

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 482
T. A. No. 452

199 0

DATE OF DECISION 13-8-199 1

Maj. V. D. Uniyal Applicant (s)

Mr. M R Rajendran Nair Advocate for the Applicant (s)

Versus

Union of India represented by Respondent (s)
Secretary to Govt. of India
Ministry of Defence, New Delhi and others

Mr. C. Kochunni Nair, ACGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. N. V. KRISHNAN, ADMINISTRATIVE MEMBER

The Hon'ble Mr. N. DHARMADAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? ✓
2. To be referred to the Reporter or not? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement? >
4. To be circulated to all Benches of the Tribunal? ✓

JUDGEMENT

MR. N. V. Krishnan, Administrative Member

This is an application filed by Major V. D. Uniyal working at present as Administrative Officer, 3 Kerala Girls Bn N.C.C., Quilon. His main grievance is that he has not been promoted to the rank of Lt. Col. while his juniors have been so promoted and that he has also not been granted permanent Commission in the N.C.C. He has therefore sought the following reliefs:

- i) To declare that the applicant is entitled to be promoted as Lt. Colonel by considering him along with his juniors and with reference to the date of promotion of his juniors and to direct that the applicant if found fit shall be promoted with retrospective effect from the date of his juniors' promotion with all consequential benefits including arrears of salary;

- ii) Direct the respondents to grant permanent Commission in the NCC to the applicant
- iii) Direct that the applicant's name shall be removed from the agreed list of suspected officers and the same circulated;
- iv) Direct the respondents to consider the pending representations regarding the above matters and to dispose of the same within a time limit;
- v) Grant such other reliefs as may be prayed for and the Tribunal may deem fit to grant and
- vi) Grant the cost of this O.A. "

2. The respondents have replied as follows:

i) In 1978 the question of granting permanent Commission to him was considered and submitted to the Government for final approval. Before a decision could be taken the Audit reported certain financial irregularities at the NCC Group Head Quarters, Coimbatore Canteen in 1979 in which the applicant was also ^{allegedly} involved. Therefore, the name of the applicant was withdrawn from the list.

ii) The second Review Board Meeting was held in December, 1981 but the official's name was not considered as he was involved in a disciplinary case. He was considered in the Board Meeting for grant of permanent Commission held in December, 1985 and the recommendations were kept in a sealed cover.

iii) In reply to our query, it is stated that the respondents have taken a decision to initiate proceedings for the imposition of a minor penalty and issued a notice to the applicant ^{only} in May, 1991.

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3. Thus, prior to May, 1991, regular disciplinary proceedings had not been initiated. If that be so, the applicant had a right to be considered for promotion along with his juniors whenever their cases were considered by the competent authority and the respondents could not have held back his case from such consideration, merely on the basis of suspicion. While the applicant is entitled to succeed on this ground, we cannot but take note of the fact that he had not agitated the matter before the appropriate forum every time he was superseded.

4. The learned counsel for the respondents produced before us today the sealed cover relating to the Board meeting of 1985 for grant of permanent Commission. This sealed cover was opened and we have perused the recommendations. We notice that the consensus of the Committee is for grant of permanent Commission to the applicant. This has to be considered for necessary action because on that date no disciplinary proceedings was pending against the applicant.

5. The applicant has filed Annexure-I and Annexure-II instructions which relate to the opening and maintenance of "Agreed list" of suspected officers which also indicate how the names once included will be deleted. These instructions are not assailed. Hence, we cannot

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issue any direction in this regard at present as disciplinary proceedings have now been started. We only make it clear that the inclusion of his name in the list will not stand in the way of the applicant's name being considered for promotion.

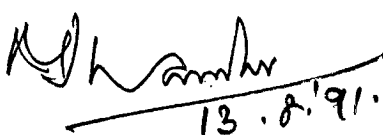
6. For these reasons we dispose of the application with the following directions:

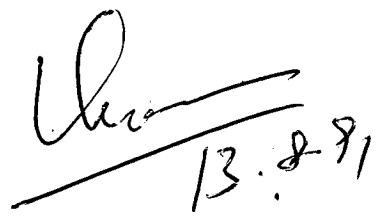
- i) The respondents shall consider the recommendation of the Board meeting held in 1985 regarding grant of permanent Commission and take decision thereon keeping in view the fact that no disciplinary proceedings were pending at that time. for
- ii) The respondents are directed to consider his claim/ from earlier date promotion/as Lt. Colonel in accordance with law *he openly,* and take a decision *L* as prior to May, 1991 no disciplinary proceedings were pending to justify the closed cover procedure.

These directions should be complied with within four months from the date of receipt of a copy of this judgment.

7. We also notice that disciplinary proceedings have been initiated after a lapse of about 12 years. Therefore, there is an urgent need to expedite these proceedings.

8. The application is disposed of as above. There will be no order as to costs.


13.8.91.
(N. DHARMADAN)
JUDICIAL MEMBER


13.8.91
(N. V. KRISHNAN)
ADMINISTRATIVE MEMBER