Judgment in Hardev Singh's case (Supra) is in respect of Special Selection Board, wherein it has been rightly held that Gallantry awards cannot be taken into consideration at all further stages. The claim of the petitioner is not to grant benefit of Gallantry Awards at all stages but in terms of the policy framed.

11. We find that literal interpretation of para 9 of policy dated 04.01.2011 may support the stand of the respondents but keeping in view the fact that number of Selection Boards have been reduced than what was prevailing in the year 1987, the policy has to be applied to all in a pragmatic manner. The two Selection Boards which are required to be taken into consideration would be the one which are in terms of the 2011 policy i.e. for selection to the post of Colonel and Brigadier and not the Selection Board from the rank of Major to Lieutenant Colonel. The reference to Selection Boards in policy dated 04.01.2011 alone are required to be taken into consideration than the Selection Boards which were constituted in terms of policy dated 06.05.1987. If the Selection Boards constituted prior to policy dated 04.01.2011 are taken into consideration, the policy circulated would lead to unfair results. It would have been different matter, if the number of selection boards had remained same, the restrictions could be applied to all categories for selection. But where the Selection Boards have been reduced, then the Selection Boards now constituted would be relevant to consider the suitability of the officers for empanelment.

12. Consequently, we allow the present writ petition, set aside the order of the Tribunal and direct the respondents to consider the selection of the petitioner for empanelment of the petitioner for further selection to the post of Brigadier in terms of the policy as interpreted now.