
(2021) 11 AFT CK 0020
In the Armed Forces Tribunal
Case No : O.A. No. 1427 Of 2021

Maj Gen Pradeep Kumar Hasija

APPELLANT

Vs

Union of India & Ors

RESPONDENT

Date of Decision : 29-11-2021

Acts Referred:

Armed Forces Tribunal Act 2007 — Section 14

Citation : (2021) 11 AFT CK 0020

Hon'ble Judges : Rajendra Menon, Chairperson, (J); P.M. Hariz, Member (A)

Bench : Division Bench

Advocate : I.S. Singh, Kirtika Chhatwal, Anil Gautam

Final Decision : Dismissed

Judgement

1. This application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant who is a serving Major General (Maj Gen) of the Army Medical Corps and is aggrieved by the fact that though he had been considered for promotion to the rank of Lieutenant General (Lt Gen) by the Special Promotion Board 2021 held in April 2021 for five vacancies, the Respondents declared the results for the results only for four vacancies and that the result of the fifth vacancy has been arbitrarily held up. It is the case of the applicant that his name is not in the list of empaneled officers and that given his excellent and outstanding record of service, he ought to have been empaneled for the fifth vacancy. The applicant has made the following prayers :-

a) Call for the complete record, including the file noting, pertaining to the Special Promotion Board-2021 (SPB-2021) held on 06.04.2021 and, after perusal thereof, direct the Respondents to declare the result in respect of the fifth (5th) vacancy of Lt General/equivalent assigned to SPB-2021 and thereby amend the Empaneled List published by the Respondents vide letter dated 12.07.2021 by incorporating therein name of the officer (Maj General/equivalent) whose merit, as already worked out by the SPB-2021, qualifies him to be empaneled for promotion against the said 5th

vacancy of the Lt General/equivalent;

b) After perusal of the relevant records, direct the Respondents to empanel the Applicant for promotion to the rank of Lt General/equivalent by including his name in the Empaneled List published by the Respondents vide letter dated 12.07.2021, in case Applicant's quantified merit already worked out by SPB-2021 qualifies him for empanelment against the 5th vacancy;

c) Issue any other order(s) and direction(s) as deemed appropriate by this Honble Tribunal under the facts and circumstances of this case.

(d) And in the interim, to direct the Respondents not to promote any officer against the 5th vacancy and also not to hold any SPB or promote any officer from the next zone of consideration, pending disposal of the OA.

Brief Facts of the Case

2. The applicant was commissioned on 20.12.1984; seniority adjusted to 06.12.1985; and is due to retire on 31.03.2022, for which retirement orders have since been issued vide letter dated 12.04.2021 (Annexure A-4). He was considered for promotion to the rank of Lt Gen by SPB (AFMS) held on 06.04.2021. The tentative zone of consideration for the SPB issued vide letter dated 05.01.2021 (Annexure A-3) listed 17 officers and the applicant was at serial 17. Of the 17, 04 officers were being considered for their second chance while 13 officers including the applicant were to be considered for their first chance.

3. The SPB was held on 06.04.2021, which considered 16 officers (one officer had since retired) for 5 vacancies. The results were promulgated vide letter dated 12.07.2021 (Annexure A-1) empaneling 08 officers including two officers who had since retired (and two who would retire prior to availability of a vacancy). The applicant on not being empaneled, submitted a statutory complaint dated 15.07.2021 against the non-declaration of the result for the 5th vacancy and stated that Review SPB in respect of previous batches be not held. It is the applicant's case that since there were five vacancies in the year 2021, and the fact that out of the list of empaneled officers, two had already retired and two others would retire prior to availability of a vacancy, only four officers in effect would be promoted. This left the fifth vacancy for which no officer had been empaneled. It is thus his case that considering his record, he ought to have been empaneled for this vacancy, and results promulgated accordingly.

Arguments By the Counsel for the Applicant

4. The Counsel took us through the service profile of the applicant and his professional credentials. Then the Counsel took us through the promotion policy of 2016. The Counsel then elaborated the grievance of the applicant; in that, though the applicant was in the zone of consideration for the SPB

2021, the results were promulgated for four out of the five vacancies, and that the result of the applicant was not declared. The Counsel vehemently stated that considering the overall profile of the applicant he had good reasons to believe that he should have been empaneled in the fifth vacancy. The Counsel also stated that there were two officers whose Review SPB 2020 had been held and that there was no reason to provide the fifth vacancy for the review cases, since this fifth vacancy was meant for the officers under consideration for the first time. The Counsel concluded that it was imperative that the Respondents declare the result for the fifth vacancy and empanel the applicant. And that the Respondents be directed to declare the result for the fifth vacancy at the earliest and pending declaration, this vacancy not be utilised for any of the Review cases.

Arguments by the Counsel for the Respondents

5. The Counsel first took us through the various policy letters on the conduct of promotion Board in AFMS and also highlighted Para 108 of the Regulations for the Army which lays down that the assessment of the Selection Board shall be recommendatory in nature and not binding until approved by the competent authority (i.e.) the COAS or the Central Govt as the case may be. He also highlighted the fact that the Central Govt or COAS have inherent powers to modify, review, approve with variation or repeal recommendations of the selection boards.

6. The Counsel then stated that the Respondents are taking all necessary steps to declare the result of the fifth vacancy pertaining to the SPB 2021 which was first held on 02.03.2021 and later reassembled on 31.03.2021. The contention of the applicant that results for four of the five vacancies have been declared is a matter of accepted fact. He further elaborated that while examining the recommendations of the SPB it had been observed that the value judgement marks assigned to one of the officers under consideration had altered the overall merit of this officer and the competent authority was not fully satisfied with the reasons advanced in support of such a recommendation. In view of this, the competent authority had approved the first four officers recommended for empanelment to the rank of Lt Gen and comments were sought on the observation regarding the value judgement. Accordingly, the approval for the first four officers were obtained from the Appointments Committee and results promulgated. The counsel asserted that under the statutory provisions of Para 108 of Regulations for the Army, the Central Govt was well within its rights to withhold the results of the fifth vacancy, pending certain other inputs/ decisions.

7. The Counsel then stated that the applicant had filed the OA without any cogent reasons for urgency. The grounds that the process for SPB 2022 has been initiated is actually not a matter meriting urgency as indicated in the OA. Moreover, the applicant had filed the OA without waiting for the disposal of his statutory complaint. The Counsel concluded that any cause of action for the

applicant would only arise once the results of the fifth vacancy are declared, and therefore the OA was entirely premature.

Consideration of the Case

8. This Tribunal finds much force in the arguments of the Respondents that whilst it is the right of the applicant to be considered and that the SPB can only make recommendation on officers found fit for empanelment, it is the Central Govt which is the competent authority to finally approve officers found fit for empanelment. Para 108 of the Regulations for the Army is reproduced below:-

"108. Constitution and Duties of Selection Boards.- Selection Boards (for officer other than Army Medical Corps, Army Dental Corps and Military Nursing Service) are constituted as required under the order of the Chief of the Army Staff. Their composition and duties are given below:-

(a) Composition

Presiding Officer

Chief of the Army Staff or any other senior officers as directed by him according to the importance of the Selection Board

Members

As directed by the Chief of the Army Staff from time to time in accordance with the nature of their duties

Secretary

MS/Addl MS/Dy MS

(b) Frequency of Meeting ? As required by the Chief of the Army Staff.

(c) Duties.- (i) Assessment of officer for promotion to Lt Col and above, in accordance with the criteria laid down for selection. (ii) Any other matter which the Chief of the Army Staff may direct the Board to consider.

(d) The assessment of the Selection Board shall be recommendatory in nature and not binding until approved by the competent authority viz the COAS or the Central Govt as the case may be.

(e) The Central Government or COAS have the inherent power to modify review, approve with variation or repeal recommendations of the selection Boards."

9. The final zone of consideration of 16 officers includes four officers being considered for their second chance since they were not empaneled in their first chance by SPB 2020. Of these four officers, two officers Maj Gens Sharad Bhatnagar and RM Gupta have filed OAs and these have since been heard by the Tribunal. In their respective OAs, this Tribunal has directed that they be considered by the Review SPB 2020. As seen from the records produced before

this Tribunal on 26.11.2021, both these officers were only recently considered by the Review SPB for 2020 on 22.11.2021; the results of which too are yet to be approved by the competent authority and promulgated. Since vacancies for officers approved in Review Boards have to be found from within the vacancies available in the year, the Respondents are well within their right to consider the Review SPB and then decide on the outcome of the fifth vacancy.

10. Moreover, in relation to the fifth vacancy, a cause of action will accrue to the applicant only when the results of the fifth vacancy is approved by the competent authority and promulgated. We therefore, see no reason at this juncture to interfere in the statutory provisions as given in Para 108 of the Regulations of the Army.

11. In view of the above, we find no merit in the OA and accordingly the same is dismissed. No orders to cost.