
(2014) 07 DEL CK 0258
In the Delhi High Court
Case No : W.P.C. No. 6148/2004

S.B. Akali

APPELLANT

Vs

UOI

RESPONDENT

Date of Decision : 01-07-2014

Acts Referred:

Army Act, 1950 — Section 3(vi)
Constitution of India, 1950 — Article 226

Citation : (2014) 07 DEL CK 0258

Hon'ble Judges : Pradeep Nandrajog, J; Jayant Nath, J

Bench : Division Bench

Advocate : K.K. Rohtagi, Advocate and Party-in-Person, Advocate for the Appellant; S.K. Dubey and Inderjeet Sidhu, Advocate for the Respondent

Judgement

Pradeep Nandrajog, J.—The controversy in the present case relates to the Defence Research and Development Organization (hereinafter referred to as the 'DRDO').

2. For carrying on scientific and technological research and development work on projects of vital importance to the defence forces DRDO was established in the year 1958 by amalgamating the Defence Science Organization and some of the technical development establishments. The head of DRDO is a civilian, namely, the Scientific Advisor to the Ministry of Defence. The personnel of DRDO consist largely of civilian scientists and a few officers drawn from the three defence forces. The service officers from the three defence forces are initially taken on short tenure and if found suitable are permanently seconded to DRDO. The service of the service officers who are permanently seconded and absorbed in DRDO is thereafter governed by the terms and conditions applicable to the officers of DRDO.

3. In the year 1965 the petitioner was commissioned in the Indian Army in the rank of Second Lieutenant.

4. On November 23, 1979 the Ministry of Defence, Government of India issued an Office Memorandum laying down the procedure for intake and permanent secondment of service officers (officers belonging to three defence forces) in DRDO, the relevant portion whereof reads as under:-

"Subject: Procedure for Intake of Service Officers in The Research & Development Organisation of Min of Def And Terms and Conditions of Service of those Permanently Retained

The undersigned is directed to say that the question of laying down a separate procedure for intake of Service Officers and prescribing the terms and conditions of service of those of them who are permanently seconded to the Defence Research & Development Organization has been under consideration of the Government since the bifurcation of R&D and Inspection cadre vide Government of India, Ministry of Defence No. 1300/RD- 25/6447/D(R&D) dated 17 July, 1976. The President is pleased to decide that in supersession of Government of India, Ministry of Defence O.M. No. 11(5)/58/D(R&D) dated 18 March, 1967 as amended from time to time, the terms and conditions of service of service officers permanently seconded to DRDO will be as under:-

Controlling Authority

2. The DGR&D will be the controlling authority. He will be advised on matters concerning promotions and permanent retention of Service officers in the Research & Development Organization by a Selection Board as constituted by the Government .

Authorised Strength:

3. Strength of Service officers may be upto one-third of the officers strength of DRDO of SSO-1 (Scientist „C) equivalent and above. However, the exact number and distribution rank-wise will be decided by the DGR&D from time to time to meet the requirements of DRDO as well as to provide career opportunities to Service officers .

Intake of Officers on Tenure

(a) Intake of Service officers to fill appointment in the Research and Development Organization will ordinarily be at Major/Eqvt level. The period of tenure will normally be 3 years which may be extended upto 4 years with the concurrence of Service BQrs concerned. Officers with minimum academic qualification of MSC or BB or eqvt would be considered for intake on tenure as well as permanent retention, except officers from user Arms/Services like Artillery, Infantry, Ordnance etc. Officers of such Arms/Services considered for permanent secondment should have done an equipment/system oriented long specialization course .

Permanent Secondment

5. Selection for permanent secondment will be made from amongst tenure

officers who have done about 2 years service in the Defence Research and Development Organization. Officers of the rank of Maj/Eqvt and Capt/Equivalent with minimum of 10 years of service and eligible for rank of substantive rank of Major Eqvt would be considered for permanent Secondment. Officers taken on tenure for employment as Works Officers, Medical Officer and Security Officer will not be considered for permanent secondment . In exceptional cases, however, officers in higher ranks may also be considered for permanent secondment with the condition that their seniority in R&D Cadre would be fixed as stipulated in Para 16 below .

Promotions

9. Acting Rank

(a) Selection for promotion to acting rank of Lt Col and above of the permanently retained officers will be made by the Selection board appointed by the Government in accordance with the vacancies and rules of eligibility as issued by the Government, for service officers from time to time .

10. Substantive Ranks

(b) Tenure officers, wherever eligible, will also be considered for promotion. Their promotion, however, will be considered only after consultation with MS/COP/AOA, as the case may be .

Seniority After Permanent Secondment

16. As hithertofore seniority of all service Officers permanently seconded to DRDO will continue to be based upon their seniority of substantive rank of Major/Sqn Ldr/Lt Cdr, subject to any penalty/loss of seniority that an officer might suffer subsequently and the seniority of officers with substantive ranks higher than Major/Sqn Ldr/Lt Cdr will after their permanent secondment, also reckon vis-?-vis other officers in R&D Cadre, for future promotion/confirmation, from the date of their substantive rank of Major/Sqn Ldr/Lt Cdr subject to any penalty/loss of seniority that an officer might have suffered in his parent Arm/Service .

(Emphasis Supplied)

5. In the month of January 1980, the control of two institutes viz. Institute of Nuclear Medicine and Allied Sciences (hereinafter referred to as the `INMAS") and Defence Institute of Physiology and Allied Sciences (hereinafter referred to as the `DIPAS") was transferred from the Indian Army to DRDO.

6. Significantly, soon thereafter on July 14, 1980, DRDO carried out an amendment in Office Memorandum dated November 23, 1979, whereby existing para 4 was sub numbered as (a) and sub-para (b) was inserted in paragraph 4 of said office memorandum. The newly inserted sub-para (b) reads as under:-

"(b) Officers from AMC and RVC may also be considered for induction on tenure/permanent secondment where necessary. However, such officers will be

promoted against posts tenable by AMC/RVC officers.

(Emphasis Supplied)

7. Sometime thereafter sub-para (c) was inserted in paragraph 4 of Office Memorandum dated November 23, 1979 and the same reads as under:-

(c) Officers may also be taken from the three Service on tenure basis only. Such officers will, however, not be considered for permanent secondment and will revert to the parent Services on completion of their tenure.

8. The petitioner was permanently seconded in DRDO in the rank of Major on February 21, 1981.

9. On April 29, 1982 DRDO issued an office order relating to permanent secondment of Army Medical Corps (AMC)/Remount Veterinary Corps (RVC) officers and the same reads as under:-

Posts Tenable by AMC/RVC Officers

I am directed to refer to Para 4(b) of Govt. of India, Office Memo No. Pers/18601/RD Sel Bd/7971/D(R&D) dated 23 Nov 79 (as amended) and Letter No. Pers/18601/RD Sel Bd/366/S/D(R&D) dated 6 Oct 81 and to say that the following posts are tenable by AMC/RVC officers posted/permanently seconded to DRDO:-

Brig/eqvt - 1

Col/eqvt - 4

Lt Col/eqvt - 3

Maj/eqvt - 12

2. The above allocation is based on posts authorized/earmarked/transferred for AMC/RVC officers till date and is subject to change as and when any additional posts are authorized for AMC/RVC officers in R&D.

3. The above posts, however, do not include posts of Major/eqvt sanctioned to various DRDO Labs/Estts for performing medical duties which are to be filled by AMC officers on tenure basis only.

(Emphasis Supplied)

10. On April 22, 1988, the Department of Defence Research and Development, Ministry of Defence, Government of India issued another Office Memorandum relating to the procedure for intake and permanent secondment of service officers (officers belonging to three defence services) in DRDO, the relevant portion whereof reads as under:-

The undersigned is directed to refer to the Government of India, Ministry of Defence letter No. Pers/18601/RD Sel BD/7971/D (R&D) dated 23 Nov 79 as

amended from time to time and to say that in partial modification of the letters under reference the President is pleased to decide that hence-forth there will be no permanent secondment of service officers to the Defence Research & Development Organisation except under very special circumstances. It will be decided on each occasion by the Scientific Advisor to the Raksha Mantri in consultation with the Chief of the respective Service or Director General of Armed Forces Medical Services as the case may be.

11. The petitioner was approved for promotion to the rank of Colonel on May 23, 1988.

12. In the year 1991 one Col.Surjit Singh Riar belonging to Remount Veterinary Corps and permanently seconded to DRDO filed a writ petition being W.P.(C) No. 1218/1991 before this Court contending therein that the DRDO has committed an illegality in not promoting him to the rank of Brigadier when the officers junior to him have been promoted to the said rank.

13. In W.P.(C) No. 1218/1991 filed by Col.Surjit Singh Riar, Ministry of Defence/ DRDO filed a counter affidavit, the relevant portion whereof reads as under:-

Brief Facts of the Case

2. In accordance with the terms and conditions of permanently seconded officers, AMC/RVC officers are to be considered for promotion only against posts which are tenable by AMC/RVC officers . Therefore, such officers are always considered separately against vacancies which are specifically tenable by them. For this purpose their names are shown separately in the list of permanently seconded officers of DRDO. So far no AMC/RVC officer junior to the petitioner has been promoted to the rank of Brigadier .

Reply on Merits:

Paras 14 to 16: As submitted herein above being an RVC officer the petitioner could be considered for promotion only against vacancies which are tenable by AMC/RVC officers. The officers stated by the petitioner as junior to him, belongs to general cadre and were promoted against vacancies which are not tenable by AMC/RVC officers . Therefore, the comparison is not appropriate. As already submitted no AMC/RVC officer junior petitioner has been promoted to the rank of Brig. As such the petitioner cannot have any grievance on this ground.

Paras 32 & 33: The present seniority roll of permanently seconded Service officers is fully in accordance with the existing instructions. The Supreme Court judgment of 1982 has upheld the principles followed by DRDO for fixing the seniority of service officers. The seniority of AMC/RVC officers is maintained fully in accordance with the principles given by the Supreme Court. However, as per the existing instruction AMC/RVC officers are required to be considered for promotion only against posts tenable by them. Therefore, their name shown separately in the seniority list.

Reply To Grounds:

Paras 18 to 19: As per the terms and conditions of service of the petitioner, he can be considered for promotion only against posts which are tenable by AMC/RVC officers. He has been duly considered by the Board in his turn in 1988 and 1989 and he has not so far been recommended for promotion. The turn of the petitioner for consideration for promotion .

(Emphasis Supplied)

14. Respondent No. 3, Lt.Col.T.Ravindranath, an officer of the Army Dental Corps (ADC) was posted to INMAS (which was under the administrative control of DRDO) on May 15, 1991, initially for a period of three years. Being relevant, we note the following portion of the posting order dated May 15, 1991:-

Part II Orders : AMC/SIGS Officers

(Emphasis Supplied)

15. The Selection Board of DRDO recommended the petitioner for permanent secondment to DRDO on November 06, 1994. Thereafter, on April 26, 1995 the Government approved the permanent secondment of respondent No. 3 to DRDO in the rank of Colonel.

16. Respondent No. 4 Commodore S.Mohapatra, an officer of the Indian Navy was permanently seconded to DRDO in the rank of Commodore on January 06, 1997.

17. The petitioner was promoted to the rank of Brigadier on January 06, 1997.

18. Respondents Nos. 3 and 4 were promoted to the rank of Major General on December 24, 1998.

19. The petitioner was promoted to the rank of Major General on March 06, 2002.

20. The Ministry of Defence, Government of India issued a letter/note to DRDO on March 19, 2002 regarding permanent secondment of officers belonging to Army Dental Corps to DRDO, the relevant portion whereof reads as under:-

During the last Selection Board held on 27 Feb 2002 respect of permanently seconded officers in DRDO, the VCOAS has brought out that presently the appointments held by Permanently Seconded medical officers in DRDO are in excess of the authorization as laid down by the govt. vide R&D HQrs letter No. Pers/18305/R&D Sel Bd dated 29 Apr 82 .

2. Under the provisions as contained in the above govt. sanction, the number of vacancies authorized vis-?-vis those actually held are as under :

3. In the context of the above, the VCOAS had indicated that separate vacancies should be earmarked for AMC/ADC officers and the general cadre pool vacancies should not be utilized for promoting medical officers against the general pool .

4. The SA to RM had accordingly indicated to the VCOAS that he would have the issue examined in the light of the above suggestion. In view of the above, COP may initiate a proposal for seeking an amendment to the above sanction for increasing the authorization of medical officer in DRDO as per the posts presently held as also for amending the same to provide for the authorization of ADC officers in the seconded pool of medical officers .

(Emphasis Supplied)

21. Thereafter, on April 26, 2002 the Adjutant General, Indian Army wrote a letter/note to DRDO, the relevant portion whereof reads as under:-

2. DRDO has a mix of civilian scientific officers and service officers. As per Govt. of India MOD letter No Pers/18601/RD Sel Bd/7971/D(R&D) dated 23 Nov 1979, service officers may be up to one third of scientists. DRDO has 240 scientists equivalent to the rank of Maj Gen however there are barely 5 Maj Gens including one from Dental Corps in DRDO. There were eight Maj Gens in August 2000 against the present holding of five. One sees that there is a gradual reduction in Gen Officers ranks in DRDO. As also, one of the five is tenanted by a dental officer, which is irregular.

3. As per above referred letter at para 1 (a), DRDO is auth only one Brig from Med/RVC. As also, it has also been clarified that the Med/RVC officers can only tenant vacs meant for them. DRDO has also affirmed the same in the court case of Surjit Singh Riar versus Union of India, vide CWP No. 1218 of 1991 in the High Court of Delhi.

4. However, in spite of clear-cut directive on the subject, DRDO has arbitrarily promoted following Med/Dental Officers against a total auth of one Brig:-

(a) Maj Gen T Ravindernath (ADC)

(b) Brig JK Bansal, VSM (AMC)

(c) Brig RP Tripathi (AMC)

5. The action of DRDO is not only irregular but also tantamount to "Contempt of the Honourable Court". In view of the above, following officers are recalled under the provisions of Govt. of India, MOD OM No 96895/MS/DGI/Adm-4/4388/D (Inspection) dated 13 Jun 83 :-

(a) Maj Gen T Ravindernath

(b) Brig RP Tripathi

6. DRDO is requested to take addl Maj Gen and Brigs from other than AMC & ADC to fill up shortages in their ranks . MS Branch to please provide a suitable panel of Maj Gens and Brig to DRDO to tenant vacant posts .

(Emphasis Supplied)

22. In response thereto, DRDO wrote letter dated May 14, 2002 to the Ministry of Defence, the relevant portion whereof reads as under:-

2. Govt. of India, Ministry of Defence letter no. Pers/18601/RD Sel Bd/7971/D(R&D) dated 23 Nov 1979 had laid down the upper limit for induction of Service Officers in DRDO. The requirement of Service Officers in DRDO is being constantly reviewed and the officers inducted both on „permanent secondment basis as well as on „tenure basis. Presently, a total number of 623 Service Officers as per details given below are authorized vide Govt. of India letter no. MPD/76682/MPB/286/S/D(R&D) dated 13 Aug 2001: -

3. The breakup of the Service Officers service-wise as well as Corps and Arms wise is dependent on the specific requirements of the DRDO Labs. DRDO was holding 8 Maj Gen in August 2000; 5 against authorization, two against project which has since been closed and one was against a higher vacancy .

4. The allocation of post tenable by AMC/RVC Officers was earlier done vide letter no. Pers/18305/RD Sel Bd dated 29 Apr 1982 which is subject to change depending on actual requirements and other factors. However, all the promotion of AMC/RVC officer has been done within the overall ceilings of authorized posts.

5. Maj Gen T Ravindranath and Brig RK Tripathi are both holding important assignments at Institute of Nuclear Medicine and Allied Sciences. These officers have been trained in specific area of work and presently involved in vital and important research activities. Their recall is, therefore, not in overall interest of the Government.

8. In view of the foregoing it is felt that the whole issue needs to be reviewed and both the officers, i.e., Maj Gen T Ravindranath and Brig RK Tripathi be allowed to continue in DRDO in the interest of the Organization.

(Emphasis Supplied)

23. In the year 2003 the petitioner submitted representation(s) to the competent authority in DRDO contending therein that:-

(a) induction/permanent secondment of respondent No. 3, an officer belonging to Army Dental Corps, to DRDO is illegal for the reason the officers belonging to Army Dental Corps are not eligible for being inducted/permanently seconded in DRDO in terms of Office Memorandum dated November 23, 1979 read with office order dated April 29, 1982.

(b) promotion of respondent No. 3 in the rank of Major General in DRDO is illegal for the reason the Office Memorandum dated November 23, 1979 stipulates that officers belonging to Army Medical Corps/Remount Veterinary Corps can be promoted only against the posts which are tenable by Army Medical Corps/Remount Veterinary Corps officers. Office order dated April 29, 1982 lays down the posts which are tenable by Army Medical Corps/Remount Veterinary Corps officers. A perusal of office order dated April 29, 1982 shows that the highest

post which is tenable by Army Medical Corps/Remount Veterinary Corps officers is that of Brigadier. Such being the position, the promotion of respondent No. 3 in the rank of Major General is patently illegal for the stand of DRDO is that the respondent No. 3 has been promoted against a post tenable by Army Medical Corps/Remount Veterinary Corps officers.

(c) promotion of respondent No. 4, an officer belonging to Indian Navy, in the rank of Major General in DRDO is illegal for the reason his seniority in the rank of Major/equivalent has been wrongly determined by DRDO. Before his induction/permanent secondment in DRDO, respondent No. 4 was superseded for promotion on two occasions in his parent organization i.e. Indian Navy. As per the prevalent Rules, the date on which the respondent No. 4 attained the rank of Major/equivalent was to be determined after depressing his actual date of attaining said rank by a period of two years on account of his supersession in his parent organization. The respondent No. 4 had actually attained the rank of Major/equivalent on December 09, 1978 and thus his date of attainment of rank of Major/equivalent was to be fixed as December 09, 1980 and his seniority was to be fixed on said basis. However, DRDO had wrongly determined the seniority of respondent No. 4 on the basis that he had attained the rank of Major/ equivalent on December 09, 1978 instead of December 09, 1980.

(d) selection Boards held between the years 1998 to December, 2001 for making promotions in the rank of Major General did not consider the petitioner for said promotion despite the fact that the petitioner was fully eligible for being considered for promotion in the rank of Major General. As per Office Memorandum dated November 23, 1979 an officer having twenty five years of service is eligible for being considered for promotion in the rank of Major General. The petitioner was having 33 years of service in the year 1998 and thus became fully eligible for being considered for promotion in the rank of Major General between the years 1998 to December, 2001.

24. Vide order dated June 19, 2003 the competent authority rejected the afore-noted representations of the petitioner. Being relevant, we note following portion of the order dated June 19, 2003:-

4. With regard to your contention that the highest post tenable by AMC/RVC officers is that of a Brig in terms of DRDO letter No. Pers/18305/RD Sel Bd dt.29 Apr 82 it is clarified that the letter only stipulates the minimum number of posts which are tenable by AMC/RVC officers and does not debar the cadre controlling authority who has issued this letter to allot additional posts within the overall authorized strength of DRDO to other category of officers in any rank keeping in view interest and requirement of this organization .

5. With regard to your allegation that your promotion has been delayed, it may be stated that your promotion to the rank of Maj Gen in Selection Board 2001 was deferred due to non availability of vacancy. It may be noted that no officer junior to you was promoted in that Board. In the Promotion Board prior to that

held in 1998, you were not considered for promotion since you had not completed the requisite two years of service in the rank of Brig.

(Emphasis Supplied)

25. On May 29, 2003 the petitioner submitted a statutory complaint to the Ministry of Defence, Government of India raising the same contentions as were raised by him in the afore-noted representation(s) and the same was rejected vide order dated August 04, 2004. Being relevant, we note the following portion of the order dated August 04, 2004:-

3. The matter has been examined in the light of the provisions of Army Act, 1950, regulations for the Army, procedure for intake of service officers in DRDO and terms and conditions of permanently seconded officers as enshrined in Government of India Ministry of Defence letter No. Pers/18601/RD Sel Bd/7971/D(R&D) dt. 23rd Nov. 79, as amended from time to time and other relevant rules, instructions, records and found that:

(ii) The Board held in the year 1998 for the rank of Maj. Gen. did not consider his name because he was not fulfilling the criteria of having earned a minimum of two annual confidential reports in the rank of Brig. No Board for promotion to the rank of Maj. Gen. was held in the year 1999 and 2000.

(iii) There is no restriction on induction of officers of Army Dental Corps in DRDO as per letter dated 23rd Nov. 1979. Officers from this Corps were inducted into DRDO with the concurrence of Director General Armed Forces Medical Services, based on specific research, requirement of the Laboratory. Vacancies for career progression of such officers are allocated by the Director General Research & Development in terms of para 3 of the Government of India Ministry of Defence letter No. Pers/18601/RD Sel Bd/7971/D(R&D) dated 23rd Nov. 1979.

(Emphasis Supplied)

26. Aggrieved by the aforesaid the petitioner has filed the present petition under Article 226 of Constitution of India inter-alia raising the same contentions as were raised by him in the representation(s) submitted by him to DRDO.

27. The Ministry of Defence/DRDO have filed a common counter affidavit stating therein that the contentions advanced by the petitioner in the present petition are fallacious.

28. On the issue of permanent secondment of respondent No. 3 in DRDO, the stand taken by Ministry of Defence/DRDO in the counter affidavit filed by them is as under:-

9. The averments so far it relates to permanent secondment of Lt Col Ravindranath being in contravention of the laid down procedure on intake of service officers are false and denied. The correct position is that vide GOI, MOD letter No. 18601/RD/Pers4/1660/D(R&D) dated 22 Apr 1988 the SA to RM in consultation with the respective services chiefs or DGAFMS, was empowered to

take the service officer on permanent secondment under very special circumstances. The respondent no. 3 was taken on permanent secondment under these provisions under very special circumstances after the Institutes like INMAS, DIPAS involved in the research in the medical field came under the control of respondent No. 2.

In reply to para 9(a) it is submitted that the distribution of posts is not final as is evident from the letter dated 29 Apr 1982 (Annexure-R3) wherein it is clearly stated that the allocation of posts was subject to change as and when additional posts are authorized. When Lt Col Ravindranath was taken in DRDO on permanent secondment as Colonel then one post of Colonel was made available. Based on this allocation, the orders for his permanent secondment were issued vide letter dtd 26 Apr 1995 which is annexed hereto as Annexure-R5 .

12. It is relevant to mention that respondent No. 4 was permanently seconded to DRDO in the rank of Commodore on 06/01/1997. He attained the rank of substantive Maj equivalent on 09/01/1978. The fact regarding his supersession twice in his career was known to DRDO. Accordingly his substantive seniority in the rank equivalent to Maj was arrived at by depressing this seniority by two years. His notional date of acquiring substantive rank of Major/equivalent was determined accordingly and fixed on 09/01/1980. On the date of permanent secondment, Respondent No. 4 was in the rank of Commodore (equivalent to Brigadier) whereas the petitioner was holding the rank of Col only. Para 16 of GOI MoD Letter No. Pers/18601/RD Sel Bd/7971/D(R&D) dt 23 Nov 1979 says seniority of officers with substantive ranks higher than Maj/Sqn Ldr/Lt Cdr will after secondment, also reckon vis-?-vis other officers in the R&D Cadre for future promotion/confirmation .

13. The contents of para 13 are false and denied. The petitioner was not fulfilling the eligibility criteria adopted by the Selection Board according to which he should have earned a minimum of 2 annual reports in the rank of Brig equivalent out of which one report should be after induction into DRDO as a permanently seconded officer. Hence he was not considered .

In exercise of the power vested in the respondent no. 2 to decide rank wise distribution of posts in DRDO, one post of Maj Gen was made available for respondent no. 3 and he was promoted accordingly. His averment that respondent no. 3 was promoted without any vacancy is therefore false .

23. Though some vacancies/posts were allocated to AMC/RVC officers vide Dte of Personnel letter no. Pers/18305/RD Sel Bd dated 29 Apr 1982, these posts are subject to change due to increase in project activities. The Cadre Controlling Authority is empowered to allocate vacancies for officers depending upon the requirement of the DRDO. Due to expansion of research in the field of life sciences, vacancies in higher rank have been allocated to AMC/ADC/RVC officers in the interests of the Organization .

28. The contents of para 28 are matter of record and need no reply. The

petitioner being ineligible for consideration for promotion to the rank of Lt Gen could not have been considered. The respondent no. 3 and 4 fulfilled the eligibility criteria and were therefore rightly considered for promotion. The eligibility criteria has been laid down Army HQ letter no. 04560/1/MS/Policy dated 27 June 96 and mutatis mutandis adopted by DRDO by virtue of para 9(a) of GOI MOD letter No. Pers 18601/RD Sel Bd/7971/D(R&D) dated 23 Nov 79, as amended from time to time(Annexure R-1) .

(Emphasis Supplied)

29. We note that the eligibility criteria for promotion to the rank of Major General laid down in the letter dated June 27, 1996 referred to in the counter affidavit filed by Ministry of Defence/DRDO is „Minimum tenure of eighteen months in the rank subject to earning two confidential reports.

30. During the course of hearing, learned counsel appearing for the petitioner reiterated the contentions/submissions contained in the representation(s) submitted by him before DRDO.

31. Per contra, learned counsel appearing for Ministry of Defence/DRDO also reiterated the stand taken by them in their counter affidavit. In addition thereto, learned counsel appearing for Ministry of Defence/DRDO argued as follows:-

A. Section 3(vi) of Army Act, 1950 defines 'Corps' to mean any separate body of persons subject to the Army Act 1950, which is prescribed as a corps for the purposes of all or any of the provisions of the Army Act 1950. Rule 187 of Army Rules, 1954 enumerates various 'Corps' prescribed u/s 3(vi) of Army Act, 1950. On November 23, 1979 the Ministry of Defence, Government of India issued an Office Memorandum laying down the procedure for intake and permanent secondment of service officers (officers belonging to three defence services) in DRDO. Initially, no 'corps' could be permanently seconded to DRDO. In the year 1980, two defence institutes dealing with medical research viz. INMAS and DIPAS came under the control of DRDO. This necessitated the need for induction/permanent secondment of persons engaged in medical research to DRDO. In this view of the matter, on July 14, 1980 an amendment was carried out in Office Memorandum dated November 23, 1979 whereby sub-para (b) was inserted in paragraph 4 of said office memorandum. The newly inserted sub-para (b) prescribed permanent secondment of officers belonging to Army Medical Corps (AMC) to DRDO as the said officers were engaged in medical research. It was argued that the expression 'officers from AMC' referred to in sub-para (b) of paragraph 4 of Office Memorandum dated November 23, 1979 included within its fold even the officers belonging to the Army Dental Corps (ADC) who were also engaged in medical research. To buttress said submission, counsel drew our attention to order dated May 15, 1991 whereby respondent No. 3 was posted to INMAS, DRDO. Counsel pointed out that the posting order dated May 15, 1991 of respondent No. 3 records the 'corps' of the respondent No. 3 as AMC (Army Medical Corps) whereas the respondent No. 2 belonged to Army Dental Corps

(ADC). According to the counsel, the very fact that the corps of respondent No. 3 has been referred as AMC in the posting order dated May 15, 1991 though he belonged to ADC shows that the expression `officers from AMC" referred to in sub-para (b) of paragraph 4 of Office Memorandum dated November 23, 1979 included within its fold the officers belonging to Army Dental Corps (ADC).

32. From the above noted conspectus of facts, it is apparent that the petitioner has essentially raised following four grievances in the present petition:-

I Permanent secondment of respondent No. 3, an officer belonging to Army Dental Corps, is illegal.

II Promotion of respondent No. 3 to the rank of Major General in DRDO is illegal.

III Fixation of seniority of respondent No. 4 in DRDO is illegal.

IV Action of the selection board held in the year 1998 for making promotions to the rank of Major General by not considering petitioner for promotion is arbitrary.

In Re I: Whether the permanent induction of respondent No. 3, an officer belonging to Army Dental Corps, to DRDO is illegal?

33. As already noted herein above, the personnel of DRDO consist of mainly civilian scientists and a small number of service officers drawn from the three defence forces.

34. Office Memorandum dated November 23, 1979 lays down the modalities for intake and permanent secondment of service officers in DRDO. Office memorandum dated November 23, 1979, as originally introduced, envisaged the permanent secondment of only service officers i.e. the officers belonging to three defence services in DRDO and excluded from its ambit officers belonging to the Army Medical Corps and the Remount and Veterinary course. Subsequently, on July 14, 1980, office memorandum dated November 23, 1979 was amended and sub-para (b) was introduced in paragraph 4 of said memorandum, which envisaged the permanent secondment of the officers belonging to the Army Medical Corps and Remount and the Veterinary Corps to DRDO. Thus, only service officers and officers belonging to Army Medical Corps and Remount and Veterinary Corps are eligible to be permanently seconded to DRDO. As a necessary corollary thereof, save and except the officers belonging to Army Medical Corps and Remount and Veterinary Corps, officer belonging to any other corps including Army Dental Corps are eligible to be permanently seconded to DRDO. In this view of the matter, the permanent secondment of respondent No. 3, an officer belonging to Army Dental Corps, in DRDO is not valid. (It is also worth mentioning that the note/letter dated March 19, 2002 written by Ministry of Defence to DRDO noted by us herein above also records that the officers belonging to Army Dental Corps could not be permanently seconded to DRDO).

35. Further, we find that office memorandum dated April 22, 1988 prescribed that with effect from April 22, 1988 the permanent secondment of service

officers to DRDO would be permitted only under very special circumstances. It has been suggested by Ministry of Defence/DRDO that the permanent secondment of respondent No. 3 to DRDO was necessitated on account of very special circumstances. What were those special circumstances? We do not know. None have been shown/pointed out to us.

36. The above noted conspectus of facts show that two very contrasting stands have been taken by the Ministry of Defence/DRDO to justify the permanent secondment of respondent No. 3 to DRDO. Firstly, that there is no restriction under Office Memorandum dated November 23, 1979 on permanent secondment of officers belonging to Army Dental Corps in DRDO. (See the portion of order dated August 4, 2004 extracted by us hereinabove). Secondly, that the expression "officers from AMC" referred to in sub-para (b) of paragraph 4 of office memorandum dated November 23, 1979 includes within its fold "officers belonging to Army Dental Corps".

37. The aforesaid marked variation in the stands taken by the Ministry of Defence/DRDO to justify the permanent secondment of respondent No. 3 to DRDO is itself a pointer to the fact that the permanent secondment of respondent No. 3 to DRDO was not valid. Further, the contention that the expression "officers from AMC" referred to in sub-para (b) of paragraph 4 of office memorandum dated November 23, 1979 includes within its fold "officers belonging to Army Dental Corps" is fallacious inasmuch as Army Medical Corps and Army Dental Corps are two distinct corps. Had it been the intention of the Government to induct the officers belonging to Army Dental Corps in DRDO the office memorandum dated November 23, 1979 would have expressly stated so. It is also worthwhile to note that the DRDO does not deal with dental discipline/research.

38. The sum and substance of the above discussion is that the permanent secondment of respondent No. 3 to DRDO is not valid. The respondent No. 3 was posted on tenure basis in DRDO and ought to have been reverted to his parent organization i.e. Army Dental Corps on completion of his tenure in DRDO as envisaged in paragraph 4(c) of office memorandum dated November 23, 1979. However, we do not quash the permanent secondment of respondent No. 3 in DRDO on account of the fact that he has since superannuated from service and he was posted to INMASS which was under the administrative control of DRDO on May 15, 1991. What direction would be finally issued qua the petitioner keeping in view the illegal permanent secondment of respondent No. 3 in DRDO would depend upon the decision on the fourth contention, and if the decision would be in favour of the petitioner, since even petitioner has superannuated from service, a direction would be issued to create a supernumerary post and promote the petitioner.

In Re II: Whether the promotion of respondent No. 3 to the rank of Major General in DRDO is illegal?

39. When the very induction/permanent secondment of respondent No. 3 in DRDO has been held illegal by us, the promotions earned by respondent No. 3 in DRDO automatically would be liable to be quashed on said count alone, but for the reasons mentioned hereinabove in paragraph 38, we leave the issue at that.

40. Apart from the fact that the promotion of respondent No. 3 to the rank of Major General in DRDO was illegal on account of his very permanent secondment being illegal, there are other reasons to hold that his promotion was illegal, and for which reasoning, we proceed as if officers of the Army Dental Corps could be permanently seconded in DRDO.

41. Admittedly, the respondent No. 3, an officer belonging to the Army Dental Corps was promoted to the rank of Major General against a post tenable by an officer belonging to Army Medical Corps/Remount Veterinary Corps. How could this be done? How could an officer belonging to Army Dental Corps be promoted against a post tenable by an officer belonging to Army Medical Corps/Remount Veterinary Corps?

42. Assuming for a moment that the respondent No. 3 could be promoted against a post tenable by an officer belonging to the Army Medical Corps/Remount Veterinary Corps, even then the promotion of respondent No. 3 to the rank of Major General was illegal. As per the office order dated April 29, 1982 the highest post which is tenable by an officer belonging to Army Medical Corps/Remount Veterinary Corps is that of Brigadier. In the counter affidavit filed by the Ministry of Defence/DRDO in W.P.(C) No. 1218/1991 filed by Col.Surjit Singh Riari, it had been categorically pleaded that the officers belonging to the Army Medical Corps/Remount Veterinary Corps can be promoted only against posts tenable by said officers. Despite such categorical statement made by Ministry of Defence/DRDO in W.P.(C) No. 1218/1991, the respondent No. 3 was promoted to the rank of Major General against a post which was not tenable by the officers belonging to the Army Medical Corps/Remount Veterinary Corps. All rules have been thrown to winds in the case of respondent No. 3. (It is also worth mentioning that the notes/letters dated March 19, 2002 and April 26, 2002 written by Ministry of Defence to DRDO noted by us herein above also records that the respondent No. 3 could not have been promoted to the rank of Major General as the highest post which is tenable by an officer belonging to Army Medical Corps and Remount and Veterinary Corps is that of Brigadier).

In Re III: Whether the fixation of seniority of respondent No. 4 in DRDO is illegal?

43. With regard to the grievance relating to fixation of seniority of respondent No. 4, suffice it to state that the Ministry of Defence/DRDO have admitted in the counter affidavit filed by them in the present petition that the date on which the respondent No. 4 attained the rank of Major/equivalent, was to be determined after depressing his actual date of attaining said rank by a period of two years on account of his supersession on two occasions in his parent organization i.e. Indian Navy. It has further been admitted by the Ministry of Defence/DRDO that

the respondent No. 4 had actually attained the rank of Major/equivalent on January 09, 1978 and thus his date of attainment of rank of Major/equivalent was to be fixed as January 09, 1980 and his seniority was to be fixed on said basis. Yet, when we look at the seniority list of permanently seconded officers of DRDO circulated on November 12, 2003 we find that DRDO has fixed the date of attainment of rank of Major/equivalent by respondent No. 3 as January 09, 1978 and his seniority has been determined on said basis.

44. Aforesaid being the position, the logical direction would be to correctly fix the date of attainment of rank of Major/eqv by respondent No. 1 as January 09, 1980 and re-fix his seniority accordingly, but we do not do so for the same reasons which we had recorded in para 38 above : respondent No. 4 has since superannuated from service.

In Re IV: Whether the action of the selection board held in the year 1998 to effect promotions to the rank of Major General by not considering petitioner for promotion is arbitrary?

45. The conspectus of facts noted by us herein above goes to show that four different stands have been taken by the Ministry of Defence/DRDO to justify the action of the selection board held in the year 1998 to effect promotions to the rank of Major General by not considering petitioner for promotion.

46. The first stand taken is that the petitioner had not completed requisite two years of service in the rank of Brigadier. (See the relevant portion of the order dated June 19, 2003 passed by DRDO rejecting the representation(s) submitted by the petitioner noted by us herein above). The second stand taken is that the petitioner did not fulfill the criteria of having earned minimum two annual confidential reports in the rank of Brigadier. (See the relevant portion of the order dated August 04, 2004 passed by the Ministry of Defence rejecting the statutory complaint of the petitioner noted by us herein above). The third stand taken is that the petitioner did not fulfill the criteria of having earned minimum two annual confidential reports in the rank of Brigadier/equivalent, out of which one report should be after induction into DRDO as a permanently seconded officer. (See paragraph 13 of counter affidavit filed by Ministry of Defence/DRDO in the present case noted by us herein above). The fourth and last stand is that the petitioner did not fulfill the eligibility criteria of having minimum tenure of eighteen months in the rank of Brigadier subject to earning of two confidential reports. (See paragraph 28 of counter affidavit filed by Ministry of Defence/DRDO in the present case noted by us herein above and paragraph 26 of the present judgment).

47. During arguments in the writ petition, learned counsel for the respondents was at a loss to take forward the stand of the respondent to justify non-consideration of petitioner's name in view of the four different stands projected, and as noted by us above.

48. As against that the petitioner has made good his case of being entitled to be

considered for promotion with reference to the office memorandum dated November 23, 1979, the contents whereof have been noted by us in paragraph 4 above. As per para 9 of the said office memorandum selection for promotion to acting rank of Lt.Colonel and above of the permanently retained officers has to be made by the selection boards in accordance with the vacancies and rules of eligibility for service officers, and the number of years of service rendered as commissioned officers stands stipulated therein as per para 10. Officers are eligible for substantive major general rank who have rendered 25 years service and as a Lt.General who have rendered 28 years service. The petitioner had rendered 33 years service in December 1998 and 38 years service in June 2003 and thus could not have been denied consideration for promotion to the acting rank of Major General in the year 1998 and acting rank of Lt.General in June 2003.

49. Where do we bring the curtains down keeping in view the aforesaid findings?

50. In view of the fact that the very induction of respondent No. 3 in DRDO has been held to be illegal and his further promotions have also been held to be illegal and in view of the fact that the year of seniority assigned to respondent No. 4 has been held to be illegal thereby adversely impacting even the promotion of respondent No. 4, it has to be held that a vacancy existed to consider petitioner for promotion as Major General in the year 1998 and as a Lt.General in June 2003. Since respondents No. 3 and 4 have since superannuated from service, without quashing their respective promotions, the only direction which could be issued would be to create supernumerary post as of the year 1998 in the rank of Major General and to the post of a Lt.General as of June 2003 and thereafter, considering the petitioner as eligible for promotion firstly as a Major General and then as a Lt.General as of the years 1998 and 2003 respectively, a selection board to be re-constituted. We direct that a review selection board be constituted to appraise the service record of the petitioner as of the year 1998 and if found suitable to promote the petitioner as of the year 1998 to the rank of Major General but on notional basis. Thereafter as of the year 2003 the petitioner to be considered for promotion to the rank of Lt.General and if found suitable to be promoted, to be given promotion from said year on notional basis, meaning thereby, the pension of the petitioner to be suitably enhanced and arrears paid, for the reason, the petitioner has also superannuated from service.

51. Needful shall be done within a period of six months from today.

52. Costs awarded to the petitioner and against the respondents in sum of `20,000/- (Rupees Twenty Thousand only).