

(2006) 04 CAL CK 0031
In the Calcutta High Court
Case No : Writ Petition No. 25155 (W) of 2005

Major General Arun Roye

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 25-04-2006

Acts Referred:

Army Act, 1950 — Section 27

Citation : (2006) 3 CALLT 276 : (2006) 2 CALLT 526

Hon'ble Judges : Pranab Kumar Chattopadhyay, J

Bench : Single Bench

Advocate : Shaktinath Mukherjee, Partha Sarathi Sengupta, Dipankar Dutta, Biswarup Bhattacharya and Arjun Roy Mukherjee, for the Appellant; Gopal Subramaniam, Addl. Solicitor General, Chandrima Bhattacharjee, Sahasrangshu Bhattacharjee, Rajshekhar Rao and Raghenath Basant, for the Respondent

Judgement

Pranab Kumar Chattopadhyay, J.—A very senior Army Officer holding the rank of Major General has challenged various decisions of the superior authorities in connection with his service career including the matter relating to the claim for promotion to the post of Lieutenant General.

2. The petitioner herein now posted as GOC, Bengal area is very much aggrieved by the decisions of the respondent authorities for not selecting the said petitioner as fit for promotion to the post of Lieutenant General. According to the petitioner, seeds of the disputes were sown at the time of selection of the said petitioner as Defence Attache/Military Attache to U.S.A. in the year 1996 as it has been submitted on behalf of the petitioner that his aforesaid assignment was not taken in the right spirit by the detractors who started spreading a wrong message that the petitioner was selected and sent to U.S.A. as Defence Attache/Military Attache at the behest of the then Chief of Army Staff, General Sankar Roy Chowdhury.

3. The learned Advocate of the petitioner submits that the respondent authorities on various occasions changed its policies regarding assessment of the army

officers and preparation of the confidential reports in order to prejudice the service prospects of the petitioner. From the records it appears that an office order was issued on 7th April, 1998 from the Army Headquarters wherein it has been specifically mentioned that the Chiefs of staff have approved dispensing with the system of figurative assessment in personal qualities and box-grading and retained only the pen-picture in the confidential reports of the officers holding certain specified appointments.

4. It has been submitted on behalf of the petitioner that the figurative assessment was dispensed with mainly at the behest of certain top army officers in order to prejudice the service prospects of the petitioner and also to protect the service careers of some other senior army officers whose reports in the foreign missions were not upto the desired standard. The petitioner ultimately returned to India in the month of September, 1999 from U.S.A after successful completion of his tenure as Military Attache/Defence Attache (hereinafter referred to as MA/DA).

5. Mr. Saktinath Mukherjee, learned Senior Counsel of the petitioner specifically submits before this Court that the petitioner was illegally denied first mandatory consideration for nomination to N.D.C. course on unjust and untenable ground as the ACRs in respect of his service period as MA/DA to U.S.A. were not considered on the ground that the appointment of the petitioner as MA to U.S.A. was an Extra Regimental Appointment. The petitioner, however, on 28th December, 1999 submitted a representation against the dispensation of figurative assessment in the ACRs of MAs but the respondent authorities reintroduced the figurative assessment in the ACRs of the MAs w.e.f. 1st January, 2000 which according to the said petitioner benefited his batch-mates who were then posted as MAs/DAs although the petitioner suffered serious prejudice because of the dispensation of the figurative assessment during the service tenure of the said petitioner as MA/DA to U.S.A.

6. Mr. Mukherjee, further submits that the petitioner herein was deprived of two numeric CRs in view of dispensation with the figurative assessment on 7th April, 1998 and reintroduction of the same w.e.f. 1st January, 2000. According to the petitioner, change in ACR endorsement has seriously affected the service prospect and career of the said petitioner.

7. In the month of April, 2000, the petitioner was, however, considered by the No. 1 Selection Board for promotion to the post of Major General but was not empanelled due to the absence of NDC weightage. In the month of October, 2000. the petitioner was again denied consideration for nomination to NDC for the year 2001.

8. The petitioner being aggrieved by the aforesaid non-consideration filed a statutory complaint which was ultimately rejected by the concerned authority on the ground of promotability as the petitioner was not found promotable by the No. 1 Selection Board. The said No. 1 Selection Board, however, found the

petitioner fit for promotion to the post of Major General in the month of April, 2001.

9. Mr. Mukherjee, learned Senior Counsel of the petitioner submits that although the No. 1 Selection Board refused to grant promotion to the petitioner for the post of Major General in the month of April, 2000 but on the basis of same materials found the petitioner fit for promotion to the post of Major General in the month of April, 2001. Mr. Mukherjee specifically urged before this Court that dispensation of numerics in the ACRs of MAs/DAs and further reintroduction of the same from June, 2000 only benefited the batch-mates of the petitioner and prejudicially affected the service prospects and career of the said petitioner as the petitioner was not considered for nomination to NDC course and subsequently also not considered for promotion to the post of Major General in the month of April, 2000.

10. From the records it appears that the petitioner made a specific request for converting the assessments in respect of the petitioner by the Ambassador to U.S.A. for the year 1997-98 and 1998-99 to numerical quotients so that the petitioner may put on equal terms with his other batch-mates before the No. 1 Selection Board.

11. Selection system for NDC course specifically provides for two looks for all Brigadiers provided they fulfil the laid down eligibility criteria. Para 3(a) of the Selection System for NDC Course is quoted hereunder:

3. Selection Procedure.

(a) The selection system provides for two looks for all Brigs provided they fulfil the laid down eligibility criteria.

12. It is the contention of the petitioner that in terms of the aforesaid selection procedure, the said petitioner was not given two looks for selection to NDC Course. According to the petitioner, first mandatory look for nomination to NDC Course for the year 2000 was rejected in the month of October, 1999 as the ACRs in respect of his service as MA to U.S.A. were not considered on the ground that the posting of the said petitioner as MA to U.S.A. was an Extra Regimental Employment For the next NDC Course i.e. NDC, 2001, petitioner was not even considered on the ground that the said petitioner was not assessed as promotable by the concerned Selection Board, It has therefore, been contended on behalf of the petitioner that the respondent authorities deprived the petitioner of the second mandatory look.

13. Being aggrieved by the decisions, statutory complaint was filed by the petitioner on 7th February, 2001 and the said statutory complaint was ultimately disposed of by the competent authority of the Government of India on 14th March, 2002 wherein it was specifically held that the petitioner could not be given the second look as assessment of promotability by the No. 1 Selection Board is an essential element in the selection process for NDC and the petitioner

had admittedly been over looked by the said No. 1 Selection Board.

14. Mr. Mukherjee, learned Senior Counsel of the petitioner submits that non-consideration of the petitioner's candidature for selection to NDC Course 2000 on the ground that the confidential reports as MA could not be taken into account being an Extra Regimental Employment (hereinafter referred to as ERE) is illegal and arbitrary. Referring to various office orders, circulars and regulations, Mr. Mukherjee submits that the posting of the petitioner as MA could not have been treated as ERE and the said appointment should be regarded as a Graded Staff Appointment.

15. Mr. Gopal Subramaniam, learned Additional Solicitor General, however, submits that the appointment of the petitioner to the post of DA/MA was an ERE assignment as mentioned in the Regulations. Various clauses of the Defence Services Regulations have also been cited on behalf of the respondents in support of the contention that the appointment to the post of DA/MA should be regarded as Extra Regimental Employment.

16. In any event, no circular and/or document has been disclosed and/or produced before this Court on behalf of the respondents wherefrom it would specifically appear that the respondent authorities categorised the appointment to the post of DA/MA as Extra Regimental Employment.

17. However, I do not intend to decide whether the posting of the petitioner as MA to USA should be treated as Extra Regimental Employment or to be regarded as Graded Staff Appointment in the present proceeding since the petitioner neither sought for any relief on the aforesaid aspect in the statutory complaint filed on February, 2005 nor even prayed for any declaration in this regard in the present writ petition.

18. Although the petitioner specifically demanded for converting the assessments made by the Ambassador to USA for the year 1997-98 and 1998-99 to numerical quotients but the said prayer cannot be allowed for the simple reason that the rules and/or regulations applicable at the relevant point of time do not provide such conversions of the assessments into numerical quotients. The respondent authorities are bound to follow the rules which were applicable at the relevant point of time and therefore, I do not find any illegality for not allowing the aforesaid request of the petitioner to convert the assessment by the Ambassador to USA for the year 1997-98 and 1998-99 to numerical quotients.

19. The petitioner, however, claimed that he was denied the second mandatory look in violation of the prescribed selection procedure as mentioned in the Selection System for NDC.

20. Referring to the order dated "14th March, 2002 issued by the Deputy Secretary, Ministry of Defence, Government of India, learned Advocate of the petitioner submits that the respondent authorities have admitted in the aforesaid order that the petitioner was not given the second mandatory look on the ground

of promotability checks. The relevant portion from the aforesaid order dated 14th March, 2002 passed by the Deputy Secretary, Ministry of Defence, Government of India while deciding the statutory complaint of the petitioner dated 7th February, 2001 is quoted hereinbelow:

6. As regards officer's request that he be provided with an Honorary degree for NDC and its concomitant accruals be made towards the IBA as he has been denied a second mandatory look for the NDC it is stated that the officer was given a look for NDC, 2000 but could not be given the second look as assessment of promotability by No. 1 Selection Board is an essential element in the selection process for NDC and he had already been overlooked by the No. 1 Selection Board. There is no provision for award of Honorary NDC Degree.

21. The learned Advocate of the petitioner submits that the promotability checks were introduced for selection to NDC Course long after October, 2000 when the Selection Board met for finalising the names of the officers to be detailed to NDC, 2001. Referring to the written communications dated 7th January, 2002 and 7th February, 2003 issued by the Military Secretary's Branch, Army Headquarters, Mr. Mukherjee submits that promotability checks were introduced only after issuance of the aforesaid circulars,

22. The learned Additional Solicitor General, however, urged before this Court that the petitioner was only entitled to two looks with his batch i.e. batch of 1967 and the said 1967 batch of the petitioner came up for the first consideration for NDC, 1999 in October, 1998. According to the learned Additional Solicitor General, the petitioner was not considered in October, 1998 for NDC 1999 since the said petitioner was not available in the country and thus the petitioner forfeited his first mandatory look for NDC in the month of October, 1998.

23. The learned Additional Solicitor General further submits that the petitioner cannot raise any grievance in this regard in view of the execution of the Adverse Career Certificate by him before accepting the appointment as MA to USA. The learned Additional Solicitor General also submits that the petitioner's batch came up for their second and final mandatory consideration in October, 1999 for NDC, 2000 when the petitioner was considered but not recommended as the available seats were filled up by the better candidates.

24. According to the respondents, the petitioner thus exhausted his two mandatory looks for NDC and cannot claim to be considered for third look, which is impermissible under the Rules. The learned Additional Solicitor General submits that the order dated 14th March, 2002 was passed by the Deputy Secretary, Ministry of Defence, Government of India, while rejecting the petitioner's statutory complaint against supersession and therefore, any observation and/or remark in the said order cannot confer any vested right on the petitioner to be considered for NDC Course for third time in contravention to Para 3(a) of the policy dated 23rd May, 1995 for selection to NDC Course,

25. The learned Senior Counsel of the petitioner submits that the petitioner did

not forfeit his first mandatory look for NDC in October, 1998 for NDC 1999 as the said petitioner was not eligible in the year 1998 being not available in the country. The learned Senior Counsel of the petitioner also submits that the stand taken by the respondents in course of advancing arguments before this Court is that the order dated 14th March, 2002 issued by the Deputy Secretary, Ministry of Defence, Government of India records incorrect facts about the second look in respect of the petitioner herein.

26. Admittedly, the Selection procedure for NDC Course categorically provides for two looks for all Brigadiers provided they fulfil the laid down eligibility criteria. In the present case, petitioner was not eligible in the year 1998 for selection to NDC, 1999 due to his posting as MA to USA. The respondent authorities never contended that the case of the petitioner was considered for selection in October, 1998 for NDC, 1999 and was rejected. As a matter of fact, the petitioner was not considered by the respondent authorities for selection to NDC Course in October, 1998 and therefore, it cannot be said that the petitioner forfeited his first mandatory look for NDC in the year 1998.

27. Furthermore, while deciding the statutory complaint the competent authority of the Government of India after considering the comments of the Army authorities specifically held that the second look could not be given to the petitioner on the ground of promotability checks.

28. Although it has been submitted on behalf of the respondents that the aforesaid observations of the Deputy Secretary, Ministry of Defence, Government of India in the order dated 14th March, 2002 cannot confer any right on the petitioner but I am unable to accept the aforesaid contention of the respondents as the aforesaid order dated 14th March, 2002 was passed by the statutory authority upon considering the specific observations and/or comments of the Army authority while deciding the statutory complaint of the petitioner.

29. Undisputedly, the statutory complaints are decided by the competent authority of the Union of India after receiving the comments from the Army authority. In the present case, the Army authority while sending comments in respect of the grievances of the petitioner mentioned in the statutory complaint either admitted that the second look was not given to the petitioner for selection to NDC Course or any objection raised by the Army authority in respect of the said second look was not acceptable to the competent authority of the Government of India since the Deputy Secretary while deciding the statutory complaint of the petitioner specifically held that the second look could not be given to the petitioner on the ground of promotability checks.

30. From the aforesaid order dated 14th March, 2002 it is clear that the Government of India also did not approve the stand taken by the respondents Army authorities that the petitioner forfeited his first mandatory look for NDC in October, 1998. Furthermore, the respondents also in the affidavits filed before this Court specifically took the stand that the petitioner became ineligible for

consideration in the year 1998 as he was unavailable due to his posting as MA to U.S.A. and, therefore, it cannot be said that the petitioner was considered for selection to NDC in the year 1998.

31. Surprisingly, the learned Additional Solicitor General while advancing the arguments on behalf of the respondents raised a dispute regarding correctness and/or validity of the decision of the competent authority of the Government of India regarding the denial of the second mandatory look to the petitioner for the NDC in October, 2000 for NDC, 2001, In my considered opinion, the correctness and/or validity of the order passed by the competent authority of the Government of India while deciding the statutory complaint of the petitioner cannot be questioned by the respondents in the present writ petition filed by the petitioner.

32. The learned Advocate of the petitioner cited a decision of the Supreme Court in the case of *State of Assam v. R. Rajagopalachari* reported in 1972 SLR 915 in support of the contention that the respondents cannot attack its own order. In my opinion, the aforesaid decision is very much applicable in the facts of the present, case.

33. However, from the records it appears that the promotability checks were introduced pursuant to the written communication dated 7th January, 2002 and 7th February, 2003 and therefore, there was no occasion to refuse the second look to the petitioner in October, 2000 for NDC, 2001 on the ground that the assessment of promotability by the No. 1 Selection Board is an essential element in the Selection Process for NDC and the petitioner had been over looked by the No. 1 Selection Board.

34. Accordingly, I find that the aforesaid refusal of the second look to the petitioner in October, 2000 for NDC, 2001 was not on any valid ground. It is also not in dispute that after expiry of couple of months i.e. in April, 2001, the same No. 1 Selection Board found the petitioner fit for promotion to the post of Major General.

35. In terms of the selection procedure for NDC Course [Para 3(a)], a Brigadier shall have two looks for NDC provided he fulfils the eligibility criteria. It follows that eligibility would be followed by consideration. If one is ineligible, question of looks cannot and does not arise. It being the stand of the respondents that the petitioner was ineligible, he could not have been given any look and hence, the plea now advanced cannot be accepted to be a valid and tenable plea.

36. By referring to the Adverse Career Certificate, it has been submitted on behalf of the respondents that the petitioner cannot complain for non-selection, I also do not find any merit in the aforesaid submission. If the petitioner had been selected for NDC Course but could not be detailed due to his unavailability, he could not have complained. But the petitioner never undertook not to complain if he was overlooked for consideration. The terms of the Adverse Career Certificate, therefore, cannot be invoked for defending the impugned actions of the

respondents.

37. For the aforementioned reasons, I am constrained to hold that the petitioner was illegally denied second mandatory look for NDC Course.

38. The petitioner is also aggrieved for non-selection to the rank of Major General from the rank of Brigadier in April, 2000 and subsequently non-selection to the rank of Lieutenant General from Major General in April, 2004 as fresh case and April, 2005 as First Review Case and finally in October, 2005 as Final Review Case.

39. The non-selection to the rank of Major General from Brigadier in April, 2000 cannot be a vital issue now since the petitioner was promoted to the rank of Major General in April, 2001, While raising the issue relating to the non-selection of the petitioner to the rank of Lieutenant General, the petitioner contends that the change of policy in the channel of reporting of the Additional Director General, Assam Rifles just before the posting of the petitioner is primarily responsible apart from the other grounds discussed hereinbefore which according to the petitioner, considerably affected the overall profile of the said petitioner.

40. The petitioner was moved on temporary duty to the post of Additional Director General, Assam Rifles (hereinafter referred to as ADG) on 24th September, 2002, The petitioner contends that channel of reporting for ADG, Assam Rifles was changed to his detriment just at the time of his appointment to the said post.

41. On 19th December, 2002, the Military Secretary's Bench issued an order regarding initiation and/or endorsement of CR's by reporting officers other than Army Officers. In the said order it was clarified that all reporting officers including Army officers as well as officers other than Army will fill up only the pen-picture and are excluded from reporting in all figuratives and recommendations for promotion and employment while rendering CR's on officers tenanted these appointments. The said order was admittedly applicable to various appointments including ADG, Assam Rifles.

42. The then existing channel of reporting for ADG, Assam Rifles was (1) DG, Assam Rifles (Initiating officer) and (2) Home Secretary (Reporting Officer).

43. By another order dated 30th December, 2002, said Military Secretary's Branch issued an order by which the channel of reporting to the post of DG, Assam Rifles and ADG, Assam Rifles was changed. Pursuant to the aforesaid order dated 30th December, 2002, the channel of reporting for ADG, Assam Rifles was changed as follows:

Existing Proposed DC AR (IO) Part I Home Secretary DG AR(IO) Home Secretary (RO) Part II GOC-in-C EC (IO) Chief of Army Staff (RO) 44. Para 4 of the said order dated 30th December, 2002 prescribes that assessment in Part I will be undertaken as per the format enclosed whereas assessment in Part II will be undertaken in regular Indian Army Form. The petitioner contends that while

he was posted as ADG, Assam Rifles, the G.O.C.-in-C. (Eastern Command) and the Chief of Army Staff (hereinafter referred to as COAS) made assessments in figuratives which is absolutely unauthorised.

45. In terms of policy letter dated 19th October, 2002 all reporting officers including Army Officers as well as officers other than Army will fill up only the pen-picture and are excluded from reporting in all figuratives. The aforesaid policy letter was followed by the subsequent letter dated 30th December, 2002 wherein at Paragraph 5 it has been mentioned that assessment by civilian and service officers in the channels for ibid appts will be in the form of pen-picture only, in consonance with letter No. A/17151/9/98/MS4 Coord dated 19th December, 2002.

46. Referring to the aforesaid policy letters learned Senior Counsel representing the petitioner submits that assessment in figuratives by all officers including army officers in the channels was dispensed with. The learned Senior Counsel of the petitioner further submits that on the face of those policy letters, each and every assessment made in figuratives by the GOC as Initiating Officer and the COAS as Reporting Officer are unauthorised and non est. It has been urged on behalf of the petitioner that all assessment in figuratives by those two officers ought to be expunged and the profile of the petitioner should be changed on the basis of the pen-picture.

47. The learned Additional Solicitor General, however, submits that since the officers named in Part II of the channel of reporting are required to make endorsements on regular IA Form, assessment in figuratives by the officers concerned is authorised. In my view, the aforesaid submissions of the learned Additional Solicitor General is devoid of any merit for the reasons discussed hereinafter.

48. Undisputedly, it has not been provided in the aforesaid two policy letters that the assessments by the officers mentioned in Part I of the channel is to be non-figurative and that of the officers mentioned in Part II is to be figurative.

49. The policy letter dated 19th December, 2002 clearly empowers assessment by filling up only the pen-picture by all officers including Army officers and excluding reporting in all figuratives. The policy letter dated 30th December, 2002 reiterates that assessment in the channels will be in the form of pen-picture only in consonance with the letter dated 19th December, 2002. Paragraph 5(a) of the policy letter dated 30th December, 2002 is quoted hereunder:

5. Filling of CR Form

(a) Figurative assessments for DG, Assam Rifles, DDG, Assam Rifles and Dir of Std had been dispensed with by the Chiefs of Staff in 1998. Therefore, assessment by civilian and service offs in the channels for ibid appts will be in the form of pen-picture only, in consonance with our letter No. A/17151/9/98/MS4 Coord dt. 19th December, 2002.

50. The word "Channels" mentioned in Para 5(a) of the aforesaid policy letter dated 30th December, 2002 will apply in respect of both the channels mentioned in Para 4 of the said policy letter. The form cannot supersede the policy laid down by the competent authority and therefore, the format of the regular Indian Army Form cannot authorise the Army Officers, namely, the G.O.C.-in-C, Eastern Command and the COAS to avoid pen-picture and reporting in figuratives. Accordingly, I am of the opinion that the G.O.C.-in-C, Eastern Command and the COAS acted in excess of jurisdiction and in violation of the policy decisions as mentioned in the policy letter dated 19th December, 2002 and 30th December, 2002 by making figurative assessments of the petitioner while posted as ADG, Assam Rifles.

51. It has also been contended on behalf of the petitioner that assessment was required to be made objectively and independently on the basis of observance of competence, employability and potential in terms of Army Order No. 457 2001/MS. It is the categorical case of the petitioner that the GOC-in-C, Eastern Command and the COAS not having any direct interaction with the petitioner could not have assessed the competence, employability and potential of the said petitioner objectively. Learned Senior Counsel of the petitioner submits that any assessment made by those officers without any interaction is purely subjective based on which there cannot be said to be a proper and fair consideration of the profile of the petitioner for selection to the rank of Lieutenant General.

52. The learned Additional Solicitor General, however, on behalf of the respondents specifically denied that the aforesaid two officers had no direct contact with the ADG, Assam Rifles as claimed by the petitioner herein and further submits that various reports are regularly received by the said top two Army officers in respect of the functioning of the ADG, Assam Rifles through various channels including military channels and therefore, the said two Army officers are posted with the up to date informations regarding the performance of the ADG, Assam Rifles.

53. Since the two channels of reporting in respect of ADG, Assam Rifles have been specifically provided in the policy letter dated 30th December, 2002, the G.O.C.-in-C, Eastern Command and COAS are very much entitled to assess the performance of the petitioner and fill up the CR forms. However, the assessments in respect of the petitioner by the aforesaid Army officers should be in the form of pen-picture only in consonance with the policy decision as mentioned in the policy letter dated 19th December, 2002 and specifically mentioned in Para 5(a) of the subsequent policy letter dated 30th December, 2002.

54. The aforesaid two Army officers therefore, by adopting figurative assessments in respect of the petitioner while posted as ADG, Assam Rifles committed serious wrong and irregularity. The said figurative assessments therefore, cannot be allowed to be taken into consideration at any stage by any authority and the service profile of the petitioner is also required to be changed in this regard.

55. One other important issue has been raised in this petition with regard to the disposals of the statutory complaints of the petitioner.

56. In terms of Section 27 of the Army Act, the aggrieved Army Officer is entitled to file statutory complaint. Section 27 of the Army Act is quoted hereunder:

Section 27. Remedy of aggrieved officers.--Any officer who deems himself wronged by his commanding officer or any superior officer and who on due application made to his commanding officer does not receive the redress to which he considers himself entitled, may complain to the Central Government in such manner as may from time to time be specified by the proper authority.

57. The first statutory complaint filed by the petitioner on 7th February, 2001 was rejected by the competent authority of the Union of India on 14th March, 2002 which has already been discussed hereinbefore. The subsequent statutory complaint dated 28th February, 2005 against non-selection for NDC and CR's for 1996 to 1999 was rejected by the order dated 29th March, 2005.

58. By another order dated 2nd February, 2006, the other statutory complaint submitted by the petitioner on 28th February, 2005 against non-empanelment for the rank of Lieutenant General was decided by the competent authority of the Government of India whereby and whereunder partial redress has been given to the petitioner. The other statutory complaint filed on March, 2005 has not yet been decided.

59. Surprisingly, the statutory complaint filed by the petitioner on 28th February, 2005 against non-selection for NDC and CR's 1996-1999 was rejected by the Military Secretary's Branch on the ground that the complaint is untenable. The order dated 29th March, 2005 has been challenged by the petitioner on the ground that the Military Secretary's Branch could not have rejected the same as untenable. In terms of Section 27 of the Army Act an aggrieved officer has the right to approach the Central Government by filing statutory complaint assailing any action of his superior officer.

60. The learned Senior Counsel of the petitioner submits that the lis, as raised, in the statutory complaint is required to be decided by the Central Government as the statutory authority and Military Secretary's Branch has no authority and/or jurisdiction to declare any statutory complaint as untenable and refuse to forward the same to the Central Government. The learned Senior Counsel of the petitioner also submits that the aforesaid order passed by the Military Secretary's Branch is incurably bad and non est.

61. The learned Additional Solicitor General referring to Section 27 of the Army Act submits that procedure for filing complaints has been clearly stipulated in Para 364 of the Defence Services Regulations. According to the learned Additional Solicitor General, the aforesaid executive instructions have been issued by the Government of India to supplement the provisions of Section 27 of the Army Act.

62. Referring to various Paragraphs from the Defence Services Regulations and Army Orders, learned Additional Solicitor General submits that the statutory complaint dated 28th February, 2005 against non-selection for NDC was rightly held as untenable by the Military Secretary's Branch as the petitioner made a complaint which was earlier decided by the competent authority of the Government of India. The learned Additional Solicitor General further submits that the petitioner is not entitled to raise the same complaint repeatedly in the form of statutory complaint and the Military Secretary's Branch is authorised to scrutinise the statutory complaint submitted by an Army officer in order to ascertain whether the said complaint is complete in all respects and is in correct form.

63. Mr. Gopal Subramaniam, learned Additional Solicitor General referred to and relied upon Clauses 10 and 12 of Para 364 of the Defence Services Regulations in this regard. The said Clauses 10 and 12 are set out hereunder:

10. The immediate superior authority in chain will offer his detailed parawise comments on the complaint. He will also ensure that the stipulations made in paras 8 and 9 above have been complied with. In case any of the conditions mentioned below is not satisfied, he will withhold the complaint and inform the next superior authority and the complainant the reasons for withholding the complaint :

- (a) That the complaint is complete in all respects and is in correct form,
- (b) That the complaint is not couched in discourteous, disrespectful or improper language.
- (c) That the complaint does not contain official documents and correspondence, access to which does not have any formal authority.

12. An intermediary authority will examine the complaints set forth by the complainant and may take any of the following actions:

- (a) Where the intermediary authorities arrive at the view, after due examination, that only a partial redress will meet the ends of justice, the same may be granted by the authority concerned. In such cases, the intermediary authority granting such redress will further call upon the complainant to express as to whether he desires to withdraw the complaint in view of the partial redress granted, within 90 days, and if he gives such concurrence it will be communicated to all concerned and the complaint closed.
- (b) Where the intermediary authority decides to grant full redress sought by the complainant, he shall be suitably informed. The next higher authority to the authority granting such redress will be kept informed of the grant of redress. Such cases will not be forwarded to the authority to whom the complaint is addressed.
- (c) Where the redress prayed for is not given at all, the intermediary authority will forward the complaint along with his comments and recommendations

through normal channels to the authority to whom the complaint is addressed for final disposal.

64. The aforesaid clauses of para 364 of the Defence Services Regulations/ however, do not authorise the Military Secretary's Branch to declare any statutory complaint as untenable. Furthermore, Section 27 of the Army Act specifically provides that any Army officer who deems himself wronged by his superior officer may complain to the Central Government for redressal of the grievances and therefore, the superior Military officer cannot refuse to forward the statutory complaint of any aggrieved officer to the Central Government on the alleged plea that the same is not tenable on any ground since the ultimate decision in this regard is required to be taken by the competent authority of the Central Government and not by the Military Secretary's Branch as statutory complaints are filed by an Army officer being aggrieved by the decision of his superior officer.

65. The officer of the Military Secretary's Branch, in the present case, while declaring the statutory complaint of the petitioner dated 28th February, 2005 as untenable has really prevented the petitioner from pursuing the remedial measures as specifically provided in the Army Act.

66. For the aforementioned reasons, the decision of the Military Secretary's Branch dated 29th March, 2005 rejecting the statutory complaint of the petitioner cannot be sustained in the eye of law and the same is, therefore, quashed.

67. However, since the grievances mentioned in the aforesaid statutory complaints by the petitioner have been considered in the present writ petition, I am of the opinion that the same are not required to be decided by the competent authority of the Government of India afresh but I would like to examine the prescribed procedure and rules for the disposal of the statutory complaint of an aggrieved Army Officer.

68. In terms of Section 27 of the Army Act, statutory complaints are filed before the Central Government. Before deciding the statutory complaint submitted by an aggrieved officer, the competent authority of the Central Government asks for the comments of the concerned Army authorities and only after receiving the comments from the Army authorities the statutory complaint is decided. However, the copy of such comments is admittedly not supplied to the aggrieved Army officer. The comments of the superior Army authorities in respect of the complaint submitted by an aggrieved officer are thus taken into consideration by the competent authority of the Central Government without even giving an opportunity to the aggrieved Army officer to deal with the same.

69. In the present case, also, all the statutory complaints submitted by the petitioner were decided by the competent authority of the Central Government on 14th March, 2002 and 2nd February, 2006 without giving any opportunity to the petitioner to submit any comment on the correctness of the comments

submitted by the superior Army authorities. Therefore, the decisions of the Central Government in respect of the statutory complaints of the petitioner are vitiated due to non-observance of the principles of natural justice.

70. The learned Senior Counsel representing the petitioner cited the following decisions of the Supreme Court in this regard:

- 1) State Bank of India and others Vs. D.C. Aggarwal and another,
- 2) Mohd. Quaramuddin (Dead) by Lrs. Vs. State of A.P.,

In my opinion, the principles laid down by the Supreme Court in the aforesaid decisions are very much applicable in the facts of the present case.

71. I am also of the opinion that the decisions of the Central Government dated 14th March, 2002 and 2nd February, 2006 rejecting the statutory complaints filed by the petitioner have been vitiated on account of violation of the audi alteram partem rule as the vital documents, namely, the comments of the Army authorities on the statutory complaints of the petitioner were not supplied to the petitioner for information and submission of necessary comments.

72. The learned Additional Solicitor General, however, referred to the following decisions of the Supreme Court in support of the contention that the Court will not interfere with the policy decisions of the Government:

- 1) Tata Cellular Vs. Union of India,
- 2) Col. A.S. Sangwan Vs. Union of India (UOI) and Others,
- 3) State of Rajasthan Vs. Sriram Verma and Another,
- 4) Major General I.P.S. Dewan Vs. Union of India (UOI) and Others,

73. In the present case, this Court did not interfere with any policy decision of the Government. As a matter of fact, various irregularities committed by the Army authorities in violation of the policy decisions of the Government of India and without observing the principles of natural justice have been specifically considered and decided in this petition. Accordingly, the aforesaid decisions have no manner of application in deciding the issues raised in this petition.

74. Although the petitioner alleged that the respondent authorities changed its policy decision with regard to the assessment of the CR's of the petitioner with a mala fide intention but proper and necessary particulars in support of the allegation of mala fide have not been furnished in the writ petition. As a matter of fact, the learned Senior Counsel of the petitioner did not seriously argue to establish mala fides on the part of the respondent authorities.

75. Various decisions cited by the respondent authorities in support of the contention that the petitioner has failed to establish mala fides are not required to be discussed in details as this Court is of the opinion that none of the respondents ever proceeded or acted in the present case with a mala fide

intention. May be, sometimes, accidentally, the policy decisions have been changed by or at the instance of the respondent authorities in detriment to the interests of the petitioner but the same by itself do not establish the mala fides on the part of the respondents.

76. From the records I find that the Special Selection Board considered the promotional aspect of the petitioner to the rank of Lieutenant General on 8th February, 2006 and the said petitioner was not selected for promotion. It has been submitted on behalf of the petitioner that the said Special Selection Board was fed with improper data and tainted profile of the petitioner as a result whereof the members of the Special Selection Board could not consider the petitioner's claim for promotion to the rank of Lieutenant General in an appropriate manner.

77. The learned Counsel of the petitioner submits that the consideration by the Special Selection Board with regard to the claim of the petitioner for promotion to the rank of Lieutenant General on 8th February, 2006 was no consideration in the eye of law as the service profile of the petitioner was not properly and correctly prepared. According to the petitioner, proper assessments of the service career of the petitioner could not be reflected in the overall profile presented before the members of the Special Selection Board as according to the petitioner, various irrelevant and irregular considerations tainted the profile of the petitioner presented to the members of the Special Selection Board.

78. For the reasons mentioned hereinbefore, I am constrained to hold that the entire profile of the petitioner warrants a thorough change as I have already held that the respondent authorities wrongfully and illegally denied a second mandatory look for the NDC and the superior Army Officers, namely, the G.O.C.-in-C, Eastern Command and the COAS made figurative assessments in respect of the CR's of the petitioner, while posted as ADG, Assam Rifles, instead of pen-picture in terms of the policy decisions mentioned in the policy letters dated 19th December, 2002 and 30th December, 2002 issued by the Military Secretary's Branch.

79. In the aforesaid circumstances, the decision of the Special Selection Board taken in the meeting held on 8th February, 2006 and communicated by the letter dated 24th February, 2006 regarding non-selection of the petitioner for promotion is also liable to be quashed and the same is accordingly, quashed.

80. The respondent Military authorities are therefore, directed to change the profile of the petitioner immediately in the light of the aforesaid findings and reconsider the claim of the petitioner for promotion to the rank of Lieutenant General.

81. The respondent Military authorities are further directed to arrange a meeting of the Special Selection Board on or before 29th April, 2006 positively, in order to consider the claim of the petitioner for promotion to the rank of Lieutenant General on the basis of the changed profile of the petitioner pursuant to the

findings and observations mentioned hereinbefore. The members of the said Special Selection Board are specifically restrained from considering the NDC aspect as second mandatory look for NDC was illegally denied to the petitioner and also the figurative assessments of the CR's of the petitioner by the G.O-C.-in-C, Eastern Command and COAS, while the said petitioner was posted as ADG, Assam Rifles, at the time of considering the relative assessments of the candidates for the purpose of granting promotion to the rank of Lieutenant General.

82. In the event, the Special Selection Board declares the petitioner fit for promotion to the rank of Lieutenant General on the basis of the changed profile in terms of this order then, the petitioner will be entitled to enjoy all the benefits of the promotional post in the rank of Lieutenant General. I also make it clear that the respondents will be entitled to issue formal order of promotion to the petitioner even after the date of retirement with retrospective effect as the petitioner filed this writ petition long before his retirement and this writ petition has also been decided while the petitioner is in service.

83. With the aforesaid observations and directions, this writ petition stands disposed of. There will be, however, no order as to costs.

84. Let xerox plain copy of this judgment duly countersigned by the Assistant Registrar (Court) be handed over to the learned Advocates of the respective parties on usual undertaking.