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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

O.A. NO.2540/1999

This the 12th day of July, 2002.

HON'BLE SHRI V.K.MAJOTRA, MEMBER (A)

HON'BLE SHRI SHANKER RAJU, MEMBER (J)

A.S.Shekhwat S/O Mohar Singh,
R/O C/O N.S.Rathore (Deputy Inspector General),
House No.2793, M-Block, Netaji Nagar,
New Delhi. ... Applicant

(By Shri B.B.Raval, Advocate)

-versus-

1. Union of India through
Cabinet Secretary,
Government of India,
Rashtrapati Bhawan,
New Delhi-110001.
2. Director General of Security,
Directorate General of Security,
Government of India,
Cabinet Secretariat,
East Block 5, R.K.Puram,
New Delhi-110066. ... Respondents

(By Shri Mohar Singh, Advocate)

O R D E R

Hon'ble Shri V.K.Majotra, Member (A) :

Applicant has challenged order dated 23.12.1998 (Annexure-A) whereby one Shri M.C.Ghansiyal has been promoted from the rank of Deputy Commandant to that of Commandant in the pay scale of Rs.4100-5300 (pre-revised) w.e.f. 6.1.1996. Whereas Shri Ghansiyal is stated to have expired on 19.2.1999, applicant has retired from service on 30.9.1997.

2. According to applicant, he had filed an earlier OA No.3264/1992 seeking restoration of seniority vis-a-vis Shri M.C.Ghansiyal, Deputy Commandant who was stated to be junior to applicant in terms of Army service

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as well as in terms of confirmation. That OA was disposed of by the Tribunal vide order dated 4.10.1996 with the following directions :

- "a) The respondents are directed to hold a review DPC in the post of Commandant in SFF for the vacancy arising w.e.f. 1.4.1992 in accordance with the rules and instructions within a period of two months from the date of receipt of a copy of this order.
- b) In the event, the applicant is selected, he shall be entitled to all consequential benefits in accordance with law.
- c) No order as to costs."

3. Applicant submitted a representation dated 1.11.1996 (Annexure A-3) to Director General of Security, respondent No.2, seeking reversion of Shri M.C.Ghansiyal (respondent No.3 in OA No.3264/1992) to the post of Deputy Commandant w.e.f. 4.10.1996. He made further representations to the same effect. It is alleged that when respondents did not decide his representations, he filed CWP No.6417/1998 before the Delhi High Court. The said CWP was dismissed "In view of the averments made in the affidavit filed by the respondent" vide orders dated 19.3.1999 of the High Court.

4. The learned counsel of applicant stated that Shri Ghansiyal had been declared medical category A-1 on 7.9.1993, on a date subsequent to the date of applicant's representation and the Tribunal's order dated 24.5.1993. As such he was not medically fit at the time of the original DPC dated 8.12.1992. The learned counsel further stated that as per DOP&T instructions dated

10.4.1989, a review DPC cannot change the grading as already accorded by the original DPC. However, the review DPC held on 28.3.1994 in pursuance of the Tribunal's orders had not only changed the grading but also considered records for the years 1992-93 and 1993-94 which were not considered by the original DPC dated 8.12.1992. The learned counsel further submitted that applicant had not been communicated rejection of his representation. He came to know about that only from the counter filed by respondents before the High Court in 1999. According to the learned counsel, review by the DPC has to be related to vacancy on 1.4.1992 and facts obtaining on that date.

5. On the other hand, the learned counsel of respondents stated that this OA is hit by res judicata, the High Court having rejected the Writ Petition on the same issue as agitated in the present OA. The learned counsel also produced the records relating to review DPC held on 30.10.1996 in pursuance of the Tribunal's orders dated 4.10.1996 in OA No.3264/1992.

6. In CWP No.6417/1998 before the High Court, applicant had sought the following relief :

"a) Issue an appropriate Writ/Order or Directions in the nature of Mandamus to the respondents to hold a review D.P.C. in the post of Commandant in S.F.F. for the vacancy arising w.e.f. 1.4.1992 in accordance with the law as contained in the order/judgment dated 4.10.1996 passed by Hon'ble Central Administrative Tribunal in O.A.3264/92 titled "A.S.Shekhwat Vs. Union of India & Ors."

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b) Issue an appropriate Writ/Order or Directions to the respondents that in the event the petitioner is found eligible, the petitioner be given all consequential benefits in accordance with law.

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Applicant had not challenged the recommendations of the review DPC held on 30.10.1996 in that Writ Petition. As respondents conveyed to the High Court that review DPC had been held, the CWP was dismissed. In the present OA, the relief claimed is different than that claimed in the aforesaid CWP. As such, the present OA is not hit by res judicata.

7. Consolidated instructions on Departmental Promotion Committees issued by DOP&T vide memorandum No.22011/5/86-Estt.(D) dated 10.4.1989 are relevant in the present matter. Instruction 18.3 is extracted below:

"18.3. A Review DPC is required to consider the case again only with reference to the technical or factual mistakes that took place earlier and it should neither change the grading of an officer without any valid reason (which should be recorded) nor change the zone of consideration nor take into account any increase in the number of vacancies which might have occurred subsequently."

8. We have perused the minutes of the review DPC held on 30.10.1996 to consider promotion of Deputy Commandants to the rank of Commandant in the Special Frontier Force (SFF) in pursuance of this Tribunal's order dated 4.10.1996. The DPC took note of the salient features of the judgment as follows :

"(a) Seniority of Shri AS Shekhawat as fixed by the DPC held on 3.12.1980, placing

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Shri MC Ghansiyal above Shri Shekhawat is in order.

(b) Shri AS Shekhawat cannot claim restoration of his seniority based on the DPC proceedings held on 30 Aug 1988 as this DPC had recommended a panel of 2 officers namely Shri RP Singh and Shri PC Vyas for promotion.

(c) There is nothing on record to substantiate allegations made by Shri AS Shekhawat that the department in general and Maj Gen SK Sarda, the IG, SFF in particular, had acted in any manner which was prejudicial to the interests of Shri AS Shekhawat.

(d) Since the vacancy occurred on 01 Apr 92, there was no justification to hold the DPC treating the vacancy as on 03 Feb 95, as was done by the DPC held on 11 Sep 95."

They also took note of the directions made by the Tribunal. It was considered that the benchmark for the post under consideration was "very good". The DPC evaluated ACRs for six years from 1986-87 to 1991-92 in respect of the three eligible officers including applicant and Shri M.C.Ghansiyal. Since all the three candidates attained the benchmark grading of "very good", all of them were declared fit for promotion. However, Shri M.C.Ghansiyal being the seniormost as also senior to applicant was recommended for promotion as Commandant in the SFF.

9. It has been observed in order dated 4.10.1996 in OA No.3264/1992 that in the DPC held on 8.12.1992, a reference had been made to the case of Shri Ghansiyal, the seniormost Deputy Commandant having overall CR rating of "very good" that he had suffered fracture of the right leg on 18.5.1992 while doing para jumps. The medical board convened on 16.11.1992 held that the officer was

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fit for all duties except para jumping. The DPC considered the question of his fitness as an Administrative Commandant keeping in mind the recommendations of the medical board and the nature of duties for Administrative Commandant as per the Force orders. The DPC came to the conclusion that the officer was held fit for promotion and could undertake responsibilities of the higher rank as stipulated in the Force orders of 7/88 and 13/91. In that DPC, ACRs from 1987-88 to 1991-92 were taken into consideration and Shri Ghansiyal was recommended for promotion.

10. We have gone through the minutes of the review DPC held on 30.10.1996. The assertion of the learned counsel of applicant that two additional ACRs had been taken into consideration by the review DPC is wrong. The review DPC had also not changed the overall grading obtained by applicant and Shri Ghansiyal in the DPC held in 1992. We do not find any infirmity in the selection of Shri Ghansiyal for the post of Commandant on the basis of the recommendations of the review DPC held on 30.10.1996. The view of respondents relating to medical fitness of Shri Ghansiyal is also in order. The procedure adopted by the review DPC and its recommendations have been in consonance with the consolidated instructions dated 10.4.1989 of DOP&T.

11. Having regard to the reasons recorded and discussion made above and finding no merit in the OA, the same is dismissed accordingly.

S. Raju

(Shanker Raju)
Member (J)

V. K. Majotra

(V. K. Majotra)
Member (A)

/as/