

# SUPREME COURT OF INDIA

Lakhwinder Singh

Vs.

Union of India

C.A.No.8501 of 2007

(Altamas Kabir and V.S.Sirpurkar JJ.)

10.07.2008

## JUDGMENT

### **Altamas Kabir, J.**

1. This Special Leave Petition is directed against the judgment and order dated 22nd March, 2007 passed by the Delhi High Court dismissing Writ Petition No. 899 of 2006 filed by the petitioner herein challenging the decision of the Central Government, to reject the recommendation made by two Special Selection Boards for promoting the petitioner to the rank of Lieutenant General.

2. The petitioner, who was commissioned as a Second Lieutenant in the Indian Army on 16th December, 1967, was promoted to the rank of Major General in the year 2001. Two successive Special Selection Boards of the Indian Army recommended the petitioner for promotion to the rank of Lt. General, but the Central Government did not approve the said recommendations. General. The said decision of the Central Government was challenged by the petitioner in the aforesaid Writ Petition on the ground that such denial of promotion to the petitioner to the rank of Lt. General was arbitrary, discriminatory, whimsical and in violation of the rules and the established procedure of selection and it also offended the principles laid down in various judicial pronouncements both by the High Courts as well as this Court.

3. According to the case made out by the petitioner, he was engaged in active combat at Dera Baba Nanek in the Punjab Sector during the Indo-Pakistan War and was recommended for Vir Chakra award. He also took part in various operations, including operations relating to counter-insurgency, such as operation Blue Star, in Punjab in 1984. In 1999, he was posted to command an Artillery Brigade in the active insurgency area in Kashmir. The Brigade under the petitioner's command was mobilized to fight the Kargil War/Operation Vijay in Drass-Kargil Sector in 1999. For the petitioner's participation in the Kargil War he was awarded the Yudh Sewa Medal in August, 1999.

4. On account of his service profile, the petitioner was promoted to the rank of Major General and was posted as General Officer Commanding 40 Artillery Division, this was the only Artillery Division of the Indian Army at the relevant time and he led Operation Parakram in 2002. In 2003 he was posted to the Northern Command and participated in the Operational Command, which was responsible for the insurgency-affected Jammu and Kashmir Sector.

5. It is the further case of the petitioner that all promotions above the rank of Colonel are made not on the length of service put in by an officer but on the basis of selection. It is the petitioner's case that he was promoted on first consideration right from the rank of Colonel to Major General on a competitive basis. For selection, from the rank of Major General to Lt. General, a Special Selection Board is constituted by the Chief of the Army Staff, hereinafter referred to as "COAS", under powers delegated to him under the authority of the President. The said Board comprises the Chief of Army Staff, the Vice- Chief of Army Staff and the six senior-most Lt. Generals, who make recommendations for promotion to the rank of Lt. General and appointments, are made after the recommendations are approved by the Ministry of Defence and other competent authorities.

6. It is the petitioner's case that the Special Selection Boards are expert bodies which consist of the COAS, the Vice-Chief of Army Staff and the six Corp-Commanders representing different fields/ branches of the Army, including officers from technical and non- technical fields. According to the petitioner, a person who has been recommended by the Special Selection Board can hardly be ignored by the Government for promotion.

7. As far as the petitioner is concerned, the first Board for Selection was held on 27th of February, 2004, in which four names were unanimously recommended, including the name of the petitioner. Before promotions could be given in terms of the recommendations made, one of the four candidates superannuated on 31st August, 2004 and one of the others expired on 3rd September, 2004. According to the petitioner, without, however, applying its mind to the aforesaid facts, the Government returned the recommendations of the Board on the ground that four names had been recommended when there were only three vacancies, though, at the relevant time, there were only two officers left against three vacancies. Despite the above, only one of the recommended candidates, Major General A. Vasudeva was promoted to the post of Lt. General by the Central Government but the petitioner's case for promotion was rejected and the said decision was declared after a period of 10 months. The petitioner has contended that he was the only officer amongst the General Officers recommended for promotion as Lt. General in the Staff Stream.

8. Aggrieved by his non-selection to the post of Lt. General, the petitioner filed a non-statutory complaint with the COAS on 17th January, 2005. The same remained unattended to and ultimately on 1st April, 2005, a second Board was held. Once again, the Board recommended the name of the petitioner for promotion to the rank of Lt. General. It has been emphasised by the petitioner that both the Boards were headed by the functioning Chiefs of Army Staff. In the list recommending the names of five officers for promotion to the rank of Lt. General, the petitioner's name was shown at serial No.1. When the result of the second

Board was declared on 30th June, 2005, the petitioner found that he had once again been superseded and the recommendation of the second Board, as far as he was concerned, was not approved by the Central Government.

9. It is also the case of the petitioner that two of the recommended candidates, Major General Utpal Bhattacharya and Major General A.K. Saini, were to superannuate on 1st July, 2005 and 31st August, 2005, respectively, and consequently in the vacancy arising on 1st February, 2006 only two officers, namely, the petitioner and Major General Y.K.Jain should have been promoted. However, on 29th/30th July, 2005, two vacancies were created and just before the retirement of Major General U. Bhattacharya, the rank of Lt. General was conferred on them.

10. Aggrieved by the aforesaid action of the respondent, the petitioner filed another statutory complaint on 29th August, 2005 with the Ministry of Defence challenging his supersession, but the same was rejected by a cryptic order on 29th December, 2005. It is the petitioner's case that although there were vacancies in the rank of Lt. General to which the petitioner was entitled to be promoted, the respondents did not fill up the available vacancies as the petitioner was due to retire on 31st May, 2006.

11. The grievance made out by the petitioner in his Writ Petition is that despite his excellent service profile and unblemished service for a period of 38 years and two successive recommendations for promotion, he was denied promotion to the rank of Lt. General in an arbitrary and high-handed manner.

12. Appearing for the petitioner, learned senior counsel, Mr. Patwalia, repeated and reiterated the case made out by the petitioner in his Writ Petition and emphasised the fact that despite the recommendation of two Special Selection Boards, consisting of the COAS, the Vice-Chief of Army Staff and the six senior Lt. Colonels in the Army, the Central Government had wrongly withheld promotion to the petitioner from the rank of Major General to the rank of Lt. General. Mr. Patwalia submitted that the senior-most officers of the Indian Army, who were acquainted with the qualities of the officers under consideration, had made the recommendations for promotion of the petitioner to the post of Lt. General, and accordingly, such recommendation by two successive Boards, should not have been rejected. It was submitted that except for indicating that in comparison to the other recommended candidates, the petitioner had a weak profile, no other satisfactory reason had been given by the respondents for rejecting the recommendation made by the Special Selection Boards in the petitioner's favour.

13. Mr. Patwalia urged that while the petitioner may not have obtained the grading of 9 in the box grading, for the purpose of promotion, of the recommendees, he was the only officer who had seen active combat during the Kargil War and had been decorated for the same. Mr. Patwalia urged that despite the fact that the petitioner did not possess any Box Grading of "9", the Special Selection Boards still recommended him for promotion to the rank of Lt. General, not once, but on two occasions, which surely reflected the fact that Box Grading of "9" was not of such significance as to deny promotion to the petitioner to the rank of

Lt.General. Referring to the criteria/factors, which are considered for selection to the post of Lt. General, in terms of the policy devised by the Central Government, Mr. Patwalia submitted that only the Annual Confidential Report profile of the officer appears to have been taken into consideration while rejecting the recommendation of the Special Selection Board to promote the petitioner to the rank of Lt. General. He pointed out that one of the 7 criteria was consistent recommendations for promotion to the next higher rank. It was submitted that such criteria appears to have not been given due importance by the Central Government while rejecting the successive recommendations made in the petitioner's favour. Although, no case of malafides had been made out on behalf of the petitioner either before the High Court or before this Court, it was submitted that despite the fact that the petitioner's case for promotion was rejected, two posts were created to accommodate two officers as a special favour to promote them to the rank of Lt. General just before they retired from service. Accepting the position that promotion was not a matter of right, Mr. Patwalia concluded by urging that an officer who had been selected the Special Selection Board consisting of the highest officers in the Indian Army was entitled to request the Court to look into the records to ascertain the reason for such rejection.

14. Appearing for the respondents, learned senior counsel, Mr. Doabia, submitted that the petitioner was first recommended for promotion to the rank of Lt. General, along with three other officers, by the Special Selection Board on 27th February, 2004, but when the said recommendation was taken up for consideration by the Central Government, it was discovered that the Special Selection Board had presumed four vacancies when only three vacancies were available. Thereafter, on a comparison of the profiles of all the officers, the petitioner was found to have the weakest profile and was graded "unfit" for promotion. Even when the second recommendation was made by the Special Selection Board on 1st April, 2005, on a comparison of the profiles of the officers recommended, the petitioner was once again found to have the weakest profile and accordingly graded "unfit". It was submitted that such consideration to hold the petitioner "unfit" in comparison to the others recommended officer, was a decision taken not by the COAS alone, in his individual capacity, but by the Ministry of Defence in a representative capacity, which also included the COAS. In fact, it was submitted that as names of five officers had been recommended against three vacancies, the cases of all the officers were considered on a comparative basis and since the petitioner was found to have the weakest profile amongst all the officers recommended, he was once again graded as "unfit". It was submitted that no undue preference had been shown or given to any of the concerned officers, but since from the records the petitioner was found to have the weakest profile, he had been graded as "unfit" since only three vacancies were available while five names had been recommended for promotion.

15. It was lastly submitted that Para 108 of the *Regulations for the Army, 1987*, which provides for the constitution and duties of Selection Boards, clearly indicates that the assessment of the Selection Board shall be recommendatory in nature and not binding until approved by the Competent Authority namely, the COAS or the Central Government as the case may be. The said Regulation also provides that both the Central Government and the COAS have an inherent power to modify, renew, approve with variation or repeal the

recommendations of the Selection. It was urged that it was, therefore, evident that the recommendation of the Special Selection Board was not binding and had to be approved by the Central Government or the Chief of the Army Staff. In support of his aforesaid submission learned counsel referred to the decision of this Court in *Union of India and Ors. Vs. Lt. General Rajinder Singh Kadyan*<sup>1</sup> in which this Court, inter alia, held as follows:-

"Of course, considering the nature of rigorous standards adopted in the matter of selection of officers from the stage of Lt. Colonel onwards up to the stage of Lt. General, in the usual course it may be that the senior-most officer is selected as the Army Commander. But that does not debar the Chief of the Army Staff or the Union of India from making the selection of any other person for good reasons who fulfils the necessary criteria."

16. Reliance was also placed on another decision of the Delhi High Court in the case of *Union of India vs. Col. Shyam Kumar*<sup>2</sup> in which it was held that the assessment of the Selection Board is purely recommendatory in character and that the power of the appointing authority to accept or even vary the recommendation of the Selection Board is implicit.

17. It was urged that since the petitioner's case had been considered at the highest level of the appointing body, in which the COAS was also present, no interference was called for with the decision either of the said authority or the High Court.

18. Having considered the submissions made on behalf of the respective parties, we are not inclined to interfere with the decision of the High Court impugned in this proceeding.

19. It is no doubt true, that the name of the petitioner had been recommended on two occasions by two successive Special Selection Boards for promotion to the post of Lt. General, but on each occasion, he was declared unfit, on account of the fact that there were lesser number of vacancies available than the number of candidates recommended and it was found on a comparative assessment that of all the recommended officers, he had the weakest profile. It is also no doubt true that the Special Selection Board consists of the highest-ranking officers of the Indian Army, but its suggestions are only recommendatory in nature and under the Army Regulations, can be varied or interfered with by the Appointing Authority, as has been done in the instant case. It is unfortunate that the recommendations were made in excess of the vacancies available which necessitated a comparison to be made of the profiles of the recommended candidates in which process the petitioner got eliminated, but having gone through the official records, which were produced before us, we find that the entire question was considered and dealt with by the Central Government in a manner which was completely free from bias and based on the service records of the different officers. The active service of an officer during War and Battle Awards and Honours earned during such action, is one of the several factors to be taken into consideration by the Special Selection Board in recommending promotion from the post of Major General to Lt. General. While the petitioner may have better records in the said category, the Board has also to take into consideration various other categories which have been set out in the judgment of the High

Court impugned in this Special Leave Petition. It is only on an overall assessment that the profile of an officer is prepared and had been so prepared in the instant case where a comparison had to be made in filling up the available vacancies.

20. Apart from the two decisions referred to hereinabove which support the case of the respondents, various other decisions were also referred to on behalf of the parties, but the same are not really relevant for a decision in this case, having regard to the view taken by us on the basis of the materials available to us.

21. In the circumstances indicated hereinabove, no interference is called for with the impugned judgment of the High Court and the Special Leave Petition is, accordingly, dismissed.

22. There will be no order as to costs.

<sup>1</sup>2000 (6) SCC 698

<sup>2</sup>1982 (3) DRJ 225