

(2008) 10 DEL CK 0050

In the Delhi High Court

Case No : Writ Petition (C) No. 6297 of 2003

Maj. Gen S. Bindra

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 21-10-2008

Acts Referred:

Army Rules, 1954 — Rule 23

Citation : (2008) 10 DEL CK 0050

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

Bench : Division Bench

Advocate : Party in Person and Ankur Chibber, for the Appellant; Preeti Dalal, for Maneesha Dhir, for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Kishan Kaul, J.—The petitioner is a Commissioned Officer in the Army in Ordnance Corps (for short "AOC"). He rose in his rank to the level of Major General. During his tenure the petitioner was assigned various responsibilities including staff assignment. The petitioner had immense exposure of working in Inventory holding establishment at each rank including Command of Ordnance Depot in the rank of Brigadier. The petitioner was also selected for and underwent various courses viz. Higher Command and National Defence College Course. The Confidential Reports earned by the petitioner have throughout been with consistent praise of exceptional contribution. Qualification wise, the petitioner has three Post Graduate Master Degrees to his credit. Above all, the petitioner was also awarded the Vishisht Seva Medal, on Republic Day 2003, for his distinguished service rendered in the rank of Major General.

2. It is the case of the petitioner that he was eligible for being considered to the next promotional post of Lt. General by the Special Selection Board (for short "SSB") which was held on 23.10.2002. However, the Selection Board did not empanel him rather empanelled respondent No. 4 whose career graph was not superior to that of the petitioner and had several deficiencies in comparison to

the career graph of the petitioner. Thus the said action of the respondents has been assailed by the petitioner in this petition.

3. It has been submitted that the said respondent No. 4 namely Major General TA D" Cunha was also commissioned in "AOC. He held mostly departmental appointments with no exposure on staff appointment. In the rank of Major General he assumed appointment of Additional DGOS (CV) at Army Headquarters in 1997 and had been Major General "AOC, Western Command, since 1999. In both appointments there are reported instances of financial irregularities in his subordinate units. In two cases, the inquiries have even been finalized and he has even recently been punished with a non-recordable disciplinary award for offences committed in the high rank of Major General. In fact, DV ban was also imposed on him for his connivance in a case of financial irregularity by subordinates. The charges were so serious that disciplinary action was contemplated. Annual Confidential Reports of Respondent No. 4 have been mostly above average, however in the rank of Brigadier there are adverse/ advisory comments due to poor management of troops. In fact due to lower average profile, he was not selected for Higher Command or National Defence College, either with his own batch or the next batch whereas the petitioner who is of 1966 batch was selected over him. It was, thus, submitted that the selection of the said respondent ignoring the petitioner for the next promotion by the SSB needs to be quashed and direction be given to the said Board to empanel the petitioner to the rank of Lt. General. The petitioner before approaching this Court also made statutory complaints to the authorities but the statutory complaints were rejected.

4. The respondents have denied the allegations made by the petitioner. According to them, the "SSB" has appointed the most fit person from amongst the eligible candidates for empanelment to the post of Lt. General.

5. With a view to satisfy ourselves as to the service profile of the petitioner as well as that of the fourth respondent, we had called for the original records of the "SSB" held on 23.10.2002.

6. A perusal of the records show that the profile of the appellant and others were considered and it was opined:

AOC	RESULT-SPECIAL	SELECTION	BOARD	HELD	ON	23	OCT	2002	
-----									A No. ICNO
RANK	NAME	ARM	GRADING						REMARKS
-----									FRESH
CASES-1966	BATCH 1	IC-16437	MAJ GEN S.	MEDIRATTA	AOC	Z	UNFIT	2	
IC-16829	MAJ GEN S	BINDRA	AOC	Z	UNFIT	FIRST	REV CASE -	1965 BATCH 3	
IC-16257	MAJ GEN MS	AHLUWALIA	AOC	Z	UNFIT	4	IC-16309	MAJ GEN TA	
D"CUNHA	AOC B	FIT 5	IC-16328	MAJ GEN DK	SENGUPTA	AOC	Z	UNFIT 6	
IC-16390	MAJ	GEN	GS	KOHLI,	VSM	AOC	Z	UNFIT	

7. The record shows that out of the persons considered for selection to the next rank of Lt. General, none of the fresh cases of 1966 batch, which includes the petitioner and three officers from the 1965 batch, were found "Fit". The only candidate found fit was IC-616309 Maj. General TA D" Cunha, "AOC" arrayed as respondent No. 4.

8. It may also be relevant to take note of service profile as examined by the "SSB" in respect of the petitioner and others including the fourth respondent. In this regard, following observations made by the COAS while endorsing the Board's gradings become relevant;

4. The Board's gradings have been examined in MOD based on the input given in MDS, which is placed in the linked file of AHQ.

Agenda No. 4, Maj. Gen TA D"Cunha (IC 16309) has been graded "B" (Fit) by the Board. The officer has "Above Average" to "Outstanding" profile in the rank of Maj Gen, without any "7" point award either in box or in PQs/DP/Qs AP. In rank of Brig also, his profile is "Above Average" to "Outstanding" which is free from "7" pt award. He has one criteria CR in the old scale of rating which is also "Above Average". He is SC qualified and is a recipient of CC (1978). The grading "B" (Fit) awarded by the Board in his case appears to be justified.

5. The record profiles of the remaining Five General officers who have been graded "Z" (unfit) by the Board is discussed in brief as below:

(i) Agenda No. 1- Maj. Gen S. Mediratta (IC 16437):

In the rank of Maj Gen, the officer has "Above Average" profile which is free from "7" point award. In the rank of Brig, the officer has "Above Average" to "Outstanding" profile with 3x "7" pt awards in box in two criteria reports and 4x "7" pt awards in PQs/DP in two other criteria reports. He has not done any All Arm Course and also has no Hons/Awards to his credit. The grading "Z" (Unfit) awarded by the Board in his case appears to be justified.

(ii) Agenda No. 2- Maj. Gen S. Bindra (IC 16829):

In the rank of Maj. Gen, the officer has "Above Average" profile which is free from "7" pt. award. In the rank of Brig, his profile ranges between "Above Average" to "Outstanding" without any "7" pt award in the box, but has earned 8x "7" pt awards in PQs/DP in two criteria reports. He is SC, HC and NDC qualified and has no Hons/Awards to his credit. The grading "Z" (Unfit) awarded by the Board in his case appears to be justified.

(iii) Agenda No. 3-Maj. Gen MS Ahluwalia (IC 16257):

In the rank of Maj Gen, the officer has "Above Average" to "Outstanding" profile which is free from "7" pt award. In the rank Brig also, his profile ranges between "Above Average" to "Outstanding" with 1x "7" pt award in box and 1x "7" pt award in PQs/DP in CR 7/92-6/93 which is a criteria report. In the rank of Brig, he has one CR in the old scale of rating which is also "Above Average". He is

PSC, HC and NDC qualified, but has no Hons/Awards to his credit. The grading "Z" (Unfit) awarded by the Board in his case appears to be justified.

(iv) Agenda No. 5 - Maj Gen DK Sengupta (IC 16328):

The officer has "Above Average" to "Outstanding" profile in the rank of Maj Gen without "7" pt award in box, but has been awarded 8x "7" pt award in PQs/DP/QsAP. In the latest report, IO has given him "May promote" against the column PPMN(Potential for promotion). In the rank of Brig. Also, his profile is "Above Average". He is SC and LDM qualified. He has no Hons/Awards to his credit. The Grading "Z" (Unfit) awarded by the Board in his case appears to be justified.

(V) Agenda No. 6 - Maj Gen GS Kohli (IC 16390):

The profile of the officer in the rank of Maj Gen ranges between "Above Average" to "Outstanding" profile without any "7" pt in PQs/DP/QsAP. In CRs 4/01-6/01 and 7/01-6/02, IO has given him "May promote" against the column PPMN (Potential for promotion). In the rank of Brig also, his profile is "Above Average" to "Outstanding" with 2x "7" point awards in PQs/DP. He has done LDM course and is a recipient of VSM (1991). The grading "Z" (Unfit) awarded by the board in his case appears to be justified.

9. The comparative profile is as under:

Special Selection Board held in 23.10.2002, AOC -----
----- Na Performance
in Maj Gen Performance in Brig Hon Cou Performa me s/A rses nce in of war
Brig Old Maj. Criteria Other Reports Criteria Other Reports ds Scale Reports
Reports -----
----- Gen Box PQs/ Box PQs/ Box PQs/ Box PQs/D DP DP DP P
9 7 6 7 6 9 7 6 7 6 9 7 6 7 6 9 7 6 7 6 -----
----- "B" Fit -----
----- 4. TA
8 - - - - - 2 - - - - 1 - - - - CC(SC One D"C 0 78) Criteria unha report is
"Above Average) -----
----- "Z" (Unfit) -----
----- 1. S - - - - - 4
3 - 4 - .Me dira tta -----
----- 2. S. - - - - - 3 - - 8 - 2 - - - - SC,
Bin - HC dra - & ND C -----
----- 3. M. 3 - - - - - 2 1 - 1 - 5 - - - -
PSC One S. , HC Criteria Ahl & report is uwa ND "Above lia C Average" -----
----- 5. DK 4 - - 8 - - - - - 7 - - - - SC One Sen & Criteria gupt LD
report is a M "Above Average" -----
----- 6. G.S. 1 - - 1 - - - - 8 - - 2 - - -
- - - VS LD Koh 1 M M li (91) -----

10. Having gone through the comparative profile of the petitioner and that of the selected candidates, we are satisfied that while the petitioner had eight "seven" in his overall profile, the selected candidate had none. Similarly, the petitioner had only two "Nine", while the selected candidate had "Ten".

11. Now coming to the punishment of non-recordable censure relied upon by the petitioner as a disqualification for respondent No. 4 had come simply by observation that as per Rule 23 of the Army Rules, such punishment is not a disqualification. Relevant provision is reproduced as hereunder:

Effect of Censure on Promotion

23 The award of a censure does not debar an officer

from being considered for promotion and may not by itself affect his promotion. However, while it is operative, it is taken cognizance of as part of the officer's overall record of service in assessing his performance for such promotion. The effect of a recordable censure on promotion would be considered in its totality on the overall performance. A censure ceases to have any effect on promotion once it is inoperative.

12. Thus, having examined the relevant material placed before us and being satisfied that in a pyramidal system, it is always possible that even on account of marginal difference in the overall profile of an incumbent which may be found lower than the selected candidate, there is always a possibility of the incumbent being not empanelled for the next promotional avenue. It needs to be emphasized that this Court will not sit as a Court of appeal over the findings of the Selection Board. We are conscious of the fact that apart from the box gradings, certain other factors are also taken into account including the postings and qualifications. However these are matters to be looked into by the Selection Board which on examination of the comparative merit has found in favour of the selected candidate. This does not reflect on the performance of the other persons since there was only one vacancy.

13. Thus, we do not find any reason to interfere with the selection of the fourth respondent specially when there are no allegations of bias against any of the members of the Selection Board in having empanelled fourth respondent for the next rank. Consequently, we dismiss the writ petition leaving the parties to bear their own costs.