



NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 4653 OF 2018

Lt. Col NK Ghai (Retd.)

... Appellant

versus

Union of India and Another

... Respondents

J U D G M E N T

ABHAY S. OKA, J.

FACTUAL MATRIX

1. The appellant has taken an exception to the Judgment and Order dated 02nd November, 2017 of the Armed Forces Tribunal, Principal Bench at New Delhi (for short 'the Tribunal').

2. On 14th March, 1978, the appellant was commissioned into the Territorial Army. On 14th March, 1991, he was promoted to Time Scale Major. With effect from 21st March, 1996, he was promoted to Selection Grade Lieutenant Colonel. He was considered by the Selection Board for promotion on five occasions between 2000 to 2003, but was not empanelled.

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Reason:

3. The appellant filed several statutory and non-statutory complaints. The first non-statutory complaint was against the Annual Confidential Report (for short 'ACR') of 1998, where redress was granted by GOC-in-C, Northern Command. Non-statutory complaint against non-empanelment for promotion to the post of Colonel in July, 2000 was treated as null and void. Statutory complaint against non-empanelment for promotion to the rank of Colonel in January, 2000 was rejected. A non-statutory complaint against ACR of October, 2000 was pending when the impugned Judgment was delivered. A non-statutory complaint filed by the appellant against non-empanelment for promotion to the rank of Colonel in December 2002 was rejected.

4. Earlier, the appellant filed a writ petition before the Delhi High Court, which was disposed of by an order dated 20th February, 2006, where the respondent was directed to dispose of the statutory complaint made by the appellant by a reasoned order. Accordingly, on 28th April, 2006, the statutory complaint was rejected by a detailed speaking order. Being aggrieved by the said order, the appellant filed Writ Petition (C) No. 8370 of 2006, which was later transferred to the Tribunal. There were diverse prayers made in the petition. The prayers are as under:

“(a) To promote the petitioner on completion of 22 years of meritorious Commissioned service with effect from

14.03.2000 as substantive Colonel by accepting statutory complaints dated 18.01.2002 and 07.12.2002 and as substantive Brigadier with effect from 14.03.2003 with consequential benefits including by treating in continuous service with pay and allowances.

(b) To accept TA Group Headquarter, Western Command letter dated 20.01.2003 clarifying that the petitioner was entitled to annual confidential report 2000 - 2001 from the Initiating officer on 30 days embodiment (and not from the reviewing and initiating officer) and due to the inadequate knowledge and/or non communication of same, it has to be treated as invalid.

(c) To accept petitioner's non statutory complaint dated 25.10.2002 against premature annual confidential report 2002 - 2003 initiated/ forwarded on 25.08.2002.

(d) To set aside/clarify that Reproof dated 24.06.1999 being contrary to paras 317 and 820 of Defence Service Regulation is invalid against which statutory complaint dated 18.01.2002 was filed.

(e) To lay down promotion criteria for selection grade Colonel /Brigadier including threshold limit, mainly as for

Time Scale Promotions to Colonel/ Brigadier in Regular Army (being suitable for non unit command functions of Regular Army and for same reasons in non command TA, with suitable weightage for TA decoration; but no weightage for non compulsory course.

(f) To not to grant commission in Territorial Army, those already Reservists of Regular Army upto normal date of retirement and those who are key appointment holders and to decommission when they become so or fail to attend for 75 % of the training days.

(g) To conduct an high level enquiry to bring out how respondent 2 was re-commissioned, was shown on training, his annual confidential reports initiated and entered/waived and how he was promoted.

(h) To promote the petitioner through SMRB with effect from 16.12.2004 if the Court does not deem fit to pass an order as at (i) above.”

5. The transferred writ petition was contested before the Tribunal. By impugned Judgment dated 02nd November, 2017, the Tribunal found no error with the act of not placing the appellant in an acceptable grade for promotion to the rank of Colonel.

SUBMISSIONS

6. We have heard the appellant appearing in person. The appellant has invited our attention to various documents on record. He submitted that he has been victimized and denied promotion to the post of Colonel. He pointed out several facts leading to the filing of the present petition. The appellant, appearing in person, submitted that all along, his ACRs have been above average or near excellent. He relied on the Territorial Army Regulations, 1948 (hereafter referred to as the 'TA Regulations'), which dealt with the promotion of Territorial Army officers. He pointed out that as per Clause (c) of Paragraph 38 of TA Regulations, Territorial Army officers will be eligible for promotion by selection to the substantive rank of Colonel against specific vacancies after completion of 22 years of service.

7. The appellant appearing in person pointed out that the No. 3 Selection Board meeting was held in June 2000. However, the appellant's case for promotion was rejected. He made a statutory complaint against the same. His submission is that the Army Headquarters replied that the result of the No. 3 Selection Board has been nullified for certain reasons. The submission of the appellant appearing in person is that a favour was done to respondent No. 2 while granting promotion. He, therefore, submitted that the case of the appellant for promotion must be reconsidered.

8. Learned Additional Solicitor General (ASG) appearing for the respondents referred to Paragraph 108 (d) of Defence Services Regulations for the Army, 1987 (for short 'DSR'), which provides that the competent authority may differ from the recommendations of the Selection Board. She pointed out that respondent No. 2 was not recommended for promotion by the No. 3 Selection Board (Colonel Rank) held in June 2001. However, in terms of Paragraph 108 of DSR, the competent authority empanelled respondent No. 2. She pointed out that as provided in Paragraph 108 (d) of DSR, the assessment of Selection Board is recommendatory in nature and becomes binding only after it is approved by the competent authority i.e. Chief of Army Staff (for short 'COAS'). Moreover, clause (e) of Paragraph 108 of DSR provides that the Central Government or the COAS has the inherent power to modify, review, approve with variations, or repeal the recommendations of the Selection Boards. Learned ASG pointed out that the consideration of the case of respondent No.2 was in terms of the policy.

9. Learned ASG produced for perusal of the Court in a sealed envelope, the proceedings of No. 3 Selection Board of July 2000, June 2001, December 2001, June 2002 and February 2003. The proceedings have been kept in a sealed cover. The gradings to be awarded for promotion to the selective ranks are A, B, Z, D and W. 'Z' is unfit for promotion to the next higher rank at present. She pointed out that in all five proceedings, the gradation of the appellant was 'Z'.

CONSIDERATION

10. We have considered the arguments and perused the documents on record. We find from the confidential proceedings of the No. 3 Selection Board that an elaborate selection process was conducted. In the proceedings of No. 3 Selection Board in July 2000, it is recorded that the appellant's case was considered along with respondent No. 2 and Lt. Colonel A. Singh. The name of respondent No. 2 was deferred. In the June 2001 process, there were three candidates, including the appellant, respondent No. 2, and Col. N.K.V. Narayanan. Grading 'B' was given to respondent No. 2 and Col. N. K. V. Narayanan, which means they were found fit for promotion to the next higher rank. However, the appellant was given grading 'Z' and therefore, the appellant was not eligible. Even in the subsequent process of December, 2001, the appellant was given grading 'Z' and hence, he was held to be ineligible. Similarly, we find from the proceedings of No. 3 Selection Board held in June 2002 and February 2003 that the appellant was given grading 'Z'.

11. Now, coming to the No.3 Selection Board of June, 2001, it is mentioned in the record that grading of 'Z' was given to respondent No. 2. The grading of respondent No. 2 has been altered by the COAS by converting 'Z' into 'B'. According to the DSR, the final authority for granting promotions is the COAS. We find that in the case of respondent No. 2, the COAS reconsidered his case. However, that was not done in

the case of the appellant. In our view, as the COAS has reconsidered the case of respondent No. 2, the case of the appellant for upgradation ought to have been considered.

12. Hence, we direct reconsideration of the grading given to the appellant in the selection process of June 2001. No other modification can be made to the impugned Judgment. We direct that in the selection process of June 2001, the case of the appellant for upgradation from category 'Z' shall be considered by the COAS. An appropriate decision shall be taken within a period of three months from today.

13. Subject to the modification made above, the impugned Judgment is confirmed. Needless to add that if, ultimately, grading 'Z' is upgraded, the case of the appellant for grant of notional promotion shall be considered along with consequential benefits.

14. Ordered accordingly. Appeal is partly allowed on the above terms.

.....J.
(Abhay S. Oka)

.....J.
(Ujjal Bhuyan)

**New Delhi;
May 21, 2025.**