

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

Civil Appeal Nos.7436-7437 of 2010

UNION OF INDIA & ORS.

Appellant(s)

Versus

MAJOR GENERAL ARUN ROYE & ORS.

....
.... Respondent (s)

J U D G M E N T

L. NAGESWARA RAO, J.

1. The First Respondent was commissioned as Second Lieutenant in the Army through the National Defence Academy on 11.06.1967. He was promoted as Lieutenant Colonel, Colonel and Brigadier. While he was working as Brigadier, he was appointed as Defence Attaché/Military Attaché in the United States of America on 16.05.1996. Before proceeding to join the said post, the First Respondent signed an Adverse Career Certificate, stating that he will accept any adverse effect on his future career in terms of not being adequately exercised, non-detailment on career courses/subsequent courses, and delay in subsequent promotion etc. During the

course of his stay in the USA, the Chief of Army Staff ('COAS') approved a change in the assessment of officers, by doing away with figurative assessment of Defence Attachés/Military Attachés in the matter of finalizing their Annual Confidential Reports. By an office order dated 07.04.1998, the method of figurative assessment in personal qualities and box-grading of Defence Attachés/Military Attachés was dispensed with. Pen-picture assessment of officers holding the listed appointments was retained. After returning to India on completion of his tenure as a Defence Attaché/Military Attaché, the First Respondent requested for a 'look' for the National Defence College (NDC), 2000 course.

2. The First Respondent was considered for nomination to NDC, 2000 course. The First Respondent voiced his grievance regarding the dispensation of figurative assessment of his confidential reports as Defence Attaché/Military Attaché. In response to the representation made by the First Respondent, the Military Secretary informed the First Respondent that figurative assessment in the confidential reports of Defence Attachés/Military Attachés was re-introduced in 2000 with prospective effect.

3. The First Respondent was considered for promotion as Major General but was not empanelled due to the absence of NDC weightage. A Non-Statutory Complaint was preferred by the First Respondent, aggrieved by his non-empanelment as Major General, which was rejected on 07.11.2000. The First Respondent was further denied consideration for nomination to NDC for the year 2001. The First Respondent filed a Statutory Complaint regarding his supersession to the post of Major General, in which he contended that the order by which the Non-Statutory Complaint was rejected did not consider various claims made by him, including the one pertaining to conversion of the confidential reports for the years 1997 and 1998. He emphasized the injustice done to him by not considering his nomination for the NDC course during his tenure as Defence Attaché/Military Attaché. He raised other grounds in support of his case that he was unjustly superseded. Pursuant to the recommendations of the Special Selection Board, the First Respondent was found fit for promotion as Major General. On promotion, the First Respondent was posted as GOC, 11th Infantry Division. The Statutory Complaint filed by the First Respondent regarding his supersession for promotion to Major

General in the year 2000 was rejected by the Chief of Army Staff by a letter dated 14.03.2000.

4. The First Respondent was temporarily promoted as Deputy Director General, Assam Rifles on 26.09.2002 and later posted as Additional Director General, Assam Rifles on 10.01.2003. During the period of his service as Deputy Director General, Assam Rifles, there was again a change in the method of assessment of officers holding certain posts including the post of Deputy Director General, Assam Rifles to the detriment of the First Respondent.

5. The First Respondent was considered by the Special Selection Board for promotion to the post of Lieutenant General but he was not empanelled. The statutory complaints filed by the First Respondent aggrieved by his non-empanelment as Lieutenant General were rejected.

6. Assailing the legality of the orders rejecting the statutory complaints and his non-empanelment as Lieutenant General, the First Respondent filed a Writ Petition. During the pendency of the Writ Petition in the High Court, the third Statutory Complaint filed by the First Respondent was rejected on 02.02.2006 and the First Respondent was not selected for

promotion as Acting Lieutenant General by the Special Selection Board meeting that was held in February, 2006.

7. The learned Single Judge of the High Court allowed the Writ Petition and directed the Appellants to change the profile of the First Respondent. The Appellants were further directed to reconsider the claim of the First Respondent for promotion to the rank of Lieutenant General in the light of the findings recorded in the judgment. The Appellants were directed to arrange a meeting of the Special Selection Board on or before 29.04.2006 to consider the claim of the First Respondent for promotion to the rank of Lieutenant General on the basis of the changed profile of the First Respondent. The members of the Special Selection Board were specifically restrained from considering the NDC aspect as the second mandatory look for NDC was illegally denied to the First Respondent. The learned Single Judge further directed that the figurative assessment in the confidential reports of the First Respondent by the GOC-in-C, Eastern Command and COAS when the First Respondent was posted as ADG, Assam Rifles shall also not be taken into consideration at the time of relative assessment of the candidates for the purpose of granting promotion to the post of Lieutenant General. In case the Special Selection Board

declared the First Respondent fit for promotion to the rank of Lieutenant General on the basis of the changed profile in terms of the order passed by the High Court, the First Respondent was held entitled to enjoy all the benefits of the promotional post in the rank of Lieutenant General. As the date of retirement of the First Respondent on attaining the age of superannuation was on the anvil, the Appellants were given liberty to issue formal orders of promotion even after the date of his retirement with retrospective effect.

8. Both the Appellants as well as the First Respondent filed appeals against the judgment of the learned Single Judge. While dismissing the appeal filed by the Appellants and allowing the appeal filed by the First Respondent, a Division Bench of the High Court affirmed the directions issued by the learned Single Judge. The Division Bench further observed that the learned Single Judge went wrong in not deciding whether the posting of the First Respondent as Defence Attaché/Military Attaché to the USA should have been treated as an Extra-Regimental Employment. The Division Bench further held that the learned Single Judge had erroneously upheld the decision of the Appellants in refusing a first look to the First Respondent for NDC, 2000 on the ground that there

was no illegality in not allowing conversion of figurative assessment into numeric assessment for the years 1997-1999. The Division Bench was of the opinion that the issue pertaining to the non-selection of the First Respondent to the rank of Major General in April, 2000 ought not to have been ignored by the learned Single Judge by treating it as a non-vital issue. The Appellants are before this Court challenging the judgment of the learned Single Judge as affirmed by the Division Bench. The Appellants are also aggrieved by the observations made by the Division Bench while allowing the appeal of the First Respondent.

9. It would be convenient to deal with each of the relevant issues separately for a proper understanding of the dispute.

Confidential Reports

10. By an office order dated 07.04.1998 from the Army Headquarters, the Chief of the Army Staff approved the dispensation with the system of figurative assessment in personal qualities and box-grading while retaining the pen-picture in the confidential reports of the officers holding certain specific appointments. At that point of time, the First Respondent was working as Defence Attaché/Military Attaché in USA. The contention of the First Respondent before the High

Court was that the figurative assessment was dispensed with to cause prejudice to his service prospects, which would entail an advantage to his colleagues. When the First Respondent made a representation to the authorities complaining of dispensation of figurative assessment in the ACRs of the Defence Attaché/Military Attaché, he was informed that the figurative assessment was re-introduced with effect from 01.01.2000, which would benefit his colleagues. The change in assessment, according to the First Respondent, seriously affected his career prospects. It was the further contention of the First Respondent before the High Court that he was not considered for nomination to NDC course and was not empanelled as a Major General in view of the change of the method of assessment of the confidential reports during 1997-1999. The First Respondent sought for conversion of the assessments made by the Ambassador to USA for the years 1997-1998, 1998-1999 to numeric quotients, which was not allowed by the High Court as the Regulations do not permit such conversion.

11. After being moved on temporary duty to the post of Additional Director General, Assam Rifles the channel of reporting for the post of Additional Director General, Assam

Rifles was changed to the detriment of the First Respondent. On 19.12.2002, an order was issued by the Military Secretary Branch regarding the initiation/endorsement of the confidential reports by reporting officers other than the Army officers. It was clarified in the said order that all reporting officers will fill up only the pen-picture and are prevented from reporting in figurative. The First Respondent contended that the GOC-in-C, Eastern Command and the Chief of Army Staff made assessments in figurative though they were not authorized to do so. As the assessment in figurative was contrary to the policy, the First Respondent sought expunction of the assessment that was made by the GOC-in-C and COAS. Accepting the submission of the First Respondent the learned Single Judge held that the GOC-in-C, Eastern Command and the COAS acted in excess of jurisdiction and in violation of the policy decision by making figurative assessment of the First Respondent when he was posted as ADG, Assam Rifles. The Division Bench affirmed the said conclusion of the learned Single Judge and we have no reason to take a different view on the point pertaining to the figurative assessment made by the GOC-in-C and COAS being contrary to the policy, and therefore without jurisdiction.

12. The learned Single Judge was of the opinion that the assessment of CRs of the First Respondent cannot be stated to be vitiated due to *mala fides* as no such submission was made by the First Respondent. However, the learned Single Judge found fault with the rejection of the statutory complaints on the ground of violation of principles of natural justice. According to the learned Single Judge, vital documents namely, the comments of the Army Authorities on the statutory complaints were not supplied to the First Respondent. Mr. R. Balasubramanian, counsel for the appellant, did not press the point relating to the supply of the comments of army authorities on the statutory complaints to the First Respondent. Therefore, we leave the question of law as to whether non-furnishing of the remarks of the Army authorities on statutory complaints to the officer concerned would result in violation of principles of natural justice, open. However, on an overall consideration of the issue pertaining to the confidential reports, we are in agreement with the learned Single Judge that the profile of the First Respondent warranted a change.

National Defence College

13. The First Respondent contended before the High Court that his service period as Defence Attaché/Military Attaché in USA was not considered on the ground that the appointment of the First Respondent was an Extra-Regimental Employment. The procedure for selection to the NDC course provides for two looks for all Brigadiers, provided they fulfill the eligibility criteria. The First Respondent submitted before the High Court that the first mandatory look for nomination to NDC course for the year 2000 was rejected in the month of October 1999 in view of the non-consideration of his ACRs during his service as Defence Attaché/Military Attaché in the USA on the basis that the posting of the First Respondent was an Extra Regimental Employment. He was not considered for the second look on the ground that he was assessed as 'not promotable' by the concerned Selection Board. The learned Single Judge of the High Court refused to adjudicate on the issue relating to the posting of the First Respondent as Defence Attaché/Military Attaché in USA being treated as Extra Regimental Employment, on the ground that no such declaration was sought by the First Respondent in the Writ Petition. The refusal to have a second look at the First Respondent in October, 2000 for NDC, 2001 was found to be arbitrary by the High Court in view of

promotability checks being introduced only on 07.01.2002 and 07.02.2003. The submission made on behalf of the Appellants that the First Respondent forfeited his right for the first mandatory look for NDC in the year 1998 was rejected by the High Court on the ground that the First Respondent was not, in fact, considered by the Appellants for selection to NDC course in October, 1998. Moreover, it is clear from the record that two months after the refusal of a second look to the First Respondent in October, 2000 for NDC 2001, the First Respondent was found fit for promotion to the post of Major General in April, 2001. On a detailed consideration of the above issue, the learned Single Judge of the High Court observed that the First Respondent was illegally denied a second mandatory look for the NDC look. On a thorough examination of the evidence on record, we have no reason to take a different view from the one taken by the learned Single Judge and affirmed by the Division Bench.

Non-empanelment as Lieutenant General

14. The First Respondent contended before the High Court that his consideration for empanelment as Lieutenant General in February, 2006 was not a valid exercise of power as his service profile was not properly and correctly prepared. The

overall profile of the First Respondent presented before the members of the Special Selection Board was tainted by irrelevant and irregular considerations. In view of the findings recorded by the High Court on the confidential reports as well as the nomination to the NDC, the direction issued by the learned Single Judge of the High Court that there should be re-assessment of the First Respondent by the Special Selection Board suffers from no infirmity. It is relevant to note that the Special Selection Board considered the First Respondent as a Special Review Fresh Case of 1968 batch with changed profile, but found the First Respondent not fit for empanelment as Lieutenant General.

15. After holding that the directions issued by the learned Single Judge and affirmed by the Division Bench warrant no interference by this Court, the point that remains to be considered is whether the Division Bench was justified in its observations pertaining to certain aspects which were not considered by the learned Single Judge. The learned Single Judge made it amply clear that the High Court was not interfering with any policy decision of the Government. The relief that was granted to the First Respondent was in view of

the irregularities committed by the Appellants in violation of the policy decision of the Government. As stated supra, the learned Single Judge also observed that the First Respondent did not seriously contest the issue of *mala fides*. We are of the opinion that the Division Bench went wrong in holding that the learned Single Judge ought to have decided the point whether the posting of the First Respondent as Defence Attaché/Military Attaché to USA should be treated as Extra Regimental Employment. As the said issue was not raised by the First Respondent in his Statutory Complaint filed in February, 2005 and as the First Respondent did not even seek for a declaration in the Writ Petition, the learned Single Judge was right in not deciding the issue of the posting of the First Respondent as Defence Attaché/Military Attaché to USA being treated as Extra Regimental Employment. The Division Bench also observed that the learned Single Judge erred in upholding the refusal of first look in 1999 for NDC 2000. In view of the relief that was granted by the learned Single Judge to change the profile of the First Respondent after holding that the second look for nomination to the NDC, 2001 was illegally denied to him, we do not see any reason for the Division Bench to have made such observations. The Division Bench

took a view different from the one taken by the learned Single Judge on the point pertaining to the non-selection of the First Respondent to the rank of Major General from Brigadier in April, 2000. We are in agreement with the learned Single Judge on this issue as well. The learned Single Judge held that non-selection of the First Respondent to the rank of Major General from Brigadier in April, 2000 is not a vital issue since the First Respondent was promoted as Major General in April, 2001. In view of the relief that was granted by the learned Single Judge in favour of the First Respondent, the Division Bench ought not to have held that the learned Single Judge committed an error in not considering the aforementioned issues. The observations made by the Division Bench pertaining to the above issues which were not considered by the learned Single Judge are not sustainable and are hereby set aside.

16. For the aforementioned reasons, we uphold the judgment of the learned Single Judge as affirmed by the Division Bench. The observations relating to the non-consideration of certain issues by the learned Single Judge

made by the Division Bench are set aside. Accordingly, the appeals are dismissed.

.....J
[L. NAGESWARA RAO]

.....J
[M.R. SHAH]

New Delhi,
April 09, 2019.