
(1999) 07 DEL CK 0014
In the Delhi High Court
Case No : CW. No. 1916 of 1989

Col. Kehari Singh (Retd.)

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 30-07-1999

Acts Referred:

Citation : (2000) 5 AD 319 : (2000) 86 DLT 409

Hon'ble Judges : K. Ramamoorthy, J

Bench : Single Bench

Advocate : Mr. Naveen Kumar Jaggi, for the Appellant; Mr. Jayant Bhushan, for the Respondent

Judgement

K. Ramamoorthy, J.—The petitioner, who was approved for promotion to the rank of acting Colonel in the Number Three Selection Board meeting held on the 9th of November, 1987, was not actually given the promotion till he attained the age of superannuation on the 30th of April, 1988. Hence the petitioner, after his statutory complaint was rejected, presented the writ petition praying for the following reliefs:-

"The petitioner Therefore prays that this Hon"ble Court be pleased to:-

(a) interfere in the matter as a court of equity and issue a writ of mandamus or any other writ, order or direction in the nature of mandamus directing the respondents to grant the rank of Acting Col. to the petitioner with effect from July, 1987 i.e. the date when his batchmates were promoted to the post of Colonel on the result of the Board held in March, 1987 and to grant the petitioner pay and allowances with effect from that date and consequently the retirement and pensionary benefits attached to the post of Colonel."

p>2. The facts, in brief, necessary for the appreciation of the point raised by the petitioner could be narrated thus:

On the 10th of May, 1964, the petitioner was commissioned into the Indian Army.

After 19 years of service, in or about 1983, he was approved for the rank of selection grade Colonel. On the 15th of July, 1985, he was promoted to the rank of Lt. Colonel. His next higher rank is Colonel and he was to be considered for promotion to the rank of acting Colonel which would entitle to him the pensionary benefit in the rank of Colonel. On the 14th of November, 1986, a communication was sent to all concerned that Number Three Selection Board would be held and directed initiation of ACRs. The communication dated 17.11.1986 wherein the signal issued on 14.11.1986 was sent would read as under:-

"NO THREE SELECTION BOARD FOR LT.COL. 1967

1. A Copy of HQ 51 Sub Area Sig No.A-2089 dated 14 Nov 86 is fwd herewith for info and necessary action.

Sd/-

(V. Verma)

Col.

Adm Comdt. C1-1.

(Copy of HQ 51 Sub Area Signal No.A-2089 dated 14 Nov. 86)

NO. THREE SELECTION BOARD FOR LT COL 1967 SENIORITY GENERAL CADRE AND EQUIVALENT BATCHES OTHER ARMS AND SERVICES (.) REF INDARMY LETTER 32301/34/P/MS4 COORD OF 21 JUN 86(.) FIRSTLY (.) BOARD IN RESPECT ALL AFFECTED OFFERS TO BE INITIATED AS ON 01 JAN 87 (.) ACR TO REACH INDARMY MS BRANCH BY 15(.) THIRDLY DETAILED LETTER CONTAINING MODALITIES FOR RENDIATION SPECIAL CONFIDENTIAL REPORTS FOLLOWS.

Relevant extract of Army Headquarter letter No. 32301/34/P - MS4/Coord dated 21 Jan 86 addressed to all Headquarter Commands.

1. As a result of upgradation of the units to Col's Comd is also to maintain a young age profile of the commanding offers. It has been decided to screen Lt. Cols of 1966 and 67 seniority (In the General Cadre and equivalent batches from other arms and services) during Jul 86 and Dec 86 Mar 87 respectively by calling for special ACRS. Details are given in the succeeding paragraphs.

No.2 SD July 86

XXXXXXXXXX

XXXXXXXXXX

No.3 SB Dec 86 -Mar 87

6. Offrs due for spl confidential reports. This bd. will screen offrs of the seniority as given below:-

(a) Fresh cases.

(i) Armd Corps, Arty - 1967 and Inf (ii) Engineers and - 1965 Signals (iii) All other - 1965 services

1. The petitioner, who was approved for promotion to the rank of acting Colonel in the Number Three Selection Board meeting held on the 9th of November, 1987, was not actually given the promotion till he attained the age of superannuation on the 30th of April, 1988. Hence the petitioner, after his statutory complaint was rejected, presented the writ petition praying for the following reliefs:-

"The petitioner Therefore prays that this Hon"ble Court be pleased to:-

(a) interfere in the matter as a court of equity and issue a writ of mandamus or any other writ, order or direction in the nature of mandamus directing the respondents to grant the rank of Acting Col. to the petitioner with effect from July, 1987 i.e. the date when his batchmates were promoted to the post of Colonel on the result of the Board held in March, 1987 and to grant the petitioner pay and allowances with effect from that date and consequently the retirement and pensionary benefits attached to the post of Colonel."

p>2. The facts, in brief, necessary for the appreciation of the point raised by the petitioner could be narrated thus:

On the 10th of May, 1964, the petitioner was commissioned into the Indian Army. After 19 years of service, in or about 1983, he was approved for the rank of selection grade Colonel. On the 15th of July, 1985, he was promoted to the rank of Lt. Colonel. His next higher rank is Colonel and he was to be considered for promotion to the rank of acting Colonel which would entitle to him the pensionary benefit in the rank of Colonel. On the 14th of November, 1986, a communication was sent to all concerned that Number Three Selection Board would be held and directed initiation of ACRs. The communication dated 17.11.1986 wherein the signal issued on 14.11.1986 was sent would read as under:-

"NO THREE SELECTION BOARD FOR LT.COL. 1967

1. A Copy of HQ 51 Sub Area Sig No.A-2089 dated 14 Nov 86 is fwd herewith for info and necessary action.

Sd/-

(V. Verma)

Col.

Adm Comdt. C1-1.

(Copy of HQ 51 Sub Area Signal No.A-2089 dated 14 Nov. 86)

NO. THREE SELECTION BOARD FOR LT COL 1967 SENIORITY GENERAL CADRE AND EQUIVALENT BATCHES OTHER ARMS AND SERVICES (.) REF INDARMY LETTER 32301/34/P/MS4 COORD OF 21 JUN 86(.) FIRSTLY (.) BOARD IN RESPECT ALL AFFECTED OFFRS TO BE INITIATED AS ON 01 JAN 87 (.) ACR TO REACH INDARMY MS BRANCH BY 15(.) THIRDLY DETAILED LETTER CONTAINING MODALITIES FOR RENDIATION SPECIAL CONFIDENTIAL REPORTS FOLLOWS.

Relevant extract of Army Headquarter letter No. 32301/34/P - MS4/Coord dated 21 Jan 86 addressed to all Headquarter Commands.

1. As a result of upgradation of the units to Col's Comd is also to maintain a young age profile of the commanding offers. It has been decided to screen Lt. Cols of 1966 and 67 seniority (In the General Cadre and equivalent batches from other arms and services) during Jul 86 and Dec 86 Mar 87 respectively by calling for special ACRS. Details are given in the succeeding paragraphs.

No.2 SD-July 86

xxxxxxxxxx

xxxxxxxxxx

No.3 SB Dec 86 -Mar 87

6. Offrs due for spl confidential reports. This bd. will screen offrs of the seniority as given below:-

(a) Fresh cases.

(i) MS - up to 3 months (ii) COAS - up to 6 months

(c) Cases where the shortfall exceeds more than six months will invariably not be granted any waiver. However, on the merit of the case, the sanction may be obtained from the COAS only in exceptional cases or special report may be called for as directed by the MS.

Conclusion

9. xxxxxxxxxxxx"

4. Admittedly, this procedure was not followed and no opportunity was given to the petitioner to request for waiver. The petitioner, it has to be noticed here, had received Commendation Card from GOC-in-C Eastern Command on the 15th of August, 1987 having regard to his meritorious service. Therefore, between 15.7.1985 to March, 1987, the petitioner's service was good is a fact which cannot be disputed.

5. On the 10th of July, 1987, the petitioner was informed by the Military Secretary as to why the petitioner's case was not considered by the Number Three Selection Board which met between the 30th of March, 1987 to the 3rd of April, 1987. The letter reads as under :-

Result

No. 3 SELECTION BOARD HELD FROM

30 MAR TO 03 APR 87

1. Defer for want of adequate report in the rank of Lt. Col.
2. Type of Case : Fresh 1965
3. Last ACR Considered 7/85-5/86
4. Your case will be placed before the next appropriate Selection Board with fresh material on record."

It is clear that the petitioner was deprived of his chance of being considered by the callous indifference of the respondents.

6. On the 17th of October, 1987, the petitioner wrote to the Military Secretary, Army headquarters, New Delhi stating that Number Three Selection Board would be met on the 9th of November, 1987 and in the event of petitioner's name being approved for promotion, the order of promotion would have to be issued on or before the 31st of December, 1987 and the petitioner would have got pensionary and resettlement benefits as he was to retire on the 30th of April, 1988. The letter reads as under:-

"1. With due respect I wish to submit the following for your kind consideration.

2. I was commissioned into the Army on 10th May, 1964. After 19 years of service, I was approved for the rank of Selection Grade Lt.Col. However, after the approval, I had to wait for 2 years and 5 months, for getting promoted to the rank of Lt.Col. due to stagnation in the service and for want of vacancy. I was thus promoted to the rank of Lt.Col. on 1st Jul 85.

3. I am commanding 825 ASC Bn (Air Maintenance) since 15 Jul 85. Throughout my service and more so in my present rank I have served with devotion, utmost sincerity, high sense of loyalty and honesty. In recognition of my meritorious service, I am the proud recipient of GOC-in C Eastern Command's Commendation Card, on 15 Aug, 1987.

4. My batch of officers in ASC were considered for promotion to the rank of Colonel during Mar 87. But my case was deferred for want of adequate report in the rank of Lt.Col, vide Army Head quarters letter No.365/0/ASC/MS5B dated 10 Jul 87. In this connection it is mentioned here that HQ 51 Sub Area Sing No.A2089 dated 14 Nov 86 had directed that No.3 Selection Board for Lt.Col. seniority general cadre and equivalent batches other arms services will be held and ACR in respect of all affected officers have to be initiated as on 1st Jan 87 and also to reach Army Headquarters Ms Branch by 15 Feb 87 (Army headquarters letter No.32301/34/P/MS4 Coord. dt.21 Jan 86 refers). Accordingly, I had submitted my special ACR to HQ 51 Sub Area for onward transmission vide letter No.220/ST2 dated 06 Dec. 86. My special ACR was forwarded duly initiated

by Cdr. 51 Sub Area to HQ 101 Area. However, HQ 101 Area on receipt of my special ACR intimated vide their Sig.No.A-1089 dated 04 Mar 87 that No.3 Selection Board would now be held during July 87, hence special ACR not required to be fwd to Army Headquarters. Whereas No.3 Selection board for my batch of officers in ASC of 1965 seniority was held during Mr. 87. Had this special ACR been forwarded to Army headquarters my case would not have been deferred for want of ACR and I would have not suffered for my pensionary and retirement benefits.

5. Further, had the fact of the shortfall in being adequately exercised been known to me, I would have approached you for waiver as per instructions contained in Army Headquarters letter No.32666/Waiver/175/5B dated 24 Mar 1987 as the shortfall period of my ACR was only one month and 14 days. But the facts were known to me only when I received the letter of deferment.

6. The promotion board for my next rank is now being held on 9th Nov.87. In case I stand approved for promotion to the rank of Colonel, I am not likely to get pensionary and resettlement benefits if I am not promoted before 31st December, 87 due to my retirement with in next four months i.e. 30 April 88.

7. May I Therefore, request you to consider my case as a very special case and obtain sanction of Government of India in my case at the earliest after finalisation of promotion board proceedings as that I may get promotion by 31 Dec.87. This will have great psychological satisfaction to a soldier who has sincerely devoted to the duty throughout his service and never in whole service have put up any type of request for anything on any ground whatsoever.

8. Hope this will get your sympathetic consideration."

7. Number Three Selection Board met on the 9th of November, 1987 and the petitioner was found to be fit for promotion to the rank of Colonel. But in spite of his letter dated 17.10.1987, no orders were passed by the respondent. On the 17th of March, 1988, the Military Secretary wrote to the petitioner in the following terms:-

"Result

NO.3 SELECTION BOARD HELD FROM

09 TO 20 NOV 87

1. Approved for promotion.
2. Type of Case: Fresh (Defer/Withdrawn) 1965 batch.
3. Last ACR Considered 86/87.
4. Promotion will be subject to continued satisfactory performance and remaining in acceptable medical classification."
8. The respondent had taken four months" time to implement the decision of

Number Three Selection Board. On the 19th of March, 1988 a signal was issued granting local rank of Colonel to the petitioner. The same reads as under:-

"AO 139/74 (.) approval MS accorded for grant of local rk col to IC-22151 Lt.Col. KEHASRI SINGH comma CO 825 ASC BN (AM) for period from apr 01 to Apr 30."

9. On the 11th of April, 1988, the petitioner sent his statutory complaint which reads as under:-

INTRODUCTION

1. This statutory complaint is made under the provision of Army Act Section 27 and Regulations for the Army (Revised Edition) 1962, para 361 as amended vide CS No. 232/K/78.

BACKGROUND OF THE CASE

2. I belong to 1965 batch of ASC Officers and was promoted to the rank of Lt. Colonel on 15 Jul. 85. My batch of Officers in ASC were considered for promotion to the rank of Colonel during Mar 87. But I was deferred for consideration for promotion due to shortfall in adequately exercised period in the rank of Lt. Colonel as intimated to me vide Army Headquarters letter No. 36510/ASC/MS5B dated 10 Jul 87 (copy attached as per appendix "A"). Shortfall period of my adequately exercised was only one month and 14 days. Neither this period was waived at the time the selection board was held nor I was informed so that I would have approached competent authorities for waiver as per instructions contained in Army headquarters letter No. 32666/Waiver/MS5B dated 24 Apr 87 (copy attached as per appendix "B"). That facts were known to me only when I received the letter intimating my deferment. In case I was approved for promotion to the rank of Colonel in the Selection Board held in March, 87, I would not only have benefited for grant of promotion, pay and allowances but also could have got pensionary and resettlement benefits. I am due for superannuation on 30 Apr 88 (AN) on completion of 52 years of age. Due to the existing rules and regulations, I have been debarred from entitlement of these benefits for no fault of mine.

FACTS OF THE CASE

3. I was commissioned in ASC on 10 May 64. As I was emergency commissioned officer. My seniority was adjusted to 21 Oct. 65 on being granted permanent commission. I was approved for promotion to the rank of Lt. Colonel in Mar 83. After waiting for a period of 2 years and 3 months, I was promoted to the rank of selection grade Lt.Col. My batch of officers belong to 1965 seniority were considered for promotion to the rank of Colonel during Mar 87. I was also informed vide Army headquarters letter No.32301/34/P/M54 Coord dated 21 Jan 86 (Copy attached as per appendix "C") that my case would also be considered. Unfortunately my case was deferred for shortfall in adequately exercised period in the rank of Lt. Col vide Army Headquarters Letter No.36510/ASC/MS5B dated 10 Jul 87 (Refer to Appendix "A"). The shortfall period of my adequately

exercised was one month and 14 days only. Neither this period of shortfall was waived at the time when Selection Board was held nor I was informed so that I would have approached the competent authority for waiver as per instructions contained in Army Headquarters letter No. 32666/Waiver/MS5B dated 24 Apr 87 (Refer to appendix "B"). The special ACR was asked for vide headquarters 51 Sub Area Signal No.A 2089 dated 14 Nov. 86 (Copy attached as per Appendix "D"), Accordingly, the same was initiated and forwarded to Headquarters 101 Area. I was thereafter intimated by Headquarters 101 Area that the special ACR is no longer required since the promotion Board is now being held in July 87, vide Headquarters 101 Area Signal No. A 1089 dated 04 Mar 87 (Copy Attached as per Appendix "E"). Contrary to this information the Board was held in Mar 87, as per earlier decision on the authority of which the special ACR was called for. I was, Therefore, deferred for selection due to no fault of mine. I submit that I was wronged on two counts as under :-

(a) Normally shortfall in adequately exercised up to a period of 3 months is waived by Military Secretary. However in my case the shortfall of one month and 14 days was not waived and neither I was informed so that I could take corrective measure.

(b) Though special ACR was initiated but was not considered due to the reasons not known to me. I feel this special ACR could have at least been forwarded to Military Secretary Branch for consideration.

4. The result of selection board No. 3 held in Mar 87 was out by 01 July 87. Since I was already working against a vacancy of Colonel as Officer Commanding 825 ASC Battalion (Air Maintenance) Type "B", I would have been promoted in situation thus entitling me for full pensionary benefits as I would have served for 10 months as a Colonel.

5. The fresh Selection Board No.3 for deferred cases of 1965 seniority of ASC Officers was held on 09 Nov. 87. Keeping in mind that the result of this Board might be delayed I had submitted an application to Military Secretary, Army Headquarters, requesting that since I am retiring on 30 Apr 88, my result may be cleared before 31 Dec. 87, to obtain partial pensionary and resettlement benefits. Unfortunately nothing was heard regarding the action on this application submitted vide 22152/KS/personal dated 17 Oct 87 (Copy attached as per Appendix "F"). The result of No.3 Board held in November has been out in 3rd week of March 88. Though I have been approved vide Army Headquarters letter No.36510/ASC/MS5B dated 17 Mar. 88 (Copy attached as per Appendix "C") and given local rank of Colonel vide Army headquarters Signal No.387542/MS1 dated 19 Mar. 88 (Copy attached as per Appendix "M") yet I have been deprived of all pensionary benefit.

6. Since I have been debarred from pensionary benefit of the rank of Colonel for no fault of mine, it is submitted that I may be given the benefits of rank of Colonel. I have been working against the vacancy of Colonel since its

upgradation in defacto and acting as a Colonel. This may kindly be given sympathetic consideration to permit me to draw all pensionary benefits as Colonel.

INTRODUCTION

7. In view of the foregoing, it is submitted that I was not promoted to the rank of Colonel at the appropriate time that is 01 Jul 87, whereas I was qualified to assume this rank on this date. This lacuna occurred due to procedural oversight at higher headquarters and conditions beyond my control.

8. It is, Therefore, prayed that:-

(a) I may please be given seniority in the rank of acting Colonel with effect from 01 Jul 87, when my batch of officers were considered for the same and I was deferred because the special ACR asked upon me was not forwarded by Headquarters 101 Area possibly under instructions from higher authorities that promotion board shall be held on said date whereas the same was held on the same date.

(b) The benefit of waiver to cover the short fall in the adequately exercised period should have been granted to me by Military Secretary under the existing provision on the subject.

9. I, Therefore, pray that I may be granted seniority in the rank of acting Colonel with effect from 01 Jul 87, as it will have lasting beneficiary effect on my pension and resettlement."

10. In the statutory complaint, the petitioner had prayed for his being granted the rank of acting Colonel w.e.f.1.7.1987. There was no reply from the Government of India.

11. On the 16th of November, 1988, the petitioner issued notice, through counsel, to the Chief of the Army Staff. The notice reads as under :-

"Under instructions from my client Col. Kehari Singh (Retd.) No.IC-22152-F, I have to serve you with the following registered AD notice which I hereby do:-

1. That my said client was commissioned into the Army on 10th May, 1964. After 19 years of service, he was approved for the rank of Selection Grade Lt. Colonel but for want of vacancy he was promoted to the rank of Lt. Colonel on 15th July, 1985.

2. That my said client has throughout served the Army with devotion, sincerity, high sense of loyalty and honesty and in recognition of his meritorious services, he was awarded by GOC in C Eastern Command's Commendation Cards two times i.e. on 15th August, 1987 and 15th August, 1988.

3. That the batch of officers in ASC to which my client belongs were considered for promotion to the rank of Colonel during March, 1987 and since my client was also due to be considered along with them special ACR was initiated vide

Headquarters 51 Sub Area Signal No. A 2889 dated 14 November, 1986 and forwarded to headquarters 101 Area. If this special ACR had been furnished in time, my client would have been considered for promotion in March 1987 but unfortunately for reasons best known to the officers concerned, my client was informed vide Headquarters 101 Area Signal No.A 1089 dated 4.3.1987 that the Special ACR was no longer required since the promotion Board was being held in July 1987. In spite of this communication received by my client, the special Board was held in March 1987 and since the special ACR had not been furnished, the promotion of my client was deferred to the next board and my client was intimated accordingly vide No. 36-510/ASC/MS5B dated 10th July, 1987 wherein he was informed as under :-

"Defer for want of adequate report in the rank of Lt. Col."

From this remark it is self evident that if adequate report in the form of Special Acr as initiated earlier had been furnished and made available to the Board held in March, 1987, there was every possibility of my client having been promoted as Colonel but he was deprived of this only because the Special ACR had not been furnished even though initiated earlier. My client has thus suffered only because the special ACR on him, even though initiated earlier, was not furnished to the Board only because the officers concerned felt that there was no necessity of doing so since the Board was to be held in July, 1987, whereas it was actually held in March 1987. Thus my client was unnecessary prejudiced for no fault of his.

4. The requirement of adequate report in the form of ACR is twelve months. My client had already earned ACR as Lt. Colonel for 10 months and 15 days w.e.f. 15th July, 1985 to 31 May, 1986. As such the shortfall was of one month and 15 days only. My client's special report initiated vide HQ 51 Sub Area Signal No. A 2089 dated 14th November, 1986 would have met the requirement, if it would have been considered by the Board held in the month of March 1987. Unfortunately the report was not produced to the Board for consideration. Also my client was not informed by the concerned officer about the shortfall in this ACR. Had my client been informed he would have applied for the waiver of shortfall of adequate period for which Military Secretary has been empowered to waive off shortfall period up to three months. Unfortunately my client was kept in dark due to which he was deprived of the following benefits:-

- (a) Promotion to the rank of Col.
- (b) Pay and allowances
- (c) Pensionary benefits.
- (d) Resettlement

5. That thereafter the fresh Selection Board for deferred cases of 1965 batch of ASC officers was held on 9th November, 1987. Keeping in mind that the result of this board might be delayed, my client had submitted an application to Military

Secretary, Army headquarters, requesting that since he was retiring on 30th April, 1988, his result may be declared before 31st Dec. 1987 so that he could avail of pensionary and resettlement benefits. Unfortunately no action was taken on this application of my client and the result was declared only in the third week of March 1988 and though my client was approved for promotion, he was given local rank of Col. Since he was to retire on 30 April, 1988. Thus it would appear that once again my client has suffered because his result was not declared before 31.12.1987. Had the result of my client would have been entitled to pensionary benefits.

6. On behalf of aforesaid client of mine I am to state that he was suffered for no fault of his, just because his special ACR, although initiated was not furnished to the Board on the plea the it was not required since the Board was to be held in July 1987 although it was actually held in March, 1987. Again my client suffered because the result of the next Board held on 9.11.1987 was not declared before 31.12.1987. There is no justification for my client being deprived of the pensionary benefits in this manner for no fault of his when he has been as a matter of fact approved for promotion by the Board. It is patent that if the special ACR had been furnished to the Board held in March 1987, my client's promotion would not have been deferred and he would have been promoted w.e.f. 1st July, 1987. It is thus in the interest of equity, justice and fair play that my client be promoted as acting Colonel w.e.f. 1.7.1987 so that he is entitled to all pensionary and resettlement benefits.

7. On behalf of my client I am to further state that even though my client sent his statutory complaint vide his No. 224/ST2 dated 11.4.1988 to the headquarters 41 Sub Area C/o 99 APO with copy to the Complaint Analysis Bureau, Chief of Army Staff, South Block, New Delhi, he has heard nothing in reply.

8. This is, Therefore, to request you to see that his statutory complaint is favorably considered and he is granted the relief to which he is entitled in equity and be not made to suffer for no fault of his, so that he is not compelled to seek justice through the process of law."

12. On the 1st of March, 1989, the Government of India passed the following order :-

"The Central Government, after considering the Statutory Complaint dated 11th April, 1988, submitted by Colonel Kehari Singh (IC22152) ASC, against deferment of his case for promotion to the rank of A/Colonel in April, 1987, is satisfied that no injustice has been done to the officer. His complaint is, Therefore, rejected.

By order and in the name of president."

13. By letter dated the 5th of April, 1989, that was communicated to the petitioner and the letter dated 5th of April, 1989 reads as under:-

1. One copy of the Central Government Order No.36501/44/ASC/335/MS5C/1283/D(MS) dt 01 Mar 89, rejecting the statutory complaint dated 11 Apr 88 submitted by you against deferment of the case for promotion to the rank of A/Col in Apr 87 is forwarded herewith.

2. Please acknowledge receipt of the letter."

14. The case of the petitioner is that even though the petitioner had rendered unblemished service, his case was completely ignored and he must have been granted the rank of acting Colonel w.e.f.1.7.1987 and the respondents by their acts had deprived the petitioner of his rank and consequential benefits and the respondents had acted illegally, irrationally and unreasonably, and, Therefore, the petitioner is entitled to the reliefs prayed for by him.

15. In the counter affidavit, without disputing the facts stated by the petitioner, it is stated:

"In case of petitioner it is just bad luck that he had to retire as Lt.Col. even after approval for promotion to the rank of A/Col. due to his superannuation in the age of 52. Though he was granted local rank of Col. for a month prior to his retirement, he cannot get the pensionary benefits attached to the rank of Col. as per existing rules."

16. It is further stated in the counter affidavit:

"In reply to para 4 it is submitted that the officers of 1965 batch to which the petitioner belongs were considered by No.3 Selection Board in April, 1987 with Annual Confidential Reports (ACRs) up to 1985-86 as cut off report. The petitioner took over the command of 825 ASC Bn on 15th July, 1985. He could not complete the mandatory period of 12 months. Adequately exercised (AE) period before he was considered for promotion in April, 1987 and thus, he was rightly deferred by the selection Board. Waiver of any shortfall in the stipulated 12 months AE period is not admissible under the rules. The petitioner was one of the 15 officers who were deferred in April, 1987 Selection Board. Due to the management constraints, his case could not be taken up as a special case and he was considered for promotion in the next board held in November, 1987."

17. With reference to the fact that there was a communication dated 14.11.1986 asking for special ACR, the stand taken in the counter is:

"In reply to para 5 of the petition it is submitted that at no stage Army HQ asked HQ 101 Area for the Special ACR in respect of the petitioner. However, as a routine a signal was sent seeking special CR during November, 1986 covering the period up to 01 Jan., 1987 but subsequently the same has been cancelled. The cancellation of the earlier instructions of seeking special CR has no relevance in the petitioner's case as in any case his batch was only to be considered in Apr. 87 with the report up to 85-86 as cut of report which are in any case available with Army HQ for screening the officers in April, 1987 Selection Board."

18. The Number Three Selection Board met between the 30th of March, 1987 to the 3rd of April, 1987 is a fact admitted by the respondents and what is stated in paragraph 5 of the counter is not at all correct.

19. Mr.Narender Kumar Jaggi, the learned counsel for the petitioner, submitted that the petitioner who rendered meritorious service had been deprived of his due promotion and retrial benefits, and the action of the respondents is vocative of Article 14 of the Constitution of India. The respondents had acted in an arbitrary fashion. If sufficient opportunity had been given to the petitioner as per the letter dated 24.3.1987 issued by the Army Headquarters, his case would have been put up before the Number Three Selection Board in March, 1987, and having been approved for promotion in November, 1987 and when the petitioner had made a special request on the 17th of October, 1987, the respondents had not cared to pass orders. The learned counsel submitted that the petitioner should have been promoted and granted the rank of acting Colonel w.e.f. 1.7.1987. That is the date on which the petitioner's batchmates were promoted on the basis of the result of the Number Three Selection Board held in March, 1987.

20. Mr. Jayant Bhushan, the learned counsel for the respondents, submitted that in the Selection Board meeting held in April, 1987, the case of 15 officers, including the petitioner, had been deferred for lack of adequate report. One must have worked for a period of 12 months but the petitioner had worked only for ten months. In the Selection Board meeting held in November, 1987, the case of the officers had been cleared but the respondents could pass orders only in March, 1988 due to administrative reasons. The learned counsel submitted that it is not disputed that as per the existing rules, the officer concerned should have rendered at least four months service in the promotion post and as the petitioner was to retire on the 30th of April, 1988, in March, 1988 when the decision of the Selection Board was approved, the petitioner could not be promoted. Therefore, according to the learned counsel, the petitioner did not get the rank of acting Colonel.

21. In my view, the respondents had acted illegally not putting the case of the petitioner before the Number Three Selection Board held in March, 1987 and the respondents ought to have followed the letter dated 24.4.1987 with reference to shortfall and the respondents ought to have issued orders approving the decision of the Selection Board held in November, 1987. The fact that the petitioner had rendered meritorious service is not disputed by the respondents. The non consideration of the case of the petitioner by the Number Three Selection Board held in March, 1987 was due to the arbitrary action of the respondents. Having issued the communication dated 14th of November, 1986, the respondents had gone to the extent of saying that Number Three Selection Board could meet only in July, 1987 when as a matter of fact the Number Three Selection Board met in March, 1987 and it would show that the respondents had acted in an arbitrary fashion. If the petitioner had been considered by the Number Three Selection

Board in March, 1987, he would have been approved because the petitioner satisfied the set criteria required for promotion.

22. The stand taken in the counter that it was the bad luck of the petitioner would show that the respondents having acted infringing the Fundamental Rights of the petitioner, would try to force the petitioner to resign himself to the vicissitudes of life. The respondents had ignored that if they had acted in accordance with law, the petitioner would have had his promotion in March, 1987 and he would be entitled to his pension and retrial benefits. Having acted in an arbitrary way when the petitioner has approached this Court under Article 226 of the Constitution of India, the answer is that owing to bad luck, the petitioner did not get his promotion. It is really some what strange that the respondents instead of owning the responsibility had taken a very cruel stand as if they could weird off the future of the officers.

23. In my view the petitioner has made out a case for interference under Article 226 of the Constitution of India. The writ petition, accordingly, stands allowed.

24. Respondents are directed to pass necessary orders granting the petitioner the rank of acting Colonel with effect from July, 1987 and consequential retrial, pensionary and resettlement benefits attached to the post of Colonel. The respondent shall pass orders in this behalf on or before the 31st of October, 1999.

25. There shall be no order as to costs.