

SURINDER SHUKLA
v.
UNION OF INDIA
(C.A. No. 250 of 2008)

JANUARY 9, 2008

[S.B. SINHA AND HARJIT SINGH BEDI, JJ.]

Armed Forces:

Promotion — Appellant-Lt. Colonel, considered for promotion to rank of Colonel a number of times — Not selected on all such occasions — Complaints filed by him rejected — Writ petition by Appellant praying entitlement for promotion on ground that his service record was better than that of his colleagues superseding him — Dismissed — Justification of — Held: Justified — Selection board had not recommended name of Appellant for promotion, which was approved by the Chief of Army Staff — Court cannot exercise power of judicial review to enter into merit of the decision — Moreover, there was no allegation of mala fide against members of Selection Board — Colleagues of Appellant who superseded him were furthermore not impleaded as parties in the writ petition — In their absence, the writ petition could not have been effectively adjudicated upon — Considerations applicable to other Government servants in matter of promotion may not be applicable in army services — Administrative Law — Judicial Review — Constitution of India, 1950 — Art. 226 — Service Law.

Appellant, Lt. Colonel, was considered for promotion to the rank of Colonel a number of times but not selected on all such occasions. Complaints filed by him were rejected by the Competent authority. Appellant filed writ petition contending that he should have been promoted as he had a better service record than that of his colleagues who superseded him. High Court dismissed the writ petition. Hence the present appeal.

A Dismissing the appeal, the Court

B HELD: 1.1. The post of 'Colonel' is a selection post. A large number of factors are required to be taken into consideration therefor, viz.: i) Annual Confidential Reports profile of the officer in the relevant ranks; ii) War Reports; iii) Battle Awards and Honours earned by the officers during his service; iv) Professional courses done by the officer, his performance during the course and grading obtained therein; v) Special Achievements and weaknesses; vi) Appointments held by the officers including criteria command/staff appointments; vii) Disciplinary background and punishments and viii) Employability and potential including consistent recommendations for promotion to the next higher rank. [Para 9] [454-E, F, G, H; 455-A, B]

D 1.2. Considering the comparative batch merit, if the selection board did not recommend the name of the appellant for promotion to the rank of Colonel which appears to have been approved by the Chief of Army Staff, it is not for the court exercising power of judicial review to enter into the merit of the decision. The selection board was constituted by senior officers presided over by an officer of the rank of Lt. General. [Para 10] [455-B, C]

F 1.3. Appellant moreover did not allege any mala fide against the members of the Selection Board. What impelled the selection board not to recommend his case but the names of other two officers is not known. [Para 10] [455-D, E]

G 1.4. The colleagues of Appellant who superseded him were furthermore not impleaded as parties in the writ petition. In their absence, the writ petition could not have been effectively adjudicated upon. [Para 11] [455-E, F]

H *Union of India and Ors. v. Lt. Gen. Rajendra Singh Kadyan and Anr. (2000) 5 SCALE 327 and Amrik Singh v. Union of*

India and Ors. (2001) 10 SCC 424 – relied on.

A

2. The peculiarities of special requirements of defence services in a case of this nature must also be kept in view. The considerations which apply to other Government servants in the matter of promotion may not be held to be applicable in the army services. [Para 14] [456-C]

B

Lt. Col. K.D. Gupta v. Union of India and others, AIR 1989 SC 1393 : 1989 Supp (1) SCC 416]- relied on.

CIVILAPPELLATE JURISDICTION : Civil Appeal No. 250 of 2008.

C

From the final Judgment and Order dated 11.1.2007 of the High Court of Delhi at New Delhi, in C.W.P. No. 3639/2005.

Surinder Shukla, Appellant-In-Person.

D

Kiran Bhardwaj and B.K. Prasad (for D.S. Mehra) for the Respondents.

The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Leave granted.

E

2. Appellant herein was granted commission in Army Education Core. He at the material time was holding the post of Lt. Colonel. He was considered for promotion to the post of Colonel but was not selected. He filed a non-statutory complaint which was rejected by the competent authority by an order dated 10.11.1997. First review for promotion was conducted in December, 1998 but he was again not promoted. His statutory complaint was rejected summarily.

F

Yet again in December, 2000, his case was considered for promotion but he was not found fit therefor. He thereafter filed a number of statutory complaints. By an order dated 6.07.2004, his statutory complaint dated 16.02.2004 was rejected, stating:

G

“Statutory Complaint dated 16 Feb 2004 against non- H

A empanelment for promotion submitted by IC-30957 N Lt. Col. Surender Shukla, AEC has been perused alongwith other relevant document regarding his complaints available at this HQ. It is observed that the instant complaint is the second one against the same SBs without any fresh facts meriting reconsideration of the case. Further, the order dated 17 Jul 2003 of the Hon'ble High Court of MP in WP No. 2229 of 2003 of Brig. J.K. Nagpal Vs. Union of India and ors., quoted by the officer in his complaint as fresh facts is not applicable in the officer's case, as per legal opinion obtained by this HQ.

3. In view of the above, the Statutory Complaint dated 16 Feb 2004 is declared untenable and will not be acted upon at this HQ. The officer may please to inform accordingly."

D 3. Aggrieved by and dissatisfied with the said order, he filed a writ petition before the Delhi High Court which by reason of the impugned judgment has been dismissed.

E 4. A Bench of this Court noticing the following averments made in the writ petition of the appellant, directed issuance of notice:

"G. Because the career profile of the Petitioner is unblemished and better than that of his colleagues who superseded the Petitioner. Two of such officers are:-

Name	Service No.
Col. A.P.S. Panwar (one above the petitioner)	IC30661-P
Col. V.K. Sinha (one below the petitioner)	IC30972-H

H Hence it is submitted that the comparative study of the Career Profiles of these officers with that of the petitioner can be of much help for deciding the present Writ Petition."

5. The Union of India in its counter-affidavit inter alia A
contended:

"2. The assessment of officers in ACR was regulated by
SAO 3/S/89 (which has now been replaced by Army Order
45/2001) and other relevant policies at any given time. B
The gradings are numerical from 1 to 9 (overall as well as
in personal qualities and performance variables in different
qualities) and in the form of pen picture also. The entire
assessment of an officer in any ACR consists of
assessment of three different reporting officers whose
assessments are independent of each other. C

3. While considering an officer for promotion to a selection
rank the Selection Board takes into consideration a number
of factors such as war/ operational reports, course reports,
ACR performance in command and staff appointments, D
honors and awards, disciplinary background, and not only
the ACR or one/ few ACRs etc. Selection/ rejection is
based upon the overall profile of an officer and comparative
merit within the Batch as evaluated by Selection Board.
The petitioner did not make the grade based on his overall
profile as evaluated by the Selection Board. It was upto E
the Selection Boards to assess the suitability of the
petitioner for promotion to the rank of Col..."

It was further averred:

"4. In the instant case the petitioner was considered for F
promotion from the rank of Lt Col to the rank of Col by No
3 Selection Board as follows:-

Look	Year	Result	
(i) Fresh Case	Jun 97 'Z'	Non-empanelled	G
(ii) First Review	Dec 97	Withdrawn	
(iii) Final Review	Jun 98	Withdrawn	
(iv) First Review	Dec 98 'Z'	Non-empanelled	
(v) Final Review	Dec 2000	-do-	H

A 6. Appellant appearing in person inter alia submitted that his service records being better than that of his batchmates, viz., Col. A.P.S. Panwar and Col. V.K. Sinha, he should have been promoted.

B 7. Before us, the Union of India has placed the service records of the said three officers. We have gone through them.

C 8. Although service records of the appellant appears to be better than those of Col. A.P.S. Panwar and Col. V.K. Sinha, the question which arises for consideration is as to whether the High Court could have exercised its discretionary jurisdiction under Article 226 of the Constitution of India for granting the relief(s) prayed for by him.

D We may notice that before the High Court another contention by the appellant was raised, viz., that adverse remarks, if any, were not communicated to him. The High Court opined that merely because he was not selected to the post, the same did not mean that he had been downgraded.

E We have, however, noticed hereinbefore that the notice was issued by this Court on limited ground.

F 9. The post of 'Colonel' is a selection post. A large number of factors are required to be taken into consideration therefor, viz.:

(i) Annual Confidential Reports profile of the officer in the relevant ranks.

(ii) War Reports

(iii) Battle Awards and Honours earned by the officers during his service.

G (iv) Professional courses done by the officer, his performance during the course and grading obtained therein.

H (v) Special Achievements and weaknesses.

- (vi) Appointments held by the officers including criteria command/ staff appointments. A
- (vii) Disciplinary background and punishments.
- (viii) Employability and potential including consistent recommendations for promotion to the next higher rank. B

10. Considering the comparative batch merit, if the selection board did not recommend the name of the appellant for promotion to the rank of Colonel which appears to have been approved by the Chief of Army Staff, it is not for the court exercising power of judicial review to enter into the merit of the decision. The selection board was constituted by senior officers presided over by an officer of the rank of Lt. General. It has been contended before us that the selection board was not even aware of the identity of the candidates considered by them because only in the Member Data Sheet all the informations of the candidates required to be considered by the selection board are stated, but the identity of the officers is not disclosed. C
D

Appellant moreover did not allege any mala fide against the members of the Selection Board. What impelled the selection board not to recommend his case but the names of other two officers is not known. E

11. The said Col. A.P.S. Panwar and Col. V.K. Sinha were furthermore not impleaded as parties in the writ petition. In their absence, the writ petition could not have been effectively adjudicated upon. F

12. In *Union of India and Others v. Lt. Gen. Rajendra Singh Kadyan and Another* [2000 (5) SCALE 327 : (2000) 6 SCC 698], it was held: G

"...It is a well-known principle of administrative law that when relevant considerations have been taken note of and irrelevant aspects have been eschewed from consideration and that no relevant aspect has been H

A ignored and the administrative decisions have nexus with
the facts on record, the same cannot be attacked on merits.
Judicial review is permissible only to the extent of finding
whether the process in reaching decision has been
observed correctly and not the decision as such. In that
B view of the matter, we think there is no justification for the
High Court to have interfered with the order made by the
Government.”

13. The said views have been reiterated in *Amrik Singh v. Union of India and Others* [(2001) 10 SCC 424] .

C 14. The peculiarities of special requirements of defence
services in a case of this nature must also be kept in view. The
considerations which apply to other government servants in the
matter of promotion may not be held to be applicable in the
D army services. [See *Lt. Col. K.D. Gupta v. Union of India and others*, AIR 1989 SC 1393 : 1989 Supp (1) SCC 416]

15. For the reasons aforementioned, there is no merit in
this appeal which is dismissed accordingly. In the facts and
circumstances of this case, however, there shall be no order as
E to costs.

B.B.B.

Appeal dismissed.