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

+ **W.P.(C) 9233/2016, CM Nos.37328/2016 & 14651/2018**

LT COL SAMEER SINGH

..... Petitioner

Through: **Ms.Arati Mahajan Shedha &
Ms.Swati, Advocates**

versus

UNION OF INDIA AND ORS

..... Respondents

Through: **Ms.Shiva Lakshmi, CGSC, Mr.Ruchir
Ranjan Rai & Mr.Siddharth Singh,
Advocates with Col.Kishan Singh,
Jt.Director, DGQA**

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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16.04.2018

W.P.(C) 9233/2016

1. The petitioner has approached this Court for quashing the decision of the respondent No.1/Ministry of Defence, Union of India and the respondent No.2/Director General Quality Assurance (DGQA), declining to grant him permanent secondment in the Quality Assessment Selection Board (QASB) (01) 2016, held on 17.02.2016. He further seeks directions to the respondents to examine his candidature for permanent secondment, in terms

of the O.M. dated 12.05.2011, issued by the respondent No.1/Ministry of Defence, with the approval of the *Raksha Mantri*.

2. The brief undisputed facts of the case are that the petitioner was commissioned in the Indian Army w.e.f. 12.06.1994. While holding the post of Lt.Colonel in the Indian Army, on 29.07.2013, he was posted in the respondent No.2/DGQA as a high merit R-1 officer. On completion of two years of physical service in the Controllerate of Quality Assurance (Radars) /DGQA, Bangalore, the petitioner fell in the zone of consideration along with other eligible officers, for permanent secondment in the QASB, held on 17.02.2016. On 04.04.2016, the result of QASB (01) 2016 was declassified but the petitioner found that his name had not been recommended for permanent secondment.

3. On perusing the extracts of the Board proceedings of QASB (01) 2016 held on 17.02.2016, as obtained through the RTI route, the petitioner discovered that he was recommended as '*FIT*' in the Technical Assessment Report (in short, TAR) in the year 2013-2014. However, in the year 2014-2015, it was recommended that he was "*NOT YET FIT*" for permanent secondment in the DGQA. The Board had directed that the petitioner's case be considered again for permanent secondment with the next permanent Secondment Board after one more TAR was initiated and if found "*FIT*", then his case could be recommended for permanent secondment, subject to his meeting other specified criteria.

4. The petitioner's case was reconsidered in the year 2015-16 and in the TAR, he was declared "*NOT FIT*". As a result, his name was not recommended for permanent secondment and on completion of three years, he was reverted to the Indian Army. Aggrieved by the aforesaid action, the

petitioner has filed the present petition.

5. Ms.Arati Mahajan, learned counsel for the petitioner refers to the O.M. dated 12.05.2011, to contend that the date on which the petitioner was considered for permanent secondment, he was only required to meet the criteria laid down in the captioned O.M. However, the respondents proceeded to apply the requirement of the TAR for assessing the eligibility of the petitioner for permanent secondment in the DGQA, without the rules stating so. She submits that the criteria for permanent secondment has been laid down in the O.M. dated 12.05.2011, which holds good even as on date and once the additional quality assurance of seeking TAR has been dispensed with, the same cannot be insisted upon as an eligibility criteria for the purposes of recommending the petitioner's name for permanent secondment.

6. The aforesaid submission is however disputed by Ms.Shiva Lakshmi, learned counsel for the respondents who places reliance on the averments made in the counter affidavit dated 28.11.2016 and the additional affidavit dated 21.07.2017, filed in terms of the order dated 23.05.2017 and states that TAR was introduced in the DGQA vide policy letter dated 08.04.2004 that was based on the Minutes of the Meeting of the Quality Assurance Selection Board held on 05.04.2004, in the office of the Secretary (DP). The said Minutes of the Meeting are reproduced below for ready reference:-

“2.3 The chairperson emphasized the need for induction as well as Permanent Secondment of well qualified and experienced officers since the image and credibility of DGQA Organization stems from the professional calibre of these officers. The chairperson was of the view that in addition to existing methodology of assessing the suitability of the service

officers for Permanent Secondment on the basis of mean value of gradings in four attributes of the ACR, technical competence and compatibility of these officers to DGQA Organization needs to be evaluated objectively through a probationary report in DGQA Organization. This probationary report should clearly bring out the suitability or otherwise of these officers in DGQA Organization. All these tenure officers must be put through a probation of at least 6 to 8 months in AHSP/SQAE and their performance needs to be monitored by the Heads of Establishments and Technical Directors. Permanent Secondment must be based on these two inputs. The format for the probation report should be worked out by Director (S-1) and Addl Dir (Officers).

2.4 Addl Secretary (DP) was of the view that the ACRs earned by the service officers while serving in DGQA Organization should cover a minimum effective period of 10 months so as to maintain greater objectivity in assessment. After deliberation and discussions with the members, QASB decided that a probation report be called for in respect of the officers listed at para 2.2 above. thereafter these cases for Permanent Secondment may be considered on file.”

7. The aforesaid minutes were formalised in the shape of Instructions dated 08.04.2004, issued by the respondents [Annexure R-3]. The relevant extract of the said Instructions is as below:-

“With a view to bringing in a greater objectivity in the assessment process for Permanent Secondment, it has now been decided to call for an assessment report on all tenure officers at the level of Lt Cols/Majors who have completed one year of tenure in DGQA. A specimen assessment report is enclosed.”

8. It is submitted by learned counsel for the respondents that in view of the above directions, TAR was introduced in the DGQA and has remained a consistent part of the probationary report. The object behind the said report is to evaluate the technical performance and suitability of the service officer on tenure, or for grant of further tenure or permanent secondment to newly inducted service officers in the DGQA.

9. It has been averred in the counter-affidavit that the aforesaid criteria that was being followed as a practice ever since the year 2004, has been followed even after the issuance of the O.M. dated 12.05.2011 and in the past too, officers have been rejected for permanent secondment on not being recommended in the TAR. Our attention has particularly been drawn to the DO letter dated 14.07.2014, issued by the Under Secretary, Ministry of Defence, Government of India with the approval of the Secretary (DP) which states as follows:

“2. Recommendation in two TARs is an essential requirement for grant of permanent secondment/second tenure to DGQA officers on tenure. Though the recommendation in TAR is not mentioned as one of the QRs specified in the MoD OM No.28(2)/2011/D(QA) dated 12 May 2011 but this requirement has been considered in all cases of permanent secondment (without any exception) and for grant of second tenure in DGQA, ever since its introduction in Apr 2004. It is further clarified that the aim and purpose of initiating a TAR is difference from ACR, as clarified in the following paras:-

(a) While the ACRs are initiated with the aim of assessing the overall performance of the officer during the reported period and these are used for promotions/progress in the career, the TARs are initiated with the specific purpose of

objective assessment of technical acumen and aptitude of the ratee officer for the Quality Assurance work for granting him permanent secondment/second tenure in DGQA.

(b) While ACRs are written for every year of the service, the TARs are initiated only during the first two years of the officer while the officer is on tenure with DGQA. Based on the recommendations in the TARs the officers are recommended for permanent secondment/grant of second tenure in the organization. Recommendation in two TARs is essential for consideration for permanent secondment because the officers are considered for permanent secondment only after having served for two years in the DGQA organization.”

10. It is thus urged by learned counsel for the respondents that apart from fulfilling the criteria laid down in O.M. dated 12.05.2011, the petitioner was expected to fulfil the eligibility criteria of receiving favourable recommendations in the TAR for the years 2013-2014 and 2014-2015, which he could not. As TAR is a mandatory requirement prescribed by the Cadre Controlling Authority ever since the year 2004, having failed to qualify the same, the petitioner's name was not recommended for grant of permanent secondment and he was reverted back.

11. In her rejoinder arguments, learned counsel for the petitioner countered the submissions made by the other side and stated that the DO letter dated 14.07.2014 relied upon by the respondents cannot supplement the eligibility criteria, that has specifically been laid down in the O.M. dated 12.05.2011 and even otherwise, the said DO letter was issued later on and cannot be applied to the petitioner's case with retrospective effect. She asserts that O.M. dated 12.05.2011 had declared in so many words that it

supersedes all previous instructions, provisions and guidelines issued on the subject of QRS for tenure and permanent secondment of the officers of the rank similar to that of Lt.Colonel in the DGQA and that being the position, the respondent could have only been guided by the criteria laid down in the said O.M. for purposes of assessing the eligibility of the petitioner for permanent secondment.

12. We have carefully perused the pleadings and considered the submissions made by the learned counsel for the parties. It is an undisputed position that on the date when the petitioner fell in the zone of consideration for permanent secondment in the DGQA, the O.M. dated 12.05.2011 was in force. The said O.M. lays down the criteria required to be adopted for grant of tenure and permanent secondment to service officers of the rank of Lt. Colonel (Substantive) in the DGQA and states as below:-

“1. The following criteria will henceforth be adopted for grant of tenure and permanent secondment to service officers of the rank of Lt.Col (Substantive) in DGQA:-

*(b) **Permanent Secondment***

QRs

- (i) Offrs of the rank of Lt Col (Substantive) only will be considered for grant of Permanent Secondment.*
- (ii) Officer should have minimum of two years of regular service from the date of reporting to DGQA organization before being considered by QASB for grant of Permanent Secondment.*
- (iii) Officers should not have been finally superseded as on date of acceptance by DGQA on tenure (the date of approval of board proceedings for acceptance of officers on tenure by DGQA).*
- (iv) Mean value of all box grading for seven years should not be less than ‘7’ including ACRs earned in DGQA.*

- (v) *Mean value of box grading in 3 Mandatory Qualities (LOYALTY, DECISIVENESS & DEPENDABILITY) should not be less than '7' and in respect of INTEGRITY should not be less than '8'.*
- (vi) *Should be in acceptable medical category as stipulated in Appendix 'A' to MOD OM No.67952/Q/DGI (Adm-4)/10412/D(PRODN) dated 28 Oct 1978 as amended from time to time*
- (vii) *The officer should have undergone Basic Quality Management Course (BQMC) at DIQA, Bangalore and should have obtained above average grading.*
- (viii) *The disciplinary record of the officers should not be adverse.*

Note:

- (aa) *Officers one rejected in QASB for grant of permanent secondment will be re-considered only once in the subsequent QASBs.*
- (ab) *Officers rejected in QASB could continue to serve in DGQA subject to recommendations of DGQA (Max two tenures).*
- (ac) *Date of approval of Board proceedings by DG, DGQA for acceptance of officers on tenure will be the date for reckoning the promotion status and seniority of officers for fixation of seniority in DGQA Gradation list. As far as Short Service (SS) officers granted permanent commission subsequent to acceptance for permanent secondment by DGQA (limited to eight per year), the seniority of such SS officers will be modified by one year thereby keeping them at par with regular entry officers, from the same batch year of seniority, being granted permanent secondment in DGQA.*
- (ad) *The eight vacancies of SS officers will be from within the allotted tenure vacancies of Lt.Cols in the PE of DGQA. However, these will be over and above the presently yearly cap of 250 SS officers being granted PC by the Army.*

13. As can be seen from a perusal of the O.M. dated 12.05.2011, officers once rejected in the QASB for grant of permanent secondment, could be re-considered only once in the subsequent QASBs and officers rejected in the QASB would continue to serve with the DGQA, subject to the recommendations made in that regard, upto a maximum of two tenures. There is no mention of qualifying TAR assessment in the captioned O.M. The concluding para of the said O.M. states as follow:-

“3. These revised criteria will be applicable to all Service Officers inducted into DGQA on tenure prospectively from the date of issue of this OM. In the interim period QASBs will be held as per policy in vogue.

4. This supersedes all previous instructions/guidelines issued on the subject.

5. This issues with the approval of Hon’ble Raksha Mantri.”

14. In the light of the criteria laid down in the aforesaid O.M., the respondents cannot be heard to state that any previous policy guidelines, as mentioned in the DO letter dated 08.04.2004, will continue to apply; nor can the subsequent DO letter dated 14.07.2014, addressed by the DGQA on the subject of writing Technical Assessment Reports of Tenure Officers be interpreted in such a manner as to incorporate in the O.M. dated 12.05.2011, those conditions of eligibility that do not form a part thereof, and that too, retrospectively.

15. There is merit in the submissions made by learned counsel for the petitioner that if respondents proposed to change the eligibility criteria, the only lawful method that they could have adopted was by amending O.M. dated 12.05.2011, which did not happen in this case. That the respondents

were cognizant of the said position is borne out by the fact that an O.M. dated 14.06.2011 was issued within one month from date of issuance of the O.M. dated 12.05.2011, whereby para 1(b)(aa) was specifically amended and it was clarified that the officers rejected in the QASB for grant of permanent secondment, will not be reconsidered in the subsequent QASBs. If the respondents wanted to make TAR a mandatory requirement for fulfilling the eligibility criteria for the subject post, then it was necessary to have amended the O.M. dated 12.05.2011. But that never happened.

16. This being the position, it is not understood how the respondents could have continued insisting that the petitioner ought to have qualified in the TARs, which is extraneous to the conditions of eligibility prescribed in the O.M. dated 12.05.2011. Nor can the subsequently issued letter dated 14.07.2014, which clarifies the underlying purpose of initiating TAR, be of any assistance to the respondents. Once assessments through TARs was not specified as a part of the eligibility criteria laid down in the O.M. dated 12.05.2011, for grant of tenure and permanent secondment to service officers of the rank of Lt. Colonel (Substantive) in the DGQA, the respondents could not have insisted that the petitioner ought to have qualified the same.

17. The respondents cannot be heard to urge that notwithstanding the criteria laid down in the O.M. dated 12.05.2011 and in the absence of any rules for conducting an assessment through TARs, such an assessment would remain an essential unspoken condition, over and above the eligibility conditions laid down in the captioned O.M.

18. In view of the aforesaid discussion, we are of the opinion that the decision taken by the respondents for turning down the candidature of the

petitioner for granting him permanent secondment in the QASB on the ground that he was not found fit in the TARs for the years 2013-2014, 2014-2015 & 2015-2016, cannot be sustained as it is based on extraneous considerations and is *de hors* the eligibility criteria laid down in the O.M. dated 12.05.2011 that holds the field for making such an appointment.

19. Resultantly, the petition is allowed. The respondents are directed to re-assess the eligibility of the petitioner for permanent secondment in the QASB, strictly in terms of the eligibility criteria for permanent secondment, laid down in the O.M. dated 12.05.2011 and without interpolating therein the criteria of assessing his TARs for the relevant years. The said exercise shall be undertaken and completed by the QASB Board within eight weeks from today. If the petitioner is found “*FIT*”, strictly in terms of the eligibility criteria laid down in the O.M. dated 12.05.2011, then consequential orders shall be passed within two weeks therefrom, under written intimation to him. Needless to state that if the petitioner qualifies for the subject post, his appointment shall relate back to the date when he was due for permanent secondment in the QASB and he shall be entitled to all the consequential benefits from the said date, except for payment of back wages.

20. The petition is allowed and disposed of along with the pending applications. The parties are left to bear their own costs.

HIMA KOHLI, J.

PRATIBHA RANI, J.

APRIL 16, 2018

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