

the consent of the others except by filing a suit for partition. The objection that the plaintiff has not alleged or proved such prior arrangement is also without any substance. It may be noticed that the plaintiff obtained a decree against her sons Dalip Singh and Malkiat Singh in suit decided on 7th January, 1957 for recovery of Rs. 200 for six months and for being entitled to remain in possession of land measuring 11 Bighas 7 Biswas which also includes the suit land from which she was forcibly dispossessed by the respondents.

In view of this, she has proved prior arrangement in the form of decree,—*vide* which she was permitted to remain in exclusive possession. The respondents, in such a situation, could not forcibly dispossess the plaintiff by wrongful means. However, the respondents, can very well file a suit for partition against the plaintiff. The plaintiff, therefore, was entitled to protect her possession till partition and defendants (respondents) had no right to dispossess her forcibly.

(11) The defendants (respondents) having wrongfully dispossessed the plaintiff from the land in suit, are liable to restore possession to the plaintiff. As a result thereof, the appeal is allowed and the judgments and decree of the Courts below are set aside and the suit of the plaintiff is decreed. However, parties are left to bear their own costs.

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S.C.K.

Before : G. C. Mital, A.C.J. & H. S. Bedi, J.

UNION OF INDIA AND ANOTHER,—*Petitioners.*

*versus*

LT. COLONEL S. P. KAPOOR,—*Respondent.*

26th July, 1991.

*Army Act, 1950—Ss. 191, 192, 193—Army Regulations, 1962—Regl. 69—Petitioner, Lt. Col. superseded for promotion to the rank of Colonel—Statutory complaint against supersession rejected by Chief of Army Staff—Petitioner's case for promotion considered thrice after which declared unfit for promotion to higher rank—Army Regulation 69 does not confine review of promotion cases to only three chances—However, instructions restricting review to three chances—Army*

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*instructions have statutory force—Aforesaid instruction is not contradictory to Regl. 69 but has to be read as supplemental to it—Such consideration for promotion in the higher echelons of the Army is adequate and equitable—Regl. 69 framed under S. 192 not having been published in the official gazette as provided by S. 193 will not have precedence over statutory instructions issued by the army.*

*Held, that the Regulations not having been published in the official gazette serve as broad guidelines for purposes of regulating promotion and other matters mentioned therein. The Regulations/ Rules do not restrict the review of the officer concerned for promotion to the higher rank in three chances.*

(Para 9)

*Held, that the instructions restricting the review to three chances have statutory and therefore binding force and the aforesaid instruction is not contradictory to Regulation 69, but has to be read as supplemental to it. We are also of the view that three considerations for promotions in the higher echelons of the Army are not only adequate but also equitable.*

(Para 10)

*Held, that the Regulations framed under S. 192 have not been published in the official gazette as provided by S. 193 and, as such, those Regulations can in no way have precedence over the instructions issued by the Army.*

(Para 10)

*Letters Patent Appeal under Clause X of the Letters Patent Appeal against the judgment of Hon'ble Mr. Justice M. R. Agnihotri, dated 22nd March, 1990.*

Harinder Singh Giani, Sr. Advocate with Mr. A. Mohanta, Advocate, for the Appellant.

Lt. Col. S. P. Kapoor, in person.

#### JUDGMENT

*Harjit Singh Bedi, J.*

(1) By this judgment, we propose to dispose of L.P.A. No. 900 of 1990, C.W.P. Nos. 10133 of 1988, 14714 and 16795 of 1989 and 2044 of 1991. The facts have been taken from L.P.A. No. 900 of 1990.

(2) Lt. Col. S. P. Kapoor, respondent herein, filed a petition under Articles 226 and 227 of the Constitution of India, for quashing the order dated 28th February, 1983, Annexure P-4 to the petition, by

which he had been superseded for promotion to the rank of Colonel and also the order dated 15th June, 1987 by which the statutory complaint filed by him against his supersession had been rejected by the Chief of the Army Staff.

(3) The respondent had been commissioned in the Indian Army and served in the Armoured Corps and at the time of filing of the petition, had completed almost 30 years of service. As per the averments made in the petition and in accordance with para 19 of the Regulations for the Army 1962 (hereinafter called the Regulations) he was promoted to the rank of Lt. Colonel by selection. However, further promotion to the rank of Colonel and thereafter to Brigadier was to be made on the consideration of the Annual Confidential Reports and on this consideration he was not promoted to the rank of Colonel. The case of the respondent is that his name was to be kept under review for purposes of promotion in accordance with the provisions of paragraph 69 of the Regulations. Yet this was not done and after his name was considered thrice, he was dubbed as unfit for promotion to the higher rank for all times to come. Aggrieved against the same, the respondent submitted a statutory complaint in terms of section 27 of the Army Act 1950 (hereinafter called the Act) on 22nd July, 1981 to the Chief of the Army Staff/Central Government, but the same was rejected without disclosing any reason. On the above-noted set of facts, the respondent filed civil writ Petition No. 414 of 1988, out of which the present Letters Patent Appeal arises.

(4) In the written statement filed by the present appellants, it was pleaded as under:

“Promotion depends upon Annual Confidential Reports and course profile, recommendations for employment, merit of his batch, honours and awards and disciplinary background. Para 69 of Regulations for the Army, 1962, says that the cases of officers who are superseded for promotion will be kept under review and the number of considerations has not been specified. Therefore, the Chief of the Army Staff, who has the responsibility of running the Army efficiently had taken a decision with the approval of the Central Government that an officer's case for promotion by selection will be considered thrice only. If an officer does not get selected in the given three chances, he is permanently superseded. This policy has universal application and

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uniformly applied. The petitioner cannot claim exception and his contention that the said policy is illegal, is devoid of truth and rationale..... The Petitioner failed to make the grade for promotion to the rank of Acting Colonel based on his over-all performance limited employability and merit of his batch. The changes in policies are not responsible for his supersession..... Any Policy change, affects a large number of officers and policies are neither formulated nor discontinued keeping one individual in view. Due to cadre review, it is true that certain changes had taken place and new policies have come into existence. These policies are universally applicable and the petitioner cannot claim exception. Further, it is submitted that policies come into effect prospectively and not retrospectively and reopening of past cases as a whole is neither administratively feasible nor is it in the interest of management.”

(5) In answer to the other plea of the respondent regarding the non-fixation of his pay in the rank of Lt. Colonel, it was pleaded that the respondent had been superseded for promotion to the rank of acting Colonel and, as such, could not claim equation with Colonels based on the fact that Colonels were then commanding the regiments due to upgradation.

(6) After hearing the arguments advanced by the counsel for the parties and examining the record, the learned single Judge allowed the writ petition and directed that as there was no statutory or non-statutory provision on the basis whereof consideration of the respondent's case for promotion could be restricted to only three chances, the Union of India should further review the case of the respondent for promotion. It was further held that the criteria for assessment and promotion having been changed, in the meantime, another review was a necessary. It has been pointed out before us at the time of arguments that in view of the directions of the learned single Judge, the case of the respondent was reviewed for the fourth time, but he was once again found unsuitable for promotion.

(7) The learned single Judge also allowed the claim of the respondent for fixing of pay and directed that the selection grade having been granted to him, he was entitled to the pay fixation of Rs. 4,500 plus Rs. 800 as rank pay. Aggrieved against the order of the learned Single Judge, the Union of India has come up in this Letters Patent Appeal.

(8) Lt. Col. S. P. Kapoor, appearing in person has reiterated the arguments advanced before the learned single Judge. He has stated that Regulation 69 does not restrict the review of officers for fitness for promotion to higher rank to only three chances and, as such, the instructions of the Central Government to that effect are, in fact, beyond the scope of the Regulations.

(9) He further argued that even assuming that the Government Instructions which do restrict the review to only three chances are valid and enforceable, even then on a reading of the aforesaid instructions, it cannot be said with certainty that these in fact do provide for review only thrice. We have examined the matter with reference to the arguments and pleadings of the parties and Section 191 of the Army Act provides for the framing of rules. Section 192 authorises the Central Government to the Regulations for all or any of the purposes, other than those specified in Section 191 of the Act. Admittedly, section 191 does not deal with the matters regarding promotions or the procedure concerned therewith. It is also admitted that policy regarding promotions and the actual promotions themselves are governed by the Regulations framed under the Act, Section 193 of the Act, however, provides that all rules/regulations made under the Act shall be published in the official gazette and on such publication, shall have effect as if enacted in the Act. It is the admitted case of the parties that the regulations have not been published in the official gazette and on such publication, shall have effect as if enacted in the Act. It is the admitted case of the parties that the regulations have not been published in the official gazette and, as such, we are of the view that they serve as broad guidelines for purposes of regulating promotion and other matters mentioned therein. It would, therefore, be apparent that the Regulations/Rules do not restrict the review of the officer concerned for promotion to the higher rank to three chances. The appellants before us have, however, relied on the Instructions dated 9th March, 1965, which were circulated to all the Army Commands, in which it has been mentioned that unfit for promotion to the next higher rank i.e. Grade & 'U' shall be awarded where an officer continues to be graded 'R' on assessments made on his next two reviews. It has been urged by the respondent that the aforesaid Instructions are only a communication from the Army Headquarters to the various Army Commands, but, in fact, no decision restricting the chances to three has been specifically taken by the Government and it was the Government alone that was competent to issue such instructions. The appellants have produced the entire file dealing with the matter

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before us and we find from an examination thereof that the decision to restrict the consideration to three chances was taken at the level of the Government of India after the matter had been considered at the highest levels in the Ministry of Defence.

(10) Having held as above, the question that now arises for determination is as to the value that is to be attached to the aforesaid instructions in view of the fact that Regulation 69 does not confine the review to only three chances. In this connection our pointed attention has been drawn to *Virendra Kumar v. Union of India* (1) and *Capt Rachpal Singh v. Union of India* (2). In *Virendra Kumar's case* (supra) a specific argument was raised that the instructions issued by the Army did not have any statutory status. This argument was specifically repelled and it was held therein that the Army Instructions have statutory force. The aforesaid decision was reiterated by the Supreme Court in *Capt. Rachpal Singh's case* (supra). We are, therefore, of the view that the instructions which have been referred to above, restricting the review to three chances have statutory and therefore binding force and further that the aforesaid Instruction is not contradictory to Regulation 69, but has to be read as supplemental to it. We are also of the view that three considerations for promotions in the higher echelons of the Army are not only adequate but also equitable. It may once again be highlighted that the Regulations framed under section 192 have not been published in the official gazette as provided by section 193, and, as such, those Regulations can in no way have precedence over the instructions issued by the Army. We therefore hold that the judgment of the learned Single Judge that the review cannot be confined to three chances only is wrong and needs to be upset. We are also of the view that the assessment of the record was to be done in the manner provided by the amended criteria, as this was being uniformly applied.

(11) We have also considered the question of fixation of pay of the respondent and find that this score also the reasoning adopted by the learned Single Judge appears to be erroneous. We have seen the record of the case and have also heard the learned counsel for the parties at length in this matter. We find that on 1st January, 1986 the pay drawn by the respondent as Lt. Colonel was Rs. 3,900 plus Rs. 800 as rank pay. It has also been clarified before us that on 1st January, 1986 the pay of Colonel was to be fixed at Rs. 4,500.

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(1) A.I.R. 1981 S.C. 947.

(2) A.I.R. 1987 S.C. 212.

Admittedly, the respondent was a Lt. Colonel on 1st January, 1986 and the holding of a selection grade on that date would not entitle him to have his pay fixed in the rank of Colonel. We, therefore, set aside the judgment of the learned single Judge on this score as well, and hold that the respondent would be entitled to have his pay fixed on 1st January, 1986 at Rs. 3,900 plus the rank pay.

(12) We have also considered the submissions of the learned counsel for the parties in the connected writ petitions mentioned above. The submissions regarding the number of chances for review for purposes of promotion have already been dealt with by us. On merits, it has been argued that the cases of the petitioners were considered for promotion ignoring their service record and not fully appreciating their outstanding careers. We have heard the learned counsel for the parties on this matter as well and have also examined the record minutely. We find that the cases of the petitioners were fully considered by various selection committees consisting of officers of very high rank. We also find that a correct appreciation seems to have been made in each case. Undoubtedly, an officer beyond the rank of Lt. Colonel must seek his promotion through selection and there is no time-scale promotion. The selection is to be made by a selection Board and this Court would be hesitant to interfere in the proceedings of the Board until some glaring shortcoming is pointed out. We find no such infirmity in the proceedings of the various selection Boards in which the cases of the petitioners were considered for promotion.

(13) For the reasons recorded above, the L.P.A. No. 900 of 1990 is allowed, whereas the Civil Writ Petition Nos. 10133 of 1988, 14714 and 16795 of 1989 and 2044 of 1991 are dismissed, but with no order as to costs.

R.N.R.

Before : A. L. Bahri & H. S. Bedi, JJ.

EX. HC MUNSHI RAM,—Petitioner.

*versus*

THE STATE OF HARYANA AND OTHERS,—Respondents.

Civil Writ Petition No. 7237 of 1991.

6th August, 1991.

*Punjab Police Rules, 1934—Rl. 16.2—Absence during suspension period cannot be treated as absence from duty—Such absence cannot form basis of dismissal from service.*