
(2008) 08 DEL CK 0091

In the Delhi High Court

Case No : Writ Petition (C) No. 10958 of 2004

K.R. Srinivasan

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 04-08-2008

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2008) 106 DRJ 47

Hon'ble Judges : Sanjay Kishan Kaul, J; Mool Chand Garg, J

Bench : Division Bench

Advocate : K.R. Krishnamani and R.K. Gupta, for the Appellant; Vikas Singh, ASG and Sanjay Katyal, for the Respondent

Final Decision : Allowed

Judgement

Mool Chand Garg, J.—The petitioner was appointed as a Commissioned Officer on 15.5.1967 in the Executive Branch of the Indian Navy. During his service he specialized in "Hydrography" some time in Jan. 1969 while posted in the executive branch. He was then assigned his duties in Hydrographic Section of the Executive Branch.

2. In 1976 the Navy started an exercise for creating a separate Hydrographic Cadre to retain professionalism in the service. They also sought views of those who were working in this branch and gave them option to come back to the general cadre while retaining the final decision to be taken by the Naval Headquarters vide letter No. NA/1648/76, dated 25.3.1976. The petitioner as well as others requested to come back to the general branch but the said option was refused at that time.

3. However, based on the inputs from the naval commands and the apprehensions of vast majority (over 80%) of the hydrographic officers, including the petitioner, the Naval Headquarters after deliberations within and at the PSOs meeting on 02 Jan. 1977, decided to form a separate hydrographic cadre within

the Executive Branch due to the exigencies of the services.

4. It is also the case of the petitioner that when a decision was taken to create a separate Hydrographic cadre, the Headquarters of Navy also decided to safeguard further promotional avenues and career prospects of such hydrographic cadre (H) officer who were retained in Hydrographic Cadre. It was decided that promotional avenues and career prospects of promotion shall be maintained at par with those of the General Service (X) officers. This is apparent from the provisions of para 3(a) and (b) and 4 Naval Headquarters letter NA/1648/76 dated 02.9.1976. The said paragraph are reproduced for the sake of reference:

Career Prospects: It will be ensured that promotion opportunities for the officers of the Hydrographic cadre will remain at par with those of the General List officers of the Executive Branch by:

- a) Creating additional Hydrographic vacancies, based on periodic cadre reviews.
- b) Making temporary adjustments in the Executive Branch vacancies ashore, pending the sanction of additional Hydrographic vacancies, from time to time.

4. Cross-Movement to General Service: It is not considered necessary that Hydrographic Officers move to afloat appointments in General Service. However, as explained above, career prospects will be maintained by appointing them to General List appointments ashore.

(emphasis implied)

5. On 4th January, 1977 respondent No. 1, in accordance with the spirit of the policy letter dated 02.9.1976, conveyed the sanction of the President of India for the upgradation of the post of then Chief Hydrographer Navy as Rear Admiral so long as it was held by Commodore F.L. Fraser. It is a matter of record that in terms of the policy decision taken by the respondents the petitioner was also considered for promotion to the post of Lt. Commander (Cdr.) on 1.11.1976. Later on, he was also promoted as Captain with seniority of his own batch. He became Commander (Cdr.) on 30.9.1980. He was also considered for promotion to the rank of Rear Admiral initially but he could not make it twice. But later on he was promoted to the post of Rear Admiral by the Promotion Board (PB) 01/96 which was duly notified vide letter No. RS/1416/96, dated 30.7.1996 issued by the Chief of the Naval Staff.

6. However the petitioner was not considered for promotion to the post of Vice Admiral even though his juniors and the officers of his batch were considered. He made representations in this regard but without success. He was intimated about the decision taken in this regard on 26.3.2004 and 14.6.2004 and thereafter, he filed the present petition.

7. It is the case of the Petitioner that his non-consideration for the post of Vice Admiral is contrary to the promise made in the letter dated 2nd September, 1976

(supra) and is therefore arbitrary. It is also discriminatory as one Sushil Kumar who was also a hydrographer as per the current Navy list was also promoted to the higher rank up to the rank of Admiral. He also submits that even his juniors have also been granted the rank of Vice Admiral by the last Selection Board. Thus his grievance can only be readdressed by this Court.

8. The petitioner has made the following prayers in his writ petition:

a) Issue a writ of certiorari or any appropriate writ or writs to set aside the order dated 14.6.2004 passed by Respondent No. 1.

b) Issue a writ of certiorari or any appropriate writ or writs to set aside the order dated 26.3.2004 passed by Respondent No. 1.

c) Issue writ of Mandamus or any other writ or writs commanding the respondent No. 1 to consider the petitioner for promotion to the rank of Vice Admiral in Indian Navy with applicable seniority in accordance with para 3 and 4 of policy dated 02.9.1976, total sub-cadre management decisions of 17.3.1997, and based on ACRs till PB 01/03.

d) Any other writ or writs, order/orders, direction/directions.

9. The respondents have opposed the writ petition by filing a counter affidavit. It is stated that the representation made by the petitioner against his non-consideration for the post of Vice Admiral stands already rejected vide orders passed on 26.3.2004 and by the order dated 14.6.2004. It is also stated that the petitioner was commissioned in the Navy on 15.05.67 in the Executive Branch ("X" Branch) of Navy which consists of officers who are specialized in the field of Aviation, Submarine, Gunnery and Missiles, Communication, Diving etc. and has small cadres such as Logistic, Hydro, Naval Armament Inspection (NAI) and Naval Law (NL). The petitioner specialized in "Hydro" in his early years of service and thus he was posted in Hydro appointments.

10. It is also the case of the respondents that in 1976 a separate Hydro cadre within the "X" Branch was envisaged vide Naval Headquarters (NHQ) letter No. NA/1648/76 dated 02.09.76 and that the officers specialized in Hydro were given a special preference to opt for the new cadre and the same was appreciated by the officers. It is further submitted that the letter of 02.09.1976 (supra) clearly shows that the officers already holding Hydro specialization were to be given an option either to continue in the cadre, or revert to General Service, with the clear stipulation that the final decision regarding individual officers rested with NHQ. The contention of the petitioner that his option to revert to X (GS) in 1976 was rejected by NHQ due to exigencies of service was not germane, as he never raised this issue ever since 1976, prior to his recent representations. Moreover the petitioner in hydro cadre was promoted to the highest rank i.e. R. Admiral and enjoyed all the service benefits and is now raising baseless issues with regard to his promotion to Vice Admiral. It is further submitted that before 1981 the Captain was the senior most rank in the Hydro Cadre but the same was

upgraded vide Government of India, circular dated 27.03.1981.

11. It is stated that in Navy the rank of Commanders (Cdr) and above are selection ranks and officers are given a minimum of "three looks" for consideration for these ranks, viz. First Look, Review Case 1 (R-1) and Review Case 2) R-2. The petitioner was promoted to various higher ranks as per details given below:

(a) Lieutenant 15.06.70 (b) Lt. Commander 15.06.1978 (c) Commander As a First Look Case as part of X (GS) by PB 3/80 (d) Capt As a First Look Case as part of X (GS) by PB 2/86 (e) Radm As a Third Look (R-2) case by PB 1/6 as part of X (GS) but cleared exclusively for Hydro cadre.

12. It is submitted that till 1997 officers from Hydro cadre were being treated as part of X (GS) and were being cleared against X (GS) vacancies. Based on this policy, the petitioner though belonging to Hydro Cadre continued to be considered and promoted to the ranks of Cdr and Caption (Capt) against X (GS) billets. Therefore for the rank of R. Adm also the petitioner was considered by PB 1-94 and PB 1/95 against X (GS) billets and was graded "R-1" and "R-2" respectively. The petitioner was appointed as Chief Hydro in the rank of Cmde on 03.08.94, on demise, in harness, of the then incumbent R. Admn. PP Nandi as he was the only officer available. He was then considered again for promotion as a third look case by PB 1/96. The respondents also submitted that on the consolidated merit list, the petitioner figured at number 13 and hence would not have merited promotion to rank of R. Adm. itself due to availability of only four vacancies. However, he was promoted "Exclusively for Hydro Cadre" as a special case. Further the approval of promotion MoD also carried this annotation. As the petitioner was promoted to the rank of R. Adm., (Exclusively for Hydro cadre) and there being no post of Vice Admiral (V. Adm.) in Hydro cadre, therefore he was not eligible for consideration for further promotion. Accordingly, the petitioner was not considered by the Promotion Board (PB) No. 1 held on 13.06.2003 in which R. Adms. Of X (GS) of Selected List Year (SLY) 1996 were considered for promotion to the rank of V. Adm.

13. It is further stated that the petitioner was initially posted as Chief Hydro Officer in the rank of Commodore (Cmde) in August 1994 and continued to hold the same post on promotion to the rank of Rear Admiral since 1.11.96. He never asked for any change of post during this long tenure of 10 years service. This implied that the petitioner was well aware of the fact that he was retained, as Chief Hydro for an unusually long spell whereas the normal tenure of Naval officers is 18 to 24 months in one appointment. Therefore it is clear that the petitioner tacitly accepted this reality as he never raised any objection to his continued retention as Chief Hydro for ten long years, nor asked for any change of posting except seeking promotion to the rank of V. Adm. nearly at the end of his service. As such it has been prayed that the present petition is devoid of any merit and deserves to be dismissed.

14. We have heard the learned Counsel for the parties and have also gone through the written submission.

15. The basic issues which arise for consideration in this writ petition are two fold:

i) Whether the respondents were not duty bound to take care of the career prospects of the officers working in the Hydrography Branch despite the assurance given by them in this regard by refusing their option to shift to X (G) Branch as was contemplated vide the letter dated 02.9.1976. The said paragraphs are reproduced for the sake of reference:

Career Prospects: It will be ensured that promotion opportunities for the officers of the Hydrographic cadre will remain at par with those of the General List officers of the Executive Branch by;

c) Creating additional Hydrographic vacancies, based on periodic cadre reviews.

d) Making temporary adjustments in the Executive Branch vacancies ashore, pending the sanction of additional Hydrographic vacancies, from time to time.

4. Cross-Movement to General Service: It is not considered necessary that Hydrographic Officers move to afloat appointments in General Service. However, as explained above, career prospects will be maintained by appointing them to General List appointments ashore.

ii) Whether the respondents could change the service condition of the petitioner by restricting further promotion of the petitioner from the rank of Rear Admiral to Vice Admiral and above despite the fact that persons who had also been in the Hydrography cadre were promoted to the highest post in Navy such as Shri Sushil Kumar who also became Admiral.

16. There can be no dispute that the petitioner was at number 13 in the merit list when he was considered for the post of Rear Admiral. It is also a matter of record that on the first two occasions he was not granted promotion but on the third occasion he was granted promotion along with JS Bedi and A.K. Singh who happened to be his juniors also considered at that time. There is nothing on record which may justify that the promotion of the petitioner as Rear Admiral was on account of any special concession shown to the petitioner or that there is any policy decision taken by the respondent to put a glass ceiling for the promotion of hydro officers who admittedly form part of the X (G) Cadre service.

17. At this juncture it would be interesting to take note of the profile of the Hydrographer in a booklet which has been circulated by the Indian Navy for inviting the people to join Navy. Regarding Hydrographic Officer it is stated that,

This small but crucial sub specialization is responsible for collecting information needed for the charts used by the Indian Navy and other Navies around the world. You have the option to remain a Surveyor throughout your career for the sheer love of it, or opt for other shore based appointments.

18. Thus the aforesaid public notice does not show that there is any distinction between a Hydrographic cadre or the general services cadre which might be formed or that it forms a separate class which puts an end to their promotional avenues after attaining the post of Rear Admiral. It is also interesting to note that while considering the case of the petitioner for the post of Rear Admiral, the profile which has been disclosed to the promotion board reads as under:

Cmde KR Srinivasan (00744R). The promotion Board noted that this officer also belongs to the exclusive cadre of "Hydrographic Specialists", has excelled in the appointment of Chief Hydrographer and has brought great distinction to the Navy and the country. Whilst holding charge of the Navy's Hydrographic department, this officer has fully displayed the qualities and attributes required of a Flag officer and through rare qualities of leadership and professional expertise, he has achieved high international acclaim for this major department of the Navy. The Board was thus absolutely convinced and unanimous in its view that Cmde KR Srinivasan fully merits elevation to Flag rank. He has thus been placed in the Select List and graded "B" for promotion to RAdm (X) for the exclusive assignment of Chief Hydrographer to the Govt. of India. This is a special cadre vacancy for a RAdm and at present there are no other eligible candidates who meet the QRs for this assignment.

19. A perusal of the aforesaid shows that the petitioner was an excellent officer and this was the reason for his selection. The promotion to the post of Rear Admiral was also based upon seniority cum merit. Thus, it cannot be presumed that by the aforesaid promotion any favour was shown to the petitioner.

20. It is an admitted fact that a conscious decision was taken by the Naval Headquarters to refuse the option exercised by more than 80% in the hydro cadre to shift X Branch. It is also a matter of record that despite a decision having been taken to create a separate Hydrographic cadre no such cadre was formed and the Hydrographic cadre was working as part of Executive (G) Branch and therefore no distinction can be made between officer working in Hydrography branch or in other branches of Navy. Moreover, the letter dated 2.9.1977 (supra) goes to show that while refusing the option and taking into consideration the grievance which were prevailing in the Hydrographic Cadre at that time the respondents themselves decided to ensure that the promotional opportunities for the officers of the Hydrographic Centre will remain at par with those of general list officer of the Executive cadre, as discussed above.

21. There is no document which might go to show that the intention as expressed by the respondent in their letter dated 02.9.1976 was not to be complied with. There is also nothing on record which may go to show that the officers who were retained in the Hydrographic Cadre had a glass ceiling for their promotion beyond the post of Rear Admiral. The Respondents have also not been able to place on record anything which may reflect that a consent was obtained from the petitioner to put a ceiling for his further promotion when he was appointed as a Rear Admiral. Rather the petitioner has placed on record

documents which go to show that on 06.10.02, the Chief of the Naval Staff had approved the proposal to upgrade the post of Joint Chief Hydrographer and Chief Hydrographer to the rank of Vice Admiral and Rear Admiral respectively in the Indian Navy to provide for promotion prospects within the Hydrographic Cadre as per the policy decision of 02.9.1976 and based on detailed justifications of work load since last upgradation in 1977. The respondents have also not been able to counter the submissions made by the petitioner that other officers who were earlier in the Hydrographic Branch have been promoted to the post of Vice Admiral. It is trite to say that the Court will not create a post to give preferential promotion to the petitioner. But the petitioner only seeks parity for consideration for promotion to the post of Vice Admiral along with other Rear Admirals who form part of the zone of consideration for promotion.

22. We are conscious of the fact that the right to be considered does not mean that the persons would be appointed to the post. However in the absence of anything which may go to show that the respondents were justified in putting a glass ceiling for further promotion in Hydrographic Cadre though it remained part of the general services cadre, the decision taken by the respondents not to consider the case of the petitioner for the post of Vice Admiral cannot be justified. Moreover, their action is arbitrary and discriminatory and cannot stand at touch stone of the precept of equality as enshrined in Article 14 of the Constitution of India.

23. We are thus constrained to note that the action of the respondent in having not considered the petitioner for the post of Vice Admiral while A.K. Singh and J.S. Bedi, his juniors were considered for post in January 2003 cannot be sustained. Since the petitioner stands already retired from the service, the only relief which can be given is to direct the respondents to consider the petitioner for notional promotion to the post of Vice Admiral by holding a review promotion board in accordance with law. We may note that Shri Vikas Singh, Ld. ASG appearing for the respondent submitted that a mock exercise was done by the respondents. However, there is a difference between a mock exercise and the decision taken by the Regular Promotion Board.

24. Accordingly, we allow the writ petition and issue a writ of mandamus directing the respondents to consider the petitioner for promotion to the post of Vice Admiral in accordance with law within a period of three months. In case the petitioner succeeds then he would be entitled to all consequential benefits of notional promotion within a period of three months thereafter except pay and allowances for the intervening period.

25. The writ petition is allowed as aforesaid with no order as to costs.