

A UNION OF INDIA & ORS.

v.

LT.COL. SAMEER SINGH
(Civil Appeal No. 9143 of 2019)

B DECEMBER 02, 2019

[DEEPAK GUPTA AND ANIRUDDHA BOSE, JJ.]

Armed Forces: Permanent Secondment – Eligibility criteria – Office Memorandum dated 12.05.2011 – Respondent was commissioned in the Indian Army in 1994 – While holding the post of Lt. Colonel in the Indian Army, he was posted in Directorate General Quality Assurance (DGQA) – After completion of two years of service therein, he fell in the zone of consideration of Permanent Secondment – Respondent’s case was considered by the Quality Assurance Selection Board (QASB) held on 17.02.2016, however, he was not recommended for Permanent Secondment as in the Technical Assessment Reports (TAR) for the year 2014-15, he was declared ‘Not Yet Fit’ for permanent secondment in DGQA and for the year 2015-16, in the TAR, he was declared ‘Not Fit’ – Thereafter, he was reverted to the Indian Army – Respondent filed writ petition before High Court contending that he fulfilled the requirements of Office Memorandum dated 12.05.2011 which sets out the criteria to be followed for grant of Permanent Secondment to service officers of the rank of Lt. Colonel in DGQA – High Court held that TARs are not to be taken into consideration – Whether TARs of an Army officer are to be taken into consideration while considering his case for Permanent Secondment in DGQA after the office memorandum dated 12.05.2011 came into force – Held: Initially, as per Office Memorandum of 8.4.2004, the consideration for Permanent Secondment to the DGQA was based on the TARs – Office Memorandum dated 12.05.2011 does not refer to the TARs – Office Memorandum dated 12.05.2011 clearly lays down that the criteria laid down therein would only apply to all service officers inducted into DGQA – Office Memorandum of 2011 supersedes all previous instructions/guidelines issued on this subject – This also includes the guidelines of 8.4.2004 as there is no exception for the same – No interference with the order of High Court called for.

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Dismissing the appeal, the Court

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HELD: 1. When office memorandum dated 12.05.2011 is read, it leaves no manner of doubt that it is only the criteria laid down in this memorandum which would apply to all service officers inducted into DGQA on tenure basis, after the issuance of this office memorandum. Clause 3 of the office memorandum clearly mentions this fact and it is also mentioned that in the interim period, QASBs shall be held as per the policy in vogue. The earlier policy which was in vogue was the one which took into consideration the TARs. Office memorandum of 12.05.2011 lays down a large number of criteria. It specifically mentions that the grading for 7 years should not be less than 7, including the Annual Confidential Reports (ACRs) earned in DGQA. A minimum grading in the medical category and mandatory qualities have been laid down. It specifically mentioned that the officer should have not only undergone the Basic Quality Management Course at Bangalore, but should also should have obtained 'Above Average' grading. Clause 4 of this office memorandum mentions that this memorandum supersedes all previous instructions/guidelines issued on this subject. This, would also include the guidelines of 08.04.2004, because there is no exception for the same. [Para 10][420-B-E]

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2. Plea on behalf of the appellants was that the office memorandum dated 08.04.2004 is in the nature of executive instructions approved by the Raksha Mantri, and continued to apply and cannot be deemed to be superseded. The plea is not tenable. Office memorandum dated 12.05.2011 is also in the nature executive instruction, issued with the approval of the Raksha Mantri. The authorities who issued the said office memorandum must have been aware of the earlier office memorandum of 08.04.2004. The office memorandum of 2011 is broader than the office memorandum of 2004 and the office memorandum of 2011 which is later in time specifically supersedes all previous instructions/guidelines issued on the subject. It is further seen that the office memorandum dated 12.05.2011 was amended on 14.06.2011 and it was specifically mentioned that the officers rejected in QASB for grant of Permanent Secondment will not be re-considered in subsequent QASBs. In case the appellants

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- A wanted to make TAR a mandatory requirement for fulfilling the eligibility criteria they could have done that by making similar amendment or issuing another office memorandum in this regard, but that did not happen. The TAR may be taken into consideration while grading the officer for the purposes of ACR but once the ACR is being taken into consideration then in view of the office memorandum dated 12.05.2011, the TAR is the criteria which could not have been taken into consideration. [Paras 11-13][420-F-H; 421-A-B, E]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 9143 Of 2019.

From the Judgment and Order dated 16.04.2018 of the High Court of Delhi at New Delhi in Writ Petition (Civil) No. 9233 of 2016.

A.N.S. Nadkarni, ASG, Ms. Aakanksha Kaul, Ms. Rukmini Bobde, Manek Singh, Arvind Kumar Sharma, Advs. for the Appellants.

D Ms. Arati Mahajan, Ms. Malvi Balyan, Ms. Swati, Rakesh K. Sharma, Advs. for the Respondent.

The Judgment of the Court was delivered by

DEEPAK GUPTA, J.

E 1. Leave granted.

2. The short question involved in this appeal is whether the Technical Assessment Reports (TARs for short) of an Army officer are to be taken into consideration while considering his case for Permanent Secondment in the Directorate General Quality Assurance (DGQA for short), after the office memorandum dated 12.05.2011 came into force?

3. Briefly stated, the facts of the case are that the respondent herein was commissioned in the Indian Army in 1994. He earned various promotions and while holding the post of Lt. Colonel in the Indian Army, he was posted in the DGQA. After completion of two years of service in the Collectorate of Quality Assurance, he fell in the zone of consideration of Permanent Secondment. His case was considered by the Quality Assurance Selection Board (QASB for short) held on 17.02.2016. The respondent's case was not recommended for Permanent Secondment. On finding that his name has not been recommended, the respondent made enquiries and came to know that his case has not been

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recommended since in the TAR for the year 2014-15, it was found that he was 'NOT YET FIT' for Permanent Secondment in DGQA. In the next year, i.e. 2015-16, he was declared 'NOT FIT' in the TAR. Thereafter, he was reverted to the Indian Army. A

4. Aggrieved by the said action, the respondent filed a writ petition in the Delhi High Court contending that he fulfilled the requirements of Office Memorandum dated 12.05.2011 which sets out the criteria to be followed for grant of Permanent Secondment to service officers of the rank of Lt. Colonel in DGQA. B

5. The Delhi High Court allowed the writ petition and held that the TARs could not be taken into consideration. Hence this appeal by the Union of India. C

6. We have heard learned Mr. A.N.S. Nadkarni, ASG assisted by Ms. Aakansha Kaul, learned counsel for the appellants, and Ms. Arati Mahajan, learned counsel for the respondent. It would be apposite to refer to the various instructions issued by the appellants from time to time. Initially, as per the office memorandum of 08.04.2004, the consideration for Permanent Secondment to the DGQA was based on the TARs, and relevant part of the criteria reads as under:- D

“Part-II: Assessment by the Reporting Officer

1. Technical E

(a) Nature of work assigned : to the Reportee

(b) Aptitude of the Reportee : towards Quality

Assurance related work

(c) Technical Knowledge of the officer and practical ability to apply the theoretical knowledge F

(d) Sense of dedication and responsibility towards QA work.

(e) Details of outstanding/notable work done by the reportee, if any G

Signature

Name of the officer Rank/Designation

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A Part III: Remarks of the Technical Director

1. Remarks with reference to specific comments given by the Reporting Officer
2. Fitness or otherwise for Permanent Secondment in DGQA Organisation.

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Signature:

Part IV: Remarks of DGQA

1. is fit/not yet fit for Permanent Secondment in DGQA Organisation
2. Performance of should, be watched for another months before consideration for Permanent Secondment.

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Signature”

D The first portion was to be filled in by the Head of the establishment. Thereafter, the technical Director was to give his remarks and also assess whether the officer was fit or otherwise for Permanent Secondment in DGQA Organisation and, finally these remarks were to be approved or modified, as the case may be by the DGQA.

E 7. On 12.05.2011 an office memorandum was issued, the relevant portion of which reads as follows:-

“1. xxx xxx xxx

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- (i) Offrs of the rank of Lt Col (Substantive) only will be considered for grant of Permanent Secondment
- (ii) Officer should have minimum of two years of regular service from the date of reporting to DGQA organisation before being considered by QASB for grant of Permanent Secondment.

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- (iii) Officers should not have been finally superseded as on date of acceptance by DGQA on tenure (the date of approval of board proceedings for acceptance of officers on tenure by DGQA)
- (iv) Mean value of all box grading for seven years should not be less than ‘7’ including ACRs earned in DGQA.

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- (v) Mean value of box grading in 3 Mandatory Qualities (LOAYLITY, DECISIVENESS & DEPENDABILITY) should not be less than '7' and in respect of INTEGRITY should not be less than '8'. A
- (vi) Should be in acceptable medical category as stipulated in Appendix 'A' to MOD OM No.67952/Q/DGI(Adm-)/10412/D(PRODN) dated 28 Oct 1978 as amended from time to time B
- (vii) The officer should have undergone Basic Quality Management Course (BQMC) at DIAQ, Bangalore and should have obtained above average grading. C
- (viii) The disciplinary record of the officers should not be adverse. Note:

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|----|--|-----|-----|---|
| | xxx | xxx | xxx | |
| 2. | xxx | xxx | xxx | D |
| 3. | These revised criteria will be applicable to all Service Officers inducted into DGQA on tenure prospectively from the date of issue of this OM. In the interim period QASBs will be held as per policy in vogue. | | | |
| 4. | This supersedes all previous instructions/guidelines issued on the subject. E | | | |
| 5. | This issues with the approval of Hon'ble Raksh Mantri." | | | |

8. It has been urged by Ms. Kaul, that though the second office memorandum dated 12.05.2011 does not refer to the TARs but at the same time it does not specifically overrule the office memorandum dated 08.04.2004, and it is submitted that the said office memorandum has invariably been applied by the appellants and the TARs of every Military officer who has been granted Permanent Secondment in DGQA have been taken into consideration. It is further submitted that the purpose of TAR is different from the Assessment Report and as such essential to assess the suitability of the candidate for Permanent Secondment into the DGQA. It is also submitted that even otherwise the employer could apply any criteria which it deems fit and it is not for the employee to suggest what criteria should be made applicable.

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A 9. On the other hand, Ms. Mahajan, submits that a reading of the office memorandum dated 12.05.2011 squarely indicates that only the criteria mentioned therein could be taken into consideration and none else.

B 10. We have carefully gone through the various instructions and also considered the averments of the parties. When the office memorandum dated 12.05.2011 is read, it leaves no manner of doubt that it is only the criteria laid down in this memorandum which would apply to all service officers inducted into DGQA on tenure basis, after the issuance of this office memorandum. This is apparent from Clause 3 of the office memorandum, which clearly mentions this fact and it is also mentioned that in the interim period, QASBs shall be held as per the policy in vogue. The earlier policy which was in vogue was the one which took into consideration the TARs. The office memorandum of 12.05.2011 lays down a large number of criteria. It specifically mentions that the grading for 7 years should not be less than 7, including the Annual Confidential Reports (ACRs for short) earned in DGQA. A minimum grading in the medical category and mandatory qualities have been laid down. It has been specifically mentioned that the officer should have not only undergone the Basic Quality Management Course at Bangalore, but should also should have obtained 'Above Average' grading. Clause 4 of this office memorandum mentions that this memorandum supersedes all previous instructions/guidelines issued on this subject. This, in our opinion, would also include the guidelines of 08.04.2004, because there is no exception for the same.

F 11. It was urged on behalf of the appellants that the office memorandum dated 08.04.2004 is in the nature of executive instructions approved by the Raksha Mantri, and continued to apply and cannot be deemed to be superseded. We are not in agreement with this submission. The office memorandum dated 12.05.2011 is also in the nature executive instruction, issued with the approval of the Raksha Mantri. We must assume that the authorities who issued the office memorandum dated 12.05.2011 were aware of the earlier office memorandum of 08.04.2004. The office memorandum of 2011 is broader than the office memorandum of 2004 and the office memorandum of 2011 which is later in time specifically supersedes all previous instructions/guidelines issued on the subject.

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12. Another fact which has been brought to our notice by Ms. Mahajan is that the office memorandum dated 12.05.2011 was amended on 14.06.2011 and it was specifically mentioned that the officers rejected in QASB for grant of Permanent Secondment will not be reconsidered in subsequent QASBs. In case the appellants wanted to make TAR a mandatory requirement for fulfilling the eligibility criteria they could have done that by making similar amendment or issuing another office memorandum in this regard, but that did not happen.

13. On behalf of the appellants it has been urged that another letter was issued on 14.07.2014, wherein it is noted that the TARs have been initiated by some officers in a very casual manner. The importance of TAR has been reiterated and it has been mentioned that this has serious implication on the consideration and subsequent Permanent Secondment of tenure Colonels to the DGQA Organisation, and one of the mistakes pointed out is that it has not been indicated in the TAR whether the officer is FIT/NOT FIT/NOT YET FIT, for Permanent Secondment in DGQA. It is true that this letter emphasises the importance of the TAR but in view of the clear language of office memorandum dated 12.05.2011, it still cannot be taken into consideration. It is not clear as to why in this very letter it could not have been mentioned that TAR should also be taken into consideration while considering the case for Permanent Secondment. The TAR may be taken into consideration while grading the officer for the purposes of ACR but once the ACR is being taken into consideration then in view of the office memorandum dated 12.05.2011, we have no doubt in our mind that the TAR is the criteria which could not have been taken into consideration.

14. We, therefore, dismiss the appeal and uphold the judgment of the Delhi High Court. Stay stands vacated. Pending applications(s), if any, shall also stand disposed of.