

SUPREME COURT OF INDIA

Surgeon Rear Admiral Manisha Jaiprakash

Vs.

Union of India

C.A.No.8896-8897 of 2012

(L.Nageswara Rao and Hemant Gupta,JJ.,)

16.10.2019

JUDGMENT

L.Nageswara Rao,J.,

1. These Appeals arises out of a judgment of the Armed Forces Tribunal by which the rejection of the statutory complaint filed by the Appellant was upheld. The Appellant was commissioned in the Indian Army as a Lieutenant in the year 1975. She was promoted as a Brigadier on 05.12.2005 and as Rear Admiral/ Major General on 24.11.2007. The Appellant retired as Surgeon Rear Admiral on 31.05.2012. As she was not promoted as Surgeon Vice Admiral, she filed a statutory complaint on 15.07.2010 seeking following reliefs :

" (a) Five ACRs prior to ICR- 2007 be compared with ICR-2007 and ACR-2008.

(b) Total Expunction of ICR - 2007:- if markings in the assessment on a Select Surg Rear Admiral for selection to the next rank of Surg Vice Admiral are inadequate for selection even to the first Select rank of Surg Captain/ Equivalent from the rank of Surg Commander/ Equivalent.

(c) Total Expunction of ACT 2008:- if markings in the assessment on a Select Surg Rear Admiral for selection to the next rank of Surg Vice Admiral are inadequate for selection even to the first Select rank of Surg Captain/ Equivalent from the rank of Surg Commander/ Equivalent."

2. By an order dated 02.09.2011, the statutory complaint was disposed of by giving partial relief to the Appellant which is as follows:

"(a) Box grading awarded by SRO in ICR 2006, being inconsistent with the pen picture and profile of the officer,

(b) Box grading awarded by DGAFMS in ACR 2006, being technically invalid,

(c) Numerical grading awarded by IO, RO and FTO in ICR 2007 on grounds of inconsistency with established profile,

(d) Numerical grading awarded by SRO, DGMS (Army) and DGAFMS in ACR 2008 on grounds of inconsistency with established profile,

(e) Numerical grading awarded by DGAFMS in SCR 2009, being inconsistent, and

(f) Entire assessment, including box grading, awarded by DGMS (N) as HOS in SCR 2009, being technically invalid.

2. The above-mentioned aberrations be removed from the CR Dossier of the officer and she be reconsidered for promotion, by an appropriate Promotion Board (Medical), in accordance with the existing policy."

3. Dissatisfied with the partial redressal of grievance, the Appellant filed O.A. No.19/2011 before the Armed Forces Tribunal, Regional Bench, Mumbai (for short "the Tribunal") which was dismissed by the impugned order. The Appellant is before this Court challenging the validity of the said order of the Tribunal.

4. The grievance of the Appellant is that her Annual Confidential Reports (ACRs) for the years 2006- 2009 have not been properly recorded. She alleged in the statutory complaint that the ACR for the year 2008 was initiated by Brigadier G.S. Manchanda who was working as Deputy Director General Medical Services (DDGMS) Madhya Bharat area. The Appellant apprehended that Brigadier G.S. Manchanda, who was her colleague, would have not assessed her fairly. She sought for re-assessment of the Interim Confidential Report of 2007 and Annual Confidential Report of 2008 by looking into the past five years' Confidential Reports.

5. The Appellant contended that the Confidential Reports recorded by Brigadier G.S. Manchanda who was her Initiating Officer are biased. As Brigadier G.S. Manchanda was in the same rank as of the Appellant, she apprehended that he might have marked the Appellant low in the ACR for the year 2008. The learned Senior Counsel for the Respondent submitted that according to Para 18 (c) SAO No.8/S/91 of the Army Order, Confidential Reports will normally be initiated by the immediate Commanding Officer. However, it is provided that an officer of the same rank can also initiate Confidential Reports but will not endorse the recommendation for promotion to the next rank. On a perusal of the record, the Tribunal was of the opinion that the Appellant failed to prove any malice or bias on the part of the officers concerned in recording the Confidential Reports. The overall ratings of the Appellant were found to have been improved. The apprehension of the Appellant that Brigadier G.S. Manchanda could not have graded her correctly was found to be not correct by the Tribunal. The Confidential Report initiated by Brigadier G.S. Manchanda as Initiating Officer as well as F.T.O. was shown to us by learned Senior

Counsel for the Respondent. We are in agreement with the finding of the Tribunal that no bias can be found in the ACR for the year 2008 which was recorded by Brigadier G.S. Manchanda. The endorsements made by Brigadier G.S. Manchanda as Initiating Officer has been in the range of 'Outstanding' to 'Exceptionally Outstanding'. The Confidential Report Dossier of the Appellant would show that the ACR for the year 2008 acknowledges her professional and administrative abilities.

6. Another contention raised by the Appellant is regarding the delay in processing her statutory complaint. All statutory complaints have to be disposed of within six months as per Army Regulation 364 which is as follows:

"(e) AH statutory complaints will be made through proper channel as given in sub-para (e) below and copies will not be forwarded directly to higher authorities, if the final decision on the statutory complaint is not taken within a period of six months from the date, such a complaint is submitted to the immediate superior, the applicant will have a right to represent directly to Army Headquarters of the Central Government as the case may be after informing his commanding Officer."

7. Undoubtedly, the statutory complaint was not disposed of within the stipulated period in the aforementioned Regulation. By referring to the Regulation, the Tribunal held that the Appellant did not resort to the remedies that were made available in the above Regulation. Moreover, the Tribunal was of the opinion that the Appellant is not entitled for relief only on the ground of delayed disposal of the statutory complaint. We agree.

8. The main contention of the Appellant is regarding the retrospective application of Spl. Army Order No.8/S/91 pertaining to multiple endorsements by reporting officers. While considering the statutory complaint, relief was granted to the Appellant in respect of the ICR for 2006. The Box Grading awarded by the Senior Reviewing Officer in ICR for 2006 was expunged as it was found inconsistent with the pen picture and profile of the officer. The Box Grading awarded by Director General Armed Forces Medical Service (DGAFMS) was also found technically invalid as he endorsed the ICR for the year 2006 as reporting officer as well as the DGAFMS. It was found that the endorsements made by Surgeon Vice Admiral V.K. Singh as DGAFMS amounted to moderation of his own assessment as reporting officer. Therefore, the Box Grading awarded by DGAFMS in ACR for 2006 was expunged as technically invalid. The Numerical Grading awarded by the Initiating Officer, Reviewing Officer and the First Technical Officer in ICR for 2007 was found to be inconsistent with the established profile. Likewise, the Numerical Grading awarded by the Senior Technical Officer, Director General Medical Services (a) and DGAFMS in ACR for 2008 was also found to be inconsistent. Similarly, Numerical Grading awarded by DGAFMS in ACR 2009 was found inconsistent. That apart, the entire assessment, including Box Grading awarded by Director General Medical Services (Army) as head of service in ACR 2009 was found to be technically invalid.

9. The Appellant was considered by the Promotion Board held on 04.11.2009 (Chance I) and on 04.02.2011 (Chance II). She was found not suitable for promotion to the rank of

Surgeon Vice Admiral in view of her merit position being 17 and 10 respectively. The Vishisth Seva Medal (VSM) awarded was also taken into consideration by the Promotion Board held on 04.02.2011. After disposal of the statutory complaint, a Review Board was held on 07.10.2011. With the revised profile as per the order passed on 02.09.2011, she was considered by the Reviewing Board and found to be not suitable for promotion in view of the inter se merit.

10. Dr. Harshvir Pratap Sharma, learned Senior Counsel appearing for the Appellant referred to the Navy Order (Spl.) 02/2009 to submit that the provisions thereof will be applicable only to Confidential Reports which were initiated after 01.01.2010. He referred to Clause 65 of the said Navy Order which is as follows:

"65. Whenever the DGAFMS/ DGMS (Navy)/ DGDS are included in the main channel of reporting as IO/ FTO, RO/ STO/ HTO or SRO, they will not make any further endorsement as HOS."

11. Dr. Sharma, learned Senior Counsel argued that the ACRs for the year 2006 and 2009 could not have been declared technically invalid by relying upon the Navy Order (Spl.) 02/2009 which cannot be given retrospective operation. On behalf of the Union of India, it was submitted by Mr. R. Balasubramanian, learned Senior Counsel that the concept of self-moderation is against the basic tenet of objective assessment. An officer who has endorsed the Confidential Report as Initiating Officer, Reviewing Officer and Senior Reviewing Officer should refrain from endorsing as DGAFMS or DGMS. He submitted that the same officer cannot be permitted to review his own assessment by virtue of his holding the post of DGAFMS or DGMS and that it would amount to judging his own cause. Instances where the reporting officer recused himself from self-moderation as well as instances where certain reporting officers moderated their own assessments come to light. The Navy Order (Spl.) 02/2009 mandates that DGAFMS/ DGMS cannot make further endorsements as head of service if they were a part of the main channel of reporting as I.O./F.T.O., R.O./S.T.O./H.T.O. or S.R.O. Regarding retrospective application of the Navy Order (Spl.) 02/2009, the Respondents contended that the practice that was being followed prior to the Navy Order (Spl.) 02/2009 was against the basic tenets of law and so corrective measures were taken uniformly.

12. Though we find substance in the submissions made on behalf of the Appellant that the Navy Order (Spl.) 02/2009 should not have been made applicable for Confidential Reports which were initiated prior to 01.01.2010, we are not inclined to interfere with the order of Tribunal for the following reason: The Confidential Reports for the years 2006 and 2009 along with the grading given to the Appellant have been examined by us. Even if the ACRs of 2006 and 2009 were not technically invalid, the Appellant is not entitled for any relief as she would not have been promoted due to her comparative merit. The Appellant will not stand to gain even if the endorsement made by the reporting officer as head of service for the CRs of 2006 and 2009 are taken from consideration. We are convinced that the Tribunal was right in holding that no prejudice is caused to the Appellant by applying Navy Order (Spl.) 02/2009. Violation of every provision does not furnish a ground for the

Court to interfere unless the affected person demonstrates prejudice caused to him by such violation. [See: *State Bank of Patiala & Ors. v. S.K. Sharma*¹ and *Rajendra Singh v. State of M.P. & Ors.*².]

13. For the aforementioned reasons, the Appeals are dismissed.

Judgment Referred.

¹(1996) 3 SCC 0364

²(1996) 5 SCC 0460