

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Transferred Application No. 271 of 2010
[Writ Petition No. 4051 of 2000 of M.P. High Court at Jabalpur]

Tuesday the 26th day of April, 2011

“Hon’ble Mr. Justice A.N. Varma, Member (J)
Hon’ble Lt. Gen. R.K. Chhabra, Member (A)”

Lieutenant Colonel D.S. Cheema S/o late Shri Dessa Singh, AEC Training College, Pachmarhi, District Hoshangabad (Madhya Pradesh).

Applicant

By Legal Practitioner Shri K.C. Ghildiyal, Advocate.

Versus

1. Union of India, through the Secretary, Ministry of Defence, Government of India, New Delhi.
2. Chief of the Army Staff, Army Headquarters, DHQ PO, New Delhi.
3. Military Secretary, Military Secretary’s Branch, Army Headquarters, DHQ PO, New Delhi.
4. Brigadier S.C. Gautam, Ex. President 20 Service Selection Board, present C.C. Army Headquarters 1 Corps C/o 56 A.P.O.

Respondents

By Legal Practitioner Shri K.D. Nag, Advocate, Senior Central Government Counsel.

ORDER

“Hon’ble Mr. Justice A.N. Varma”

1. This matter is before us by way of transfer from Madhya Pradesh High Court at Jabalpur under Section 34 of the Armed Forces Tribunal Act, 2007.

2. By means of a petition, filed under Article 226 of the Constitution of India (Writ Petition No. 4051 of 2009), the applicant assailed the validity and legality of the Confidential Report relating to period 01.06.1995 to 31.05.1996 and Special Annual Confidential Report initiated in August, 1996, reviewed by respondent No. 4 in capacity of Reviewing Officer which according to the applicant affected the selection making process and led to rejection of his candidature for promotion to higher rank.

3. The factual matrix of the case is given in the succeeding paragraphs :-

4. The applicant was commissioned as 2nd Lieutenant in Army Education Corps on 16.06.1974. According to him in his entire service career he served the organization with utmost sincerity, honesty, loyalty and dedication. He was also promoted to higher ranks in his own turn. During his service career the applicant served in various peace as well as field stations under different Reporting Officers. As per his case there had been no occasion for reporting any shortcoming by his superiors. Certain extra-curricular activities such as Sky Diving Course etc. carried out by him have also been elaborated in the petition.

5. According to the averments made in the petition, while serving at 20 Service Selection Board, some time in May 1995 the applicant was summoned by Major

General B.R. Verma, the then Commander of the Selection Centre. According to the applicant said Major General Verma told him that since his retirement was approaching and he was worried about his post retirement settlement, he was planning to start a Coaching Academy either at Bhopal or at Delhi as such he asked the applicant to supply him a manuscript copy of TAT, WAT and SRT test and written solution to each question as the applicant was in possession of all testing material in the capacity of the Technical Officer/Psychologist of the Selection Board. As the said request of Major General Verma was totally unwarranted, therefore, the applicant did not fulfill the above demand, consequent to which he bore a grudge against him. The applicant also is said to have written a Demi Official letter dated 23.05.1995 to Major General Verma. It is further the case of the applicant that the said D.O. letter resulted in humiliation and harassment by Brigadier S.C. Goel in many ways who was the then President of 20 Service Selection Board,. Since Brigadier S.C. Goel was the Reviewing Officer and Major General B.R. Verma was the Senior Reviewing Officer for the period 31.07.1994 to 31.05.1997 as such the applicant felt that it was due to these reports that he could not make the grade before No. 3 Selection Board.

6. The other report pertains to the period 01.06.1995 to 31.05.1996 which was reviewed by Brigadier S.C. Gautam i.e. respondent No. 4. According to the applicant the said respondent came on posting to the Selection Centre and took over the charge of 20 Service Selection Board. On coming to the Selection Centre the respondent No. 4 preferred a false claim to Controller Defence Accounts stating

therein that he had moved his family and household items from Masimpur (Assam) which in fact was false as his family had moved from Delhi. At the same time respondent No. 4 submitted a non-availability certificate in respect of the accommodation to Station Headquarters, Bhopal which was issued by Station Headquarters, Agartala stating therein that the officer had not stayed with his family at Masimpur/Agartala. According to the applicant somebody wrote an anonymous letter to the Army Headquarters based on which an inquiry was ordered. Respondent No. 4 suspected that the applicant being the Technical Officer and his staff officer, was instrumental in writing the anonymous letter and as such the applicant was insulted by the respondent No. 4 in front of other officers of 20 Service Selection Board. On account of the said episode the applicant apprehended that the said respondent No. 4 had damaged his Annual Confidential Report from 01.06.1995 to 31.05.1996 as a result of which he could not make the grade for promotion to the higher rank.

7. On 16.09.1998 the applicant submitted a Statutory Complaint before respondent No. 1 which was rejected subject to expunction of Senior Reviewing Officer's entire assessment in the Confidential Report for the period from 8/94 to 5/95 on the ground of inconsistency. According to the applicant since the assessment of Senior Reviewing Officer i.e. Major General B.R. Verma was found inconsistent by respondent No. 1 thus the applicant was vindicated. The applicant had been denied promotion to the rank of acting Colonel on account of existence of impugned Annual Confidential Reports in his service record which according to

him affected the selection process and led to the rejection of his candidature. The applicant approached the Hon'ble Madhya Pradesh High Court in Writ Petition with following reliefs :-

“i) That this Hon'ble court be pleased to issue a writ of certiorari thereby quashing the assessment made by respondent No. 4 in the Annual Confidential Report covering period 6/95 to 5/96 and Special Confidential Report initiated in August 1996 in respect of the petitioner.

ii) That the Hon'ble Court may be pleased to issue writ in the nature of mandamus thereby directing the respondents to hold fresh board in respect of the petitioner to consider his case for promotion to the rank of acting Colonel and grant him all three chances as are available to any other officer in the Army and on the result of the selection Board the petitioner may be directed to be granted promotion to the rank of acting Colonel from the due date with all consequential benefits including pay and allowances.

iii) This Hon'ble court may be further pleased to direct the respondent to produce the complete record containing confidential report of the petitioner and also complete proceedings of the selection board which considered the case of the petitioner for promotion to the rank of acting Colonel as a fresh case and also first review case.

iv) This Hon'ble Court may be pleased to quash any other ACRs which is found to be inconsistent with career profile of the petitioner on perusal of the ACR Dossier of the petitioner.

v) *Any other relief which may deem fit and proper in the circumstances of the case may also be granted.*”

8. The pleadings between the parties had already been exchanged before the High Court at Jabalpur. Upon constitution of the Tribunal the matter is before us by way of transfer.

9. We have heard Shri K.C. Ghildiyal learned Counsel for the applicant and Shri K.D. Nag, Senior Central Government Counsel for respondents at some length.

10. Learned Counsel for the applicant vehemently argued that it was on account of ill will and personal bias that Major General B.R. Verma and Brigadier S.C. Gautam/respondent No. 4 bore against the applicant, that he has been penalized in not having been granted promotion to the higher rank. It was further asserted that the respondent No. 4 in the capacity of Reviewing Officer, out of sheer malice and bias had been instrumental in negating the claim of the applicant for promotion to higher rank. As per submission of the learned Counsel, the impugned ACRs have adversely affected the selection making process, therefore, the entire process itself is liable to be set aside. It was also argued that the order rejecting the Statutory Complaint of the applicant by a cryptic order is also manifestly illegal.

11. Shri K.D. Nag Learned Counsel for the respondents in opposition refuted the stand taken by the applicant. He submitted that the claim of the applicant for promotion to the higher rank had been considered in right perspective. Upon consideration of his overall profile and performance it was found that the applicant was not suitable for promotion to the higher rank. It was further pointed out that the

applicant was granted Special Review as a fresh case by respondent No. 3 in June, 2000 consequent to expunction of Senior Reviewing Officers ACR for the period 8/94 to 5/95. It was further submitted that the process of selection is not liable to be set aside as argued by the learned Counsel for the applicant as the same is based on objective assessment of the performance of the applicant.

12. The element of malice and bias against the respondent No. 4 was also denied. In so far as the question of bias and malice against Major General B.R. Verma and Brigadier S.C. Goel, learned Counsel submitted that since they are not parties to the petition as such truthfulness of the allegations made against them cannot be substantiated. It was also pointed out that element of bias and malafide are required to be specifically pleaded and from perusal of the memo of the petition there is nothing to infer bias and malice against the aforesaid two officials. It has also been pointed out that there is also no material on record which can lead to inference of malice and bias. As per learned Counsel mere allegations of bias and malice are not sufficient grounds to record a finding on the same unless proved to the hilt.

13. Vide order dated 16.09.2010 the learned Central Government Counsel was directed to produce relevant record pertaining to the applicant's Annual Confidential Report and proceedings of the Promotion Board on the date fixed.

14. In compliance of the said order the entire record as aforesaid has been produced before us and we have gone through the same.

15. Since the learned Counsel for the applicant strenuously argued and laid great stress that the entire selection process is tainted with element of bias and malafides

which according to him has vitiated the entire process of promotion, therefore we advert first to answer the said question.

16. Regarding Bias and Malafides, the applicant in para 5.8 of his petition has averred that Major General B.R. Verma, the then Commander of the Selection Centre asked him to supply a manuscript copy of TAT, WAT and SRT Test and written solution to each question as he was going to retire shortly and he intended to start a Coaching Academy either at Bhopal or at Delhi. The applicant who at the relevant time was incharge and store holder of all testing material, did not fulfill the demand of General Verma which infuriated him and Brigadier S.C. Goel who was the then President of 20 S.S.B. and Recruiting Officer, humiliated and harassed the applicant. According to the applicant he felt that on this count he was denied promotion to the next rank. In para (vii) of the Statutory Complaint (Annexure No. P-5 to the petition) some allegations of ill will and oblique motive have been alleged against Brigadier Goel. Upon perusal of original Statutory Complaint dated 16.11.1998 preferred by the applicant before the respondents and produced before us, we find that para (vii) pertaining to allegations against Brigadier Goel is missing. In para 5.10 of the petition the applicant has alleged that an anonymous complaint was made to the Army Headquarters regarding the claim submitted by Brigadier S.C. Gautam (Respondent No. 4). Respondent No. 4 somehow suspected the applicant to be instrumental in initiating the anonymous letter as a result of which the applicant was openly insulted and humiliated by him in presence of

several officers. This episode according to the applicant was also one of the cause for his non empanelment.

17. As would appear from perusal of the frame of the petition, Major General Verma and Brigadier S.C. Goel are not parties to the petition as such the veracity of the allegations made in the aforesaid paras cannot be authenticated. More over it is a settled proposition that a person against whom allegations of Bias and Malafides are made, he should be a party to the proceedings so as to answer the truthfulness or otherwise of the said allegations.

18. Regarding the anonymous complaint an inquiry was held which was subsequently closed, as allegations made in the complaint were found unsubstantiated. In Counter Affidavit filed on behalf of all the respondents it has been categorically denied that the applicant was suspected of being the author of the complaint and therefore was openly insulted by respondent No. 4.

19. It is a well settled principle that mere general statements will not be sufficient for the purpose of indication of ill will. There must be specific and unambiguous allegations and cogent evidence available on record to come to the conclusion as to whether in fact there was existing any element of bias which resulted in miscarriage of justice. Mere apprehensions or unfounded allegations do not constitute factum of Bias and Malice.

20. In Kumaon Mandal Vikas Nigam Ltd. Versus Girja Shankar Pant and others reported in 2001 (1) A.W.C. 83 (S.C.) the Hon'ble Supreme Court explaining the connotation of words 'Bias and Malice' observed as follows :-

10. *The word Bias in popular English parlance stands included within the attributes and broader purview of the word malice, which in common acceptation mean and imply spite or ill-will (Strouds Judicial Dictionary (5th Ed.) Volume 3) and it is now well settled that mere general statements will not be sufficient for the purposes of indication of ill-will. There must be cogent evidence available on record to come to the conclusion as to whether in fact there was existing a bias which resulted in the miscarriage of justice.*

30. *The test, therefore, is as to whether a mere apprehension of bias or there being a real danger of bias and it is on this score that the surrounding circumstances must and ought to be collated and necessary conclusion drawn therefrom - In the event however the conclusion is otherwise inescapable that there is existing a real danger of bias, the administrative action cannot be sustained: If on the other hand, the allegations pertaining to bias is rather fanciful and otherwise to avoid a particular court, tribunal or authority, question of declaring them to be unsustainable would not arise. The requirement is availability of positive and cogent evidence and it is in this context that we do record our concurrence with the view expressed by the Court of Appeal in Locabail case (supra).”*

21. In State of Punjab Versus V.K. Khanna and others reported in (2001) 2 Supreme Court Cases 330 the Hon’ble Apex Court explained the manner in which element of bias and malafides is to be proved. The Hon’ble Court in para 5 and 6 of the report observed as follows :-

“5. *Whereas fairness is synonymous with reasonableness bias stands included within the attributes and broader purview of the word malice which in common acceptation means and implies spite or ill will. One*

redeeming feature in the matter of attributing bias or malice and is now well settled that mere general statements will not be sufficient for the purposes of indication of ill will. There must be cogent evidence available on record to come to the conclusion as to whether in fact, there was existing a bias or a malafide move which results in the miscarriage of justice (see in this context Kumaon Mandal Vikas Nigam v. Girija Shankar Pant & Ors: JT 2000 Suppl.II 206). In almost all legal enquiries, intention as distinguished from motive is the all important factor and in common parlance a malicious act stands equated with an intentional act without just cause or excuse. In the case of Jones Brothers (Hunstanton) Ltd. v. Stevens (1955 1 Q.B. 275) the Court of Appeal has stated upon reliance on the decision of Lumley v. Gye (2 E & B. 216) as below:

“For this purpose maliciously means no more than knowingly. This was distinctly laid down in Lumley v. Gye, where Crompton, J. said that it was clear that a person who wrongfully and maliciously, or, which is the same thing, with notice, interrupts the relation of master and servant by harbouring and keeping the servant after he has quitted his master during his period of service commits a wrongful act for which is responsible in law. Malice in law means the doing of a wrongful act intentionally without just cause or excuse: Bromage v. Prosser (1825 1 C. & P.673) Intentionally refers to the doing of the act; it does not mean that the defendant meant to be spiteful, though sometimes, as, for instance to rebut a plea of privilege in defamation, malice in fact has to be proved.”

6. In *Girija Shankar Pants case (supra)* this Court having regard to the changing structure of the society stated that the modernisation of the society with the passage of time, has its due impact on the concept of

bias as well. Tracing the test of real likelihood and reasonable suspicion, reliance was placed in the decision in the case of Parthasarthy (S. Parthasarthy v. State of Andhra Pradesh: 1974 (3) SCC 459) wherein Mathew, J. observed:

16. The tests of real likelihood and reasonable suspicion are really inconsistent with each other. We think that the reviewing authority must make a determination on the basis of the whole evidence before it, whether a reasonable man would in the circumstances infer that there is real likelihood of bias. The Court must look at the impression which other people have. This follows from the principle that justice must not only be done but seen to be done. If right minded persons would think that there is real likelihood of bias on the part of an inquiring officer, he must not conduct the enquiry; nevertheless, there must be a real likelihood of bias. Surmise or conjecture would not be enough. There must exist circumstances from which reasonable men would think it probable or likely that the inquiring officer will be prejudiced against the delinquent. The Court will not inquire whether he was really prejudiced. If a reasonable man would think on the basis of the existing circumstances that he is likely to be prejudiced, that is sufficient to quash the decision (see per Lord Denning, H.R. in Metropolitan Properties Co. (F.G.C.) Ltd. v. Lannon and Others, etc. : (1968) 3 WLR 694 at 707). We should not, however, be understood to deny that the Court might with greater propriety apply the reasonable suspicion test in criminal or in proceedings analogous to criminal proceedings.”

22. In Union of India and Others Vs. Ashok Kumar and others reported in AIR 2006 Supreme Court 124 the Hon’ble Supreme Court explained the burden of proof

regarding imputations of bias and malafides. The Hon'ble Court in para 20 of the report observed as follows :-

“20. Doubtless, he who seeks to invalidate or nullify any act or order must establish the charge of bad faith, an abuse or a misuse by the authority of its powers. While the indirect motive or purpose, or bad faith or personal ill-will is not to be held established except on clear proof thereof, it is obviously difficult to establish the state of a man's mind, for that is what the employee has to establish in this case, though this may sometimes be done. The difficulty is not lessened when one has to establish that a person apparently acting on the legitimate exercise of power has, in fact, been acting mala fide in the sense of pursuing an illegitimate aim. It is not the law that mala fide in the sense of improper motive should be established only by direct evidence. But it must be discernible from the order impugned or must be shown from the established surrounding factors which preceded the order. If bad faith would vitiate the order, the same can, in our opinion, be deduced as a reasonable and inescapable inference from proved facts. (S. Pratap Singh v. State of Punjab AIR 1964 SC 72). It cannot be overlooked that burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demand proof of a high order of credibility. As noted by this Court in E. P. Royappa v. State of Tamil Nadu and Another (AIR 1974 SC 555), Courts would be slow to draw dubious inferences from incomplete facts placed before it by a party, particularly when the imputations are grave and they are made against the holder of an office which has a high responsibility in the administration. (See Indian Railway Construction Co. Ltd. v. Ajay Kumar 2003 (4) SCC 579).”

23. In *Gulam Mustafa and Others Vs. The State of Maharashtra and others* reported in AIR 1977 Supreme Court 448 the Apex Court has held that malafide is the last refuge of a losing litigant. In para 2 of the report it observed as follows :-

“2. Striking down any act for mala fide exercise of power is a judicial reserve power exercised lethally, but rarely. The charge of mala fides against public bodies and authorities is more easily made than made out. It is the last refuge of a losing litigant. Even so, we will examine the merits of the contention here from the point of view of serious factors placed for our consideration.”

24. Thus upon going through the averments made in the petition and also keeping in mind the proposition laid down in the aforesaid decisions of the Apex Court, we find that the applicant has utterly failed to establish element of bias and malafide in the conduct of the selection process. Neither the allegations made in the petition are sufficient to establish element of bias and malafides, nor is there any material available on record to come to the conclusion that there existed any bias which resulted in miscarriage of justice. Mere general statements and apprehensions cannot lead to the inference of bias and mala fides. More over the persons against whom allegations have been made are not parties to the proceedings to answer the correctness of the same. We thus find that selection process is not vitiated by bias and malafides.

25. System of promotion in Army is pyramidal in nature i.e. as the rank increases, the number of vacancies decrease. From the broad base of pyramid only

those officers whose record of service merits promotion within a particular batch are selected to fill the vacancies available in higher ranks. Promotion upto the rank of Substantive Major is carried out, based upon length of service provided the officer fulfills the mandatory requirements of such a promotion. Promotion above the rank of Major is done through process of selection. All the Officers of a particular batch are considered together with cut off ACR and inputs on the basis of individual career profile and batch merit and thereafter empanelled or not empanelled for promotion. Seniority in itself is no consideration before the Selection Board for empanelment or non empanelment. As per applicable policy an officer is entitled to three considerations for promotion to Selection Rank vis-à-vis fresh consideration, First Review and Final Review. In case an officer is not approved as a fresh case but approved as First Review or Final Review he loses seniority vis-à-vis his original batch. After three considerations, if an officer is not approved, he is deemed to be finally superseded.

26. The Selection system has been devised to ensure objectivity and impartiality in selection process so as to give fair consideration to those who are found eligible for promotion and further to ensure selection of best officers who are considered to shoulder the responsibility of higher ranks.

27. As per Special Army Order No. 3/S/89 and other relevant policy, at any given time the grading are numerical from 1 to 9 and in form of pen picture. The entire assessment of an officer in any ACR consists of assessment of various reporting officers whose assessment are independent of each other. The Selection

Board takes into consideration number of factors such as war/operational reports, course reports, ACR performance in Command and Staff, honours and awards, disciplinary background, etc. Selection or rejection is based on overall profile of an officer vis-à-vis comparative merit of his batch mate. It is the function of the Selection Board to assess relative merit of various officers.

28. We also find from perusal of the petition that no oblique motive, ill will or bias has been alleged or even suggested by the applicant against the Members of the Selection Board. There is as such no reason or occasion to infer such motive against the Members of the Selection Board. Courts cannot encroach upon the powers and conclusion arrived at by the Selection Boards by substituting its own views. The decision of the Selection Board can be interfered with only when it is alleged irregularity in constitution of the Committee or its procedure, or the Selection are proved malafide affecting the selection.

29. In Air Vice Marshal S.L. Chhabra, VSM (Retd.) Vrsus Union of India and another reported in 1993 Supplementary (4) Supreme Court Cases 441. The Hon'ble Supreme Court while commenting upon the scope of judicial review in respect of decision taken by Selection Board held as follows:-

“10. It is well known that a Selection Board, while considering the suitability of an officer for promotion to a higher post or rank, takes into consideration several factors and it is not solely based on the Appraisal Report of the controlling officer. The learned Additional Solicitor General produced the proceedings of the Selection Board of 1987 and pointed out that the Selection Board had postponed the promotion of the appellant on the ground, that only one report was available by that time and as such

decision was taken to watch the performance of the appellant at least for a year more, to assess his potentiality and suitability for discharging the higher responsibility attached to the rank of Air Vice Marshal. The aforesaid fact has been mentioned in the proceedings of the Selection Board of the year 1987. In such a situation, it was neither possible for the High Court, nor is possible for this Court to act as a court of appeal against the decision of the Selection Board, which has been vested with the power of selection of an officer for being promote to the rank of Air Vice Marshal. No oblique motive has been suggested on behalf of the 673 appellant against any of the members of the Selection Board and there is no reason or occasion for us to infer such motive on the part of the members of the Selection Board for denying the promotion to the appellant with reference to the year 1987. Public interest should be the primary consideration of all Selection Boards, constituted for selecting candidates, for promotion to the higher posts, but it is all the more important in respect of Selection Boards, meant for selecting officers for higher posts in the Indian Air Force. The court cannot encroach over this power, by substituting its own view and opinion. According to us, there is no scope to interfere with the decision of the Selection Board of 1987, merely on the ground that adverse remarks, in the Appraisal Report of 1986, which were placed before the Selection Board in the year 1987, were later expunged.

30. In *Dalpat Abasaheb Solunke and others Versus Dr. B.S. Mahajan and others* reported in (1990) 1 Supreme Court Cases 305 the Apex Court again while considering the scope of judicial review held as follows :-

“12. It will thus appear that apart from the fact that the High Court has rolled the cases of the two appointees in one, though their appointments are not assailable on the same grounds, the court has also found it necessary to sit in appeal over the decision of the Selection Committee and to embark

upon deciding the relative merits of the candidates. It is needless to emphasise that it is not the function of the court to hear appeals over the decision of the Selection Committees and to scrutinize the relative merits of the candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The court has no such expertise. The decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the Committee or its procedure vitiating the selection, or proved mala fides affecting the selection etc. it is not disputed that in the present case the University had constituted the Committee in due compliance with the relevant statutes. The Committee consisted of experts and it selected the candidates after going through all the relevant material before it. In sitting in appeal over the selection so made and in setting it aside on the ground of the so called comparative merits of the candidates as assessed by the court, the High Court went wrong and exceeded its jurisdiction.”

31. In Union of India and others Versus Lt. Gen. Rajendra Singh Kadyan and another reported in 2000 (6) Supreme Court Cases 698 Apex Court while considering the scope of judicial review in the matter of selection observed as follows :-

“29. The contention put forth before us is that there are factual inaccuracies in the statement recorded by the Cabinet Secretary in his note and, therefore, must be deemed to be vitiated so as to reach a conclusion that the decision of the Government in this regard is not based on proper material. The learned Attorney General, therefore, took great pains to bring the entire records relating to the relevant period which was considered by the Cabinet Secretary and sought to point out that there were notings available on those files which justify these remarks. Prima facie, we cannot

say, having gone through those records, that these notings are baseless. Critical analysis or appraisal of the file by the Court may neither be conducive to the interests of the officers concerned or for the morale of the entire force. May be one may emphasize one aspect rather than the other but in the appraisal of the total profile, the entire service profile has been taken care of by the authorities concerned and we cannot substitute our view to that of the authorities. It is a well-known principle of administrative law that when relevant considerations have been taken note of and irrelevant aspects have been eschewed from consideration and that no relevant aspect has been ignored and the administrative decisions has nexus to the facts on record, the same cannot be attacked on merits. Judicial review is permissible only to the extent of finding whether process in reaching decision has been observed correctly and not the decision as such. In that view of the matter, we think there is no justification for the High Court to have interfered with the order made by the Government.”

32. In *Amrik Singh Versus Union of India Versus Union of India* and others reported in (2001) 10 Supreme Court Cases 424 the Hon'ble Supreme Court observed that Court cannot enter into correctness of the assessment made by the Selection Board. In paragraph 21 of the said judgment it observed as follows :-

“21. In the result, we are not inclined to grant any relief to the appellant in spite of the fact that his performance in the subsequent years has been shown to be very good and his rating were very high. Ultimately the single adverse remark of 1985-86 by the Reviewing Officer had stood in his way, not only at the time of original consideration but also when the matter was considered afresh pursuant to the directions of the High court. The result may be unfortunate. But the scope of the jurisdiction of the High Court being very

limited, we cannot go into the correctness of the adverse remarks nor into the assessment made by the Selection Board on the two occasions.”

33. In Major General I.P.S. Dewan Versus Union of India and others reported in (1995) 3 Supreme Court Cases 383 the Hon'ble Apex Court while considering the scope of judicial review in the decision taken by the Selection Committee/Selection Board observed that Selection Committee/Selection Board is not obliged to record reasons for its decision while they are not selecting a particular person. In paragraphs 17 and 18 of the said judgment it observed as follows :-

“17. Sri Ramaswamy relied upon the decision in Union of India v. H.P.Chothia & Ors. (1978 (2) S.C.C.586) in support of his yet another submission that where allegations of arbitrariness are made against a Selection Board/Selection Committee, one of the members of the Board/Committee should file a counter-affidavit explaining the circumstances in which the petitioner was not selected. We are unable to find any such proposition flowing from such decision. That was a case where neither the relevant record was produced nor did any responsible person swear to an affidavit with respect to reasons for which the petitioner therein was not included in the Select list. That is not the situation here, apart from the fact that there is no specific allegation of arbitrary conduct on the part of the Selection Board. The respondents have also produced all the relevant records which we have Perused.

18. Sri Ramaswamy then relied upon the decision in The Manager, Government Branch Press & Anr. v. D.B.Belliappa (1979 (2) S.C.R.458) in support of his submission that administrative orders affecting the rights of citizens should contain reasons therefore We are afraid, the said principle cannot be extended to matters of selection. Unless the rules so require, the Selection Committee/Selection Board is not obliged to record reasons why

they are not selecting a particular person and/or why they are selecting a particular person, as the case may be. If the said decision is sought to be relied upon with respect to the adverse remarks made against the appellant, the attack should fail for the reason that the memo containing adverse remarks in this case does set out the particulars in support of the same. It is equally relevant to note that no allegation of malafides or arbitrariness has been levelled against the Chief of the Army Staff who made the said remarks.”

34. The Selection Board is constituted by Senior Officers and presided over by an Officer of the rank of Major General. The Selection Board is not even aware of the identity of the candidates to be considered by them because only in the members’ data sheet all the information of the candidates required to be considered by the Selection Board are stated, but the identity of the officer is not disclosed. In such situation there cannot be even a single instance of bias, unfairness, impartiality or illegality.

35. In *Surinder Shukla Versus Union of India* reported in (2008) 2 Supreme Court Cases 649 Hon’ble Supreme Court observed as follows :-

“11. Considering the comparative batch merit, if the Selection Board did not recommend the name of the appellant for promotion to the rank of Colonel which appears to have been approved by the Chief of Army Staff, it is not for the court exercising power of judicial review to enter into the merit of the decision. The Selection Board was constituted by senior officers presided over by an officer of the rank of Lt. General. It has been contended before us that the Selection Board was not even aware of the identity of the candidates considered by them because only in the member data sheet all the information of the candidates required to be considered by the Selection

Board are stated, but the identity of the officer is not disclosed. The appellant moreover did not allege any mala fide against the members of the Selection Board. What impelled the Selection Board not to recommend his case but the names of other two officers is not known.

12. *The said Col. A.P.S. Panwar and Col. V.K. Sinha were furthermore not impleaded as parties in the writ petition. In their absence, the writ petition could not have been effectively adjudicated upon.*

13. *In Union of India v. Lt. Gen. Rajendra Singh kadyan it was held (SCC p. 715, para 29)*

“29. It is a well-known principle of administrative law that when relevant considerations have been taken note of and irrelevant aspects have been eschewed from consideration and that no relevant aspect has been ignored and the administrative decisions has nexus to the facts on record, the same cannot be attacked on merits. Judicial review is permissible only to the extent of finding whether process in reaching decision has been observed correctly and not the decision as such. In that view of the matter, we think there is no justification for the High Court to have interfered with the order made by the Government.”

The said views have been reiterated in Amrik Singh v. Union of India.

14. *The peculiarities of special requirements of defence services in a case of this nature must also be kept in view. The considerations which apply to other government servants in the matter of promotion may not be held to be applicable in the Army services. (See Lt. Col. K.D. Gupta v. Union of India).”*

36. As is clearly decipherable from the proposition laid down by the aforesaid decisions of the Apex Court, the Courts should not encroach upon the powers of the Selection Board by substituting its own findings. The Selection Board consists

of very senior and high ranking officers and identity of officers who are being considered in the Selection process is kept secret and the only qualitative material which is to be considered is placed before the Board, therefore, unless any oblique motive, ill will or bias has been alleged against the Members of the Selection Board, the proceedings cannot be interfered with merely on unfounded allegation made regarding the procedure. In the case at hand since we do not find any averment throughout the entire fabric of the petition regarding malice, ill will or oblique motive against the Members of the Selection Board, therefore, we are not inclined to interfere in the selection proceedings.

37. Upon perusal of the record we find that overall performance of the applicant was considered by the Selection Board vis-a-vis his batch mates and he having not been found fit for promotion, was rightly not empanelled.

38. We also do not find any illegality in the orders deciding the Statutory Complaint of the applicant. The same has also been dealt with in accordance with law. Upon perusal of record no interference as such is warranted by this Tribunal.

39. We, thus, in the circumstances do not find any ground for interference in the orders impugned in the petition. The Transferred Application lacks merits and deserves to be dismissed.

40. The Transferred Application accordingly is dismissed.

41. No order however as to costs.

(Lt. Gen. R.K. Chhabra)
Member (A)

(Justice A.N. Varma)
Member (J)