

SUPREME COURT OF INDIA

Union of India

Vs.

Narinderjit Singh Sindhu

C.A.No.80 of 2003

(J.M. Panchal and Gyan Sudha Mishra JJ.)

29.09.2010

JUDGEMENT

J.M. Panchal, J.

1. This appeal is directed against judgment dated October 10, 2002, rendered by the Division Bench of High Court of Punjab and Haryana at Chandigarh in CWP No. 10037 of 2002, by which the appellants are directed to consider the case of the respondent for promotion to the rank of Major General in accordance with the Rules and his service profile in the Army Aviation Corps.

2. The relevant facts emerging from the record of the case are as under:

“The respondent was commissioned in the Indian Army in the Regiment of Artillery on June 23, 1968 in the rank of Second Lieutenant. After grant of Commission, the seniority of the respondent was re-fixed with effect from August 21, 1969. Thus, for the purpose of promotion and career advancement, he became an officer of 1969 Batch. The Government of India, Ministry of Defence, sanctioned formation of a nucleus Additional Directorate General Army Aviation at Army Head Quarters by order dated October 29, 1986. The selection grade vacancies including the post of Major General were to be from within the sanctioned cadre of the Army and were to remain unfilled for a period of one year till the post of Additional Director General Army Aviation was sanctioned by the Government of India. The Chief of Army Staff approved the establishment of a permanent cadre of officers for the Army Aviation Corps by an order dated April 17, 1997. In the said order/letter, it was mentioned that the cadre initially would have 15% permanent officers and 85% would be borrowed from the other cadres and would be built up in a graduated manner to 100% permanent cadre. By the said letter, cadre structure was formulated. Regarding allocation of vacancy in the rank of Major General to permanent cadre, it was mentioned that it would be decided later.

The initial induction was to be on voluntary basis with an irrevocable one time option. It was also provided by the said order that Aviation Corps Officers would be eligible for induction into general cadre on the lines as officers of supporting Arms, i.e., after selection based on positive recommendation in designated Command and staff assignment.

In May, 1997 the respondent was promoted to the rank of Brigadier in the Regiment of Artillery. On September 1, 1997 a letter was issued by Army Head Quarters seeking application from volunteers for transfer to Army Aviation as per the terms and conditions set out in the letter/order dated April 17, 1997 passed by the Chief of Army Staff. The record shows that the President of India approved following Peace Establishments of Army Aviation: - a) Additional Directorate General Army Aviation, at Army Head Quarters.

b) Command (Aviation) Branch at Eastern, Western and Northern Commands.

c) Command (Aviation) Branch Southern and Central Commands.

The President also sanctioned selection grade ranks as under: - (a) Major General - 1 (Offset provided Ex Pay Commission Cell).

(b) Brigadiers - 7

It was also mentioned in the said order that three selection grade ranks of Brigadiers for which offsets have not been identified would remain suppressed till suitable offsets were identified by the SD Directorate and removal of this suppression would be carried out in consultation with MOD (Fin.). The decision of the President was communicated by the Government of India, Ministry of Defence, New Delhi vide communication dated November 27, 1997 to the Chief of the Army Staff. Along with the communication dated November 27, 1997, appendix A was also sent which was in the following terms: - "Appendix A to Government of India, Ministry of Defence letter No. 00659/PE/Misc./AA-5/ 1875/DO-1/D(GS-I) Dated 27 Nov., 1997.

(The information given in this document is not to be communicated decision directly or indirectly to the press or to any person not authorized to receive it) PE No. 00659/PE/Misc.AA-5/ 1975/DO-1/D(GS-1) Dt. 27th Nov., 1997 (Three pages) ADDITIONAL DIRECTORATE GENERAL ARMY AVIATION ARMY HEAD QUARTERS PEACE ESTABLISHMENT SUMMARY Personnel Officers Army - 25 JCO - 2 Other Ranks - 44 Total - 71 Transport Car Ambassador - 1 Gypsy - 2 Motor Cycle - 2 Total - 5 ----- Details Number Notes -----

1. Personnel Officers Additional Director General (Maj. Gen.) (a) 1 Deputy Director General (Brig) (a) and (i) 2 Directorate (Col) (a) 6 AMS (Lt. Col) (a) (b) 1 General

Staff Officers (Lt. Col.) (a) (h) 8 General Staff Officers (Maj) (a) (h) 7 Total 25 Junior Commissioned Officer (b) JCO (Clerk) (c) (d) (e) 2 Other Ranks Personal Assistant 9 Clerk (GD) (c) (d) (f) 15 Drivers (c) (f) 3 Driver Motor Cycle (c) (f) 2 Draughtsman (c) (d) (g) 2 Jetliner Operator (c) (g) 1 Runner 11 Despatcher 1 Total other tanks 44

2. Transport Motor Cycle 2 Car Ambassador 1 Gypsy 2 Total transport 5 GENERAL NOTES (a) Officer to be trained aviator (b) To function under MS-6 (c) Rank as per Corps roster (d) To be computer qualified (e) One JCO to function under MS-6 (f) To be provided by Regiment of Artillery (g) To be provided by Corps of Engineers (h) Two officers to be qualified on computer (i) Appointment of One Deputy Director General will be kept suppressed till offset is identified by SD Directorate. The removal of suppression would be carried out in consultation with MOD (Fin.)."

On December 14, 1997, the respondent voluntarily applied for permanent transfer from the Regiment of Artillery to Army Aviation Corps. By a communication dated November 6, 1998, the transfer of the respondent to Army Aviation Corps was approved with immediate effect by the Army Head Quarters. Between the year 1997 and 1999, the respondent commanded 373(I) Artillery Brigade in the Regiment of Artillery. The respondent assumed the appointment of Brigadier (Aviation) Head Quarters Western Command at Chandimandir on June 24, 1999. On December 22, 2001, the respondent submitted a non-statutory complaint to the Chief of Army Staff against non- consideration of his name for promotion to the next rank of Major General in the Army Aviation Corps, since he was the senior most Brigadier in the Army Aviation Corps (Permanent Cadre). The complaint of the respondent was considered by the Chief of Army Staff but was rejected on June 10, 2002 on the ground that no appointment of Major General was authorized to Army Aviation Corps (Permanent Cadre). By the said communication the respondent was informed that if he so wished, he should seek reversion to the Regiment of Artillery."

3. Feeling aggrieved, the respondent filed CWP No.10037 of 2002 before the High Court of Punjab and Haryana at Chandigarh praying, inter alia, to direct the appellants to consider his case for promotion to the rank of Major General in Army Aviation Corps.

"He also prayed that the appellants be restrained from posting an ex-cadre officer to the Post of Additional Director General Army Aviation, Army Head Quarters. The petition filed by the respondent was contested by the appellants. The High Court, by the impugned judgment, has directed the appellants to consider the case of the respondent for promotion to the rank of Major General in Army Aviation Corps, giving rise to the instant appeal."

4. This Court has heard the learned counsel for the parties at length and in great detail. This Court has also considered the documents forming part of the appeal.

5. The fact, the respondent had a reasonably good service profile and was awarded various distinctions, as mentioned in the impugned judgment, is not in dispute. The respondent was promoted on selection to the post of Brigadier in the Regiment of Artillery in the year 1997. The appellants had invited applications for conversion to Army Aviation Corps and in response thereto the respondent had submitted application on December 14, 1997. The respondent was permanently converted to the Army Aviation Corps on November 6, 1998. It is relevant to notice that the respondent, having opted for conversion from Regiment of Artillery to Army Aviation Corps, he was precluded from again opting for Regiment of Artillery. This is so in view of the letter/order dated April 17, 1997, referred to earlier. As per the guidelines mentioned in the said communication, Aviation Officers were to be groomed in stipulated criteria appointments and due career protection was to be given to those posted in "hi-tech" appointments like test Pilots.

“On the basis of these clear terms, the respondent had applied for conversion to the Aviation Corps on permanent basis. The respondent left his permanent Corps after considering various aspects including the chances of future promotion in the Aviation Corps. Initially, the allocation of vacancy in the rank of Major General in the Aviation Corps was not decided. However, the process of exercising an option was irreversible one and the officer was left with no option to revert back to his parent Corps. The respondent had made a non-statutory complaint as his name for promotion to the next rank of Major General was not considered. It was rejected vide letter dated June 10, 2002. The only reason mentioned for rejecting the claim of the respondent was that the appointment of Major General was not authorized for Army Aviation Corps, Permanent Cadre and holding of selection for the said rank was not possible. This Court finds that the reason given by the Chief of Army Staff for turning down the request made by the respondent to consider his case for promotion to the post of Major General, was totally erroneous and contrary to the record.”

6. As observed earlier, one post of Major General was allocated to the Army Aviation Corps, which is evident from the communication dated November 27, 1997. While providing a post for Major General in Army Aviation Corps, one post of Major General provided in Pay Commission Cell was Offset. The claim made by the appellants that the provision of post of Major General, made in Army Aviation Corps was mere allocation of vacancy by the Chief of Army Staff and not for release of vacancy for Army Aviation Corps, cannot be accepted in view of the contents of the communication dated November 27, 1997 nor the contention that the issue of allotment of specified and unspecified vacancies was required to be determined by Chief of Army Staff can be appreciated. Though the order rejecting the complaint of the respondent does not mention so, a stand was taken by the learned counsel for the appellants before this Court that at the time when the complaint was made by the respondent, the post of Major General in Army Aviation Corps was being manned by a Major General, who was brought from Artillery Corps. On question being asked as to whether the Major General, who was brought from Artillery Corps and was manning the post of Major General in Army Aviation Corps, had voluntarily applied as contemplated by the Scheme for being absorbed in Army Aviation Corps, the learned counsel could not give any reply. Nor the learned

counsel could give reply to the question whether condition that once an officer opts for Army Aviation Corps would not be entitled to revert back to his parent Corps, was made applicable to the Major General, who was brought from Artillery Corps and was manning the post of Major General in Army Aviation Corps. There is no manner of doubt that bringing a Major General from different cadre to man the post of Major General in Army Aviation Corps was illegal and contrary to the guidelines laid down by the appellants themselves. The record would show that after sanction to the formation of the nucleus Additional Directorate General Army Aviation at Army Head Quarters vide order dated October 29, 1986, a permanent and regular cadre was established for the Army Aviation Corps vide order dated April 17, 1997 passed by the Chief of Army Staff. Having sanctioned the cadre structure by the order dated April 17, 1997, Selection Grade ranks were provided by communication dated November 27, 1997 under which the post of Major General was sanctioned after offsetting the post of Major General provided in Ex Pay Commission Cell.

“Under the circumstances, this Court is of the firm opinion that no other Major General could have been brought to Army Aviation Corps for manning the post of Major General sanctioned for the said establishment.”

7. A conjoint and purposeful reading of the documents produced on record of the case by the parties makes it evident that the post of Major General had already been earmarked and specified for Army Aviation Corps to which sanction of the President of India was granted and conveyed. The language of the documents on record do not in any manner suggest that Army Aviation Corps had no specified vacancy in the rank of Major General. After creating a permanent cadre and specifying the post of Major General in the Army Aviation Corps, the appellants were treating the same as an unspecified vacancy to be manned by an officer to be brought from the other Corps, which was erroneous and not justified at all. The High Court has rightly observed that the inevitable effect of filling up the post of Major General sanctioned in Army Aviation Corps by bringing Major General from other Corps had the adverse effect of marring the chances of promotion of the officers belonging to Army Aviation Corps.

8. On the facts and in the circumstances of the case, this Court is of the opinion that a just direction is given to the appellants to consider the case of the respondent for promotion to the post of Major General in Army Aviation Corps and no case is made out for interfering with the same in the instant appeal. The appeal, which lacks merit, therefore, deserves to be dismissed.

9. For the foregoing reasons, the appeal fails and is dismissed. There shall be no order as to costs.