

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ WP (C) No. 60/2008

% Date of decision: May 29th, 2008

LT. COL. RANBIR SINGH ...PETITIONER
Through: Major K. Ramesh,
Advocate.

Versus

UOI ...RESPONDENTS
Through: Ms. Jyoti Singh,
Mr.Ankur Chibber and Mr.
B. Balasubramaniam,
Advocates.

WP (C) No. 2651/2008

LT. COL. D.S.GREWAL ...PETITIONER
Through: Major K. Ramesh,
Advocate.

Versus

UOI ... RESPONDENTS
Through: Ms. Jyoti Singh,
Mr.Ankur Chibber and Mr.
B. Balasubramaniam,
Advocates.

AND

WP (C) No. 61/2008

LT. COL. D.V. NEHRA ...PETITIONER
Through: Major K. Ramesh,
Advocate.

Versus

UOI ...RESPONDENTS
Through: Ms. Jyoti Singh,
Mr.Ankur Chibber and Mr.
B. Balasubramaniam,
Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers may be allowed to see the judgment? No
2. To be referred to Reporter or not? No
3. Whether the judgment should be reported in the Digest? No

SANJAY KISHAN KAUL, J (ORAL)

1. This common order shall dispose of the aforesaid three writ petitions which arises out of the identical facts and raises common question of law ***“whether the loss of seniority suffered by an incumbent on account of passing a promotional examination later than the time specified, will change the seniority and would have a permanent effect or would only retard his seniority in the rank without effecting his overall seniority except the pay and allowance for the additional period taken by the incumbent to pass such an examination over and above the specified period for it”.***

2. The petitioners joined the services in the Indian Army and were posted as officers in Remount Veterinary Corps (RVC). They were promoted to the rank of Major after they cleared the requisite departmental examination within the prescribed time or thereafter but within reckonable period of service which enabled their promotion to the next rank i.e. the rank of Major and then to the rank of Lt. Col. along with the private respondents. However, when their name came for consideration for further promotion to the post of colonel they

could not make it and in fact, they were not selected for the next promotion by three consecutive boards.

3. By way of these writ petitions, the petitioners are assailing, the decision of the third selection boards having not selected them but promoted two of the private respondents as Colonel despite loss of seniority as they failed to clear the promotional examination in the time available to them as per the rules. It is submitted that this should not have been done. The petitioners cleared promotional examination within the time prescribed and in any case before the private respondents could do so, thus the petitioners seek setting aside of the result of the 3rd Selection Board qua the respondents who have been promoted to the post of Colonel with further direction to consider the petitioners in their year of seniority by lowering down the seniority of the respondents.

4. It may be observed here that the petitioners as well as private respondents were promoted as Lt. Col. by common order passed on 16.12.2004 but no grievance was made by the petitioners regarding giving of seniority to the private respondents at that time. They also did not challenge the result of first selection board or the second selection board and have come to the court only after the results have been declared by the third selection board wherein, the petitioners could not make it to the next level.

5. To explain their case, the petitioners have relied upon a chart annexed with the writ petition bearing no. WP(C) No. 60/2008 i.e., the case of Lt. Col. Ranbir Singh Vs. UOI and Ors. at page 41 and 42 which gives particulars of extra time taken

by Lt. Colonel S.K. Bhardwaj, Lt. Colonel Y.S. Kumar, Lt. Col. RN Joshi, Lt. Col. AK Verma, Lt. Col. Inderjit Singh in clearing the promotion examination. It is submitted, that the aforesaid delay was beyond 8 years and therefore, they were not eligible to be appointed as major what to talk of Lt. Colonel. In any event, if rules were to be correctly applied then the revised date of seniority of these officers for consideration by the 3 Selection Board would have been 10.1.1992, 10.1.1992,10.1.1990,06.1.1990,11.1.1991 while that of Lt. Col. Ranbir Singh is 06.11.1989. It is thus contended that the officers should not have been promoted either as Lt. Colonel along with the petitioners nor should have been consider as eligible for any other post as they were junior to the petitioners on account of loss of their seniority. The chart given at page 42 is reproduced for the sake of reference:-

S.No.	Details of officer's service	V-432P Lt. Col. SK Bhardwaj	V-434A Lt. Col. YS Kumar, VSM	V-444K Colonel R.N.Joshi	V-440M Lt. Col. DP Singh	V-445M Lt. Colonel A.K. Verma	V-446P Colonel Inderjit Singh	V-448 Lt. Col Ranbir Singh
(a)	Date of initial Seniority	10.04.89	10.04.1989	10.04.1989	06.11.1989	06.11.1989	06.11.1989	06.11.89
(b)	Date of Substantive Major	.01.2000	.01.2000	.01.1998	.01.1998	.01.2001	11.01.1999	11.01.99
(c)	Completed 08 years reckonable commissioned service on	10.04.97	10.04.1997	10.04.1997	06.11.1997	06.11.1997	06.11.1997	06.11.97
(d)	Extra time taken by officer beyond eight years upto 16 Dec 04 (in months)	33	33	09	02	38	14	Nil
(e)	Date of passing promotion exam Part D	.01.2000	.01.2000	.01.1998	.01.1998	.01.2001	11.01.1999	1995/96
(f)	Completed 11 ½ yeas service of reckonable service on	10.10.00	10.10.2000	10.10.2000	06.05.2001	06.05.2001	06.05.2001	06.05.00
(g)	Date of substantive Lt. Col	16.12.00	16.12.2004	16.12.2004	16.12.2004	16.12.2004	16.12.2004	16.12.04
(h)	Extra time taken by an officer beyond 11 ½ years after 16 Dec 2004 to qualify in promotion exam Part 'D'	Nil	Nil	Nil	Nil	Nil	Nil	Nil

(i)	Total of (d) and (h) above denoted in months	33	33	09	02	38	14	Nil
(j)	Revised date of seniority to decide batch seniority for consideration by No. 3 selection board (a+j)	10.01.92	10.01.1992	10.01.1990	06.01.1990	06.01.1993	11.01.1991	06.11.89

To seek support of their contention, petitioners have relied upon special army instructions 1/S/85 as well as para 79(e) of the Defence Service Regulations.

6. The respondents have filed counter affidavits in opposition to the petition. They have strongly opposed the prayer made by the petitioners, firstly, on the ground of delay and laches on the part of the petitioners in challenging the seniority of the private respondents which was known to them in the year 2005 itself when the notification promoting them as Lt. Col. (time scale) was gazetted i.e. much before holding of the Selection Board. No challenge was made by the petitioners to the seniority of the private respondents who awaited the declaration of the result of the Selection Board not once but thrice before approaching this court. Secondly, the writ petition has also been opposed on the ground, that the petitioners have not even filed either statutory or non statutory complaint before the respondents and therefore approaching this court without availing of the said remedies cannot be permitted.

7. On merits it has been contended that in Indian Army Remount Veterinary Corps (RVC) is a class apart. They are governed by different policy as given in Defence Service

Regulations (DSR) for Army. It is submitted that as per para 81 of these Regulations, Graduate Veterinary Officer of RVC were exempted from undertaking promotional Examination Part 'A', part 'B', Part 'C' and Tactics and Military History paper of Part 'D'. This was in vogue till 15.7.2003, when Govt. of India by an order dated 15.7.2003 exempted Graduate Veterinary Officers of RVC from qualifying Promotion Examination Part 'D' for their promotion from the rank of Captain to Major. It is also submitted that the position as it stood prior to 15.7.2003 was that those veterinary officers of RVC who were granted permanent regular commission, were required to qualify the Promotional Examination Part 'D' within 8 years reckonable commissioned service for becoming eligible for promotion to the rank of Major. This period of 8 years reckonable commissioned service to the rank of Major was reduced to 7 years with effect from 14.1.2000 and now further reduced to 4 ½ yrs w.e.f. 16.12.2004, post AVSC Ph-I implementation.

8. **It is also submitted that in case an officer did not qualify in Promotion Examination Part 'D' within 8/07 years of service as applicable, then his promotion to the rank of Major was retarded by extra time taken by the officer to pass the said examination. To that limited extent the officer lost seniority for promotion to the rank of Major.** Their subsequent promotion to the substantive rank of Lt. Col is contingent upon their having completed 17 years of service without any loss of seniority, now reduced to and in the present case completion of 11 ½

years service subsequent to AVSC Ph-I (AV Singh Committee Report).

9. It is stated that the promotion of a Major to the rank of Lt. Col, is time bound promotion in RVC and the same is granted on completion of 17 years service irrespective of the delay in promotion in the earlier rank of Major provided they had passed promotional Examination Part 'D' before completion of 17 years of service. Reference has been made to Regulation 66 of Defence Service Regulations which reads as under:-

"66. Subsequent promotion by time scale to the rank of Lt. Col:

(a) XXXXX

(b) XXXXX

(c) XXXXX

(d) XXXXX

(e) XXXXX

(f) Remount & Veterinary Corps:

(i) Remount officer:

(aa) XXX

(ab) XXX

(ii) Veterinary Officer (Veterinary Graduates):

To Lt. Col. : 17 years

(g) XXXX

(h) XXXX

10. Thus, in RVC, the promotion to the post of Lt. Col. being time bound, does not depend on the time as to when part D Examination is passed by an officer in the rank of a Major of Indian Army Services. Prior to December, 2004 promotion to Lt. Col was selection based and therefore in terms of para 71 of DSR read with para 79, there used to be loss of seniority in case of late passing of Part D Examination. Presently, passing of such examination is not necessary.

11. As regard the plea of discrimination taken by the petitioners by citing the case of the Lt. Col. J.S. Bhardwaj and Capt. Balasubramaniam it is stated that the case of Lt. Col. J.S. Bhardwaj had no relevance as he was an officer in Army Ordnance Corps Officer and therefore could not be compared with an officer in RVC. As regard Balasubramaniam it has been stated, that the said case pertains to the person not clearing the examination even in 17 years which compelled the authorities to issue him a discharge order. It is stated that in view of the changed position that also cannot be ground for granting any indulgence to the petitioner. The respondents further submitted that the policy letter dated 4.8.2006 relied upon by the petitioners has no application to their case since the said letter is based upon an earlier policy decision dated 21.12.2004. The first paragraph of that letter is reproduced as under:-

"President is pleased to sanction revision of various terms and conditions of service for Army Officers of all Arms/Services except AMC (including AMC Non-technical), ADC, RVC and APS, as given in the succeeding paragraphs."

12. We have given our thoughtful consideration to the rival submissions and also gone through the relevant paragraph of the Defence Service Regulations. Some paragraphs which are of relevance are reproduced hereunder:-

65. Substantive promotion by time-scale upto and including the rank of Major- Irrespective of availability of vacancies, substantive promotion upto and including the rank of Major, or officers of all arms and services will be by time scale.

Officers will be eligible for substantive promotion after the completion of periods of reckonable commissioned service as given below, subject to their being found fit in all respects for such promotion and after qualifying in prescribed examinations/courses:-

(f) Remount and Veterinary Corps:-

(i) Remount Officers:-

To Lieutenant	2 years
To Captain	6 years
To Major	13 years

(ii) Veterinary Officers (Veterinary Graduates):-

To Lieutenant	On Commission
To Captain	2 years
To Major	13 years

71. Retarded Promotion- The promotion of an officer who fails to pass the prescribed processional examination for promotion within the time limit allowed, will be retarded as provided for in para 79. The subsequent promotion of such officers will be governed by the provisions of paras 65, 66 and 67.

79. Promotion Examinations- (a) all commissioned officers of the Army, unless otherwise exempted, are required to pass promotion examination for substantive ranks of Captain and Major before they have completed the prescribed length of service for substantive promotion to these ranks as given in para 65. Some terms and conditions governing the examinations are given in Appendix 'C'.

(c) Loss of Seniority- Officers who do not pass the promotion examination within the prescribed length of the service for promotion to the substantive ranks of Captain or Major as given in para 65 will lose seniority to the extent of extra time taken by them to pass the requisite examination.

13. It may also be of importance to take note of the Government of India letter dated 15.7.2003 exempting promotional examination. The said letter reads as under:-

No. 80147/RV-1/739-C/D/DSII/2003
Government of India
Ministry of Defence
New Delhi

15th July 2003

To
The Chief of Army Staff

EXEMPTION FROM QUALIFICATION IN PROMOTION
EXAM PART 'D' IN RESPECT OF GRADUATE
VETERINARY OFFICER OF RVC

Sir,

I am directed to refer to SAI 1/S/85 and to convey the sanction of the President to **exempt Graduate Veterinary Officers of RVC from qualifying promotion Examination Part 'D' for promotion from Capt to Major.**

2. Henceforth, to be eligible for time scale promotion to the rank of Lt. Col in RVC, qualification of Veterinary Officers Junior Command Course (VOJC) will be a mandatory requirement. Graduate Veterinary Officer of RVC who are not qualified in Promotion Examination Part 'D' are required to attend and qualify in VOJC Course for time scale promotion to the rank of Lt. Col.

3. RVC officers already qualified in Promotion Examination part 'D' and not required to attend VOJC Course for promotion to the rank of Lt. Col.

4. These orders will take effect from the date of issue.

5. Necessary administrative instructions shall be issued by Military Training Dt accordingly.

6. This issues with the concurrence of Ministry of Defence (Finance) vide their U.O. No. 1275/GS/2003 dated 03 Jul 2003.

(V.K. Kapoor)
Under Secretary to the
Govt. of India"

14. It will also be appropriate to take note of another letter of 14.9.2005 regarding restructuring of Non-Select Ranks in Officers Cadre of Remount Veterinary Corps (RVC) which reads as under:-

*“No. 5(2)/2005(D (QS)
Government of India
Ministry of Defence*

*New Delhi-110001
Dated 14.11.2005*

*To
The Chief of Army Staff*

*Sub: Restructuring of Non-Select Ranks in Officer
Cadre of Remount Veterinary Corps (RVC)*

Sir,

I am directed to convey the sanction of the President to revision in terms and conditions of service for the officers of Remount Veterinary Corps (RVC) cadre as given in the succeeding paragraph:-

2. Substantive promotions: To reduce the age profile and supersession levels in the Remount veterinary Corps officers as also to improve vertical mobility, promotion to the substantive rank of officers will be made on completion of reckonable commissioned service as indicated below:-

<i>Rank</i>	<i>Reckonable commissioned service</i>
<i>i) Captain</i>	<i>On Commissioning</i>
<i>ii) Major</i>	<i>04 years & six months</i>
<i>iii) Lt. Colonel</i>	<i>11 Years and six months</i>
<i>iv) Colonel (Time Scale)</i>	<i>24 years and six months</i>

Time Scale Ranks

3. Colonel (Time Scale). The terms and conditions governing the rank of Colonel by Time Scale in respect of RVC officers will be as under:-

(a) Pay Scale: As applicable to Colonel in selection grade.

(b) Rank Pay: The rank pay entitled shall be that of Lieutenant Colonel.

(c) Other allowance & perks:- Officers holding the rank of Colonel by time scale shall be eligible for allowance and other perks as applicable in the rank of Colonel Selection grade.

(d) Age of Superannuation:- The officers of RVC on promotion to the rank of time scale Colonel shall retire on superannuation on attaining the age of 58 years which is the age of superannuation for the rank of Colonel Select grade.

(e) Medical criteria:- The provisions of Army Order 23/1990 as applicable to rank of Lt. Colonel by Time Scale in the Army earlier shall be applied mutatis mutandis to the time scale of Colonel for RVC officers.

(f) RVC Officers holding the rank of Colonel by time scale will be held against the post of Lt. Colonel. Such officer in rank and precedence shall be junior to the Substantive Colonel by selection.

4. All relevant orders on the subject including WEs/PEs shall be deemed to have been modified to the extent specified in this order.

5. Various orders and instructions affected by the above decisions would be amended in due course.

6. These orders will be applicable with effect from 16 Dec. 2004. Revision in pay and pension due to promotion wherever applicable, to officers who have retired during the period intervening between 16 Dec 2004 and the date of issuance of this letter, will be reviewed with retrospective effect from 16 Dec 2004.

7. This issue with approval of Ministry of Finance vide their ID No. 2(4) E.III/2004 dated 26.10.2005 and with the concurrence of Integrated Finance vide their UO No. 810-AG/PA dated 10 Nov 2005.

Yours Faithfully,

(M.M. Singh)
Under Secretary of the Govt. of India"

15. It is not in dispute that the petitioners as well as the private respondents were promoted as Lt. Col. together, vide order dated 16.12.2004 notified in December, 2005. Admittedly

no grievance has been made by the petitioners about the aforesaid promotion or even of the Selection result in the First or Second Selection Board. Now by raising those pleas which ought to have been raised at appropriate time, the petitioner cannot succeed in the present writ petition. There is no doubt in our mind that the petitioners accepted the entitlement of the private respondents to be considered along with them for further promotion, but the petitioners having failed to make the grade are now trying to get their foot in the door through the present writ petition, which door already stands closed. The petitioners are thus highly belated.

16. Moreover a reading of paragraph 71, 79(c) along with the letters of Government of India dated 15.7.2003 and 14.11.2005 along with paragraph 65 leaves no room for doubt that the loss of seniority on account of not passing promotional examination which had some relevance prior to the issuance of letter dated 15.7.2003 is now of no relevance after the letter dated 14.11.2005. The loss of seniority was only to the extent of extra time taken by the incumbent to pass a requisite examination which in view of the changed policy is not even required. Thus, the contention raised by the petitioner that loss of seniority is to be considered at every level of promotion falls to the ground. Disability suffered by the private respondents as a consequence of their not having cleared the promotion exams only retards their consideration for the next promotion by three years with other consequences, but once they cleared the exams, the late clearance of the exams is not in the form of a permanent disability.

17. The plea of discrimination by referring to the case of Lt. Col. J.S. Bhardwaj and Capt. Balasubramaniam is also of no help to the petitioner for the reasons that Col. J.S. Bhardwaj was not an officer in the cadre of RVC while the case of Capt. Balasubramaniam is one where the officer failed to clear the examination even in 17 years resulting in his discharge. The petitioners, thus, can claim no parity with the said persons.

18. In view of the aforesaid, we do not find any merit in either of the contentions raised by the petitioner. Consequently, we dismiss the petition leaving the parties to bear their own costs.

SANJAY KISHAN KAUL, J

May, 29th 2008
rk/rm

MOOL CHAND GARG, J