

Supreme Court of India

Union Of India & Ors vs W.S. Chona on 25 November, 1997

Author: S Agrawal

Bench: S.C. Agrawal, G.T. Nanavati

PETITIONER:

UNION OF INDIA & ORS.

Vs.

RESPONDENT:

W.S. CHONA

DATE OF JUDGMENT: 25/11/1997

BENCH:

S.C. AGRAWAL, G.T. NANAVATI

ACT:

HEADNOTE:

JUDGMENT:

THE 25TH DAY OF NOVEMBER, 1997 Present:

Hon'ble Mr. Justice Agrawal Hon'ble Mr. Justice G.T. Nanavati R.K. Anand, Sr. Adv., Lokesh Sawhney and A.K. Srivastava, Adv. with him for the appellants.

Mukul Rohtagi, Sr. Adv., Manoj Prasad, Adv., with him for the Respondent J U D G M E N T The following Judgment of the Court was delivered: S.C. AGRAWAL, J.:

Special leave granted.

This appeal against the judgment of the Delhi High Court dated November 10, 1995 in Civil Appeal No. 4915 of 1995 relates to promotion from the rank of Major General to the rank of Lieutenant General in the Army.

The personnel in the Army fall in two broad categories, namely, General Cadre consisting of Infantry, Mechanised Infantry and Armoured corps, and Non-General Cadre consisting of Artillery, Engineers, Signals, Army Ordinance Corps, Army Service Corps and Electrical Mechanical Corps. The appointment within the corps or the service is known as 'Corps Appointment' which may be on

the command side or staff side within the corps or the service. Apart from Corps Appointments, appointments are also made outside the corps/service on the staff side which are called 'Staff Appointments'. Till September 9, 1986 officers in the Non- General Cadre could be promoted to the rank of Lt. Gen. in their respective Corps/Service Appointments only. By circular dated September 9, 1986 issued by the Military Secretary at the Army Headquarters it was decided to adopt the "Two Stream Concept" for officers of the rank of Brigadier and above. The said concept envisages that the officers on promotion to the rank of Maj. Gen. and Lt. Gen. will be bifurcated into the 'Command and Staff' stream and the 'Staff Only' stream. Non-General Cadre officers could also be considered for the "Staff Only" stream in the rank of Lt.Gen. The following provision was made in this regard for Non-General Cadre officers in the said circular :-

"Non-General Cadre Officers

6. High calibre officers in the rank of Brig. from other Arms and Services who are considered fit for promotion to the next higher rank within their own Corps, will be screened for holding unspecified Staff/ERE appointments on first promotion. If selected to hold unspecified appointments outside their Corps, such officers may be promoted to the higher rank of Staff/ERE appointments outside their Corps ahead of officers senior to them in the same batch.

These officers will be exercised in criteria appointments within their Corps subsequently prior to selection for next higher rank.

Methodology of Streaming

7. With the introduction of Stream Concept, the methodology of screening officers for promotion will also undergo a change. Based on the QRs prescribed from time to time, officers will first be screened to assess their suitability for promotion to the higher ranks. Those considered fit will be subjected to another screening for bifurcation into the 'Two Streams'. Officers with higher Considered for such selection by the Selection Board and his Case was deferred for the reason that he had not earned two ACRs after his promotion as Maj. Gen. and he did not have to his credit the minimum service of 18 months in the rank of Maj. Gen. Another Special Selection Board met in April, 1994. Since there was no change in the position of the respondent in the sense that two ACRs had not been received, his case was deferred. The third Special Selection Board met on July 18, 1994. The respondent was considered for promotion to the rank of Lt. Gen. as a afresh case for staff appointment. He was, however, not selected and the said recommendation of the special Selection Board was accepted by the Central Government. By latter dated November 1, 1994 the respondent was informed about his non-selection for staff appointment. The case of the appellant is that a Special Selection Board for Corps Appointment for the Corps of Engineers met on October 21, 1994 and the respondent was considered as a fresh case for Corps Appointment as Lt. Gen. but he was not selected for such Corps Appointment also. On the basis of letter dated January 4, 1994 the respondent was retired from Army in the rank of Maj. Gen. with effect from October 31, 1994. Feeling aggrieved by his non-selection for Staff Appointment in the rank respondent filed a Writ Petition in the Delhi High Court which has given rise to this appeal.

The said Writ Petition was contested by the appellants and it was submitted that the Special Selection Board for promotion of officers in the rank of Maj. Gen. to the rank of Lt. Gen. consists of the Chief of the army Staff, as Chairman, the Vice Chief of the Army Staff and Army Commanders of Western Command, Southern Command, Central Command, Eastern Command, Northern Command and Army Training Command as members with Military Secretary as the secretary to the Board. It was also submitted that the Selection Board grades each officer either fit or unfit on the basis of the officer's individual overall profile as well as comparative merit of the whole batch after taking into consideration the following materials:-

- (a) War Reports
- (b) All Annual Confidential Reports
- (c) Professional courses done alongwith gradings obtained therein
- (b) Honours and Awards
- (e) Disciplinary background and punishment
- (f) Special Achievements and weaknesses
- (g) Employability and potential including positive recommendations for promotion to next higher rank.

The grading by the Selection Board is then placed before the Chief of the Army Staff who, as COAS, then gives his recommendations in this respect and thereafter the Board proceeding alongwith all the relevant records are submitted to the Central Government which is the final approving authority. It was submitted that the case of the respondent was considered for promotion from the rank of Maj. Gen. in the 'Staff Stream' as per the above procedure and that the name of the respondent for promotion to the rank of Lt. Gen. came up for consideration before the Special Selection Board which met in January 1994, but the respondent had earned only one CR in the rank of Maj. Gen. for the period from December 1992 to June 1993 against the mandatory requirements of two CRs his case was deferred till the next Selection Board. The next Selection Board met in April 1994 but till then the respondent had earned only one CR and his name was again deferred. The respondent was considered for staff appointment by Special Selection Board which met in July 1994 by which time the second CR for the period from July 1993 to June 1994 was available. But the respondent was not recommended for promotion by the Special Selection Board taking into account the QRs prescribed for promotion to the rank of Lt. Gen. in 'Staff Stream' as well as comparative merit and that the approval of the Central Government to the non-recommendation of the respondent for promotion was received on November 1, 1994. The respondent was accordingly informed of the said decision on the same date by letter dated November 1, 1994. The allegations about arbitrariness, discrimination and capricious considerations contained in the Writ Petition filed by the respondent were denied by the appellants. It was submitted that since the respondent was considered by the Special Selection Board and the Central Government did not approve him for

promotion to the rank of Lt. Gen. as per laid down norms he has no right to claim promotion and to seek the issuance of any writ from the Court. During the course of the hearing before the High Court the relevant records from the Army Headquarters as well as the Ministry of Defence concerning the recommendations relating to the respondent and other officers were produced. On a perusal of the said records the High Court has found that the respondent was not considered fit for promotion to the rank of Lt. Gen. due to following reasons:-

(a) The petitioner does not meet the general Qualitative Requirements (hereinafter referred to as 'the QRs') introduced in the year 1986 for promotion to the rank of Lt. General; and

(b) The present assignment of the petitioner in C-DOT is not a staff appointment and since the petitioner has not worked in the Army appointment in the rank of Major General and his full period of service after he was promoted to the rank of Major General has been in C-DOT he cannot be considered for promotion to a higher Army rank (Lt. General).

The High Court has referred to the two ORs prescribed for selection into the Staff Stream. While dealing with QR No. (1) the High Court has observed that the performance of the respondent in the Corps appointment undisputedly had been of a very high order and that the said fact was clear from the records produced from the Army Headquarters and from the Ministry of Defence and even after his promotion the performance of the respondent in his capacity as Major General, on deputation with C-DOT, had been outstanding (Excellent) which fact stands duly acknowledged even by the Defence Secretary in his note dated September 22, 1994. As regards QR No. (2) the High Court has referred to the stand taken by the army Headquarters that the assignment of the respondent with the C-DOT was not a 'staff appointment' and has held that the said stand was not correct for the reason that after his promotion as Maj. Gen. the respondent was sent on deputation with C-DOT by the Army authorities and when the respondent was sent to C-DOT on deputation no adverse career certificate was obtained from him and it was clearly stated in his deputation order dated February 18, 1993 that the entire period of deputation would count in full as effective commissioned service for the purpose such as seniority, promotion, increment of pay, pensionary awards and leave etc. in the Army. The High Court has also observed that QRs do not specifically lay down that such staff appointment outside the Corps should be held within the Army and that the concerned authorities did not have a very clear cut definition of 'staff appointment'. While dealing with the QRs the High Court has held that none of the QRs relied upon by the appellants in the counter affidavit had been approved by the Government which was the appointing authority in the instant case. The High Court has also held that the QRs relied upon the appellants are at variance with the policy letter dated February 5, 1992 which shows that for consideration for promotion to the rank of Lt. General there are only two requirements, namely, that the officer should have held the appointment as Major General for a period of 18 months and that the officer should have earned minimum two reports during the above period of 18 months and in the said policy letter there is no mention of any other condition for promotion from the rank of Major General to the rank of Lt. General. The High Court, therefore, held that reason (a) given for the respondent being not considered for promotion to the rank of Lt. General could not be sustained. The High Court has also gone into the question of

comparative merit of the respondent and other officers and has observed that a perusal of the records reveals that by all standards the performance of the respondent has been of such a high order which merit his promotion and that officers with much inferior record have been promoted to the rank of Lt. General. In this context, the High Court has mentioned the name of Lt. General Singhal (DGBR) whose record was stated to be much inferior to that of the respondent but he had been promoted as Lt. General. In view of the aforesaid findings the High Court has allowed the writ Petition filed by the respondent and has quashed the letter dated November 1, 1994 issued by the Military Secretary Branch, Army Headquarters as well as the letter dated January 4, 1994 insofar as it relates to the retirement of the respondent from Army service with effect from October 31, 1994. The High Court has directed the appellants to constitute within six weeks from the date of the said order a Special Selection Board for considering the case of the respondent for promotion to the rank of Lt. General in the Army and has further directed that the Board thus constituted, while considering the case of the respondent for promotion to the rank of Lt. General in the Army and has further directed that the Board thus constituted, while considering the case of the respondent shall apply the same criteria which were applied by the Board held on July 18, 1994 except that it shall also keep in mind the direction/observations given by the High Court and while doing so shall treat the service rendered by the respondent while on deputation with C-DOT, at par with the service in the Army and if by applying the above standards the respondent is found fit for promotion, the appellants shall promote him to the rank of Lt. General in the Army from the date officer immediately junior to him has been promoted to the said rank with all consequential benefits and if, after considering the case of the respondent in the manner stated above, it is found that the respondent is still considered to be 'unfit' the date of retirement of the respondent shall remain unchanged and he shall be deemed to have retired from the service of the Army as Major General with effect from October 31, 1994. Feeling aggrieved by the said decision of the High Court, the appellants have filed this appeal.

The first question which requires consideration is whether the QRs for promotion of Non-General Cadre officers from the rank of Maj. Gen. to the rank of Lt. Gen. on the staff side had been approved by the Central Government. Shri R.K. Anand, the learned senior counsel appearing on behalf of the appellants, has urged that the High Court was in error in holding that the QRs had not been approved by the Central Government. In support of this submission the learned counsel has placed before us the relevant records relating to the passing of order dated September 9, 1986. The learned counsel had also invited our attention to the decisions of this Court in *Union of India & Anr. V. Mai. Gen. Dayanand Khurana*, 1991 (3) SCR 350, and *Lt. General R.K. Anand v. Union of India & Anr.*, 1991 (3) Supp. SCR

498. From a perusal of the records relating to the passing of the order dated September 9, 1986 we find that the QRs for the "Command and Staff Stream" and "Staff Only" Stream were finalised in the note submitted to the Joint Secretary (G) by the Military Secretary dated February 7, 1996 and the Joint Secretary (G) in his note has specifically referred to the proposed QRs. In the said note the Joint Secretary has said:-

"In the proposed QRs, the emphasis is on high order of performance in Corps appointment as also on Staff appointments outside the Corps.

Another essential requirement is that the officer should be fit for promotion to higher rank in his own Arm/Service. It is also a requirement that an officer's qualifications, performance on courses and experience should make him eminently suitable to hold senior Staff appointments on first promotion.

These QRs will ensure that only the best officers of the non-General Cadre enter into the 'Staff Only' stream of Maj. General and Lt. General."

Thereafter the matter was placed before the Defence Secretary and it was finally approved by the Prime Minister. In Maj. Gen. Dayanand Khuranna (supra) this court has mentioned that on May 31, 1986 the Government of India approved, in principle, the "Two Stream" concept of career management of Army Officer of the rank of Maj. Gen. to the rank of Lt. Gen. subject to the following stipulations:-

"(a) The modalities for implementation of "Two Stream"

concept will be worked out by the Army Headquarters and submitted to Government for Information. This will include identification of appointments to be manned by officers belonging to the "Staff Only" Stream.

(b) The criteria and the QRs formulated by the Army HQs and submitted to the Government vide Army HQs No. PC-01102/MS 9B dated 7th February, 1986 will be applied for screening officers for promotion to the two streams. It will ensure that the QRs prescribed for promotion to the "command and Staff" stream are stricter than those prescribed for the "Staff Only" stream.

(c) A comprehensive review of the working of the concept will be done in 1987 and such amendments, as may be necessary, will be put up to Government for approval." (pp.

354,355).

In the said decision it has also been mentioned that this approval of the Government was preceded by the approval of the Prime Minister on May 26, 1986.

Similarly in Lt. General R.K. Anand (supra) it has been stated:-

"In order to satisfy ourselves whether the communication of 9th September, 1986 had received the concurrence of the concerned Ministry, we inspected the department file and found that the matter was referred to the Ministry of Defence and received the approval of the Prime Minister."

(p.504) It must, therefore, be held that the QRs for promotion of Non-General Cadre officer from the rank of Maj. Gen. to the rank of Lt. Gen. on which reliance has been placed by the appellants had been approved by the Central Government and the High Court was not right in holding that the said QRs had not been approved.

The next question which needs examination is whether the said QRs can be said to have been superseded by the letter dated February 5, 1992. The said letter may be reproduced as under:-

"CONCEPT OF CRITERIA APPOINTMENTS IN THE RANK FOR MAJOR GENERAL: OTHER ARMS AND SERVICES

1. Reference MS Branch letter No. 04560/I/IX/MS: policy dated 22 April 90.
2. The concept of criteria appointments for general officers of supporting arms and services was first introduced in 1984. This issues was deliberated upon during Army Commander's Conference held during Oct 91 and it was decided to dispense with the concept of criteria for officers of supporting arms and services in the rank of Maj. Gen.
3. Henceforth, all appointments both within the Corps and outside, in the rank of Maj. Gen. for officers of supporting arms and services will be treated as command criteria appointments. However, there is no change to the existing requirements before Maj. Gens. of supporting arms and services can be considered for promotion to the rank of Lt. Gen., which are as follows:-
 - (a) The General Officer should have held the appointment for a period of 18 months.
 - (b) The General officer should have earned minimum two reports during the above period."

Shri Anand has submitted that this letter is primarily concerned with the concept of "criteria appointment" in the rank of Maj. Gen. for supporting Arms and Services. The learned counsel has pointed out that the concept of "Criteria appointments" for officers in the rank of Maj. Gen. and Brig. was introduced in 1984 and appointments in the rank of Maj. Gen. In Headquarters Commands were only designated as criteria appointments. Since these appointments were only five in number in Arms and Services, it became very difficult for the management to exercise all affected officers in criteria appointments before being considered for promotion to the next rank and, therefore, some selected appointments in Army Headquarters for Artillery, Engineers and Signals were identified and designated as criteria appointments. It was further found that with the existing number of criteria appointments the problem of truncated tenures and frequent moves had not been fully resolved and it became necessary tenures and frequent moves had not been fully resolved and it became necessary to designate additional appointments as criteria appointments to enable the management to have adequate flexibility and to provide stable tenures and, as a result though a certain amount of stability had been achieved in command tenure at Brig. level, the tenures of Maj. Gen. continued to be short. A decision was, therefore, taken at the Army Commander's Conference during October 1991 to dispense with the concept of criteria appointments for officers of supporting Arms and Services in the rank of Maj. Gen. and to treat all appointments, both within the Corps and outside, in the rank of Maj. Gen., as criteria appointments. The submission is that the letter dated February 5, 1992 gives effect to the said decision taken at the army Commander's Conference held in

October 1991. As regards promotion of Maj. Gen. of supporting Arms and Services to the rank of Lt. Gen. the said letter clarifies that no change was being made in the existing requirements, namely, that (i) the General Officer should have held the appointment for a period of 18 months and (ii) the General Officer should have earned minimum two reports during this period of 18 months. Shri Anand has pointed out that the said two requirements were general requirements which had been in operations ever since 1984 for the purpose of promotion from the rank of Maj. Gen. to the rank of Lt. Gen. and the letter dated February 5, 1992 has to bearing on the QRs which had been adopted for the purpose of promotion of Non-General Cadre officers from the rank of Maj. Gen. to the rank of Lt. Gen. in the "Staff Only" stream and that the fulfilment of the said QRs cannot be said to have been dispensed by the letter dated February 5, 1992.

We find merit in the said contention of the learned counsel. The letter dated February 5, 1992 primarily relates to dispensing with the concept of criteria appointments in the rank of Maj. Gen. in supporting Arms and Services and gives effect to the decision taken at the Army Commander's Conference held in October 1991 and, as a result all appointments, both within the Corps and outside, in the rank of Maj. Gen. for officers of supporting Arms and Services are to be treated as "Command Criteria Appointments". The statement in the said letter that "there is no change to the existing requirements before Maj. Gen. of supporting arms and services can be considered for promotion to the rank of Lt. Gen." only clarifies that the said requirements would continue to be followed for such promotion. Since these requirements were in existence prior to the adoption of the QRs in 1986, the reiteration of the said requirements in the letter dated February 5, 1992 does not, in any way, effect the operation of the QRs as adopted in 1986 for the purpose of promotion of Non-General Cadre officers from the rank of Maj. Gen. to the rank of Lt. Gen. We are, therefore, unable to agree with the learned Judges of the High Court that after letter dated February 5, 1992, the QRs primarily adopted for the purpose of promotion of Non-General Cadre officers from the rank of Maj. Gen. to the rank of Lt. Gen. of "Staff Only" Stream had ceased to operate.

It is, therefore, necessary to examine whether the respondent satisfies the QRs for promotion of Non-General Cadre officers from the rank of Maj. Gen. to the rank of Lt. Gen. in the "Staff Only" Stream. As indicated earlier, clause (b) of the said QRs requires that ***** performance on staff appointment should be of a high order and he should be considered fit in all respect to hold various staff, instructional and ERE appointments in the higher rank. The question is whether the respondent has held staff appointments outside his Corps as Brig./Maj. Gen. The respondent has submitted that he fulfils the said requirement and has pointed out that he has held the following appointments:-

(a) Deputy Director General & Chief Engineer with DGNP Vishakapatnam from April 1986 to December 1987, in the rank of Brig.

(b) Deputy Director General Works (Navy) at Army HQ Engineer-in- Chief's Branch from April 1988 to September 1992 in the rank of Brig.

(c) Deputy Commandant College of Military Engineering, Pune from October 1992-December 1992 in the rank of Maj. Gen.

(d) Chief Project Manager, redesignated as Engineer-in-Chief (Works), C-DOT, New Delhi from 28th December 1992-31 October, 1993 in the rank of Maj. Gen. On behalf of the appellants Shri Anand has urged that neither of these appointments can be regarded as a Staff appointment as envisaged in clause (b) of the Qrs. The submission is that Staff appointment that is contemplated in the said clause (b) of the QRS is other than the Corps Staff appointment and contemplates graded staff appointment outside the Corps so that the officer can have the essential expertise to hold specified staff appointment in the rank of Lt. Gen. which does not belong to any particular Arm or Service. It has been submitted that the various appointments held by the respondent, namely, Deputy Director and Chief Engineer with Director General Naval Project, Visakhapatnam as Brig, Deputy Director General Works (Navy) at Army Headquarters, Engineer-in-Chief Branch as Brig. and Deputy Commandant, College of Military Engineering, Pune in the rank of Maj. Gen. were all Corps appointments and were not graded staff appointments. As regards his appointment as Chief Project Manager, redesignated as Engineer-in-Chief (Works), C-DOT, it was submitted that though, in view of letter dated February 5, 1992 the period of deputation with C-DOT was to be treated as a part of effective commissioned service in the Army for the purpose of promotion, the said appointment had to be treated only as a Corps Staff appointment which could be counted for the purpose of Corps appointment on the post of Lt. Gen., and that the said appointment with C-DOT could not be treated as a Staff appointment for the purpose of clause (b) of the QRS. It was pointed out that the respondent was considered for promotion to the rank of Lt. Gen. In a corps appointment by the Special Selection Board which met on October 21, 1994 but he was not selected. The submission is that period of service of the respondent with C-DOT was taken into consideration for the purpose of promotion to the rank of Lt. Gen. and it is not correct to say that the terms on which the respondent joined C-DOT on deputation as contained in the letter dated February 5, 1992 were not given effect to.

Shri Mukul Rohtagi, the learned senior counsel appearing for the respondent, has urged that the word "Staff appointment" In clause (b) of the QRs covers all Staff appointments whether within the Corps or outside Corps and, therefore, the experience of the respondent on the post held by him as Brig. and Maj. Gen., including his experience with C-Dot, had to be treated as Staff appointment for the purpose of promotion to the post of Lt. Gen. on the "Staff Only" Stream. We find it difficult to accept this contention. Clause (b) of the QRs envisages that the staff has to be a Staff appointment outside the Corps and performance of the officer on such appointment should be of higher order so that he can be considered fit in all respects to hold various staff, instructional and extra regimental (ERE) appointments in the higher rank. A Corps Staff appointment only enables an officer to acquire experience of the work relating to his Arm or Service and does not enable him to acquire experience in other fields which is necessary for promotion to the rank of Lt. Gen. on the "Staff Only" Stream. The performance of the officer on a Corps Staff appointment is already covered by clause (a) of the QRs which requires that the performance of the officer in Corps appointment should be of a very high order. Since Corps appointments [which would include a Corps Staff appointment] are already covered by clause (a), the Staff appointment in clause (b) must necessarily

mean a Staff appointment outside the Corps. We are, therefore, in agreement with the submission of Shri Anand that clause (b) of the QRs only contemplates a Staff appointment outside the Corps. Since the appointments held by the respondent, both as Brig. and Maj. Gen., including that with the C-DOT, were Corps appointments and were not graded Staff appointments, it cannot be said that he fulfilled the qualitative requirement contemplated in clause (b) of the QRs. We, therefore, do not find any infirmity in the recommendation of the Special Selection Board treating him unfit for promotion to the rank of Lt. Gen. in the "Staff Only" stream which recommendation had been approved by the Central Government.

The High Court was, therefore, in error in interfering with the said decision of the Central Government and quashing the order dated November 1, 1994. Once it is held that there is no infirmity in the non-selection of the respondent for promotion from the rank of Maj. Gen. to the rank of Lt. Gen. by the Special Selection Board which met in July 1994, the respondent had to retire as Maj. Gen. after attaining the age of 56 years on October 31, 1994 and the direction contained in the letter dated January 4, 1994 regarding his date of superannuation from the Army has been rightly issued and the High Court was in error in quashing the same. In the impugned judgment the High Court here are adverse remarks against the functionaries at the higher level both at the Army Headquarters as well as in the Ministry of Defence. The said remarks, in our opinion, were uncalled for and are, therefore, set aside.

In the result, the appeal is allowed, the impugned judgment of the High Court dated November 10, 1995 is set aside and the Writ Petition filed by the respondent is dismissed. In the circumstances there is no order as to costs.