

\$~12

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

+ **W.P.(C) 10432/2016**

Date of decision: 10th August, 2017

COL L PADHI

..... Petitioner

Through Ms. Jyoti Singh, Sr. Advocate
with Ms. Sunita Padhi, Mr. Padma Kumar S
and Mr. Himanshu Gautam, Advocates.

Versus

UNION OF INDIA & ORS.

..... Respondent

Through Ms. Shiva Lakshmi, CGSC and
Mr. Ruchir Ranjan Rai, Advocates with
Brigadier J.S. Lotay, DDG, DGQA.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAVIN CHAWLA

SANJIV KHANNA, J. (ORAL)

Colonel L. Padhi, who is a Permanently Seconded Service Officer in the Directorate General of Quality Assurance, seeks promotion to the rank of Brigadier.

2. Quality Assurance Selection Board (5) of 2015 vide their meeting held on 6th October, 2015, had assessed the petitioner, who was working in the Stores discipline, as 'fit for promotion' to the rank of Brigadier. Petitioner's immediate junior Colonel S. Itnal was also assessed as fit to be promoted to the rank of Brigadier. The Board as

per the Minutes dated 6th October, 2015 was informed that all officers being considered for promotion, including the petitioner, were clear from vigilance.

2. Pursuant to the aforesaid Minutes, the petitioner was empanelled for promotion to the rank of Brigadier.

3. Colonel S. Itnal consequent to the approval of the competent authority vide communication dated 17th October, 2016 was promoted to the acting rank of Brigadier. He was posted *in-situ* as Controller in the same establishment against existing vacancy. The petitioner, though he was senior to Colonel S. Itnal, was impliedly denied and overlooked for promotion to the rank of Brigadier.

4. This has prompted the petitioner to file the present writ petition challenging the action of the respondents in not promoting him to the acting rank of Brigadier with effect from 9th August, 2016 as illegal, and for quashing of order dated 17th October, 2016 to the extent the petitioner was not promoted to the rank of Brigadier. Some other prayers including issue of Writ of Mandamus for grant of promotion to the rank of Acting Brigadier from 9th August, 2016, the date when

the petitioner had assumed charge of the post tenable by a Brigadier, have been made.

5. The stand of the respondents in the counter affidavit and additional affidavit, is that a Fact Finding Inquiry relating to supply of disinfectant fluid (black) from a private supplier/manufacture was held in 2008. Out of 18 batches supplied, 6 were accepted and the remaining 12 were rejected due to unsatisfactory test results. However, on re-testing, the 12 batches were also cleared. In the meanwhile, the shelf life of the disinfectant, which was only 12 months, had expired. As per the counter affidavit, the petitioner had failed to mention and notify the expiry date when the failed material was referred for second testing. Further, the rejected stores had been stored in the bond room after expiry of delivery period without informing the purchasing authority. Other lapses on the part of the petitioner were averred.

6. Learned senior counsel for the petitioner, on the other hand, disputes the said assertions and submits that the findings of the fact finding committee do not implicate and condemn the petitioner, for he was not responsible for the alleged lapses. In support, reference is

made to the Fact Finding Inquiry report. The charge against the junior of the petitioner was that he had not taken the approval of SQAQO i.e. the post on which the petitioner was working. As the petitioner was not responsible and guilty of any lapse and misconduct, the Army did not deem it fit and necessary to initiate and take action against the petitioner. Thus, the petitioner, it is submitted, is being punished by being denied promotion without any finding that he was at fault and responsible.

7. We do not think that we are required to go into the said factual assertion or dispute of guilty or not guilty, for the respondents have not initiated any proceedings under the applicable Act or Rules against the petitioner. It is accepted and admitted that the petitioner cannot be proceeded against under the Army Act, 1950. Further, the Army has given discipline and vigilance clearance to the petitioner. The Army has certified that the petitioner is clean from vigilance and discipline angle.

8. Counsel for the respondents has drawn our attention to the letter dated 1st March, 2016, written by the Director Vigilance, DGQA/Vigilance Cell, Ministry of Defence questioning the vigilance

clearance given to the petitioner. This letter refers to the Central Vigilance Commission's advice for initiation of major penalty proceedings against the petitioner. Approval was granted by the Defence Minister. Our attention was also drawn to an earlier letter dated 10th November, 2015, which records that the Army was the disciplinary authority in the case of the petitioner and that the Central Vigilance Commission had advised initiation of major penalty proceedings vide their order/opinion dated 11th August, 2010.

9. It is difficult to appreciate the stand of the respondents relying upon the Central Vigilance Commission's advice and the letters dated 10th November, 2015 and 1st March, 2016 for the reason that it is accepted by the respondents that they are not in a position and cannot initiate disciplinary proceedings against the petitioner. It is stated that the said proceedings would be barred by limitation and are not maintainable under the Army Act. Further, vigilance clearance was accorded to the petitioner on two occasions by the Army, notwithstanding the Central Vigilance Commission's advice.

10. This being the position, it cannot be presumed that the petitioner was guilty of any wrong doing and misconduct. In case the petitioner

is denied promotion, as has been done, he would suffer adverse consequences as if he was at fault and blameworthy. This cannot be permitted or allowed. Wrong doing and culpability on the part the petitioner cannot be assumed without findings being recorded in accordance with law under the Army Act or applicable rules. The advice and opinions, at best, can be the starting point. They cannot be read and treated as firm and conclusive findings. Thus, the petitioner has been pronounced and held guilty and therefore denied promotion in spite of clearance from the Army and empanelment by the Quality Assurance Selection Board.

11. We accordingly allow the present writ petition with a direction to the respondents to consider the petitioner's case for promotion to the rank of Acting Brigadier from the date his immediate junior was promoted. On promotion being granted, seniority would be given to the petitioner and arrears of salary would be also paid. The said exercise would be completed within a period of four months from the date a copy of this order is received by the respondents. In case promotion is not granted and payment is delayed beyond four months, the respondents would pay interest @ 8% per annum from the date of

this order till payment is made. In the facts of the present case, there would be no order as to costs.

SANJIV KHANNA, J.

NAVIN CHAWLA, J.

AUGUST 10, 2017
NA

