

SEE RULE 102 (1)

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA

ORIGINAL APPLICATION : O.A. NO. - : 64/2018

DATED : THE *Seventh* DAY OF DECEMBER, 2018

CORAM

HON'BLE DR. (MRS.) JUSTICE INDIRA SHAH, MEMBER (JUDICIAL)

HON'BLE LT GEN GAUTAM MOORTHY, PVSM, AVSM, VSM, ADC,
MEMBER (ADMINISTRATIVE)

APPLICANT (S) : MR-05378W Brig R Girish (AMC)
Command Hospital
Eastern Command
Alipore
Kolkata – 700 027

Versus

RESPONDENT (S) : (1) The Union of India, service through
The Defence Secretary
Ministry of Defence
South Block, DHQ, PO,
New Delhi – 110 011

(2) The Chief of the Army Staff
Army Headquarters
Integrated HQ of MoD (Army)
DHQ PO, New Delhi – 110 011

(3) The Director General of Armed Forces
Medical Services,
Directorate General of Armed Forces
Medical Services,
Ministry of Defence
South Block, New Delhi – 110 011

(4) The Director General of Medical Services
(Army)
Adjutant General's Branch
Integrated HQ of MoD (Army)
'L' Block, New Delhi – 110 011

Counsel for the applicant (s) : Mr. SK Choudhury, Ld. Advocate

Counsel for the Respondent (s) : Mr. Satyendra Agrawal, Ld. Advocate

ORDER**PER LT GEN GAUTAM MOORTHY, PVSM, AVSM, VSM, ADC,
MEMBER (ADMINISTRATIVE)**

1. This application has been filed U/S 14 of Armed Forces Tribunal Act, 2007 (In Short-The Act), in which the applicant, a serving Brigadier in the Army Medical Corps has assailed Speaking Order issued by the Govt. of India, MoD vide order No. 15(184)/2017/D (Medical) dt. 22 Dec 17 rejecting the complaint dt. 21 Feb 17 against his supersession.
2. The facts of the case are that the applicant was commissioned in the Army Medical Corps on 10.01.1986 and after holding important appointments successfully and obtaining Specialist Qualifications, was promoted to the rank of Colonel on 16.09.2008 and appointed as Senior Advisor in Medicine and Cardiology. He has also done his post Doctorate Specialization and is a Super Specialist in Cardiology having conducted more than 4000 Interventional Cardiology Procedures.
3. He stated that during his entire career, no weak or adverse remarks have ever been communicated to him. On the contrary, he has been praised for his commendable work which has been appreciated by all his peers and reporting officers.
4. He apprehends that during the period from 2008 – 2013, when he was posted at Military Hospital, Jalandhar Cantonment, he was having some difference of opinion with the Commandant of the Hospital and as a result of which, he apprehends that his gradings in his Annual Confidential Reports (ACRs) were subjective.

5. Accordingly, he was not selected for promotion to the rank of Brigadier in the Selection Board (SB) held on 20.11.2013 as well as in the next SB held on 20.11.2014.
6. Further, he was finally promoted to the rank of Brigadier as a final review case on 09.06.2016. But his original seniority was not restored. He also stated that he had filed two Statutory Complaints, first dated 07.12.2014 for expunging inconsistent CR(s), re-consideration for promotion to the next rank and restoration of original seniority with consequential benefits. This complaint was rejected. Thereupon after the next SB, he filed another Statutory Complaint date 21.02.2017 against supersession and for review of all reckonable CRs and for restoration of original seniority. This too was rejected.
7. In the Counter Affidavit, the facts presented by the applicant have not been contested by the Respondents. However, the respondents have stated that the rejection of the complaints by the Govt. of India was done only after thoroughly analyzing his Statutory Complaints by the competent and intermediary authorities.
8. The Respondents have stated that the assessment by all the Reporting Officers in the reckonable period were all fair, objective, well corroborated and performance based and that the applicant could not be empanelled for promotion to the rank of Brigadier by the First and Second Selection Boards on ground of his overall profile and comparative merit within his batch.
9. To adjudicate the matter, we had called for an officer from the office of the DGMS (Army), who had produced all his CR Dossiers' (CRD) of the officer along with the records with respect to his Selection Boards.

10. We have perused all the CRs of the officer during the reckonable period. It is observed that the officer has been consistently graded Above Average to Outstanding in all his reports. We confirm that there is no aberration what so ever in his reports for the period under review which have been assailed by the applicant.
11. During the first SB of the officer which held on 20.11.2013, it is confirmed that out of total 165 officers, 50 officers were selected and the merit position of the applicant was at Ser. No. 59. In the next Selection Board which was held on 26.11.2014; 130 officers were considered and of whom 28 only were selected for the rank of Brigadier. The applicant's merit was at Ser. No. 41.
12. It is observed that despite obtaining excellent reports, the applicant was not selected for the rank of Brigadier in the first two SBs being lower down in the order of merit. It is further reiterated that none of the CRs of the officer require any interference as they contain Outstanding / Above Average Gradings. The applicant's apprehensions are misplaced and no injustice has been done to him.
13. Accordingly, this O.A. (O.A. No. – 64/2018) deserves to be dismissed and is dismissed.
14. No order as to costs.
15. Original documents held (if any) to be returned to the Respondents by the Registry on proper receipt.
16. Let a plain copy of this order be supplied by the Tribunal Officer to both the parties after observing all usual formalities.

(LT GEN GAUTAM MOORTHY)
MEMBER (ADMINISTRATIVE)

dk

(JUSTICE INDIRA SHAH)
MEMBER (JUDICIAL)

