

(2002) 11 DEL CK 0042

In the Delhi High Court

Case No : Civil Writ Petition No. 4087 of 2001

Lt. Col. Vinay Dalvi

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 13-11-2002

Acts Referred:

Citation : (2002) 11 DEL CK 0042

Hon'ble Judges : Jiwan Dass Kapoor, J;B.A. Khan, J

Bench : Division Bench

Advocate : N.L. Bareja, for the Appellant; Sanjay Jain, for the Respondent

Final Decision : Dismissed

Judgement

Khan, J.—Petitioner, a Lt. Colonel in the APTC Corps and an aspirant for promotion to the rank of Colonel complains that he was unjustifiably superseded. He has filed this petition to challenge this and also wants the results of the Selection Board-III held in 1996, 1997 and 1998 to be declared null and void along with respondent's order dated 25.10.2000 rejecting his statutory complaint on the subject matter. He lastly prays that respondents be restrained from making any further promotion to the rank of Colonel (Selection Grade) in APTC Branch meanwhile.

2. Petitioner's case as could be gathered from his petition with difficulty is that Selection Board-III held in 1995 and 1996 and 1998 had contravened the pre-1997 and post 1997 selection policy respectively vitiating the selection made in the process. According to him, under pre-1997 selection policy, selection of officers for further promotion was to be made on the basis of vacancy related selection system envisaging availability of vacancies likely to accrue in the ensuing year +5% as reserve. The Boards were to be held yearly or twice a year and in case of small corps like APTC, to which he belonged, as per the requirement because of their limited number of vacancies sanctioned/authorised in the rank of Colonel. He alleges that Selection Board-III was held in 1994 for

promotion to the rank of Colonel for 1970 batch even though there was no vacancy available in the ensuing year. The Board recommended all the three officers of this batch who had to wait for considerable time to pick up their physical promotion in the absence of vacancy. No Selection Board was held in 1995 because of this but it was again held in 1996 when no vacancy was available in the ensuing year and even those recommended for promotion by the Selection Board earlier were still waiting in the wings. This Board considered all the three officers of 1971 batch including petitioner and rejected them all. Petitioner filed a statutory complaint against this. While this was still pending he along with two other officers of his batch was again considered by Selection Board-III as first review case in June 1997 and rejected but R-4 belonging to 1972 batch was selected. The second review Board was held in 1998 in contravention of the post-1997 selection policy in the absence of any vacancy at the relevant time and he was again rejected thus closing his avenues for promotion for good. He again preferred a statutory complaint against this in 1999 raising various contentions and pointing out the disparity in the application of the selection system/norms which was rejected by order dated 25.10.2000.

3. Petitioner's second grievance is that Selection Board-III held in 1994, 1996 and 1997 was ill-constituted as the Head of the APTC, required to be in attendance during the Board meeting to give advice on the employability of the officers in the next rank, as also to brief the Board members on the job contents of various appointments within the corps with a view to assist the Board in objective grading of the officers, was not there and, Therefore, the results prepared by these Boards were vitiated and void. He lastly alleges that it was all manipulated by R-3 to bestow favor on R-4 and, Therefore, the whole exercise was vitiated by malafide and extraneous considerations so much so that tenure of R-3 in MS was prematurely terminated on the complaints filed against him.

4. Petition also assails his non-selection on the ground that he possessed superior merit as he had received Commendation Certificates/Cards from two different Chiefs of the Army Staff and various appreciation letters from the defense Secretary and others. He accordingly prays that result of the Selection Board-III be declared void.

5. Respondents have explained the contours of their promotion policy from Major to the rank of Lt. Colonel and above which provides for according of consideration to all officers of a particular batch together with same cut-off ACR and inputs and on the basis of their individual profile and irrespective of their seniority. However, if any officer gets any relief through complaint, etc. in any CR after the Board was held, he is entitled to special corresponding consideration by the Board with his changed profile and in case he is approved, his original seniority remains protected under the policy. Each officer is entitled to three considerations only for promotion to the Selection Rank including that of Colonel and if he is not approved in these, he is deemed to be finally superseded. It is also pointed out that while considering an officer for promotion to the Selection

Rank, the Selection Board takes into consideration a number of factors such as war/operational reports, course reports, ACR performance in command, honours and awards, disciplinary background and, Therefore, selection/rejection of the officer is based upon his overall profile and its evaluation by the Selection Board.

6. It is submitted that in the present case, petitioner was considered for promotion to the rank of Colonel at three successive stages from 1996 to 1998 but was invariably rejected. He was considered in 1996 and 1997 under pre-1997 policy of no vacancy based promotion but was not approved due to his overall low profile and not because of lack of vacancies which aspect was communicated to him by order dated 25.10.2000 whereby his statutory complaint was rejected. It is denied that selection board was to be held prior to 1997 on vacancy based position which was introduced only after December 1997. His contention that the Board could not have been held due to availability of limited number of vacancies is said to be misconceived. The Selection Boards are also claimed to be validly constituted under the policy instructions. It is disputed the Head of the Arms/Service was a part of the Selection Board. On the contrary, he was to remain merely in attendance in advisory capacity and to clarify any point relevant to their arm/service, if asked by the Chairman and, Therefore, his presence was not mandatory and could not impinge on constitution of the Board. The allegation of malafide against R-3 are also denied.

7. The two issues fall for consideration are whether the Selection Board-III was held in breach of terms of pre-December 1997 and post December 1997 Promotion Policy in 1996-98 and whether results of these Boards were vitiated on that account and whether petitioner was denied promotion to the rank of Col. in any malafide action.

8. Army Head Quarter's letter dated 6.5.1987 provides for the method and procedure to be followed in the selection of Officers to the rank of A/Lt. Col and above. It provides for the constitution and composition of Selection Board, the guide-lines for the assessment to be made by these Boards and other allied matters which are not relevant for our purposes. The policy provides for the composition of Selection Board-III as under:-

"No. 3 Selection Board (a) Function To scree Lt. Cols. to the rank of Col. (b) Composition (i) Chairman : Corps Cdr. or Ltd.Gen who has commanded a Corps. (1) (ii) Members : Div Corps (2), Maj.Gen on : Staff (2) (iii) Secretary : Dy.MS (B) (iv) In attendance : Respective Heads of Arm/Services

9. Along with an extract of the Military Secretary Branch's letter placed on record talks of the vacancy related selection system. It gives the historical prospective of the system first introduced in 1982 providing for number of vacancies which were likely to accrue in the year to be calculated and besides 5% reserve which according to it was not followed over the years somehow necessitating its review to standardise and institutionalise the selection system w.e.f. December, 1997 by the vacancy related system envisaging the calculation

of vacancies block for three years with suitable result to be built on initial stages.

10. We have gone through the policy carefully and also the extract of MS Branch's letter and have gathered that the vacancy related selection system was to come into force from December 1997. Since petitioner was accorded consideration by the Selection Board for 1996 and 1997 before that, he could not invoke the post-December 1997 guidelines to assert and question the result prepared by the Board for these two years, even if it was assumed that non-adherence to vacancy related system was fatal for selection. We must hasten to add, however, that neither the policy nor the extract of the letter contains any term or condition in this regard on the basis of which the selection made by the Board could be held to be vitiated. Nor does it provide for holding of the Selection Board only on the availability of vacancies in the ensuing year. All it provides for is that pre-1997 number of vacancy projection was to be done for the following year and for post-1997 for a block of three years. It does not say that no Board be held without this or any selection made in contravention of this would be invalid. This we find to be more by way of a procedural guideline aimed to facilitate the physical promotion of officers immediately and to avoid any stand off which could result after the selection due to non-availability of vacancies. It would be too much to say that the selection made by the Board would be null and void where the vacancy finding exercise was not conducted or such vacancy was not, in fact, available in the following year or in a block of three years. It indeed sounds very far-fetched to us. Therefore, even if petitioner's case was taken at its best, respondents' alleged failure to conduct selection in the absence of projected vacancies for the next year or a block of three years could not and would not invalidate the Selection Board because the selection process was not wholly dependent on the availability of vacancies in the following year or in a block of three years. A selection could be made still to await the occurrence of the vacancies in the ensuing year/s.

11. petitioner's second contention that Selection Boards conducted in 1996-98 were ill-constituted and the result prepared by these stand vitiated because of the absence of the respective heads of Arms/Services is again fallacious, to say the least. Because under the policy, the Selection Board-III was to comprise of Corps Cdr or Lt.General who had commanded the Corps, Dir. Cdr C2, Major General on Staff (2) and Dy.MS (B). The Head of Arms/Services was to only remain in attendance in advisory capacity to clarify any point relevant to the Arms Services. Therefore, even if he was not present, it could not be said that the Board was not properly or validly constituted. There could be cases where his advice or clarification in a particular selection was not required or desired. Therefore, his presence or absence becomes inconsequential in the circumstances and could not be overstretched to attack the selection made by the Board. It was understandable if he was a necessary constituent of the Board under the policy. His absence in that case would have a crucial bearing on the deliberation of the Board and the selection, if any, made by it. But that was not so and he was only required to be in attendance to tender advice or to clarify

matters wherever needed.

12. We are also not impressed by the petitioner's submission that he merited selection on the strength of his claimed superior merit or that R-3 had manipulated selection all through to facilitate the selection of R-4. The selection for promotion to the rank of Colonel depends upon consideration of various factors like war/operational reports, ACR performance in command, disciplinary background, honours and awards received and so on. An aspirant officer can't indulge in his self-assessment to claim superiority of merit against others. Nor could this court enter the thicket to make any comparative evaluation or assessment in this regard. The Selection Board comprised of high ranking officers and possessed of military knowledge and expertise and was, Therefore, alone competent to do so in accordance with the laid down criteria. This is not to suggest that selection made by it was beyond challenge or that it would not admit of any judicial review. It could be assailed and questioned if found to be made in contravention of any prescribed requirements under law or tainted by any malafide and extraneous considerations. But that was not the case here and we find no scope to interfere on the tall claims made by petitioner which otherwise lack in basis.

13. Petitioner's charge of malafides are also generalised in nature. His allegation that R-3 was instrumental for his non-selection or for selection of R-4 is presumptuous. It is hard to believe that this respondent would have influenced the Selection Board from 1996-98 to facilitate selection of R-4.

This petition resultantly fails and is dismissed.

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