
(2013) 02 DEL CK 0310

In the Delhi High Court

Case No : Writ Petition (C) No. 8729 of 2011

Col. T.S. Sachdeva

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 18-02-2013

Acts Referred:

Citation : (2013) 2 ILR Delhi 1119

Hon'ble Judges : J.R. Midha, J;Gita Mittal, J

Bench : Division Bench

Advocate : S.S. Pandey, for the Appellant; Ankur Chhibber, for the Respondent

Final Decision : Dismissed

Judgement

Gita Mittal, J.—The petitioner assails an order dated 22nd September, 2011 passed in OA No. 115/2011 passed by the Armed Forces Tribunal. The petitioner was recruited on 3rd September, 1979 in the Indian Army in Remount Veterinary Corps (for brevity "RVC") in 1979 batch. He was similarly placed as one Tej Ram. They were promoted to the rank of Lieutenant Colonel but could not be empanelled by the Selection Board for the post of Brigadier. As they had grievance with regard to the ACRs which had been recorded, non-statutory complaints were filed in respect thereof. Redressal was given to both of them on their complaints by expunging the adverse portion of the ACRs.

2. In view of the adverse remarks having been expunged from the ACRs, the respondents held a Special Selection Board in September, 2010 for consideration of the petitioner along with Colonel Tej Ram. These two officers, however, could not be selected even in this consideration.

3. The respondents have contended before us that the stage of fresh consideration of these officers was consequently over and they were subsequently required to be considered as review cases.

4. The respondents pointed out that during 1980-81, there was no batch

available for consideration. When a vacancy arose on 23rd February, 2011, the batch of 1982 was eligible for its first consideration as the next available batch, with the petitioner and Col. Tej Ram being case of the first review. These two officers were considered as first review cases by the Selection Board No. 2 held in April, 2011 along with fresh cases by the 1982 batch in accordance with the afore noticed policy.

5. For the said vacancy in the post of Brigadier (which had arisen on 23rd February, 2011), Colonel Tej Ram and Col. Sachdeva (the present petitioner) contended that since they belonged to the 1979 batch, their cases were required to be considered for promotion without being clubbed with persons belonging to the 1982 batch. As this was not being done, the petitioner and Col Tej Ram approached the Armed Forces Tribunal by way of O.A. No. 115/2011 seeking a direction to the respondents to accord them such consideration. They also prayed for striking down of para 6 of the relevant policy letter for calculation of pro-rata vacancies.

6. Our attention has been drawn to the counter affidavit filed by the respondent no. 1 in O.A. No. 115/2011, Tej Ram & Anr. v. Union of India filed by the petitioner jointly with Col. Tej Ram challenging their separate non-consideration. In this counter affidavit, the respondent no. 1 stated as follows:

In terms of MS Branch policy letters No. 37417/QSIR/MS-5 dated 22 Aug 1986, "Sequence of Selection Review Cases", Para 9(a) of letter No. 04579/MS (Policy) dated 11 Dec 1991, "Sequence of Selection to Select Ranks" and letter No. 04477/MS Policy dated 07 Oct 2002 "Consideration of CRs for SBs" in Army, officers are considered batch-wise to draw a panel to fill likely vacancies, alongwith a fresh batch, officers belonging to the previous two batches are given review consideration, These policy letters are attached as Annexure "R-1" to R-3 respectively.

There was no commissioning and there are no officers in 1980 and 1981 batches of RVC. Col Tej Ram and Col T.S. Sachdeva, who were not approved as Special Review (Fresh) cases of their own batch 1979 were thus logically required to be considered as normal review cases alongwith Fresh Cases of the next available batch, which is the 1982 batch, which has three Cols, by No. 2 Selection Board for one vacancy. The plea of being considered as part of the 1980 batch is not tenable since there was no commissioning in RVC in that year. Normal review cases cannot be considered in isolation but have to be considered alongwith Fresh Cases of the next available batch who would otherwise be deprived of being considered equitably for the available vacancy. The Special Review (Fresh) cases are considered afresh based on redressal granted consequent to a complaint or for any other reason. The officers are considered as per the policy in vogue at the time of consideration of his original batch and with comparative merit of his batch mates. The policy letter No. 04502/MS Policy dated 27 July 1995 is attached as Annexure "R-4". 4.8 That the contents of Para 4.8 are denied being false, misleading and perceptions of the Applicants. It is submitted that the

review cases cannot be considered alone as the available vacancy will be of the fresh batch and if that batch is not considered it will be deprived of legitimate and fair consideration. The review cases were already considered as fresh cases for vacancies available to the said (original) batch but they were not empanelled based on quantified merit and value judgment marks. In case logic of the Applicants is accented that would mean that officer who is not approved as Fresh batch with his batch mates will be considered without a Fresh batch for a vacancy which should logically go to Fresh batch and those review cases officers should be empanelled, even though, below the comparative merit of their batch and that cycle should continue until Fresh batch comes UP for consideration, does not stand to logic, otherwise, there may not be any supersession in the Minor Corps.

(Emphasis Supplied)

7. We find that by the order dated 22nd September, 2011 which has been assailed by the petitioner herein, the Armed Forces Tribunal negated the claim of the petitioner who had filed OA No. 115/2011 along with Col. Tej Ram and held that they were not entitled to the stand alone consideration as review cases de hors the next available batch. This petition was therefore dismissed by the impugned order.

8. It is noteworthy that another officer of the RVC namely Major General Shrikant Sharma was aggrieved by the action of the respondents in acting diametrically opposite as in the case of the petitioner. Major General Shrikant Sharma was aggrieved by the act of the respondents in giving stand alone consideration to the review case of Major General S.S. Thakral as a first review case for the post of Major General and thereafter considering him alone as a fresh case for promotion to the rank of Lieutenant General. Major General Shrikant Sharma had filed OA No. 161/2011 which came to be listed with the petitioner's OA No. 115/2011 before the Armed Forces Tribunal on 22nd September, 2011. The petition filed by Major General Shrikant Sharma was dismissed by the Armed Forces Tribunal by an order passed on 22nd September, 2011 and the Tribunal returned a finding which was diametrically opposite to that in the case of the petitioner and Col. Tej Ram. Major General Shrikant Sharma assailed the order passed in his case by way of Writ Petition (Civil) No. 7208/2011 which has been allowed by us by the judgment passed on 11th January, 2013.

9. It is pointed out that this Court has considered the view taken by the Armed Forces Tribunal in the order passed on 22nd September, 2011 in OA No. 115/2011 in paragraph Nos. 61 to 72 of the judgment in Writ Petition (Civil) No. 7208/2011. It is not disputed before us that the challenge by the petitioner is covered by the reasons recorded by us in our decision on 11th January, 2013 in Writ Petition (Civil) No. 7208/2011. In view of the above, for the detailed reasons recorded in our decision dated 11th January, 2013 in Writ Petition (Civil) No. 7208/2011, the present writ petition must fail. This writ petition is accordingly dismissed.