

(2023) 02 DEL CK 0055

In the Delhi High Court

Case No : Civil Writ Petition No. 3539 Of 2014

Col Rajeev Negi

APPELLANT

Vs

Union Of India & Ors.

RESPONDENT

Date of Decision : 09-02-2023

Acts Referred:

Citation : (2023) 02 DEL CK 0055

Hon'ble Judges : Suresh Kumar Kait, J; Neena Bansal Krishna, J

Bench : Division Bench

Advocate : Pradeep Kumar Mathur, Harish Vaidyanathan Shankar, Srish Kumar Mishra, Sagar Mehlawat, Alexander Mathai Paikaday

Final Decision : Dismissed

Judgement

Suresh Kumar Kait, J

1. By this petition, petitioner is seeking a direction to the respondents to correct his seniority vis-a-vis respondents No.5 & 6 in view of Para- 2 to OM No. 21(4)/92/D (inspection) dated 22.12.1993 and Para- 22 of letter No. 04477/MS Policy dated 21.12.2004 issued by MS Branch. In addition, a direction is also sought to respondents to consider and promote petitioner w.e.f. 01.05.2012 to the rank of Brigadier being the senior most officer of the rank of Colonel in Electronic Discipline, with all consequential benefits. Further, a direction to re-fix inter-se seniority of all officers permanently seconded in DGQA after 2004, especially of those 16 officers mentioned in letter dated 27.04.2011 is also sought.

2. Petitioner claims to have joined Indian Army in the year 1988, though he was assigned two years anti-dated seniority of 1986 Batch in the rank of Second Lieutenant at the time of his joining. Petitioner further claims to have cleared Part 'D' Exam in 1999 and became Substantive Major and his seniority for promotion was fixed with 1988 Batch Officers. He was considered for promotion from Major to Lieutenant Colonel in the year 2004 but was not empanelled for

promotion as his seniority for the purpose of promotion was brought down to 1989. He was Permanently Seconded to the organisation DGQA in the rank of Substantive Major in October, 2004. He was promoted to the rank of Colonel (Selection Grade) in May, 2007 as a 1989 Batch Officer.

3. Since petitioner's seniority was brought down from 1988 to 1989, being aggrieved he submitted a representation vide letter No. MSQA/RN.47965 dated 31.12.2008 to the Additional Director (O), which was turned down by the respondents vide letter dated 20.02.2009. Petitioner filed a Statutory Complaint on 20.04.2009 which according to him was not decided within the stipulated time of 180 days and the same was rejected by the competent authorities after almost three years. Petitioner further claims to have undergone personal hearings with DG, DGQA against his rejection of Statutory Complaint but to no avail.

4. Aggrieved against the inaction of respondents to correct his seniority, the petitioner approached the Armed Forces Tribunal vide OA No.370/2012 seeking a direction to the respondents to re-fix his seniority and also quashing of order dated 01.03.2012 of Department of Defence Production, Ministry of Defence, Government of India whereby his Statutory Complaint dated 20.04.2009 was rejected.

5. Learned Armed Forces Tribunal vide order dated 03.04.2013 disposed of the above-mentioned OA filed by the petitioner holding that the Tribunal had no jurisdiction to entertain the grievance pertaining to the DGQA. Hence, the present petition has been filed by the petitioner seeking the relief(s) as mentioned hereinabove.

6. During the course of hearing, learned counsel appearing on behalf of petitioner submitted that the petitioner is presently working as Director (E) in HQ DQAL (DGQA) in the rank of Colonel and though petitioner's seniority was of 1988 Batch in the rank of Major (Substantive), he was not considered by Selection Board No. 4 in the Army for promotion from Major to Lieutenant Colonel with his original batch of 1986 (in 2001) and next batch of 1987 (in 2002) but was subsequently considered by Selection Board No.4 for promotion from Major to Lieutenant Colonel in the year 2003 with the 1988 batch officers, but unfortunately he was not empanelled for promotion and his seniority for the purpose of promotion was brought down to 1989 as R1 Case.

7. Learned counsel for petitioner also submitted that to fix the inter-se seniority of the army officers seconded to DGQA, the Government of India had issued an OM No. 21(4)/92/D (inspection) dated 22.12.1993. The relevant Para of said OM read as under:-

"It has been decided that the following criterion should be adopted for Permanent Secondment of the officer of the rank of Lt. Col. (including Lt. Col./TS) and Major:-

(a) Officer should have a minimum of two years of service in the DGQA Organisation before consideration.

(b) The officer should not be finally superseded

XXXXX

2. Final orders for permanent secondment shall be issued only after the selected officers willingness has been obtained in writing. The officers once permanently secondment, will continue in the Organisation till their retirement and shall be including in the Cadre Seniority List of Permanent Seconded Service Officers as per their dates of Seniority as substantive Major as modified based on the penalties/loss of seniority in the parent Corps and shall come up for consideration for promotion to the higher ranks based on availability of vacancies in respective disciplines.

XXXX"

8. It was further submitted by learned counsel for petitioner that based upon his qualifications, the petitioner was permanently seconded to the DGQA Organisation in the rank of Substantive Major in December, 2004 as a 1989 Batch Officer by the Additional Director (Officers), HQ DGQA vide letter dated 11.03.2005. Thereafter, he was promoted to the rank of Selection Grade Lieutenant Colonel by DGQA Selection Board in 2005 as 1989 Batch Officer. In May 2007, petitioner was promoted to the rank of Selection Grade Colonel by DGQA Selection Board again as a 1989 Batch officer. It was submitted that the petitioner had been placed correctly in the Gradation List of Seniority of DGQA at the time of induction in DGQA.

9. Learned counsel for petitioner next submitted that after the implementation of the 'Ajay Vikram Singh Committee Report' which introduced provision of Lieutenant Colonel (TS) after 13 year of service, the respondents vide Para 24 (C) of the letter dated 21.12.2004, clearly specified that the adjusted seniority of all Lieutenant Colonels previously not empanelled by Selection Board No.4, would be below the last batch previously promoted to the Acting (Selection Grade) rank of Lieutenant Colonel (i.e. 1989). Therefore, Lieutenant Colonel (now Colonel) G.S. Grewal and Lieutenant Colonel (now Colonel) K.P. Kumar i.e. respondents No.5 & 6, respectively, were promoted to the rank of Lieutenant Colonel (Substantive) on completion of 13 years of service and being the finally superseded officers in the rank of Major, their seniority was fixed as per Para- 22 of MS Branch letter No.04477/MS Policy dated 21.12.2004.

10. Learned counsel further submitted that after secondment in DGQA in the year 2008, respondent-Organisation have placed respondents Nos.5 & 6 above the petitioner (Selection Grade Lieutenant Colonel and Selection Grade Colonel of 1989 batch) and Lieutenant Colonel (now Colonel) R. Dhankar (Selection Grade Lieutenant Colonel of 1987 batch) in contravention of respondents' policies as they were finally non-empanelled, for promotion from Major to Lieutenant

Colonel in the year 2003.

11. Learned counsel for petitioner submitted that at any point of time, Army is empowered to recall Service Officers permanently seconded to DGQA Organisation (Para 5(e) of DGQA Policy dated 28.10.1978). Moreover, Service officers are seconded to DGQA only for postings and promotions and they keep the Identity Card issued by the Army Authorities. Their service documents are maintained by the AG's Branch, Army HQ and not by the DGQA and their payment Authority for medical, leave, for wearing uniform and badges, is governed by Army Rules. Therefore, modification/change of seniority of service officers before and after secondment in DGQA is not permissible. Therefore, it was submitted that, respondent No.5 has to be placed below Colonel R. Dhankar and other service officers of 1989 batch including the petitioner, in accordance with Para 22 and 24(c) of Ajay Vikram Singh Committee Orders.

12. Learned counsel for petitioner further submitted that being aggrieved by the discriminatory and biased act of the respondents in placing the petitioner below respondent Nos.5 and 6, a representation vide letter No. MSQA/RN.47965 dated 31.12.2008 was submitted to the Additional Director (O) and requested for correction in fixation of his seniority, however, vide letter dated 20.02.2009, the said request was turned down.

13. It was brought to the notice of this Court that petitioner had preferred a W.P. (C) 2652/2013 before this Court which was dismissed as withdrawn in view of the MS Branch Letter dated 24.06.2013. Thereafter, petitioner again filed petition being W.P.(C) 5435/2013, wherein interim directions were issued to the respondents to keep one post in the rank of Brigadier. However, the said petition was also dismissed as withdrawn by the petitioner in view of the fact that Colonel P.C.C. Aggarwal was not impleaded as a necessary party, however liberty was given to petitioner to file a afresh petition. Now, petitioner has filed the present petition seeking a direction to the respondents to correct his seniority and promote him to the rank of Brigadier w.e.f. 01.05.2012, being the senior most officer of the rank of Colonel in Electronic Discipline with all consequential benefits.

14. On the other hand, respondents No.1 to 4 in their counter affidavit have claimed that the petitioner was seconded in DGQA in 2004 and he was made junior to respondents No.5 & 6 in the gradation list of 2008 and 2010. However, he did not challenge those lists and after a substantive delay, the present petition has been preferred.

15. It was submitted on behalf of respondents No.1 to 4 that DGQA is an Inter Service Organisation wherein Service Officers are sponsored from various Armed Forces and services through the MS Branch of Army. All Officers of a particular batch of the year who are offered by the MS Branch get Permanently Seconded to DGQA and their seniority is fixed according to DGQA Gradation List. The seniority of the Batch year ceases to have no relevance for the purpose of getting

considered for promotion in DGQA and Officers who are promoted to the next Selection Grade rank as per their seniority rank in the DGQA. The respondents No.1 to 4 claim that petitioner had original passing out seniority of 15.06.1986 but was relegated to seniority of 11.01.1988 due to late clearance of Part 'D' Examination and were thereafter, permanently Seconded in DGQA Organisation in 2004.

16. It was submitted that the petitioner's effort to fix his seniority based on his batch year is flawed as he is trying to appear his seniority with that of respondents No.5 & 6, who were his batch mates in the Army. However, the DGQA organization is governed by OMs and Rules made by Department of Defence Production, Ministry of Defence and not by Army Act and Army Rules. Learned counsel strenuously submitted that fixation of seniority in DGQA is a set procedure and therefore, petitioner cannot be permitted to compare seniority of DGQA permanent seconded officers with the officers in the Army.

17. Reliance is placed upon Para-2 of OM No. 21(4)/92/D(Inspection) dated 04.05.1993/ 22.12.1993 as amended vide MoD OM No. 21(4)/92/D(Inspection) dated 05.10.2010, wherein it is stated that service officers on Permanent Secondment to DGQA organization shall be included in cadre seniority list of permanently seconded service officers as per their dates of seniority substantive Lt Col, as modified based on penalties/ loss of seniority in the parent corps.

18. It was further submitted that pleas of petitioner that due to three rejections, respondents No.5 & 6 were not entitled for promotion to the rank of Major, deserves to be rejected in view of implementation of Ajay Vikram Singh Committee report, whereunder all Majors (irrespective of their promotion status) were to be granted to the rank of 'Substantive Lt Col' and be further considered for promotion to the next rank by a Special Merit Board for further promotion to the rank of 'Selection Grade Col'. By virtue of this recommendation, respondents No.5 & 6 were not finally superseded and were granted permanent secondment.

19. Further submitted that petitioner's seniority was revised on account of non-clearance of Part-'D' examination and was brought down to 15.06.1986 to 11.01.1988, whereas respondents No.5 & 6 did not earn any penalty due to non clearance of Part-'D' examination. Therefore, no anomaly or disparity has occurred in fixation of seniority of officers.

20. It was submitted the petitioner is cleverly trying to hide the fact that he was also promoted to the rank of Lieutenant Colonel (time-scale), on implementation of 'Ajay Vikram Singh Committee report'. It was also submitted that respondents No.5 & 6 were promoted to the rank of Lt Col (Subs) while being on the strength of the Army on 16.11.2004 and they had been seconded to the DGQA in the year 2008; whereas petitioner was promoted to the rank of Lt Col (Selection Grad) on 21.06.2005 in DGQA as 1989 batch officer and the policy to govern promotions in Army and DGQA are different. It was submitted that Army HQ policy dated 21.12.2004 regarding inter-se seniority is applicable to officers of the Army only

and not to the officers of DGQA and for this reason, no officer of DGQA was automatically promoted but a promotion board was held in June, 2005. The Board of Officers revised the list of DGQA in the meeting convened on 09.09.2014 and a latest list was finalized on 22.10.2014.

21. In rebuttal, learned counsel appearing on behalf of petitioner submitted that respondents have suppressed that the officers inducted in DGQA are subject to recall by the Army. It was submitted that respondent No.5, who was superseded in the year 2003, was granted rank of Lt. Col. by virtue of AVSC report. (Annexure P-5). It was also submitted that policy of 1993 and thereafter vide OM dated 2003 mandated that the finally superseded officers will not be inducted in DGQA. Also submitted that Policy dated 28.10.1978/29.05.1998 (Annexure P- 2) on "Procedure for permanent secondment into DGQA" was modified vide OM dated 16.11.2007 in which induction at the level of Lt Col (instead of Major) with maximum age of 44 years was permitted without modifying the clauses of the guide lines promulgated vide OM dated 1993 (Annexure P-1) and 2003. Lastly, it was submitted that petitioner was permanently seconded in DGQA in 2004 on his seniority of 1989, which is in line with DGQA policy dated 22.05.1998; whereas respondent No.5 was permanently seconded in DGQA in the year 2008 and all the 16 officers who had picked up their rank of Col.(SG) in June, 2007, are below the officers of 1989, who have been permanently seconded in DGQA in 2008. According to petitioner, there is no provision under which DGQA is empowered to alter the seniority of officers in the parents corps.

22. Learned counsel for petitioner sturdily submitted that till the year 2007, petitioner was correctly placed in DGQA Gradation List, however, in the year 2008, respondent No.5 has been placed above him even though he was not entitled for permanent secondment in DGQA in accordance with the policy of 1993. Hence, a direction is sought to the respondents to re-fix petitioner's seniority in view of Para- 2 to OM No. 21(4)/92/D (inspection) dated 22.12.1993(Annexure P-1) and Para 22 of letter No. 04477/MS Policy dated 21.12.2004 (Annexure P-5) issued by MS Branch.

23. Upon hearing learned counsel for the parties and perusal of the material placed on record, we find that petitioner had initially joined services of Indian Army in 1988 with ante dated seniority of the year 1986. Since the petitioner could not clear the Part-D examination for 13 years, his seniority was brought down from 15.06.1986 to 11.01.1988; whereas other officers did not earn any penalty for this reason. Petitioner was promoted as Substantive Major on 11.01.1999 and was thereafter permanently seconded to DGQA in the rank of Substantive Major in October, 2004.

24. Consequent upon implementation of 'Ajay Vikram Singh Committee Report' and after permanent secondment to DGQA, petitioner was promoted to the rank of Lt Col (Selection Grad) on 21.06.2005 as 1989 batch officer. Again in May 2007, he was promoted to the rank of Selection Grade Colonel by DGQA Selection Board as a 1989 Batch officer. Similarly, pursuant to implementation of

'Ajay Vikram Singh Committee Report', the respondents No.5 & 6 were also promoted to the rank of Lt Col (Subs) on 16.11.2004 as 1988 batch officers and they were seconded to DGQA in the year 2008. The grievance of petitioner is that respondents No.5 & 6 have been placed above him in DGQA.

25. Apparently, by virtue of Office Memorandum No. 67952/ Q/DGI (Adm-4)/10412/D(Prod) dated 28.10.1978 , as amended from time to time and lastly, vide OM No. 6(1)/ 2007/D(QA) dated 16.11.2007, the terms and conditions for intake of those officers who have been permanently retained by the Ministry of Defence, Department of Defence Production, have been laid down, which clearly establish that the DGQA is an independent body and is not a form of Army. After joining DGQA organization on permanent secondment, the officer is included in cadre seniority list of permanently seconded service officers as per their dates of seniority as substantive Major, as modified based on penalties/ loss of seniority earned by the officers in their parent corps. The relevant Para of OM No. 21(4)892/D(Inspection) dated 22.12.1993 under the subject "GUIDELINES FOR PERMANENT SECONDMENT OF SERVICE OFFICERS OF THE RANK OF THE MAJOR AND LT. COLS IN THE DGOA ORGANISATION" reads as under:-

"2. Final orders for Permanent Secondment shall be issued only after the selected officers willingness has been obtained in writing. The officers once, permanently secondment, will continue in the Organisation till their retirement and shall be including in the Cadre Seniority List of the Permanently Seconded Service Officers as per their dates of Seniority as sustentative Major, as modified based on the penalties/loss of seniority in the parent Corps and shall come up for consideration for promotion to higher ranks based on availability of vacancies in respective disciplines."

26. Thereafter, vide OM No. 6(1)/ 2007/D(QA) dated 16.11.2007, Ministry of Defence, Department of Defence Production issued further guidelines for induction on Permanent Secondment of Service Officers of the rank of Lt. Col. In DGQA organization, wherein it has been noted that Officers once permanently seconded will continue in the organisation till their retirement in due course and will be considered for promotions in higher grades against their vacancies. The criteria for fixation of seniority in the DGQA is based upon the batch of seniority of the officer who is inducted to DGQA, who belong to different batches and accordingly, the officer finds his position in the gradation list. Thereby, the gradation list is the foundation of seniority of officers in DGQA.

27. In the present case, after secondment in DGQA in the year 2008, respondent-Organisation have placed respondents Nos.5 & 6 above the petitioner (Selection Grade Lieutenant Colonel and Selection Grade Colonel of 1989 batch). On this aspect we find that pursuant to implementation of 'Ajay Vikram Singh Committee Report' all Majors, irrespective of their promotion status, were to be granted status of 'Substantive Lt Col' and thereafter be considered for 'Selection Grade Col'. The relevant paras thereof reads as under:-

Tele No.23018826 Military Secretary Branch

Army HQ

New Delhi-110011

21 Dec 04

04477/MS Policy

HQ Southern Comd (MS)

HQ Eastern Comd (MS)

HQ Western Comd (MS)

HQ Central Comd (MS)

HQ Northern Comd (MS)

HO ARTRAC Comd (ms)

HQ IDS (MS & SD)

HQ ANC

HQ SFC

GUIDELINES FOR IMPLEMENTATION OF RECOMMENDATIONS OF

A V SINGH COMMITTEE REPORT

1. Consequent to the announcement by the COAS on Army Day 2004, the Govt. has accorded approval for implementation of recommendation of the A V Singh Committee Report pertaining to the Non-Select Ranks and restructuring of offrs cadre as given below:-

Xxxxx

Xxxxx

Xxxxx

Inter-se Seniority in the Rank of Lt Col

22. With effect from 16 Dec 04 all Lt Col will be subs in nature those Lt Col (TS) who cannot be promoted to this rank since they do not meet the laid down criteria. The inter-se seniority between any two Lt Cols consequent to implementation will be the same as that existed between them prior to implementation, even though, both of them would assume the subs rank of Lt Col on the same day. The either and futuristic seniority order is co-related in the table below:-

INTER-SE SENIORITY LT COLS

INTERSE SENIORITY PRIOR TO MPLEMENT ATION

INTERSE SENIORITY AFTER IMPLEMENTATION

NOTE

Lt Col (Subs)

Lt Col (Subs) (erstwhile subs Lt Col)

No change in inter-seniority prior to and after implementation

Lt Col (Actg)

Lt Col (Subs) (erstwhile Actg Lt Col)

Lt Col (TS)

Lt Col (Subs) (erstwhile Lt Col TS)

Majs (as per gradation list)

Lt Col (Subs) (erstwhile Maj as per Gradation list)

INTER-SE SENIORITY IN THE RANK OF COL

23. With effect from 16 Dec 04 onwards, promotion to the rank of Col by selection will be through No. 3 selection board as well as through opec Ment Review board (SMRB). In the transition phase, Officers promoted to select rank of Col through SMRB will either be those Lt Cols who were not empanelled by No 3 selection board or those non-empanelled by No 4 selection board.

24. The seniority of offrs promoted through SMRB will be that of adjusted seniority as existing at the time of promotion. Hence grant of subs rank of Col will be determined based on the adjusted seniority. However till such time subs rank is granted, the inter-se seniority between actg Cols will be as under:

(a) The inter-se seniority in the rank of Acth Col will be determined as per inter-se seniority in the subs rank of Lt Col as given at Para 22 above.

(b) The adjusted seniority of all Lt Cols previously non empanelled by No.3 Selection Board will be below the last batch promoted to the rank of actg Col when considered for promotion by SMRB.

(c) The adjusted seniority of all Lt. Cols previously not empanelled by No 4 Selection Board will be below the last batch previously promoted to the actg rank of Lt Col (ie 1989). This seniority will reckon for all purposed when an offr is considered initially for promotion by SMRB irrespective of when the Bd is held in comparison to 1989 batch."

28. The sub-clause(C) of Clause-24 of the afore-noted guidelines clearly show that the seniority of Lt. Col. not empanelled by Selection Board No.4, will be below the last batch of acting rank of Lt. Col. i.e. 1989. Since the petitioner belonged to the 1989 batch in parents corps and respondents No.5 & 6 belonged to 1988 batch in the parents corps, their seniority in the rank of Lt. Col. was

fixed based thereupon and when they joined DGQA on secondment, the said seniority prevailed, irrespective of their joining year in the DGQA. The seniority status of petitioner, based upon his date of Subs Major, is as under:-

Sl No.

Name of the Officer

Date of Seniority

Date of Subs Major

Promotion status as on date of holding

QASB

(i)

A K Dass,

EME

15-06-86

15-06-97

3R in 4SB

(ii)

Naval

Bhulani, EME

15-06-86

15-06-97

3R in 4SB

(iii)

GS Grewal,

EME

20-12-86

20-12-97

3R in 4SB

(iv)

KP Kumar,

Sigs

21-12-86

21-12-97

3R in 4SB

(v)

Rajeev Negi, EME

15-06-86

Revised 11-01-88

11-01-99

1R in 4SB (Jun 03)

29. Since the seniority of the petitioner has to be as per his date of seniority as substantive Major as modified based on penalties/loss of seniority in the parent corps, we find no fault in the order dated 01.03.2012.

30. In view of the above, the present petition is accordingly dismissed.