

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA

M.A. No. 57 of 2018
(Arising out of
O.A. 11 of 2014)

DATED THE *Seventh* DAY OF DECEMBER, 2018.

CORAM :

Hon'ble Dr. (Mrs.) Justice Indira Shah, Member (J)

Hon'ble Lt Gen Gautam Moorthy, Member (A)

IC-41133L COLONEL RAVINDRA NATH TIWARI
SON OF SHRI S D TIWARI PRESENTLY POSTED
AT HEADQUARTERS CE SILIGURI, DISTT JALPAIGURI,
WEST BENGAL-734008

.....APPLICANT

BY MR. RAJIV MANGLIK, LD. COUNSEL
BY MISS MANIKA ROY, LD. COUNSEL

VERSUS

1. Union of India, service through the Secretary,
Government of India, Ministry of Defence
South Block, New Delhi - 110011.
2. The Chief of AIR Staff,
Army Headquarters, Integrated Headquarters
Of Ministry of Defence (Army) Defence Headquarters
Post Office, New Delhi-110011.
3. Military Secretary, Integrated Headquarters of
Ministry of Defence (Army), Defence Headquarters Post
Office, New Delhi-110011.
4. Brig MH Rizvi, Chief Engineer, HQ II Air officer
Corps, C/o 56 APO

..... RESPONDENTS

BY MR. SATYENDRA. AGRAWAL, CENTRAL GOVT. COUNSEL

ORDER**Dr. (Mrs.) Justice Indira Shah, Member (J):**

1. The applicant has filed the instant O.A. Under Section 14 of Armed Forces Tribunal Act, 2007, against the non-promotion of the applicant to the rank of Brigadier on various grounds including the non-consideration of the applicant for the cadre course of H C with changed profile and related grounds.
2. According to applicant, the respondents have changed the policy regarding allocation of vacancies to select ranks and the additional vacancies allotted to various Arms and Services to select ranks after implementation of A.V.Singh Committee-II with effect from the year in which the applicant was considered and it has come to the knowledge of the applicant after pronouncement of the judgment dated 02.03.2015 in O.A. 430 of 2012 by the Principal Bench of the Tribunal.
3. When the applicant filed the statutory complaint against the non-empanelment for promotion to the rank of Brigadier, the issue of alleged incorrect allocation of vacancies post i.e. A.V.Singh Committee-II was not raised by the applicant. To adjudicate the issue regarding the promotion of applicant to the rank of Brigadier on various grounds including the ground of wrong calculation of AVSC-II vacancy of Brigadier for the batch of applicant, the applicant has sought for amendment of the present O.A. application.

4. The respondents in their counter-affidavit have averred that A.V.Singh Committee-II recommendations were implemented on allocation of vacancies vide AG/MP-2 policy letter dated 21-01-2009. The above policy letter was disseminated to Command Headquarters and Line Directorates. The applicant was considered for promotion by No. 2 Selection Board for promotion to the rank of Brigadier in Nov 2009, Sept 2010, April 2011 and July 2011 and was not empanelled to the rank of Brigadier.

5. Being aggrieved by the non-empanelment by No. 2 Selection Board in November, 2009, as Fresh Case 1983 Batch, he submitted a non-statutory complaint dated 15.10.2010 without raising any grievance with respect to allocation of vacancies Ajay Vikram Singh Committee-II implementation. Again he submitted statutory complaint dated 14.01.2013 against the non-implementation by Selection Board No. 2 as Special Review (Fresh). Even in 2013, the applicant had no grievance with respect to allocation of vacancies. The challenge with respect to the allocation of vacancies after a lapse of 5 years from the date of issue of letter dated 21-10-2009 suffers from inordinate delay and latches.

6. Heard the Mr. Rajiv Manglik and Miss Manika Roy, learned counsel for the applicant and Mr. Satyendra Agrawal, learned counsel for the respondents.

7. In the original O.A. the applicant has made allegation against the promotion of private respondents and has prayed to declare that the respondents cannot consider and promote the private respondent as a Special Review Case in September 2010. Further prayer has been made to compare the merit of the applicant for nomination for the HC/HDMC

Course with the changed profile and direct the respondents to grant the compensation of marks of 0.75 for HC/HDMC while considering the applicant for promotion to the rank of Brigadier and to quash and set aside the box grading of '8' or below in the command criteria reports or alternatively moderate the same as per policy etc.

8. The allocation of vacancies based on AVSC-II for the rank of Brigadier for Engineers etc were not at all raised in the original O.A. or in the statutory complaint.

9. It is submitted by the learned counsel for the applicant that the new development of allocation of AVSC Phase-II vacancy for other Arms and Services in the select rank of Colonels, Brigs and Major Generals has come to the knowledge of the applicant after the pronouncement of judgment dated 02-03-2015 in O.A. No. 430 of 2012 by the Principal Bench. In restructuring of Officer cadre while implementing the AVSC Phase-II, the method of allocation for vacancy was changed from pro rata to Command Exit Model.

10. It is evident from the averment of M.A. application that now the applicant wants to challenge the method of allocation of vacancies. The original application was filed for redressal for grievance of non-empanelment of the applicant based on ACR as per the existing vacancies at that relevant point of time.

11. It is submitted by the learned counsel for the respondents that the O.A. No. 430 of 2012-Lieutenant Colonel P.K. Chaudhury and Others Vs. Union of India and Others challenging the allocation of vacancies in the rank of Colonel post AVSC-II where implementation was allowed vide judgment dated 02-03-2015 by Armed Forces Tribunal, Principal Bench, New Delhi. An appeal being Civil Appeal No. 3208 of 2015 had

been filed on behalf of the Union of India against the above judgment of AFT Principal Bench before the Hon'ble Supreme Court and the same was allowed on 15.2.2016 wherein the Apex Court set aside the order passed by the Tribunal and upheld Command Exit Model but did not go beyond directing the appellants to create 141 additional posts of Colonels.

12. The amendment sought for by the applicant is completely a new cause of action. We are of the view that if the amendment is allowed, it will change the nature and character of the original O.A. The applicant vide M.A. application has raised a completely a new cause of action for creation of additional vacancies in the rank of Brigadier and Major General which may do so by filing a separate O.A.

13. Since the proposed amendment constitutes a new cause of action, it cannot be allowed.

14. Accordingly, the M.A. application stands rejected and disposed of.

15. Let a plain copy of this order be handed over to both the parties upon usual formalities.

(Lt Gen Gautam Moorthy)
Member(Administrative)

(Justice Indira Shah)
Member (Judicial)

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