
(2012) 05 DEL CK 0145

In the Delhi High Court

Case No : Writ Petition (C) No. 3043 of 2012

Lt. Col. Shrawan Kumar Jaipuriyar

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 25-05-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 05 DEL CK 0145

Hon'ble Judges : Sudershan Kumar Misra, J;Anil Kumar, J

Bench : Division Bench

Advocate : Vishal Bhatnagar, for the Appellant; Sumeet Puskharna, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The petitioner has challenged the order dated 28th February, 2012 passed by the Armed Forces Tribunal, Principal Bench, New Delhi in T.A.No.428/2009 (WP(C) No.6453/1998) titled as "Lt. Col. Shrawan Kumar Jaipuriyar v. Union of India & Ors.", dismissing the petition of the petitioner seeking the quashing of orders dated 25th August, 1998 and 14th September, 1998 and 13th May, 1999 and also declining to issue a direction to the respondents to conduct a fresh Medical Selection Board for considering the petitioner for promotion from Lt. Colonel to Colonel. The petitioner had filed the writ petition before another bench of this High Court by contending, inter-alia, that he has been denied promotion to the rank of Col. from Lt. Col., although his juniors have been granted promotion, with break in services while he had not even been considered for the same. The petitioner also disclosed that he is an MBBS Doctor in the Indian Army having specialty in Surgery, as well as, in Orthopedics. According to the petitioner, he had even made a statutory complaint against his omission for promotion, however, the complaint was rejected by order dated 14th September, 1998. The petitioner further disclosed that in the year 1986-1987 weak remarks were endorsed in his ACR by the then initiating officer/

FTO. Thereafter, the petitioner was not recommended for promotion by the Medical Selection Board No.3 held on 1st May, 1996, even though his juniors were considered and recommended for promotion. The petitioner also alleged that no reasons were communicated to him for his omission.

2. The petitioner aggrieved by the said omission, had made statutory complaint dated 16th September, 1997 against his supersession and against his ACRs for the year 1986-1987 and 1990-1991 which was rejected by orders dated 25th August, 1998 and 14th September, 1998.

3. Thereafter, another Medical Selection Board was held on 7th March, 1997 whereby the petitioner was placed in category "R" i.e. unfit to be promoted. According to the petitioner, even pursuant to the Medical Selection Board No.3 held on 7th March, 1997 the list of officers who were considered for selection was not circulated before holding the Medical Selection Board and the selection ought to have been quashed on this ground alone as the selection lacked any semblance of transparency. The petitioner, therefore, filed a writ petition seeking quashing of order dated 25th August, 1998 and 14th September, 1998. The petitioner had also been superseded a second time on 13th May, 1999 as the petitioner was found unfit for promotion by the Medical Selection Board No. 3. The petitioner had also filed another statutory complaint which was dismissed by an order dated 1st June, 2000. This order too was challenged by the petitioner by contending that the promotion of juniors of the petitioner is arbitrary, mala fide and patently discriminatory. The petitioner also contended that the reasons for the omission of the petitioner from the consideration for promotion ought to have been communicated to the petitioner. The petitioner asserted that even those officers against whom court of inquiries had been conducted were promoted, however, the said promotion has been denied to the petitioner for no fault of his own. The proceedings of the second Medical Selection Board No.3 held on 7th March, 1999 were also alleged to have been vitiated on account of non-circulated list of officers prior to holding Medical Selection Board.

4. The writ petition filed by the petitioner was thereafter transferred to Armed Forces Tribunal, Principal Bench, at New Delhi and during the course of arguments, the petitioner had made specific allegations that Col. H.K.Sharma, Col. K.B.Kumar and Col.R.K.Bal who were junior to the petitioner have been promoted and the name of the petitioner has been omitted and thus, the petitioner has been discriminated against. The petitioner, thereafter, also filed an affidavit detailing the facts pertaining to these junior officers.

5. The respondents contested the petition contending, inter-alia, that the promotion up to and including the rank of Lt. Colonel is by time scale, however, promotion to the rank of Colonel and above is by selection and is based on the principle of merit-cum-seniority. The respondents also disclosed that there are two separate cadres i.e. Specialist and Administrative Cadres in the Armed Force Medical Services upto the rank of Colonel. Officers in their respective cadre are considered for promotion separately. The petitioner was considered in the cadre

of "Specialist" as per his seniority by the Medical Selection Board No.3 held on 13th May, 1997, however, he could not be recommended for promotion on the basis of the average ACR earned by the petitioner in the rank of Lt. Colonel. Since he did not find a place in the merit list for selection to the rank of Colonel in the Specialist Cadre, he was graded "R". Regarding his ACRs of 1986-1987 and 1990-1991, the respondents disclosed that the petitioner had made a statutory complaint dated 16th September, 1997. The complaint was examined in detail and was rejected by order dated 25th August, 1998 as the ACRs were found well corroborated and the petitioner was also rightly considered along with his batch-mates in the Specialist Cadre in his term.

6. Before the Armed Forces Tribunal, the petitioner also raised his grievance about the change of policy as according to the earlier policy 5 years ACRs were to be considered for promotion from Lt. Colonel to Colonel, whereas, as per the new policy dated 26th February, 1996, all the ACRs in the rank of Lt. Colonel were to be taken into account for the purpose of promotion. According to the petitioner, if 5 years' ACRs had been taken into consideration as per the earlier policy, then his ACRs for the year 1986-1987 and 1990-1991 would not have come in his way and therefore, the previous policy would have benefited him.

7. This plea of the petitioner was contested by the respondents by contending that the policies are changed by the Government from time to time and this is the privilege of the Government. Change of policy may benefit some officers, while being disadvantageous to other officers, however, that cannot be a ground to challenge the finding of the Medical Selection Board for not recommending the petitioner for selection. The respondents also relied on the judgment, *Union of India and others Vs. S.L. Dutta and another*, wherein the Supreme Court held that mere chances of promotion are not conditions of service and the fact that there is reduction in the chances of promotion would not tantamount to change in the conditions of service. It was further held that a right to be considered for promotion is a term of service, however, chances of promotion are not.

8. The tribunal after careful considering the cases of Col. H.K.Sharma, Col. K.B.Kumar and Col. R.K.Bal, rejected the pleas and contentions of the petitioner and also declined to interfere regarding the rejection of the representation of the petitioner in respect of his ACR for the period 1986-1987 and 1990-1991. This order of the Tribunal is challenged by the petitioner in the present writ petition, inter-alia, on the grounds that the officers in the particular batch were to be considered conjointly, regardless of their cadre i.e. whether belonging to the Specialist Cadre or Administrative Cadre. To augment his allegation, the petitioner has contended that Lt. Colonel K.B.Kumar was placed in "R" category in the year 1996 in the Specialist Cadre but the very next year in 1997 he was in "B" category in the Administrative Cadre. According to the petitioner, Lt. Colonel K.B.Kumar was not qualified as per Training, Grading and Qualification Rules for Officers of the Armed Force Medical Services. Learned counsel appearing for the petitioner also vehemently contended that if Lt. Colonel K.B.Kumar could be

considered in the Administrative Cadre then the petitioner should also have been considered in the Administrative Cadre, even though the petitioner belongs to the Specialist Cadre.

9. Learned counsel, Mr. Sumeet Pushkarna, who appears on advance notice on behalf of respondent Nos.1 and 2 has refuted the pleas and contentions raised by the petitioner. Learned counsel has pointed out that there was no plea by the petitioner that his cadre should have been changed from Specialist Cadre to Administrative Cadre. Learned counsel also contended that in case the petitioner wants to challenge the eligibility of Col. H.K. Sharma, Col. K.B. Kumar and Col. R.K. Bal then they should have been impleaded as parties in the petition filed by him. Learned counsel has also contended that there is no rule or regulation that before the Selection Medical Board, the copy of the eligible officers who were to be considered by the Medical Selection Board had to be sent to the petitioner as has been alleged by him. Learned counsel further emphasized that the petitioner was considered for the promotion and his ACRs were also taken into account according to the prevalent policy. However, since he was not recommended by the Medical Selection Board he was not given the promotion from Lt. Colonel to Colonel. The learned counsel also contended that the petitioner has failed to point out any procedural lacunae or shortcomings except for alleging that his juniors have been promoted. It is asserted that since the post of Colonel is of selection, therefore, the petitioner cannot claim his promotion as a matter of right on the ground that if his juniors have been selected for promotion, then he too ought to have been selected.

10. This Court has heard the learned counsel for the parties in detail. Learned counsel for the petitioner is unable to show any request on behalf of the petitioner for the change of his Cadre from Specialist Cadre to that of Administrative Cadre. No rule or regulation has also been pointed out under which it is given that the officers of different cadres should have been considered together for selection and promotion to the next post. This also cannot be disputed that on account of the change of policy, all the ACRs in the rank of Lt. Colonel had to be considered by the Selection Board for recommending the selection of an officer to the post of Colonel. On account of the earlier policy under which 5 ACRs of an officer had to be considered, the petitioner cannot contend that the change of policy is unconstitutional as the chances of promotion are not the conditions of services as has been held by the Supreme Court in the case of Union of India and others Vs. S.L. Dutta and another, , relied on by the Tribunal as well. No illegality or irregularity in this aspect has been established by the learned counsel for the petitioner in the facts and circumstances.

11. The Tribunal had considered the case of Col. H.K. Sharma, Col. K.B. Kumar and Col.R.K.Bal. This has not been disputed and cannot be disputed by the petitioner that the petitioner belongs to the Specialist Cadre and that therefore he was considered along with the other officers of the Specialist Cadre by the Medical Selection Board for promotion to the post of Colonel. Colonel H.K.

Sharma belongs to the Administrative Cadre and therefore, the petitioner could not contend that he should have been considered along with Colonel H.K.Sharma or that the petitioner being not recommended for the post of Colonel is vitiated as Col. H.K. Sharma belonging to the Administrative Cadre was recommended by the Medical Selection Board. Similarly, for Col.K.B.Kumar who was considered and recommended for selection in the Administrative Cadre, no grievance can be made out by the petitioner. Even with respect to the promotion of Col.R.K.Bal, the petitioner cannot contend that his name ought not to have been recommended by the Selection Board on any ground. Col.R.K.Bal was rather not selected for promotion by the Medical Selection Board held on 13th March, 1997 and thereafter on 13th April, 1998 and on 30th August, 2000 Col. R.K.Bal was graded as unfit for promotion. Col.R.K.Bal was, however, selected for promotion to the post of Colonel after 2000 and the petitioner has not challenged the Selection Board held after 2000. No cogent grounds or illegality has been disclosed on behalf of the petitioner for the respondents rejecting his complaint against his ACRs for 1986-1987 and 1990-1991. The petitioner was given due opportunity to make his representation against the ACRs in question, which representations were considered and rejected by the respondents. This Court in exercise of its jurisdiction under Article 226 of the Constitution of India will not sit in appeal over the decision of the respondents rejecting the representation of the petitioner against his ACRs in the present facts and circumstances of the case. In the totality of the facts and circumstances, learned counsel for the petitioner has failed to point out any irregularity, illegality or any perversity in the order of the Tribunal dated 28th February, 2012 dismissing the petition of the petitioner which shall require any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

The writ petition is, therefore, without any merit and it is dismissed.