

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 2560 OF 2022

Union of India & Ors. Appellant(s)

Versus

Brigadier Javed Iqbal Respondent(s)

J U D G M E N T

A.S. BOPANNA, J.

1. The appellants/Union of India & Ors. are before this Court in this appeal, assailing the order dated 07.01.2022 passed by the Armed Forces Tribunal, Regional Bench, Lucknow (for short, 'AFT') in OA No.619 of 2021. Through the said order the AFT has allowed the OA and held that the respondent is entitled to promotion to the post of Additional Major General (Litigation) in the Judge Advocate General's Branch with all consequential benefits from the date of

declassification of No.1 Selection Board's result on 05.05.2021. The order was directed to be implemented forthwith.

2. The brief facts are; the respondent is an officer of the 1989 Batch and is presently serving as Brigadier in the Judge Advocate General (for short, 'JAG') branch of the Military. He has put in 33 years of service. The respondent is presently designated as the Deputy Judge Advocate General. The promotion to which the respondent claims entitled is to the rank of Major General which corresponds to the post of Additional Judge Advocate General. The rank of Major General in the JAG Branch had fallen vacant on 01.12.2020. The No.1 Selection Board comprising of (i) Chief of the Army Staff, (ii) Vice Chief of the Army Staff (iii) 06 Army Commanders and (iv) the Military Secretary, on consideration in its meeting on 26.10.2020 recommended the respondent for promotion. It is the case of the respondent that after clearance by the Selection Board the Chief of Defence Staff secured all information relating to the respondent, including that he had scored 94.482 marks which was the highest. With regard to the query relating to the medical status of the

respondent, it was intimated to the Chief of Defence Staff that the re-categorisation Medical Board on 12.02.2021 had indicated that medical status is the same as was in the previous pre-categorisation Medical Board proceedings held on 14.08.2018. The respondent at that stage had been classified as SHAPE-2 COPE-2. The Chief of the Defence Staff was also informed that the respondent despite such classification continues to perform the duties of Deputy JAG of the entire command which involves heavy workload. The Chief of Defence Staff on considering all aspects, including the medical condition, cleared the respondent for promotion as the medical condition indicated would not be a hurdle. Pursuant thereto the competent authority also granted its approval for promotion of the respondent. The respondent contends that the Central Government had also cleared but at that stage, the Military Secretary who has no such power had introduced the rider interfering with the promotion of the respondent. The respondent contends that the No.1 Selection Board had considered the medical condition in detail and the Chief of Defence Staff as also the competent authority had accepted the recommendation of the No.1 Selection Board.

However, despite all this since the benefit of promotion was not accorded, the respondent filed an application before the AFT seeking for the relief.

3. The case of the appellant is that in the Indian Army, every staff selection, whether it is an appointment or promotion is done by following a prescribed procedure under the Rules. The appointment/promotion is always subject to meeting the medical criteria. An individual in the Indian Army is selected to the higher post subject to medical fitness irrespective of the Branch in which she/he is required to serve. Even if selected, the promotion would be available only if the medical criteria is satisfied. In the instant case, the respondent was placed in low medical category for 'Hypertension' P2 (P) with COPE Coding C201P1E1 which is provided for in the Adjutant General's Branch policy letter dated 16.02.2018 as non-promotable category. However, the Board considered him and recommended for promotion keeping in view that he was placed in low medical category on 14.08.2018 during Annual Medical Examination and the next Medical Board was due in August 2020, which could not be held due to Covid-19. It is contended that the empanelment

pursuant to recommendation of the Selection Board cannot be claimed as unconditional, since it is always subject to meeting medical criteria.

4. With regard to the medical condition of the respondent, it is contended that since he was suffering with 'Hypertension' the Annual Medical Board in 2018 advised him to take two drugs daily to control his blood pressure within the permissible parameters. Although re-categorisation Medical Board held on 12.02.2021 found the respondent's blood pressure within the permissible parameters at 130/90, his medical category remained the same i.e., P2(P) with COPE coding C201P1E1 as he was still on medication. He had been advised to continue on one drug i.e., 'Telmisartan 40 mg', to be taken twice daily. Regarding the Re-medical board, it is contended that it was held based on the orders of the Chief of Army Staff on the request made by the respondent. In Re-medical Board, the respondent's blood pressure was found within the permissible parameters and his medical category was approved to be upgraded to SHAPE-I as he had informed the medical specialist that he was not on any medication. The appellant contends that the respondent though was on

medication had falsely stated that he is not on medication. In fact, he had stated in his appeal dated 07.05.2021 that he was only on, one drug medication. In that view, it is contended that since the applicant's medical category was still P2(P) with COPE coding C201P1E1 he is not fit for promotion despite empanelment. It is contended that the guidelines are applicable to all, irrespective of the Corps and Branch, more particularly when the duties are to be discharged in high altitude areas between 9000 feet to 14000 feet, which the respondent was required to perform at least on certain occasions if he was promoted to the post of Major General. It was contended that the respondent was not entitled to be promoted when his medical condition is admittedly in SHAPE-2.

5. The AFT having adverted to the rival contentions and also on making detailed reference to the documents which were placed before it has arrived at the conclusion that the No.1 Selection Board had taken all aspects into consideration and had thereafter empaneled the respondent. Further, AFT had also taken into consideration that the medical category of the respondent was upgraded to SHAPE-1 by a Re-Medical

Board held on 21.09.2021 after his blood pressure was found within the permissible parameters. Hence, taking into consideration the facts evolving in this case, the AFT has allowed the application and directed grant of promotion.

6. We have heard Ms. Madhavi Divan, learned Additional Solicitor General appearing on behalf of the appellants, Mr. Devadatt Kamat, learned senior counsel appearing on behalf of the respondent and perused the appeal papers.

7. The factual aspects insofar as the No.1 Selection Board recommending on 26.10.2020 the case of respondent for promotion on obtaining 94.482 marks and at that stage, the respondent was in SHAPE-2 medical category is not in dispute. The position is also that the Chief of Defence Staff on securing details on 12.02.2021 had declassified the results on 05.05.2021.

8. The learned ASG placed strong reliance on the circular dated 14.12.2012 relating to, system of Medical classification of Army Officers and consequent eligibility for promotion to select Ranks, which read as hereunder:-

“9. Promotion to Select Ranks of Colonel and Above.
Subject to meeting all other laid down conditions, officers in following permanent medical categories are eligible for promotion to select ranks of Colonel and above:-

<u>Ser No</u>	<u>Statement of Medical Classification</u>	<u>Implications</u>
(a)	Overall medical classification of SHAPE-1 and SHAPE-1B, irrespective of number of medical disabilities, ie, x, y, z or CODE Coding.	Promotable medical categories, irrespective of CODE Coding:- (a) SHAPE -1 (b) SHAPE-1B
(b)	Overall medical classification of SHAPE-2 (irrespective of number of medical disabilities, i.e, x, y, z), with disability profile H2 or P2 (for dental condition only) or E2, which will be considered at par with SHAPE-1 for promotion purposes, irrespective of the overall COPE Coding.	Promotable medical categories, irrespective of COPE Coding:- (a) S1H2A1P1E1 (b) S1H1A1P2E1(dental only) (c) S1H1A1P1E2
(c)	Overall medical classification of SHAPE-2 (irrespective of number of medical disabilities, i.e, x, y, z), with disability profile A2 or P2 (other than for dental condition only) or H2E2, if overall COPE coding is COPE-0 or COPE-1.	Promotable medical categories, only if overall COPE Coding is COPE-0 OR COPE-1:- (a) S1H1A2P1E1 (b) S1H1A1P2E1 (other than dental) (c) S1H2A1P1E2

12. Officers in permanent medical classifications, other than those mentioned in Para 9 above, are NOT eligible

for promotion to select ranks, less those eligible for consideration by Special Review Medical Board or granted Battle Casualty (War Wounded) status as covered subsequently.”

9. In that backdrop it is also necessary to take note of Defence Service Regulations for the Army, relied on by the learned senior counsel for respondent, which in the preface clarifies that departmental orders and instructions are based on, and take their authority from the said regulations. Regulation 67 of the Regulation for the Army relating to substantive promotion by selection, more particularly 67(b) thereof provides as hereunder :-

“67. Substantive Promotion by Selection – (A) xxxxxxxx

(a) xxxxxxxxxxxxxxxxx

(b) Substantive promotion by selection to the rank of Lt. Col and above will be subject to the medical fitness of the officer concerned for active service and the permanent medical classification of an officer not being other than S1 H1 A1 P1 E1, S1 H2 A1 P1 E1 or S1 H1 A1 P1 E2. An officer whose permanent classification is S1 H1 A2 P1 E1, S1 H1 A1 P2 E1 or **S1 H2 A1 P1 E2 may also be considered for promotion provided the following conditions are fulfilled:-**

(i) Such promotion would be in the public interest.

(ii) In the opinion of a Medical Board:-

(aa) **the officer is capable of performing the normal active service duties of the rank to which he is, being promoted, in his present medical category.**

(ab) any defect, disability, or disease, from which the officer is suffering, is not likely to be aggravated by service conditions, provided he is employed on

duties compatible with this medical category and within the restrictions placed by the Board.”

(emphasis supplied)

10. The case of the respondent was in the medical classification S1H1A1P1E2 referred to therein. It was subject to review and the regular Review Medical Board had not happened in the routine period of two years due to Covid-19 restrictions. The Regulation 67 of Regulations for the Army provides that an officer who is in the classification S1H1A1P1E2 also can be considered for promotion provided the conditions are fulfilled. Hence, Regulation 67(b)(ii)(aa) noted above provides that there is no absolute bar from being considered for promotion. Consideration could be made subject to the other criteria being met and the Selection Board will have to keep in perspective these aspects. Though the assessment made by the Selection Board is only a recommendation, the approval to be granted by the competent authority would be relevant. However, the nature of the post for which the selection is made and the consideration made by the Selection Board would also remain relevant. In that circumstance, the nature of consideration made by the No.1

Selection Board forms a relevant basis more particularly in a circumstance where in the instant case after recommendation by the No.1 Selection Board, the Chief of Defence Staff had also taken note of the medical status of the respondent and taking into consideration the nature of duties to be performed as Deputy JAG had cleared the respondent for promotion.

11. The AFT having gone through the No.1 Selection Board Proceedings, Records and file noting sheets of the Army, DMA, MoD, noted the observations contained therein which enabled the AFT in arriving at its ultimate conclusion. Since the sequence of nature of consideration made by the authorities concerned as noted by AFT becomes relevant, we find it expedient to reproduce and notice the same which read as hereunder :-

“(i) No.1 Selection Board considered the applicant for promotion to the post of Additional Major General (Litigation) in JAG Branch. His complete details, including medical status, and restrictions arising from this medical status were available to the Board.

(ii) The Military Secretary's policy letter on medical category restrictions dated 14. 12.2012 was available to the Board.

(iii) No.1 Selection Board recommended applicant for the rank of Additional Major General in JAG Branch after him being found fit in all respects for the rank. When Board recommended the applicant for promotion it was aware that he was placed in low medical category P2(P) for Hypertension with COPE Coding C201 P1 E1.

(iv) No.1 Selection Board recommended the applicant for empanelment to the higher rank of Major General without any rider.

(v) After applicant being recommended by the No.1 Selection Board the file was processed in Department of Military Affairs and perused at the level of the then Chief of the Defence Staff(CDS)/Secretary DMA. The then CDS, had, after going through the file raised two queries. The first query on 19.11.2020 was the "case needs to be bench marked with past boards". It was answered in the negative stating that there was no such bench mark. While answering the query it was also stated that when Brig Umesh Gupta, Brig Devendra Singh and Brig Rakesh were considered for promotion in their turn to Major General in JAG Branch the "cut off" marks were 91 and now the same was 93.5 whereas applicant has scored 94.482 marks. This shows that applicant is on a better footing than those officers who had been promoted earlier to the post in the past.

(vi) After the first query being replied the then CDS had raised another query on 12.02.2021 regarding medical status of the applicant, and in response to that query the CDS was informed on file that in the re-categorization medical board report dated 12.02.2021 his medical category was the same as that which existed on 14.08.2018 during his Annual Medical Examination, i.e. P2 (P) for Hypertension with COPE Coding C201 P1 E1. It was informed by Army HQ that "the officer has become low medical category (LMC) for Primary Hypertension on 15.04.2018 and the officer was performing the duties of DJAG at HQ Eastern Command, which involved heavy work load of all legal and HQ cases of the entire Command. In spite of LMC the officer continues to perform the duties of DJAG of the Command". The then CDS, after considering all aspects and finding applicant's medical category P2 (P) with COPE Coding C201 PI EI would not be a hurdle in his promotion, had cleared the file for approval by the Competent Authority of MOD/Govt of India. There was nothing on file to infer from any corner that applicant's approval for promotion to the rank of Major General was subject to meeting medical criteria.

(vii) After No.1 Selection Board's decision recommending applicant for promotion to the rank of Major General being cleared by the then CDS/Secy DMA without any rider, the same was also approved by the Competent Authority of Govt of India."

12. The learned ASG would however contend that the medical opinion during April 2018 records that the respondent is diagnosed with primary hypertension and the classification was indicated as SHAPE-2, which continued ever since. Insofar as the employability of the officer with COPE coding C201P1E1 it was noted that the officer is unfit for high altitude i.e., 9000 feet and above. It is pointed out that in the re-classification by the Medical Board on 12.02.2021 it was again stated that the serving officer was detected to have hypertension during AME and 'Telmisartan 40 mg' tablet had been advised and the disability profile is P2 (P). The learned ASG further contended that as on the date of declassification of result on 05.05.2021, it was indicated that latest AME/RME/RMB etc. is to be forwarded within 15 days, which discloses that the medical fitness was an essential factor to be taken into account. It is in that regard contended that the respondent also being aware of this requirement had filed an appeal dated 07.05.2021 wherein the respondent himself has admitted to these aspects of the matter and had sought consideration since the respondent assumed that he

would not be required to serve in high altitude area for which he was otherwise unsuitable. Further, the representation dated 17.05.2021 was made by the respondent seeking grant of waiver since he was aware about his disability. Subsequent thereto, on 31.08.2021 the respondent requested for re-examination of his medical category so that it could be upgraded if found fit. Such medical re-examination was sanctioned and through the medical opinion dated 20.09.2021 it was opined that the respondent is 'asymptomatic' and he is not on any medication for 'Hypertension'. The opinion recorded in the column, 'diagnosis' was that the officer is upgraded to SHAPE-1. Though the medical opinion is to that effect, the learned ASG sought to dispute the same by referring to the observations contained in the communication dated 22.09.2021 stating that the opinion dated 20.09.2021 is not reliable since it was based on the statement of the respondent himself which was made to the doctor that he is not on any medication though the earlier records indicate that he was on medication.

13. Having taken note of the contentions, the facts involved herein appear to be peculiar to the case on hand.

Firstly, as noted from regulation 67(b), an officer in SHAPE-2 also can be considered for promotion provided the Medical Board finds the officer to be capable of performing the normal active service duties. In the instant case, the respondent is the JAG officer and even if promoted would generally perform his duties in the headquarters. It cannot be disputed that as contended by the learned ASG the services may require him to occasionally go to high altitude areas. In that regard, a consideration of the Medical Board opinion during April 2018 records that the respondent is unfit for high altitude employability i.e., 9000 feet and above. As on the date of consideration by No.1 Selection Board, undisputedly the respondent was in SHAPE-2 medical condition. Apart from the fact that we have taken note of the observations of the AFT from the records of the selection process we have referred to the circular dated 06.05.1987 relating to selection process. It is noted that as per the composition of the Selection Board for the various ranks, it is indicated that No.1 Selection Board would consider the cases for promotion from the rank of Brigadier to Major General which is relevant in the instant case and No.1 Selection Board consists of the cream of officers

in the Rank. In the guidelines for conduct of Selection Board, the aspects to be taken into consideration is delineated and provides for the eligibility of the officer to be considered. Among the aspects indicated therein, the medical classification of the officer is one of the aspects. Further, while providing for objectivity in the selection process, apart from the overall performance of the officer, the employability of the officer in the next higher rank is to be kept in view by the Selection Board. The regulations while providing for the consideration empowers the Chief of Army Staff to ultimately take a decision. The role of the Military Secretary is only to bring to the notice of the Chief of the Army Staff if the officer concerned has been graded against the guidelines in the board grading.

14. In the background of the above, even if the primary aspect of the respondent officer being classified as SHAPE-2 as on the date of consideration by the No.1 Selection Board and as on the date of declassification on 05.05.2021 to which detailed reference as made by the learned ASG is taken note of, as rightly observed by the AFT the medical records were available before the No.1 Selection Board and a conscious

decision was taken to recommend for promotion. As noted, the guidelines provide for the Selection Board to take note of the medical classification of the officer. That apart, for an objective selection, the guideline requires the Selection Board to keep in view the employability of the officer in the next higher rank. In a matter of the present nature where the selection was being made to a high rank from that of Brigadier to Major General and that too in JAG branch, the employability of such officer and the nature of duties was also to be kept in view. In the instant case, the only disability of the officer concerned while in SHAPE-2 also is with regard to the risk in high altitude service and the No.1 Selection Board has kept in view the normal nature of work to be performed as JAG (Litigation). In that view, the No.1 Selection Board should be credited of having applied its mind before recommending the case of the respondent. Further, after clearance by the No.1 Selection Board, the Chief of Defence Staff had on 12.02.2021 taken note of the medical status of the respondent and had approved the recommendation. When officers of such high rank have applied their mind in the instant case and

approved the case of respondent for promotion the repeated objection by the Military Secretary is not justified.

15. The other aspect of the matter is that the respondent having filed an appeal and having made a request for waiver initially and thereafter for medical re-examination cannot be held against the respondent. Though the Selection Board had already recommended the candidature of the respondent which had been approved by the Chief of Army Staff, the respondent had sought for re-examination which is to his credit and was rightly allowed. The Medical Board in the opinion dated 20.09.2021 (ANNEXURE A/10) has recorded as hereunder :-

“This 57 year old serving officer was detected to have hypertension during AME in Apr 2018. He was evaluated and diagnosed to have Primary Hypertension. **He was advised medication BP control was adequate. Subsequently the officer has discontinued medicine for last one year as recorded by AMS and BP has remained within normal limits (Photocopy of BP recordings by AMA attached).** He is being observed in LMC P2 (Permanent). He has reported for remedial exam/Board as per directions of the COAS vide integrated HQ, MoD letter no. 76086/Gen/DGMS-5A dated 13 Sep. 2021. **He is presently asymptomatic. He is not on any medication for Hypertension.**

3. DIAGNOSIS : Primary Hypertension

Opinion: This 57 year old serving officer is a case of primary hypertension. **He has adequate blood pressure control with life style modification for one year. BP**

control remains adequate. He has no target organ damage. In view of the above, the officer is a candidate for upgradation to SHAPE-I (as per DGAFMS memorandum No. 182 of 2012 Para 17 d)”

(emphasis supplied)

16. As noted, the learned ASG disputed the same by referring to the treatment and follow up booklet which is produced along with the additional documents by the respondent himself to indicate that the observation recorded in the chart as, - ‘not on medication’ on various dates is based only on the oral statement of respondent made to the doctor which cannot be given credence. On this aspect, it is necessary to note that the medical records are of the ‘Command Hospital’ itself and not of a private practitioner. The first date on which it is recorded as, - ‘not on medication’ is on 25.06.2020 and the same is continued thereafter. The observations extracted above would indicate that the doctor has categorically recorded that the blood pressure has been controlled with lifestyle modification and the BP control remains adequate. When the opinion has been tendered by the competent medical experts, merely because the Military Secretary is not satisfied with the same will not entail either

the AFT or this court to sit as a medical expert and reassess the opinion given by the Medical Board.

17. Be that as it may, when the No.1 Selection Board had taken note of the medical records as it existed earlier, in the background of nature of employability of the respondent, which was approved by the Chief of Army Staff and further when there is medical record to indicate that the medical condition of the respondent has improved for the better and the AFT while arriving at its conclusion has kept in view all aspects of the matter, such consideration would not call for interference.

18. The learned ASG further referred to the circular dated 07.09.2016, more particularly to para 3 thereof which read as hereunder:-

“3. Post declassification of Selection Board results the empanelled officers are promoted in their turn based on availability of vacancies, performance & medical fitness. Given the time lag between the declassification of Selection Board results and physical promotion of an officer, there is a need to ensure that only 'those officers who are in acceptable medical category are promoted to the next higher rank. The actions to be taken by the officers and their Reporting chain on empanelment and during physical assumption of next higher rank are enumerated in succeeding paragraphs.”

In that regard, it is contended that given the time lag between declassification of the Selection Board results and the physical

promotion of an officer, it should be ensured that only those officers who are in acceptable medical category are promoted to the next higher rank. The said requirement also cannot act as a bar in the instant case, since as noted above, firstly there is an improvement in the health condition and the respondent is opined to be in SHAPE-1 by the Medical Board. Even otherwise as noted, the medical condition was kept in view by the No.1 Selection Board and all competent authorities, in the backdrop of employability and there is no other additional medical disability acquired by the respondent during the period of time lag, if any.

19. For all the aforestated reasons, we see no reason to interfere with the order passed by the AFT impugned herein, which shall therefore be implemented forthwith. The appeal being devoid of merit stands dismissed with no order as to costs.

20. All pending applications, if any, stand disposed of.

.....**J.**
(INDIRA BANERJEE)

.....**J.**
(A.S. BOPANNA)

New Delhi,
May 17, 2022