
(2019) 09 AFT CK 0034

In the Armed Forces Tribunal

Case No : Original Application No. 1555 Of 2019

M Lamba

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 10-09-2019

Acts Referred:

Armed Forces Tribunal Act, 2007 — Section 14
Armed Forces Tribunal (Procedure) Rules, 2008 — Rule 6

Citation : (2019) 09 AFT CK 0034

Hon'ble Judges : Sunita Gupta, J; Philip Campose, Member (A)

Bench : Division Bench

Advocate : S.S Pandey, Tarurovir Singh Khehar

Final Decision : Disposed Of

Judgement

1. This OA has been filed under Section 14 of the APT Act 2007, by the applicant, an officer of Brigadier rank in the Artillery Stream of the Indian

Army, who is aggrieved by the fact that the results of Not Selection Board in the Artillery Stream, which was conducted in July 2019, in which the

applicant was considered as a First Review case, has not been pronounced as yet. He fears that, in case he has been approved for promotion in the

said Selection Board in July 2019, he will not be promoted due to the fact that he would have superannuated on 30.09.2019. He today despite being

fully qualified for promotion, He had made a prayer that the results of No.1 Selection Board in Artillery Stream conducted in July 2019 should be de-

classified prior to 30.09.2019, his date of superannuation, to enable the applicant to be promoted before that date in case he has been approved for

promotion by the Promotion Board. In the interim, he has prayed for an order that, till the declassification of his result, his retirement should be

withheld.

2. Learned counsel for the applicant has alluded to the fact that the applicant has performed extremely well in various appointments and has done

important courses, including thi-Higher Command Course. Hence. though he was not empanelled in the earlier No.1 Selection Board of his batch

which was declassified in April 2019, he is hopeful that he has been recommended for promotion in the No 1 Selection Board conducted in July 2019,

where he was considered as a First Review Case. Counsel submits that, in case the applicant has been approved for promotion in the said Board, he

would be due for promotion immediately He contends that, in such an eventuality, it would be a travesty of justice in case he cannot be promoted to

Major General's rank only because he had superannuated before his promotion, despite being approved in the Selection Board before that date.

Counsel has averred that the applicant is due to retire from service on 30 09.2019 and it would meet the ends of justice in case his retirement is

withheld till the results of No.1 Selection Board held in July 2019 is declassified, and if he is empanelled for promotion and, if vacancy is available,, he

must be promoted as Maj Gen at the earliest thereafter.

3. Learned Counsel for the applicant has placed reliance on the orders passed in the past by the Principal Bench of the Tribunal at New Delhi in

respect of the following four cases where similar reliefs were provided:

(a) Order dated 27.11.2014 in the matter of Maj. Gen. Bharali Vs. Union of India & Ors. (OA 61012014);

(b) Order dated 30 05.2014 in the matter of Brig P.K Sharma Vs. Union of India & Ors_ (OA 255/2014);

(c) Order dated 610.2015 in the matter of Ivraj, Gen. K.K. Sinha Vs Union of India & Ors. (OA 837/2015),

(d) Order dated 28 054.2017 in the matter of Maj. Gen Jag deep Kumar Sharma Vs Union of India & Ors (OA 58612017).

Counsel referred to the fact that the petitioners in three of the above cases were granted promotion subsequently, consequent to favorable intervention

by the Tribunal which ensured that injustice in respect of those petitioners was averted

4. Counsel avers that the applicant has, in the recent past. met the respondents. specifically Respondent No.3. to request expediting of de-

classification of the results but that has not happened so far_ Counsel avers that the applicant may not have a fundamental right to get promoted but,

as per Article 16 of the Constitution of India, he has a right of fair and reasonable consideration_ and thus any lethargy in organisational functioning

must not come in the way of his promotion in case he was found fit by the Promotion Board Counsel further averred that the applicant, prima facie,

has a good case on merits as well as the balance of convenience is in his favour and the OA should be allowed

5. Per contra, learned counsel for the respondents has objected to the maintainability of the OA on the following grounds.

(i) This Hon'ble Tribunal does not have jurisdiction under Rule 6 of the AFT (Procedure) Rules. 2008 as

(a) The officer was last posted at Shillong;

(b) The officer is presently posted at Alwar:) No Application under Rule 6 of AFT (Procedure) 2008 has been filed

(ii) Alternative Remedy uts 21 of the AFT Act, 2007 has not been exhausted Reliance is drawn from the order dated 13.12.2018 in the case of Maj

Gen Basavaraj G Gilganchi vs Uol in OA No.1256/2018

(iii) Office of the respondents being in Delhi does not result in jurisdiction to the Tribunal Reliance is drawn from the order in the case of Mr. P K

Srivastava vs. Union of India, Writ Petition (C) No_I 0392 of 2015, Para 10.

(iv) Para 108 of Defence Service Regulations (DSR), sub paras (d) and (e) mandate that the assessment of the Promotron Board are only

recommendatory in nature and these are not binding unless approved by the competent authority, viz Central Government in this case.

6. Learned Counsel has submitted that the results of the Promotion Board cannot be de-classified unless its recommendations are approved by

Respondent No.1 in keeping with the regulations on the subject and the process for the same is still underway. Further, he has contended that the

Tribunal cannot allow the interim prayer as the date of retirement cannot be stayed as it tanta mounts to extending the age of retirement

7. We have given due consideration to the submissions made before us. Despite the objections raised on behalf of the respondents, we are inclined to

give our due consideration to the case in the interests of justice. Accordingly. we pronounce the following interim orders:

(a) The respondents are directed to process the proceedings of the Selection Board No 1 for the Artillery Stream. held in July 2019. as expeditiously

as possible and pronounce the same at the earliest. after approval of the competent authority.

(b) In case the applicant is empanelled for promotion and there is a vacancy in Artillery Stream pertaining to the rank of Maj. General which has

arisen on or before 30.09.2019 and which can be made available for the promotion of the applicant. had he not retired on 30.09.2019, then he should

not be denied the promotion to the rank of Major General on the ground that he superannuated on 30 09 2019

(c) The retirement of the applicant with effect from 30.09,2019 is stayed accordingly till the date of pronouncement of results of the Promotion Board,

with a further proviso that, in case the applicant is not promoted as per (b) above, he will retire on the same day and will return any pay and

allowances that may have been paid to him for the period after 30.09.2019, as in that eventuality, he would be deemed to have retired on 30.09.2019.

8. In view of this interim order, nothing survives in the O.A. and the same is accordingly disposed off No order as to costs.

9. Order as per DASTI: