

Hardev Singh. Vs. Union of India and anr.

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Court : Supreme Court of India

Decided On : Sep-14-2011

Judge : Dr. Mukundakam Sharma; Anil R. Dave, JJ.

Appeal No. : CIVIL APPEAL NO. 3973 OF 2010

Appellant : Hardev Singh.

Respondent : Union of India and anr.

Judgement :

1. Aggrieved by the Judgment and Order dated 26.4.2010 passed by the Principal Bench of the Armed Forces Tribunal, New Delhi in T.A. No. 541 of 2010 (O.A. No. 29 of 2010), the appellant has filed this appeal under Section 30 of the Armed forces Tribunal Act, 2007.

2. The appellant was commissioned as an Officer in Indian Army on 17.6.1973. Over a period of time, he rose to the rank of Major General and retired on 30.4.2010. During his service tenure, he performed his duties well and he had also carried out several special assignments and he was suitably honoured by Indian Army. Being aggrieved by the aforesaid order passed by the Tribunal, he has filed this appeal, as according to him, he was wrongly denied promotion to the rank of Lieutenant General.

3. The facts giving rise to the present litigation in a nutshell are as under:

Grievance of the appellant is that he was not promoted to the rank of Lieutenant General. According to him, the policy with regard to promotion had been changed after Special Selection Board (hereinafter referred to as the 'SSB') had been constituted for considering cases of officers of 1973 batch for promotion to the rank of Lieutenant General. After the SSB started the process of selecting officers for promotion to the rank of Lieutenant General, the Government had promulgated a new policy dated 31.12.2008 with regard to promotion. Formerly, the policy with regard to promotion was based on 'value-judgment' and on that basis the SSB was to consider overall profile of all the concerned officers. According to the said Policy, confidential remarks, war operation report, course report, honours and awards and disciplinary background of each officer was to be considered while taking a final decision with regard to giving promotion to him to the rank of Lieutenant General. The said policy was changed with effect from 1st January, 2009. Instead of the aforestated 'value judgment', a new policy described as 'quantification method' has been adopted for giving promotion to the rank of Lieutenant General. According to the new policy, while considering cases for promotion, 92% weightage is to be given to confidential reports, 3% to courses, honours and awards and 5% weightage is to be given to value judgment.

4. The learned counsel for the appellant submitted that the new policy was adopted at the time when the appellant and other officers of 1973 batch became due for promotion to the rank of Lieutenant General. According to him, the SSB had already started the procedure for considering officers of 1973 batch during calendar year 2008 and, therefore, the policy could not have been changed. According to him, this was not permissible in law because once the SSB was constituted in 2008 and had started procedure for considering the officers of 1973 batch for their promotion to the rank of Lieutenant General, new policy, even if framed could not have been implemented but the same could have been implemented only for the officers of 1974 batch. The learned counsel relied upon the judgments delivered in the cases of *P. Mahendran & Ors. v. State of Karnataka & ors.* [(1990) 1 SCC 411]; *Maharashtra State Road Transport Corpn. & ors. v. Rajendra Bhimrao Mandve & Ors.* [(2001) 10 SCC 51]; *K. Manjusree v. State of Andhra Pradesh and another* [(2008) 3 SCC 512] so as to substantiate his submissions.

5. He also submitted that every year, the SSB used to consider officers of a particular batch for promotion to the rank of Lieutenant General. In the calendar year 2006, 1971 batch officers were considered for promotion to the rank of Lieutenant General; in 2007, officers of 1972 batch were considered for promotion to the said rank but in 2008, officers of 1973 batch were not considered. The officers of 1973 batch were considered in 2009. Had the officers of 1973 batch been considered in calendar year 2008, they could have been considered as per the old policy.

6. He also submitted that though the appellant was awarded 'Kirti Chakra', the said fact was not given due weightage while considering the appellant's case for his promotion.

7. As the appellant had not been promoted, the appellant had filed non-statutory and statutory complaints but the said complaints were not properly considered and were disposed of without assigning any reason. In the circumstances, the appellant was constrained to approach the Armed Forces Tribunal, Jaipur Bench, by filing an Original Application. The said application was thereafter transferred to the Armed Forces Tribunal, Principal Bench, New Delhi. The said application was rejected by the judgment dated 26th April, 2010, which has been challenged in this appeal.

8. According to the learned counsel, if the earlier policy based on 'value judgment' had been followed by considering overall profile of the appellant, the appellant would have been selected for promotion to the rank of Lieutenant General. According to him, the appellant, who was an outstanding officer, ought to have been promoted to the rank of Lieutenant General.

9. In substance, the counsel submitted that the entire procedure followed by the SSB was incorrect and the appellant and the officers of 1973 batch ought to have been assessed as per old policy and in that event, the appellant would have been found fit for promotion and, therefore, it was submitted that the appellant deserved promotion to the rank of Lieutenant General. It was further submitted that the appellant retired on 30.4.2010 but had he been promoted to the rank of Lieutenant General, he would not have been made to retire. Finally, he submitted that the

appeal deserves to be allowed and relief sought for in the appeal be granted.

10. On the other hand, Mr. P.P. Tripathi, learned Additional Solicitor General submitted that the judgment delivered by the Tribunal is just and proper. He submitted that Indian Army is having a pyramidal organisation and it has framed its promotion policy accordingly. Till 15th December, 2004, promotions up to the rank of Major were given on the basis of seniority whereas promotions from the rank of Major to Lieutenant General and onwards were strictly on merit and they were given promotion on the basis of recommendations of a Selection Board. However, as per the new policy, at present promotions upto the rank of Lieutenant Colonel are by time scale and thereafter the promotions to higher ranks are given on the recommendation of the Selection Board.

11. He submitted that the averments of the appellant to the effect that the policy with regard to promotions was changed after commencement of selection process of the officers of 1973 batch for their promotion to the rank of Lieutenant General is incorrect. He submitted that the old policy, which was prevalent up to 31st December, 2008, was never applied in case of the appellant and other officers of 1973 batch for their promotion to the rank of Lieutenant General. He submitted that first meeting of the SSB for con

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