

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS. 29-30 OF 2016
(Arising out of SLP (C) Nos.5436-5437 of 2015)

Union of India & Ors.

... Appellants

VERSUS

Col. Chander Ballabh Sharma

... Respondent

ORDER

Dipak Misra, J.

Leave granted in both the special leave petitions.

2. The respondent knocked at the doors of the Armed Forces Tribunal, Regional Bench at Chandigarh (for short, 'the tribunal') in OA No.1334 of 2012 for setting aside the order dated 13.12.2011 passed by the Ministry of Defence of the Government of India dismissing the statutory complaint preferred by him and further for quashing para 9 of the Promotion Policy dated 04.11.2011 which postulates that the gallantry award will be given weightage for two selection boards after the award. Additionally, the petitioner also prayed for quashing of the promotion policy dated 04.11.2011 in

entirety as arbitrary and discriminatory and further to command the respondents therein to grant weightage for gallantry award, namely, Sena Medal (Gallantry) and *Vir Chakra* and consider his case afresh for promotion to the post of Brigadier. Be it stated, certain other reliefs were sought but they are not necessary to be referred to for adjudication of the present appeals.

3. The facts which are essential to be stated are that the respondent was commissioned in the Indian Army on 18.06.1983 and on 26.01.1986, he was conferred the award, Sena Medal (Gallantry) by the President of India, regard being had to his exceptional devotion to duty, and courage. He was awarded *Vir Chakra* on 26.01.1991 for his bravery and conduct during the Indian Peace Keeping Force operation in Sri Lanka. Thereafter, the question of promotion of the respondent to the post of Lt. Colonel came for consideration in May 1999 and he was promoted. While he was holding the post of Lt. Colonel, his case was considered for promotion to the rank of Colonel by the Selection Board in July/August, 2001 and he was cleared for the said rank on 21.08.2002.

4. At this stage, it is apt to note that a policy had been framed by the Army Headquarters with approval of the Union of India in the year

1987. It pertains to selection system. Clause 10 deals with guidelines of assessment. For the purpose of completeness, the said clause is reproduced below :

“Guidelines of Assessment

10. These directives are approved by the COAS for each rank and are comprehensive by themselves. The salient features of the guidelines are as follows:-

(a) Selection is to be based on the overall profile of the officer with special stress on the performance in criteria command appointment.

(b) Due consideration is given to officer who show consistency in overall performance and they are given preference over late starters.

(c) The officer should have been consistently recommended for to the next rank. Credit is given to those officers who gave earned positive recommendations for promotion in their very first report in command.

(d) The officer should have done psc/ptsc/post graduate courses and/or worked well in Staff/ERE/Instructional Appt. However, qualification of psc,ptsc or HC is neither as substitute for mediocre performance in command nor a license for promotion.

(e) Officers should have the potential for being employed or being rotated in Staff, instructional or ERE appointments.

(f) Character Qualities Disciplinary background and decorations form an important input of the overall profile of the officer and due consideration should be given while assessing borderline cases.

(g) While assessing officers with disciplinary background

gravity and nature of the offence and the service level at which the offence was committed should be taken into consideration.

(h) Cases involving moral turpitude, gross negligence, acts of cowardice, or un-officer like behaviour which reflects on the moral fibre of an officer will not be recommended for promotion.

(j) Performance during war forms an important fact of the overall record of the officer.

(k) Cautionary Notes by the COAS

(i) Element of magnanimity on the part of the reporting officers leading, to sudden elevation in figurative rating especially in the case of officers who have been superseded earlier or on the eve of the selection or on the eve the reporting officer's retirement.

(ii) Moderation by RO,-SRO, NSRO particularly in cases where officers have been over or under-rated.

(iii) Disparity in recommendations for promotion viz-a-viz the box grading, pen picture and recommendations for employments.

(iv) Comparative merit of officers in Staff/ERE viz-a-viz an officer in command in the same rank.

(v) Reports from NCC – and ERE are given less weightage as compared to the reports earned from command and graded staff.

(l) Assessment of the officer is based on the comparative merit of the overall profile of the: officers within his own batches. Needless to say, the grading of, the board is be assessed from the material placed before the board, and not from personal knowledge, if any.

(m) In case of doubt, benefit must go to the “Service”.

(n) Grading to be awarded by the selection Board are placed at Annexure II.”

[Emphasis supplied]

5. On a perusal of the aforesaid policy, it is clear as day that the character qualities, disciplinary background and decoration do form an important input of overall profile of the officer and due consideration is to be given while assessing border line cases. That apart, the assessment of the officer is based on comparative merit of the overall profile of the officers within his own batches and the grading is to be awarded by the selection board as per Annexure-II. Annexure-II deals with grading to be awarded for promotion to the selection ranks. The case of the respondent was considered by the concerned Selection Boards for the post of Lt. Colonel in the year 1999 and also for the post of Colonel in the year 2001. As per the finding recorded by the tribunal, the respondent was given weightage when his case was considered for promotion to the rank of Lt. Colonel and Colonel under the Value Judgment System as per the postulates laid down in the 1987 policy.

6. When the matter stood thus, the competent authority adopted and issued a new policy on December 13, 2008 pertaining to conduct of Selection Boards by quantification system. Paragraph 4 of the said

policy deals with distribution of marks. It reads as follows :

“4.Distribution of Marks

Distribution of marks for various SBs are as given below:

Type of CR	No. 3 SB	No.2 SB	No.1 SB	SSB
CR	89	90	91	92
Courses and Honours & awards	6	5	4	3
Quantification total	95	95	95	95
Value judgment	5	5	5	5
Grand Total	100	100	100	100”

7. Paragraph 7 which deals with honours and awards (H & A) is worth reproducing :-

“7. Gallantry awards will be given weightage for two SBs after the award. Awards for distinguished services will be considered for one SB after the award. Maximum of two marks can be awarded to any officer for H&O.”

8. The value judgment marks is covered under paragraph 9. It reads as follows :_

“9. Five percent marks have been set aside for value judgment by the Selection Board for assessing parameters that cannot be quantified.”

9. After this policy came into force, the case of the respondent was considered by the competent Selection Board for the post of Brigadier in October 2009 and he was not selected. Thereafter, his case was reconsidered in September 2010, April 2011 and September 2011 but he was again not successful. The said non-selection constrained the respondent to file a complaint before the authority which did not yield any positive result. Therefore, the Original Application was preferred before the tribunal; and it was contended before the tribunal that he was entitled to be granted the benefits of the decorations, namely, Sena Medal (Gallantry) and *Vir Chakra* on the basis of the quantification method and had it been so done, he would have been promoted. That was the singular contention which was highlighted before the tribunal. The tribunal, analysing the 1987 policy and the subsequent policies, namely, 2008 and 2011 policies, came to hold that the respondent was not entitled to the benefit.

10. Aggrieved by the aforesaid judgment and order passed by the tribunal, the respondent preferred CWP No.6487 of 2014 before the High Court of Punjab and Haryana at Chandigarh. It was urged before the High Court that when a new comprehensive policy had come into vogue on 04.11.2011 superseding the earlier policy dated 6.5.1987 and 13.12.2008, his case was required to be considered on

the basis of the subsequent policies especially the 2011 policy, regard being had to the principle enshrined in para 4(c) of the said policy.

11. On behalf of the present appellant, the said stand was resisted on the foundation that since the respondent had been given the benefit of awards/decorations twice in his service career, the benefit cannot be extended forever and hence, the marking system which has been incorporated into subsequent policies cannot be extended to the officials who had been conferred the benefit under the old policy.

12. The High Court, hearing the learned counsel for the parties, opined thus :-

“We find that literal interpretation of para 9 of policy dated 04.01.2011 may support the stand of the respondents but keeping in view the fact that number of Selection Boards have been reduced than what was prevailing in the year 1987, the policy has to be applied to all in a pragmatic manner. The two Selection Boards which are required to be taken into consideration would be the one which are in terms of the 2011 policy i.e. for selection to the post of Colonel and Brigadier and not the Selection Board from the rank of Major to Lieutenant Colonel. The reference to Selection Boards in policy dated 04.01.2011 alone are required to be taken into consideration than the Selection Boards which were constituted in terms of policy dated 06.05.1987. If the Selection Boards constituted prior to policy dated 04.01.2011 are taken into consideration, the policy circulated would lead to unfair results. It would have been different matter, if the number of selection Boards had remained same, the restrictions could be applied to all categories for selection. But where the Selection Boards have been reduced, then the Selection Boards now

constituted would be relevant to consider the suitability of the officers for empanelment.”

13. Being of this view, the High Court set aside the order of the tribunal and directed the respondents therein to consider the selection of the petitioner therein in empanelment of selection to the post of Brigadier in terms of the policy. After the said decision was rendered, an application for review was filed forming the subject matter of RA No.440 of 2014 (O & M) which was dismissed on the ground that no case was made out for review. The orders passed in the writ petition and the review are the subject matters of these appeals, by way of special leave, before this Court.

14. We have heard Ms. Pinky Anand, learned Additional Solicitor General along with Mr. Balasubramaniam, learned counsel for the appellants and Mr. Sharan, learned senior counsel along with Ms. Shobha, learned counsel for the respondent.

15. It is submitted by the learned Additional Solicitor General that since respondent had already received on two occasions the benefits in terms of the 1987 policy, the change in the application of parameters will not enure to the benefit of the respondent because that will ultimately lead to application of policy *ad infinitum* in gross disregard

of Paragraph 7 of the policy dated December 13, 2008. It is urged by her that had the benefit not been extended for the purpose of granting promotion to the post of Lt. Colonel and Colonel, the matter would have been absolutely different. Learned counsel appearing for the appellants has been extremely critical of the view expressed by the High Court that once there has been a reduction of the Boards and the post, namely, Lt. Colonel has become a non-selection post a pragmatic approach has to be adopted while appreciating the subsequent policy of 2011. In support of the stand, reliance has been placed on **Hardev Singh v. Union of India & Anr.**¹ It is her submission that the High Court has fallen into grave error in distinguishing the said authority.

16. Countering the aforesaid submissions, it is propounded by Mr. Sharan, learned senior counsel that the subsequent policies clearly envisaged that marks are to be awarded for two stages of promotion and when a specific policy is introducing precise terms, it has to be applied to the case of the respondent and the High Court has not committed any error by applying the same. Learned senior counsel would contend that the pronouncement in **Hardev Singh** (supra) is not applicable to the case at hand as the relief sought therein was to

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get the benefit in perpetuity but so is not the factual score in the case at hand. Learned senior counsel would vehemently urge that gallantry awards exhibit bravery and courage of a soldier and there are hardly many people in the country who get such awards twice and hence, the interpretation of the policy deserves a liberal outlook which the High Court has done and in such a situation, the impugned judgment and order do not warrant any interference.

17. We have already reproduced the relevant clauses of the policy. The 1987 policy postulated about the nature of benefits to be given to the awards and decorations. When the respondent was promoted to the post of Lt. Colonel in the year 1999, he was given the benefit of the awards. At that point of time, the post of Lt. Colonel was a selection post. Thereafter in 2001, as is the admitted position, he was promoted to the post of Colonel and he was granted the benefit of the decorations. There is no cavil over the fact that policy is changed in 2008 with effect from 01.01.2009 and further in 2011. The case of the respondent was considered twice for the post of Brigadier but he was not selected. The selection on any other ground was not under assail either before the tribunal or before the High Court and that is not the issue before us.

18. What has been canvassed before us is that under the 1987 policy, there was no restriction of period, meaning thereby, it was not restricted to two promotions. The restriction was incorporated in 2008 policy as well as in 2011 policy and, therefore, the benefits should be given under the said scheme. The said proponent has been astutely structured by urging that earlier there were five promotions through Selection Boards but by virtue of the change of policy, it has been reduced to four selection Boards inasmuch the post of Lt. Colonel has become a non-selection post and attainable on the basis of time bound promotion scheme and, therefore, in actuality the respondent has been conferred the benefit of awards/decorations only once.

19. In this context, it is appropriate to understand the ratio laid down in **Hardev Singh** (supra). The two-Judge Bench was considering the 2009 policy which dealt with the “value judgment”. We are really not concerned with regard to the position held by the appellant therein. The appellant was awarded *Kirti Chakra* in 1985 when he was working in the rank of Major. The said award was considered by the selection Board while considering his case for promotion upto Major General and in that context, the Court observed that the award/honour could not be considered forever as per

promotional policy. In that context, the Court held that as per the new policy, weightage for awards is allowed only for two times after receipt of the award/honour and hence, in the circumstances, the award of *Kirti Chakra* had rightly not been considered by the Special Selection Board when it had convened its meeting in January 2009.

In paragraph 21 and 22, the Court has ruled thus :-

“21. The above facts would make it clear that the cases of the appellant and others were never considered by the SSB in 2008 or prior to 1st January, 2009. It means that the cases were considered as per the new policy and, therefore, all submissions made on behalf of the appellant that the policy was changed after the process of selection had been started are not correct and, therefore, they are to be discarded.

22. The grievance made by the appellant with regard to non- consideration of award of 'Kirti Chakra' is also not having any substance for the reason that as per the new policy, the grant of such an award/honour is to be considered only twice. In 1985, when the appellant was in the rank of Major, he was awarded 'Kirti Chakra' and the said fact was duly considered till he got promotion to the rank of Major General. As per the new policy, this honour, which he had secured in 1985 could not have been considered again and, therefore, it was rightly not taken into account. We also find substance in the policy that if a person has performed his duty excellently at a particular stage in his career, then that performance of excellence cannot be considered for the entire life. When an officer has to get his promotion strictly on merits, his performance should be commendable throughout and especially during last few years. The case of the appellant was considered in 2009 for his promotion to the rank of Lieutenant General and, therefore, the achievements of the appellant in 1985 could not have been ordinarily considered by the SSB. In the circumstances, the submissions relating to not considering 'Kirti Chakra' award would not help the

appellant.”

20. The ratio of the said authority, as we understand is that if an incumbent had already been given the benefit that many number of times, which has been stipulated in the subsequent policies, he cannot claim it as a right on the basis of subsequent policy on the foundation that the restriction had come into play later and, therefore, that should be counted from that stage. To clarify, as the learned senior counsel for the respondent would put it even if the benefits had been given for two promotions on the basis of the 1987 policy, he would still be entitled to get two selections stipulated in the subsequent policy. The said submission is really pyramided on the edifice that one Selection Board has been reduced, for earlier there were five Boards and subsequently it has been reduced to four as the post of Lt. Colonel became a non-selection post. In our considered view, the said edifice is bound to founder because it does not have any rational support. Our further delineation would make it clear. The High Court, as we notice, has been guided by some kind of unfathomable pragmatism while appreciating the policy decision. A policy has to be understood in its proper perspective. It has to be appositely interpreted, regard being had to the concept of permissible and acceptable parameters. A change of criterion in a promotional

policy and more so with added restriction, as noted above, according to the High Court, would not affect the future prospects of an incumbent even if he had already availed the permissible benefit under the earlier policy. In our considered opinion, such an interpretation is indubitably fallacious. The clear language of Paragraph 7 of the new Policy has no scope for interpretation. Gallantry awards can be given weightage only for two Selection Boards after the award. Respondent's case if accepted would require weightage for more than two Selection Boards and that is clearly not permissible. Therefore, we have no hesitation in holding that the High Court has not appropriately appreciated the ratio of the authority in **Hardev Singh** (supra), the relevant clauses in the policy and has committed an illegality and, therefore, the judgment and order passed by the High Court are bound to be set aside and we so do.

21. Resultantly, the appeals are allowed and the judgment and order passed by the High Court in the writ petition and in the Review are set aside. However, there shall be no order as to costs.

.....,J.
(Dipak Misra)

.....,J.
(Shiva Kirti Singh)

New Delhi
January 06, 2016.

ITEM NO.1

COURT NO.4

SECTION IVB

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 5436-5437/2015

(Arising out of impugned final judgment and order dated 17/07/2014 in CWP No.6487/2014 and RA No. 440/2014 in CWP No. 6487/2014 passed by the High Court of Punjab & Haryana at Chandigarh)

UNION OF INDIA & ORS.

Petitioner(s)

VERSUS

COL. CHANDER BALLABH SHARMA

Respondent(s)

(with interim relief and office report)

Date : 06/01/2016 These petitions were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MR. JUSTICE SHIVA KIRTI SINGH

For Petitioner(s) Ms. Pinky Anand, ASG
Mr. R. Balasubramyam, Adv.
Mr. Santosh Kumar, Adv.
Ms. B. Tamta, Adv.
Mr. Rishabh Jain, Adv.
Ms. Saudamini Sharma, Adv.
Mr. B.V. Balaram Das, AOR

For Respondent(s) Mr. A. Sharan, Sr. Adv.
Ms. Shobha, AOR
Ms. Akanksha Kaushik, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeals are allowed in terms of the signed order. There shall be no order as to costs.

(Gulshan Kumar Arora)
Court Master

(H.S. Parasher)
Court Master

(Signed order is placed on the file)