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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

Original Application No.377/86.

Major Ramesh Chander Datta,
Administrative Officer,
4 Mah. Bn NCC,
Nagpur.

... Applicant.

V/s.

1. Union of India through
The Secretary, Ministry of
Defence Government of India
New Delhi.
2. The Director General
National Cadet Corps
Government of India,
Ministry of Defence,
West Block No.4,
R.K.Pu~~am~~,
New Delhi.110 011.
3. Brigadier (Now Major General)
B.N.Kumar (Former Director NCC
North East Region Shillong,
C/o Chief Engineer, Headquarters
Eastern Command, Fort Williams,
Calcutta.
4. The Group Commander
NCC Group Headquarters, Jorhat
(ASSAM)

... Respondents.

Coram: Hon'ble Member(A), Shri J.G.Rajadhyaksha,
Hon'ble Member(J), Shri M.B.Mujumdar.

Appearances:

Applicant in person
and Mr.J.D.Desai, for
Mr.M.I.Sethna, Counsel
for the Respondents.

JUDGMENT:

(Per Shri J.G.Rajadhyaksha, Member(A)) Dated: 4.12.1987

This application under section 19 of the
Administrative Tribunal Act, 1985 has been filed by Major
Ramesh Chander Datta against the Union of India and the
Directorate General of National Cadet Corps to which
organisation he belongs. Though the application is long
drawn and has a number of contentions raised therein, and
has also a number of annexures attached, It is sufficient

to pinpoint the grievance of the applicant and the reliefs that he seeks. The grievance of the applicant primarily is that he was given adverse Confidential Reports on the basis of which he has been excluded from promotion by the promotion board from being promoted to the post of Lt. Colonel (Selection Grade). The prayers were:

- a) The Annual Confidential Report for 1984-85 initiated by Respondent No.4, reviewed by Respondent No.3 and maintained by Respondent No.2 should be quashed as it has been written and maintained arbitrarily and illegally.
- b) Quash the order dt. 10th January, 1986 of Respondent No.2 communicated to the applicant by Respondent No.4 about his promotion.
- c) Examine the record of promotion board.
- d) Clarify why applicant had got into some problems with Respondent Nos. 2 and 3.
- e) If necessary direct Chief of Army Staff to initiate appropriate disciplinary action against Respondent Nos. 3 and 4.
- f) Quash promotion board proceedings involving the applicant held in December, 1985 and direct them to grant promotion to the applicant.
- g) Awarding suitable damages and .
- h) Awarding costs.

2. The application has been resisted by the Respondents by filing one single reply on behalf of all respondents to the effect that in writing the annual Confidential Report of the applicant no extraneous matters have weighed and that the promotion board of 1984 could not consider applicant because he was not then falling within the zone of consideration. The promotion board 1985 considered the applicant and decided that he was not fit to be promoted. Therefore, the respondents prayed that the application be dismissed with costs.

3. The applicant belongs to the National Cadet Corps, having been appointed in the year 1963 as a Captain. It is his contention that during his service he has been transferred

from place to place. When he was posted at Jorhat some time in 1981, he applied for Married Officers' Quarters, which was not allotted to him till 1983. He was therefore, rightly agitated in this matter and he found that in a Military Station there was discrimination against Officers belonging to the National Cadet Corps. He, therefore, espoused the cause of N.C.C. Officers in general and persuaded the authorities to change their approach and policies towards N.C.C. Officers in the matter of allotment of quarters. A couple of N.C.C. Officers had gone to a Civil Courts in the matter of allotment of quarters and thinking that not the Group Commander but the applicant was at the root of this Civil Litigation, the Army authorities harboured a prejudice against him which was reflected in an adverse Confidential Report given to him for the year 1984-85. It is his claim further that he had completed 21 years of qualifying service in 1984 and when the promotion board met in October, 1984 he should have been considered for his promotion as Lt. Colonel (Selection Grade). This was not done. It is his further contention that when he was considered in the following year the adverse Confidential Report was already on record and, therefore, the Promotion Board overlooked his claim and superceded him.

4. The applicant arguing in person drew our attention to a number of annexures to the application to prove his point that he had been discriminated against in the matter of allotment of Married Quarters and was kept without such quarters for almost 3 years after he went to Jorhat. He was transferred on temporary duty from Jorhat and thereafter transferred out of Jorhat and all along the attitude of his Group Commandant showed that because of the Civil Litigation

filed by a couple of officers, the authorities had felt that the applicant should be penalised because of the lead that he took in such litigation. It is his claim that it was not he but the Group Commander himself who had instigated certain officers to go to the Civil Court in litigation and that he was being victimised only because he had himself agitated his own problem about the allotment of Married Officers Quarters to himself and in general to N.C.C. Officers. The applicant has given a number of cases by way of authority. We do not find them to be helpful to the applicant and therefore they are not discussed.

5. Mr.J.D.Desai for Mr.M.I.Sethna, Counsel for the Respondents showed us a couple of communications and argued that in fact there was no question of victimisation of the applicant. The applicant has been informed in March, 1985 i.e. before writing the Annual Confidential Report for the year 1984-85 that there were a number of short-comings in his performance. This would have weighed with the promotion board when they considered him for promotion in 1985. We were also shown a confidential communication, which we also showed to the applicant, in which the comments of Major Gen. B.N.Kumar former Director of N.C.C. in the N.C.C. Directorate have been recorded. He has said as follows:-

"My remarks as given are a correct picture as it was possible for me to assess the Officers' performance carefully and correctly. My remarks can have no relation to his previous record of service and they have not been made for any extraneous reasons as alleged by Mr.R.C.Datta. The Officer was verbally counselled by me on various occasions and I had detailed discussion with him on the subject lasting for hours at a time."

This is his comment on the representation of the applicant against the adverse remarks which had been communicated to him as per Annexure '8' (Page 73) of the compilation of

Annexures to the applicant's application. These are extracts of the reviewing Officer (Brigadier) (now Major General) B.N.Kumar, Ex-Director N.C.C. Directorate, North Eastern Region. The remarks read as follows:

"..... spent a lot of time in scheming and manipulating the advice between Officers which led to souring of relations with the local army formation."

6. It is true that no one could perhaps find fault with an Officer if he agitated his own cause in the matter of allotment of Married Officers' Quarters or in the matter of a genuine grievance in service matters. If, therefore, the applicant had resorted to representations he could not possibly be blamed for those.

7. But in the course of his arguments, the applicant himself stated that he had espoused the cause of N.C.C. Officers in general and got the discrimination against them modified or removed from the authorities. This is an indication that the applicant was in fact agitating not only his personnel grievance, but also the grievances^{*} of N.C.C. Officers as a class.

8. What is more important is that the N.C.C. though not an Armed Force of the Union could be described as an organisation which prepares the young student generation for a Military career in any of the three wings of the Defence Services. Maintenance of discipline in such service is of utmost importance, and it is necessary that the Officers show exemplary conduct to the young N.C.C. Cadets so that they can learn obedience, discipline and also learn to bear hardships. We are firmly of the view that Trade Unionistic activities have no place in a Military or a Para-Military organisation and much less in the N.C.C. which

is manned at the Cadet level entirely by students. Already there is adequate student agitation in the country, and it is not possible to allow it to infiltrate into the N.C.C. for reasons we have already mentioned. In the circumstances, if the superior Officers of the applicant felt that instead of his legitimate duties he had been participating in agitational activities, they cannot be blamed for putting that down into his Annual Confidential Report. What is more important is that the applicant had an opportunity of representing against those remarks. We have seen the comments given by Major Gen. B.N.Kumar both in his review of the annual confidential report of applicant and on his representation against such remarks relying on which the Army Headquarters turned down the applicant's representation. In other words, all authorities in the Defence Ministry in the formation known as Directorate General of N.C.C. have found that the Annual Confidential Report for the year 1984-85 given to the applicant was justified. Had that representation not been turned down, and if in the meanwhile the promotion of the applicant were to be considered, there would perhaps have been a cause for a grievance. Such not being the case we cannot find fault with the Promotion Board for taking into account the confirmed Annual Confidential Report in respect of the applicant.

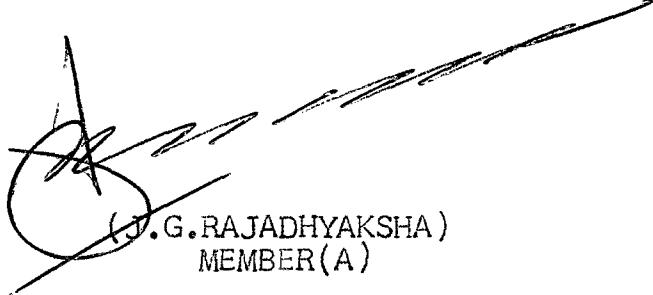
9. The second aspect may also now be briefly discussed. Admittedly, 21 years of service would entitle the applicant being considered for promotion to the post of Lt.Colonel. On his own admission the applicant completed 21 years of service on or about the 13th October, 1984. The respondents have stated that those Officers who had completed 21 years of service on the 30th September, 1984 were considered by the promotion board which met on 30.10.1984. It is not the

applicant's case that in 1984 the Promotion Board considered any Officers who had not completed 21 years of service. Therefore, if in 1984 the applicant was not considered, he can have no grievance against his exclusion from consideration for the simple reason that he was not falling in the zone of consideration along with other qualified officers. The applicant has by submitting Miscellaneous Petitions pointed out that the Promotion Board considered a large number of Officers, but promoted only a small percentage thereof and the percentage has been declining from year to year. Perhaps the applicant wants to suggest that the Promotion Board has been arbitrary in its approach. We are not however, impressed with this argument for the simple reason that the Promotion Board (as in the case of the Departmental Promotion Committees in Civilian Services) will have to take into account the number of vacancies and appropriate number of qualified Officers to be considered against those vacancies and recommend promotion only to those who were found fit in adequate numbers to fill those vacancies as well as to provide for some waiting list, if necessary. This is the normal process of promotion boards and if in any year vacancies the number of ~~xxxxxxxxxx~~ is such that the Promotion Board has to consider a large number of officers and make their choice of the best amongst them, whatever might be the percentage of persons so selected, there can be no fault found with the proceedings of the Promotion Board. We had at

one stage considered the possibilities or necessity of calling for and studying the proceedings of the promotion board of 1984 & 85. Since however, the applicant admitted that in 1984 no one who had not completed 21 years of service had been considered, we do not feel it necessary to see the proceedings of the 1984, Promotion Board. As for the 1985 Promotion Board, we have already discussed the fact that the board did not find applicant suitable for promotion. We do not sit in appeal over the proceedings of the promotion boards. If as discussed earlier, ~~in~~ the confirmed Annual Confidential Report which is adverse to the applicant was taken into account by the promotion board, then again the proceedings of the Board cannot be faulted on that account. Thus if the promotion board has passed over the applicant in 1985 the Board cannot be blamed.

10. In the result we find that the application of the applicant has not much substance in it, because, first of all he has earned an adverse remark, represented ~~in~~ against it and those representations have been considered and turned down by the Superior Authorities. There can be no malice in that procedure as the superior officers would not even perhaps personally know the applicant and his approach and attitude to work or to his activities. The same can be said about the promotion board which would normally go entirely by the records of the Officers before them. In the circumstances the application must fail.

We therefore, order that application be dismissed, but in the circumstances of the case we pass no orders as to costs.



(J.G. RAJADHYAKSHA)
MEMBER(A)



(M.B. MUJUMDAR)
MEMBER(J).

Delivered in open Court
today 11.12.98

