

**(2013) 02 DEL CK 0320****Delhi High Court****Case No:** W.P. (C) 4670/2008

Brig. P.J.S. Rangar and Another

APPELLANT

Vs

UOI and Others

RESPONDENT

**Date of Decision:** Feb. 27, 2013**Citation:** (2013) LabIC 2940**Hon'ble Judges:** Sudershan Kumar Misra, J; S. Ravindra Bhat, J**Bench:** Division Bench**Final Decision:** Dismissed**Judgement**

S. Ravindra Bhat, J.

The petitioners seek quashing of Department of Personnel and Training (DOP & T) Office Memorandum No. 22011/3/2007-Estt(D) dated 18.02.2008, and the letter No. A/23578/QASB 4(2007)/DGQA/Adm-4 of the Ministry of Defence, Department of Defence Production dated 15.05.2008. They also seek consequential direction for quashing of Empanelment Order issued on 16.06.2008. Briefly the material facts are that the petitioners were, at the relevant time in 2007, working as Brigadiers in the Indian Army. Pursuant to the normal selection modes, on 29.10.2007, a Committee considered various names of officials for promotion from the rank of Brigadier to the acting rank of Major General, for the vacancy year 2008-09. The petitioners' names were recommended, as is evident, for empanelment, and an Office Order intimating them in that regard, was issued on 31.01.2008. Subsequently, on 15.05.2008, on the decision of the competent authority, in the wake of DOP & T's benchmark, contained in its Office Memorandum dated 18.02.2008, that panel was annulled. The extract of the order annulling/cancelling the panel reads as follows:

3. Subsequently it has been decided by the competent authority, that the QAS Benchmarks are to be brought in line with DOP & T Benchmarks issued via DOP & T OM No. 22011/3/2007-Estt(D) dated 18 Feb 2008.

4. It has therefore been decided with the approval of the competent authority to annul the panel for Maj Gen for the vacancy year 2008-09, published vide office note referred at para one above. Accordingly QASB will now be held afresh for empanelment for promotion to the acting rank of Maj Gen for the panel year 2008-09 based on the revised Benchmarks issued by DOP & T.

2. The memorandum of the DOP & T dated 18.02.2008 had noted that the Appointments Committee to the Cabinet had examined, in consultation with the Union Public Service Commission (UPSC), and noticed that for operating and promoting personnel to the post of Deputy Secretary and above and their equivalent, the benchmark of "Very Good" was applicable. The Office Memorandum of 18.02.2008 also noted the previous instructions contained in the DOP & T Memorandum dated 10.04.1989 and 27.03.1997 in that regard and stated as follows:

3. The observations of the ACC have been examined in consultation with the UPSC. In order to ensure greater selectivity at higher level of administration, the DPC may ensure that for the promotion to the scale of Rs. 18,400-22,400 and above, the prescribed benchmark of "Very Good" is invariably met in all ACRs of five years under consideration. The DPC, in terms of guidelines of this Department, is required to make its own assessment on the basis of entries in the CRs and not be guided merely by the overall grading. In cases where the assessment by DPCs are apparently not in line with the grades in the ACRs, the DPC should appropriately substantiate its assessment by giving reasons, so that the appointing authority could factor these while taking a view on the suitability of officer for promotion.

4. The instructions contained in the Office Memorandum shall come into force from the panel year 2008-09. Ministries/Departments are requested to give wide circulation to these revised instructions for general guidelines in the matter.

3. The petitioners unavailingly represented to the respondents against the cancellation of the panel; and also simultaneously asked for the review of the empanelment of other Brigadier-level officials, which had taken place pursuant to the Ministry of Defence Promotion/Empanelment Order dated 16.06.2008. Thereafter, they have moved this Court.

4. It was argued by Sh. S.M. Dalal, learned counsel for the petitioners that the decision of the respondents to scrap or annul the panel is facially violative of the Office Memorandum of 18.02.2008 itself. He placed reliance on para 4 of that Memorandum and states that once valid selections had been made in respect of the concerned vacancy year, i.e. 2008-09, the petitioners acquired the right to be appointed to the post. It was argued that this could not have been reviewed or cancelled in the manner sought to be done by the imposition of fresh criteria which, in the absence of any instructions to the contrary, would apply to vacancies that would occur after the issuance of such memorandum. In other words, learned counsel's submission was that the vacancies, which arose prior to the issuance of

18.02.2008 memorandum, were governed by the pre-existing instructions and guidelines. In terms of these, the officers in the feeder cadre who possessed four "Very Good" ACRs and had one "Good" ACR had the right to be considered. The respondents understood this to be the correct situation and applied it, empanelling the petitioners. In these circumstances, it is submitted by learned counsel for the petitioners, that the respondents could not have cancelled the panel. Learned counsel relied upon various rulings, including the decisions of the Supreme Court in Y.V. Rangaiah and Ors. v. J. Srinivasa Rao and Ors. 1983 (3) SCC 264; State of Bihar and Others Vs. Mithilesh Kumar, and Hemani Malhotra Vs. High Court of Delhi, . It was emphasized that in all these cases, the common reasoning which persuaded the Court to hold that application of freshly evolved criteria, or amendment of rules during the selection process was arbitrary, was that once the process began, the candidate had a right to be considered according to the then existing norms.

5. Learned counsel next relied upon the decisions reported as Ex-Capt. K.C. Arora and Another Vs. State of Haryana and Others, , the judgment in T.R. Kapur and Others Vs. State of Haryana and Others, , as well as Ex-Major N.C. Singhal Vs. Director General Armed Forces Medical Services, New Delhi and Another, . It was argued on the strength of these judgments that promotion is an integral part of the terms of service. The Rules having vested the employees existing in the organization with a right to be promoted, could not be altered, much less retrospectively, to their disadvantage.

6. The respondents do not deny that in the panel issued on 31.01.2008, the petitioners" name had been included. Their justification for cancellation of the panel is that the DOP & T instructions of 18.02.2008 had reiterated the previously existing guidelines which indicated the benchmark for promotion to the post of Deputy Secretary and above, i.e. five "Very Good" gradings in the preceding five years. It was argued that even though the petitioners were considered on the basis of the then existing benchmark, the fact remains that till the time they occupied the posts and were issued posting orders it was open to the respondents to apply the guidelines. It was emphasized that these guidelines were reiteration of existing guidelines and apparently, the Indian Army had been disregarding them. Moreover, it was argued by learned counsel for the respondents that the reason for cancelling the panel cannot be termed arbitrary because the application of the higher benchmark was made in a non-discriminatory manner and no one was singled-out for hostile discrimination. It was also disputed that the vacancies in question had arisen prior to the issuance of Office Memorandum of 18.02.2008. In fact, they accrued from April 2008 onwards.

7. The preceding discussion would show that the petitioners were included in the panel on the basis of consideration of their names in October 2007. They were intimated about this fact in January 2008. Within three weeks of that event, the Central Government instructions in the Office Memorandum of 18.02.2008 was

issued reiterating the necessity of adhering to the five "Very Good" gradings as a benchmark for the preceding years for consideration to the post of Joint Secretary and other equivalent ranks within the Indian Army. A look at the said Memorandum would indicate that these criteria were not freshly evolved and apparently were in existence and had been spelt-out as far as back in 1989 and reiterated yet again in 1997. In these circumstances, the question which arises is whether the respondents' action is arbitrary and has in any way impinged upon or taken away the petitioners' vested rights.

8. The Constitution Bench of the Supreme Court, while speaking about the nature of rights enjoyed by an individual holding himself out to be a candidate in a selection process observed as follows (refer [Shankarsan Dash Vs. Union of India,](#) ):

Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the license of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons.

9. It is evident, therefore, that the right of a candidate to be considered - though an important one, in the course of a selection process, is not an indefeasible one. Whilst the decision relied upon by the petitioners [Y.V. Rangaiah (supra), Mithilesh Kumar (supra) and Hemani Malhotra (supra)] have undoubtedly spelt-out the proposition that mid-stream during a selection process, the recruiting agency or authority is not free to apply fresh or amend the norms. This Court is of the opinion that the law declared in these decisions does not in any way reflect or implicate upon the respondents' decision in the facts and circumstances of the present case. The Office Memorandum of 18.02.2008 clearly states that the existing guidelines had required uniform application of the five "Very Good" criteria as benchmark for the preceding five years. The memorandum, therefore, reiterated what existed on the record. Furthermore, in the present case, it was not as if the norms were amended in the form of rules, although the selection panel had undoubtedly been prepared and communicated to the concerned officials. The eligibility criteria in this case is not subject matter of any rules. These eligibility norms, which spell-out the benchmark for consideration to promotion to the post of Major General, were contained in the Office Memorandum and instructions issued from time to time and made applicable to the Indian Army. Apparently, the executive authorities, i.e. the Ministry of Defence noticed a deviation from these norms and insisted that the existing norms of five "Very Good" benchmark had to be adhered to uniformly. This was the only consideration which weighed with the respondents in deciding to cancel the panel, which contained the petitioners' names. This much is evident from the reading of the letter dated 15.05.2008, which pertinently states as follows:

4. It has therefore been decided with the approval of the competent authority to annul the panel for Maj Gen for the vacancy year 2008-09, published vide office note referred at para one above. Accordingly QASB will now be held afresh for empanelment for promotion to the acting rank of Maj Gen for the panel year 2008-09 based on the revised Benchmarks issued by DOP & T.

10. As far as the learned counsel's submissions with regard to the inhibition upon the executive authorities from changing norms retrospectively is concerned, this Court notices that the right to be promoted to the post of Major General has not been in any manner interfered with. It is only that the eligibility norms which apparently existed for at least 19 years before the issuance of the memorandum had been deviated from. If, in fact, the petitioners had received the letter of appointment and reported for duties after which the promotion orders were cancelled, the question of applying retrospectively the norms and taking-away vested rights would have arisen. In the present case, however, that stage had not occurred. The above observations would have been dispositive of the present proceeding, however, the Court notices that the petitioners were graded "Good" for one year and that in the averments, they have articulated a grievance that this has resulted to their prejudice since they could not get the opportunity to attack it. On this aspect the Court does discern some prejudice. However, the fact remains that at that stage, it was open to the petitioners to question the downgraded ACR by appropriate proceedings. In this context, the Court is mindful of the ruling which existed prior to Dev Dutt Vs. Union of India (UOI) and Others, ( U.P. Jal Nigam and others Vs. Prabhat Chandra Jain and others, ), the petitioners have significantly not challenged the gradation of ACR as "Good" for the relevant year in the present proceeding and sought appropriate directions for its quashing or such like relief. In view of the above findings, the petition lacks in merit. It is accordingly dismissed with no order as to costs.