

SUPREME COURT OF INDIA

Lt Gen Ravi Dastane, Avsm, Vsm

Vs.

Union of India, Ministry of Defence,

C.A.No.9721 of 2014

(Dr.D.Y.Chandrachud and Hemant Gupta,JJ.,)

01.03.2019

JUDGMENT

Dr.D.Y.Chandrachud,J.,

1. By the *present appeal*¹, Lieutenant General Ravi Dastane has questioned the correctness of a judgment dated 6 September 2013 of the Principal Bench of the Armed Forces *Tribunal*². The AFT rejected his challenge to the selection of Lieutenant General Dalbir Singh, GOC-in-C, Eastern Command and Lieutenant General Sanjiv Chachra, GOC-in-C, Northern Command as Army Commanders. After the decision of the AFT, Lieutenant General Dalbir Singh (the third respondent) was appointed as *Chief of Army Staff*³ and retired from service on 31 December 2016. Lieutenant General Chachra retired from service on 31 May 2014. The appellant retired from service on 30 September 2014.

2. There are seven Army Commanders and one Vice Chief of Army Staff in the structure the Indian Army. Six of them command the six regional commands of the Army while the seventh commands the Army Training Command. The position of Vice Chief of Army Staff is equivalent to an Army Commander. The post of Army Commander/Vice Chief of Army Staff, in the rank of Lieutenant General, is the second highest in the hierarchy of the Indian Army, below the Chief of Army Staff. Promotion to the post of Army Commander (General Officer Commanding in Chief) is by selection from amongst officers holding the rank of Lieutenant General, who fulfill the eligibility criteria.

3. On 22 March 2012, General V K Singh, as Chief of Army Staff, examined a proposal for filling up vacancies in two posts of Army Commander which were to arise on 1 June 2012 on the impending retirement of Lieutenant General S R Ghosh, GOC-in-C, Western Command and the appointment of Lieutenant General Bikram Singh, GOC-in-C, Eastern Command on his appointment as COAS on 31 May 2012. A seniority list of officers in the cadre of Lieutenant General was placed on file. Seven of the senior-most amongst them, who fulfilled the conditions stipulated for promotion as Army Commanders were listed out. The seven officers were:

- 1 Lt Gen Dalbir Singh;
- 2 Lt Gen Sanjiv Chachra;
- 3 Lt Gen RP Dastane;
- 4 Lt Gen JP Nehra;
- 5 Lt Gen Philip Campose;
- 6 Lt Gen AS Chabbewal; and
- 7 Lt Gen Ashok Singh.

Command. The COAS certified that no administrative, disciplinary or vigilance proceedings were pending or contemplated against them.

5. A Court of Inquiry was convened on the directions of the Army Commander, Eastern Command to investigate certain incidents which occurred at Dimapur, involving army personnel and civilians on 20-21 December 2011. On 18 April 2012, the proceedings of the Court of Inquiry were forwarded to Army Headquarters.

6. The proposal for the appointment of the third respondent as Army Commander was processed on 2 May 2012 in the Ministry of Defence (MOD) and was endorsed by the Defence Minister on 5 May 2012. The proposal for the appointment of third respondent as Army Commander of the Eastern Command was forwarded to the Cabinet Secretary for approval by the Appointments Committee of the Cabinet⁴. On 8 May 2012, the proposal in respect of the fourth respondent for appointment as Army Commander of the Western Command was forwarded.

7. On 19 May 2012, a notice to show cause was issued by the COAS to the third respondent. A discipline and vigilance⁵ ban was imposed.

8. On 24 May 2012, when the proposal was under examination with the Cabinet Secretariat, an intimation was issued by the Army Headquarters to the Ministry of Defence in regard to the imposition of a Type A discipline and vigilance ban on the third respondent. Accordingly, on 29 May 2012, the Defence Minister decided to recommend to the ACC that the proposal for the appointment of the third respondent be kept on hold until further inputs were received from the Army Headquarters. On 7 June 2012, the Army Headquarters informed the Ministry of Defence that the case against the third respondent had been closed and that the discipline and vigilance ban had been lifted. In view of this development, the Defence Minister approved the proposal for conveying the lifting of the ban to the ACC.

9. On 15 June 2012, the ACC approved the appointment of the third respondent as Army Commander.

10. On 1 June 2012 and 5 July 2012, the appellant submitted representations to the COAS and to the Defence Minister following which, on 6 August 2012, he filed a statutory complaint. On 31 January 2013, the Union government rejected the complaint.

11. In the meantime, the appellant filed an Original Application before the *AFT*⁶ seeking

the following reliefs:

- (i) Quashing of the appointments of the third and fourth respondents as Army Commanders;
- (ii) A direction to the Union of India to consider eligible officers, including the appellant, for the post of Army Commander which fell vacant on 1 June 2012 in accordance with the procedure prescribed in the letter dated 20 October 1986 of the Union government to the COAS together with a policy decision dated 16 October 1992; and
- (iii) In the alternative, to grant the appellant the status of an Army Commander with effect from 1 June 2012 based on the ineligibility of the third respondent and to appoint the appellant as Army Commander against the next available vacancy on 1 February 2013.

12. Pleadings were completed before the AFT. On 6 September 2013, the AFT dismissed the OA on the ground that the decision to appoint the third and fourth respondents as Army Commanders was made on the basis of a comparative study of merit of all the officers in the zone of consideration and that no prejudice was caused to the appellant. The AFT held that the ACC approved the appointment of the third and fourth respondents as Army Commanders following the recommendation of the Ministry of Defence and that the procedure stipulated for appointments to the post was duly followed. The AFT held thus:

“...it is necessary to examine the record which has been produced. From the record, it appears that for making the selection to the post of Army Commanders, an exercise was undertaken by the Chief of Army Staff by short listing seven Lt. Generals who fulfil the eligibility criteria. While considering the case of the officers, the note - III of the recommendation of the Chief of Army Staff clearly reflects that the service profile and paramount cards of the seven Lt. Generals were examined by him. Complete service profile of all the seven Lt. Generals were examined by the Chief of the Army Staff. It includes the exposure of the officer to command, staff assignment, instructional assignments, the details of which were given in the profile of all these officers. After consideration of service profile, he recommended the names of respondents No. 3 & 4 for the appointment as Army Commanders of Eastern Command and Western Command respectively. From the record itself it is clearly revealed that in both the tier of selection, the Chief of Army Staff and Ministry of Defence, the service profile of the petitioner was considered along with other officers.”

13. Before we deal with the submissions which have been urged on behalf of the appellant, it would, at the outset, be necessary to advert to the provisions governing the appointment of Army Commanders. On 20 October 1986, the Government of India in the Ministry of Defence issued a communication through its Joint Secretary to the COAS stating that the President of India had prescribed criteria for the appointment of Army Commanders and Vice Chiefs of Army Staff. They were formulated in the following terms:

- “a) The officer should be fit in every respect for such appointment and
- b) The officer should have a minimum of two years left before the retirement age from the date of appointment as Army Commander/ VCOAS.
- c) This will be applicable w.e.f. 1.1.1988.
- d) as a one time exception, the pay but not the status of an Army Commander will be given to those General officers, presently holding the rank of Lieutenant gen, who are otherwise found fit to hold the appointment but are not selected because of the revision in the criteria. “

On 18 November 1996, an additional requirement, in the form of clause (e), was inserted by the Union government in the earlier letter dated 20 October 1986:

“(e) The officer should have commanded a Corps for at least one year so as to become eligible for appointment as Army Commander/VCOAS. No waiver in this stipulation will be allowed without prior concurrence of the Government.”

14. The appellant has relied on a policy decision/circular dated 16 October 1992. The policy circular adverts to the norms prescribed on 20 October 1986 for the appointment of Army Commanders/VCOAS. The circular states that since commanding a Corps is a pre-requisite for promotion as Army Commander, it was essential to clarify the parameters for appointment of Corps Commanders. Paragraph 7 lays down the parameters for appointment of Corps Commanders. The appellant has relied on the following:

“d) There is a Govt requirement to suggest two senior eligible officers for each Army Commander’s vacancy. It is, therefore, essential that when an Army Commander’s vacancy arises, the two senior most officers who are eligible, in terms of the residual service rule, have completed command or are in command of a Corps.”

We proceed to elucidate the submissions which were urged during the course of the hearing.

15. Mr RK Anand, learned Senior Counsel appearing on behalf of the appellant urged the following submissions:

(i)The letter dated 20 October 1986 indicates that the appointment of Army Commanders is by selection and not on the basis of seniority. This has been reiterated in the decision of a three Judge Bench of this Court in *Union of India v Lt Gen Rajendra Singh Kadyan* ⁷(“Kadyan”);

(ii) While rejecting the statutory complaint submitted by the appellant, the Union government in the Ministry of Defence in its letter dated 31 January 2013 noted that the proposal submitted by COAS was “found to be based on seniority”. In

appointing the third and fourth respondents as Army Commanders, the Union government overlooked the requirement of selection and placed reliance exclusively on their seniority;

(iii) In assigning exclusive weight to the seniority of the third and fourth respondents, there was no evaluation of the comparative merit of the officers in the zone of consideration who fulfilled the requirements for selection as enunciated in the letters dated 20 October 1986 and 18 November 1996;

(iv) The names of two senior eligible officers were not recommended against each vacancy as mandated by the policy decision dated 16 October 1992; and

(v) Under the Government of India (Transaction of Business) Rules 1961, the authority to select an officer for appointment as Army Commander vests with the ACC. The Defence Minister recommended only two candidates namely, the third and fourth respondents, thereby depriving the ACC of its authority to choose the best amongst available officers in the zone of consideration.

16. On the other hand, Ms Madhavi Divan, learned Additional Solicitor General of India, submitted that:

(i) The appeal has been rendered infructuous in view of the superannuation of the appellant as well as the third respondent;

(ii) The case of the appellant is that since a Type A DV ban had been imposed on the third respondent on 22 May 2012, effective from 18 May 2012, the respondents ought to have immediately appointed the appellant as Army Commander since he was immediately next to the third and fourth respondents in order of seniority;

(iii) Contrary to (ii) above, the case of the respondents is that the DV ban was lifted on 1 June 2012 and by the time the third respondent was appointed as Army Commander on 15 June 2012 there was no bar on his appointment;

(iv) The appellant had no vested right to be appointed in the intervening period between the date of the ban and before the vacancy arose on 1 June 2012;

(v) The decision of this Court in *Kadyan* (supra) holds that the post of Army Commander is a selection post. This Court rejected the submission that appointment to the post of Army Commander must be based on seniority alone;

(vi) Hence, even assuming for the purpose of argument that the third respondent could not have been appointed in view of the DV ban, the appellant had no vested right to selection as the senior-most officer after the third respondent; and

(vii) On 2 May 2012, the complete service profile of seven officers in the cadre of Lieutenant General was forwarded to the Defence Minister by the COAS.

Thereafter, upon due consideration by the Defence Minister, the third and fourth respondents, who were the senior most officers, were recommended to the ACC for approval. Even assuming that the third respondent was rendered ineligible during the period of the DV ban, any of the remaining eligible officers holding the rank of Lieutenant General could have been selected. The appellant had no vested right to be selected nor could he assume that he would be selected merely because he was the senior-most officer after the third respondent.

17. During the course of the hearing, the file pertaining to the selection of the third and fourth respondents as Army Commanders has been produced by the ASG.

18. Kadyan (supra), was a decision in an appeal from a judgment of the High Court which held that the post of Army Commander should not have been treated as a selection post and ought to have been filled by seniority. The view of the High Court was reversed by the three Judge Bench of this Court. Elaborating on the criteria for appointment of Army Commanders issued on 20 October 1986, this Court held thus:

“..Though diametrically opposite views are stated, on a careful reading of this letter it becomes clear that “an officer should be fit in every respect for such appointment” will not merely mean that he must be physically fit or mentally fit but in every other respect. In addition, in clause (d) above in the letter while making certain exceptions what was in the mind of the authority is made clear that an officer holding the rank of Lieutenant General who is otherwise fit but not selected because of the revision of criteria will be a clear indication that it is a selection and not a mere promotion on the basis of seniority. Further, the expression “fit” has been brought to our notice as legally meaning “fit to be chosen” by elaborating the expression “eligible” in Stroud's Judicial Dictionary, 5th Edn. However, the expression “fit”, which has different shades of meanings, also means “a person to be appointed shall be legally eligible” and “eligible” has already been explained by us to mean “fit to be chosen”. Again, the expression “select” means “chosen or picked up”. Therefore, we are of the view that to the post of Army Commander, selection has to take place. Of course, considering the nature of rigorous standards adopted in the matter of selection of officers from the stage of Lieutenant Colonel onwards up to the stage of Lieutenant General in the usual course it may be that the seniormost 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. Therefore, we are of the opinion that it was improper on the part of the High Court to have concluded that the post of Army Commander is a non-selection post. Further, the conclusion reached by the High Court that appointment to the post of Army Commander has to be made on the basis of seniority alone cannot be accepted.”

In Kadyan (supra), the view of the High Court that the appointment of an Army Commander should not be made on the basis of selection but on the basis of seniority alone was reversed by this Court.

19. Based on the rationale that the post is a selection post, the appellant assails the decision to appoint the third and fourth respondents as Army Commanders on the ground that it was taken exclusively on the basis of seniority, sans a comparative evaluation of the merits of other officers in the rank of Lt General who fulfilled the requirements spelt out in the letters dated 20 October 1986 and 18 November 1996.

20. The letters dated 20 October 1986 and 18 November 1996 lay down the following criteria for appointment:

- (i) The officer should be fit in every respect for appointment as Army Commander;
- (ii) The officer should have a minimum of two years' service left from the date of appointment as Army Commander before attaining the age of retirement; and
- (iii) The officer should have been a Commander of Corps for at least one year.

21. The emphasis on fitness in every respect is an indicator that the post is a selection post. This is buttressed by clause (d) of the letter dated 20 October 1986 which contemplates a one-time exception to officers who were otherwise found fit but were not selected because of the revision in the criteria. An officer has no vested right to claim promotion on the basis of seniority alone. But that does not mean that the authority entitled to make the appointment must ignore seniority. Officers of the Army who attain the rank of Lieutenant General progress through the hierarchical structure after fulfilling rigorous criteria of assessment. The principle that the appointment of an Army Commander is made by selection does not require that the criterion of seniority should be ignored. The decision in *Kadyan* (supra), while emphasizing that the appointment of Army Commanders is made by selection, holds that an officer does not have a vested right to claim to be promoted only by dint of seniority. The principle that seniority alone does not confer a right to appointment to a selection post does not mean that the authority making the appointments must be oblivious to seniority. Placed below the COAS, the post of Army Commander is of crucial significance to the organizational structure of the Army. Seniority may be a relevant consideration: seniority brings with it experience of organisation, experience in handling situations and experience in perspective and planning. The post, however, remains a selection post. In making appointments to such crucial posts which carry enormous functional responsibilities bearing on the defence needs of the Armed Forces and ultimately of the nation, a range of relevant considerations can be borne in mind. It would not be appropriate in the course of judicial review to confine the appointing authority to a narrow range of considerations. The appointing authority is best suited to determine who among the officers in the rank of Lieutenant General is suited for appointment against a vacancy.

22. The submission of the appellant that the appointment of the third and fourth respondents was based exclusively on seniority without a comparative evaluation of the officers who fulfilled the conditions of eligibility is sought to be advanced on the basis of the order of the Union government dated 31 January 2013, rejecting the statutory complaint of the appellant. Emphasis has been laid on the following extract from the order

dated 31 January 2013:

“3. The Statutory Complaint of the General Officer has been examined in detail and the following facts emerge:-

(i) The proposal seeking appointment of Lt Gen Dalbir Singh Suhag as GOC-in-C, Eastern Command and Lt Gen Sanjiv Chachra as GOC-in-C, Western Command in the rank of Army Commanders against the two vacancies occurring w.e.f. 1st Jun., 2012 was received in the Ministry on March 22, 2012. The proposal was duly recommended by the COAS along with the certificate that no administrative/plenary/vigilance, proceedings were pending or contemplated against the two officers.

(ii) The proposal was examined in the Ministry with regard to the availability of vacancy and eligibility of officers fulfilling the prescribed criteria as laid down in policy letter No. 98684/JS(Pay)/86 dated 20th October 1986 modified vide letter No. 19(24)/96/d(MS) dated 18th November 1996. The proposal was found to be based on seniority and the officers were fulfilling the prescribed criteria. Accordingly, the proposal was mooted with the approval of Raksha Mantri for the approval of the ACC vide MOD's ID note No. 12(1)/2012-D(MS) dated 2nd May 2012.”

(Emphasis supplied)

The order further records:

“4. It is on record that Lt Gen Dalbir Singh Suhag was senior to Lt Gen Dastane and the proposal for appointment of the former as Army Commander was being processed but was only put on hold because of the DV Ban that came after the proposal had been referred to the ACC for approval. On the date Lt Gen Dalbir Singh was put under DV Ban, the ACC had not considered the same nor had made any decision thereon. The file was temporarily put on hold for seeking further details on the DV Ban from the AHQ. Admittedly, the DV Ban Type 'A' imposed on the officer was recalled by an Order dated 07.06.2012 for being illegal and against the established principles of the natural justice. This being the position unless the proposal of Lt Gen Dalbir Singh Suhag had been rejected by the Competent Authority, the subsequent consideration of other officer, does not arise. The request, therefore, of Lt Gen RP Dastane 01.06.2012 has no basis.

” (Emphasis supplied)

23. The reasons for the rejection of the statutory complaint cannot be read to mean that the selection of the third and fourth respondents as Army Commanders was based solely on their seniority, without regard to merit or to a comparative evaluation. On the contrary, it has been asserted in the counter affidavit which has been filed on behalf of the Union government that:

“...in the present case as per records the then COAS considered the profile of all eligible Lt Generals who were meeting the laid down criteria including that of the appellant, and recommended the name of the Respondents No 3 and 4 on 22.3.2012 for appointment to two posts of Army Commanders falling vacant, which was also examined independently and concurred by the Raksha Mantri after considering the record of service profile of all seven officers including the appellant, and the recommendations to appoint respondents No 3 and 4 were approved by the ACC in terms of the Government of India (Transaction of Business) Rules, 1961.”

Moreover, it has been submitted that:

“..in the present case the consideration took place in respect of seven eligible Lieutenant General's including the applicant and out of seven, respondents 3 and 4 were recommended by the COAS and the Government of India, Ministry of Defence and approval was given by the ACC.”

24. The averments in the counter affidavit are borne out by the file which has been produced before this Court. While recommending the name of the third and fourth respondents, the COAS had the service profile of seven officers in the rank of Lieutenant General. Two of the seven officers had a shortfall in the period of one year prescribed as Corps Commander. The service profile together with the CR dossiers of the seven officers were forwarded by the COAS to the Defence Minister. Before the Defence Minister endorsed the proposal for the appointment of the third and fourth respondents, he was apprised in writing of the fact that five officers fulfilled the criteria prescribed of having a minimum two years' service left before the age of retirement from the date of appointment as an Army Commander and that the officers had commanded a Corps for at least one year. The file indicates that “as per practice, Army Commanders are appointed on the basis of seniority subject to fulfilling the above mentioned criteria”. This practice was adverted to in the judgment of this Court in *Kadyan* (supra) where it was observed that considering the nature of the rigorous standards adopted in selecting officers upwards from the stage of Lieutenant Colonel up to the stage of Lieutenant General, in the usual course it may be that the senior most officer is selected as the Army Commander. Having adverted to this practice, this Court held that it does not debar the COAS or the Union of India from making the selection of any other person who fulfills the necessary criteria, for good reasons.

25. In the present case, it is evident that the service profile of seven officers was taken into account by the COAS in making a recommendation. This service profile was forwarded to the Defence Minister together with the recommendation of the COAS for the appointment of the third and fourth respondents. The Defence Minister was apprised of the fact that five officers in the rank of Lieutenant General fulfilled the requirements under the criteria governing selection to the post of Army Commander. Moreover, when the proposal was placed for approval before the ACC, the fact that five officers fulfilled the criteria prescribed was a matter which was specifically adverted to, together with the recommendation of the COAS (approved by the Defence Minister) for the appointment of the third and fourth respondents. The appointment of the fourth respondent was approved

by the ACC and the decision was notified by the Cabinet Secretariat on 24 May 2012. Following the lifting of the type A DV ban, the ACC approved the appointment of the third respondent, which was notified by the Cabinet Secretariat on 15 June 2012.

26. The above sequence of events leads to the conclusion that there is no merit in the submission that the appointment of the third and fourth respondents was based exclusively on seniority or in violation of the norms governing appointment to a selection post by promotion.

27. Mr RK Anand, learned Senior Counsel appearing on behalf of the appellant has adverted to the Government of India (Transaction of Business) Rules, 1961. Rule 6 of the rules provides that there shall be Standing Committees of the Cabinet, which are set out in the First Schedule. Rule 6(1) provides thus:

“6. Committees of the Cabinet.-

(1) There shall be Standing Committees of the Cabinet as set out in the First Schedule to these Rules with the functions specified therein. The Prime Minister may from time to time amend the Schedule by adding to or reducing the numbers of such Committees or by modifying the functions assigned to them.”

The ACC is specified at Item 1 of the First Schedule. The functions of the ACC include, inter alia:

“(i) To take decisions in respect of appointments specified in Annexure I to the First Schedule to the Government of India (Transaction of Business) Rules, 1961;”
Annexure 1 to the First Schedule inter alia specifies the following:

“14. Vice-Chief of the Army Staff/General Officers Commanding-in-Chief, Central Command, Southern Command, Eastern Command, Western Command, Northern Command, South Western Command and Army Training Command.”

There has been no breach of the Transaction of Business Rules. The appointment of the third and fourth respondents was duly approved by the ACC. The ACC was apprised of material facts before its approval was communicated.

28. An attempt was made to urge that the policy decision dated 16 October 1992 indicates that “there is a government requirement to suggest two senior eligible officers for each Army Commander’s vacancy”. The policy decision dated 16 October 1992 deals with appointment of Corps Commanders. Paragraph 7 is titled “Parameters for appointment of Corps Commanders”. It lists out “factors affecting appointment of Corps Commanders”. In that context para 7(d) indicates the existence of a requirement to suggest two senior eligible officers for each vacancy of Army Commander. The above “requirement” is directory. Moreover, as the Tribunal held, the extension of the zone of consideration by considering the service profile of seven officers has caused no prejudice to the appellant. The finding of the Tribunal in this regard cannot be faulted.

29. For the above reasons, we have come to the conclusion that the submissions which have been urged on behalf of the appellant are lacking in merit. The appellant as well as the third and fourth respondents have since retired from service. The third respondent retired from service as COAS. We note from the record, that the appeal was admitted to hearing by an order of this Court dated 13 October 2014, after the retirement of the appellant on 30 September 2014. Learned counsel for the appellant had also urged that the grievance of the appellant should be considered, since the claim made by him to a rank is involved. In order to render finality to the grievance which has been raised before this Court, we have addressed the challenge on merits and have not found any substance in it.

30. The appeal shall, accordingly, stand dismissed. There shall be no order as to costs.

Judgment Referred.

¹The Civil Appeal was admitted for hearing on 13 October 2014.

²AFT

³COAS

⁴ACC

⁵DV

⁶OA No. 426 of 2012

⁷(2000) 6 SCC 698