

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

12.

MA 82/2013
in OA 331/2012

Col LC Dahiya

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Mr. SS Pandey, Advocate
For respondents: None

CORAM:
HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.
HON'BLE LT. GEN. M.L.NAIDU, MEMBER.

ORDER
25.02.2013

This is an application for early hearing. The matter is already fixed on 20.03.2013. It is not possible to hear the matter at an early date. The application is dismissed.

Case to come up on the date fixed.

A.K.MATHUR
(Chairperson)

M.L.NAIDU
(Member)

New Delhi
25th February 2013

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**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
NEW DELHI.**

O.A.No.331 of 2012

Col. L C Dahiya

...Petitioner

Versus

Union of India & Others

...Respondent

For the Petitioner : Shri S.S.Pandey, Advocate

**For the Respondents: Shri R. Balasubramanian, ASG and Ms.
Shilpa Singh, Advocate**

C O R A M:

**HON'BLE MR. JUSTICE A.K.MATHUR, CHAIRPERSON
HON'BLE LT.GEN. M.L.Naidu, MEMBER (A)**

**JUDGEMENT
(26.04.2013)**

By Chairperson

1. Petitioner by this petition has prayed that the policy of the respondent treating the Mechanized Infantry Officers including the Applicant different from officers of the other Infantry Units as well as the system of reservation of vacancies Arms wise on Pro Rata basis in the Rank of Brigadier and thereafter may be quashed along with orders

dated 31.12.2004, 22.02.2009 and 28.08.2012. He has also prayed that respondent should be directed to maintain parity in the status of the Applicant as Mechanized Infantry Officers vis-à-vis his own batchmates belonging to Infantry for the purpose of consideration for career courses and promotion as the position existed till 1973 batch officers of General Cadre. He has also prayed that respondents may be directed to maintain the status quo as existed in respect of vacancy position in the rank of Brigadier amongst the General Cadre Officers and their consideration for promotion to such rank prior to 2001 quashing all other subsequent orders diluting the said system.

2. The petitioner was commissioned in the Indian Army on 20.3.1979 in Mechanised Infantry Regiment. It is alleged that the respondent in order to modernise the existing Infantry Battalion converted and raised various Battalions of Infantry Regiments to Mechanized without altering the nomenclature and affiliation of such Units with their respective Regiments of Infantry. This was with an object to retaining the ground by such mechanized forces as an integral part of the Infantry.

The Mechanized Infantry Regiment which was raised by the order dated 20.3.1979 converting Infantry Battalion from 1 to 14 and re-designated as Mechanised Infantry Battalions but no Government order or instructions was issued creating a different arm and according to the petitioner it remained a part of the Infantry. The Mechanised Infantry cell was formed and placed under Armoured Corps Directorate for technical control. This set up was re-designated as Directorate General of Mechanised Forces(DGMF) in the year 1986 with Mechanised Infantry Cell as its part for technical purposes. It is alleged that the respondent without amending in the army rule or without any order passed by the Government of India, started creating differentiation between the Infantry and Mechanized Infantry by changing the departmental channel as head of Army from Director General Infantry to Director General Mechanized Forces. It was alleged that initially it was decided to keep the Mechanized Infantry under the fold of DGMF for the technical reasons where as the administration and control was supposed to be exercised by DG Infantry. The petitioner's contention is that this was done

without any appropriate orders by the Government and it is also pointed out that in creating an independent arm, a order was issued for Air Defence Units from Artillery as separate Corps vide letter dated 29.10.1993 but there is no such order creating the Mechanized Infantry to the best of the knowledge of the petitioner. It is also pointed out that the various orders issued from time to time laying down the order of precedence of the Infantry Battalion recognized as Mechanized Infantry Battalions as a part of Infantry and not as a separate Arm/Corps in accordance with legislative provisions contained in Rule 187 of the Army Rules 1954. The emphasis of the petitioner was that the Mechanized Infantry is not recognized as a separate portion outside Infantry to be constituted as a Corps. Therefore, this Mechanized unit continues to be a part of the Infantry. It is alleged that petitioner was commissioned in the Mechanized Infantry Regiment of the Indian Army on 13.06.1987 and an impression was given to him that there is no difference so far as career progression of the officers of Mechanized Infantry and Infantry are concerned.

3. It is alleged that Army Commanders' Conference was held in 2001 and it was resolved that promotion in the rank of Brigadier and above will be treated as a 'General Cadre'. It means that for consideration of officers for the rank of Brigadier and above, all officers belonging to Infantry including Mechanized Infantry and Armoured Corps which selected officers of the other Arms such as Artillery, Signals and Engineers are clubbed together for all purposes including promotion. Therefore, the respondents were supposed to calculate the vacancies available for promotion to the rank of Brigadier by taking into count total vacancies available for the General Cadre against which total number of officers of a batch with same seniority belonging to General Cadre were required to be considered for the rank of Brigadier and above together on such combined vacancies. However, in 2001 the decision was taken by respondent to provide pro-rata vacancies in Brigadier rank which was part of the General Cadre and all officers were supposed to compete based on their merit for promotion as Brigadier and above as General Cadre officers without any fixed vacancy for any particular

Arm within the General Cadre. It is alleged that a decision was taken at the Army Commanders' Conference not to reduce the vacancy of the Infantry in the rank of Brigadier on the pro-rata basis. It is alleged that without proper consideration, the application of such decision at the Army Commanders' Conference which constituted majority from Infantry or Artillery Officers and who were the beneficiary of such policy and implemented such change for the batch of 1974 officers on such pro-rata basis.

4. Then a Committee was constituted by the Government under the Chairmanship of Defence Secretary known as AV Singh Committee for improvement of condition of service of the officers of the Armed Forces and also for suggesting measures for lowering the age profile of the field Commanders at all level from Colonel and above. The recommendations of AV Singh Committee clearly acknowledged and reaffirmed the concept of General Cadre forming part of common pool as feeder selection of higher ranks of Brigadier and above. It is alleged that recommendations of the Committee were based on the inputs

received from Respondent No.2, 3 & 4 and the concept of the General Cadre was strengthened but due to ulterior motive to extend undue advantage to the selected Arms such as Infantry excluding Mechanized Infantry and Artillery. The report of AV Singh Committee was utilised to justify that Mechanized Infantry is an independent Arm and distribution of General Vacancies is correct. It is alleged that this was protested by the Colonels of the Regiment of Brigade of Guards by addressing a letter to the Government that Mechanized Infantry Regiment and Brigade of Guards be restored as part of the Infantry. The emphasis was that Mechanized Infantry is non-else but part of the Infantry and there is no Government order to justify it. Therefore, the recommendation of the AV Singh Committee was on the basis of the data fed by the Government, therefore the recommendations of the AV Singh Committee cannot be of any help to the respondent. It is alleged that the petitioner in his 25 years of service in various units of Infantry deployed in counter insurgency environment had no reason to believe that his status in anyway was different from Infantry officers. The

contention of the petitioner was that the Mechanized Infantry was the part of Infantry and this unilateral decision to treat it as an independent Corps or Army is without obtaining the sanction of the competent authority, therefore, petitioner's case for promotion to the rank of Brigadier should be considered along with other Infantry Officers. In this context, the grievance of the petitioner is that the Selection Board for Infantry Officers of the batch of the applicant who also like the applicant are part of General Cadre in the rank of Brigadier to be considered by the Selection Board to be held in Feb & Sept 2012, wherein the officers of 1987 batch of the Infantry were supposed to get consideration for promotion to the rank of Brigadier as against the consideration of the officers of the 1985 batch of Mechanised Infantry for the rank of Brigadier. Therefore, as per the schedule followed by the Respondent, Respondent shall consider such promotion only after two years from now as compared to his own batchmates for a rank forming part of General Cadre for which the instructions clearly provided a consideration by common General Cadre Board on combined vacancies meaning thereby such

separation of Infantry Officers from the batch of the Applicant from the General Cadre impermissible within the applicable framework. Therefore, the long and short grievance of the petitioner is that the Mechanised Infantry is a part of the Infantry and he should be considered for promotion to the rank of Brigadier alongwith the Infantry officers and the fixation of the pro-rata should not be enforced as it is likely to prejudice his chances of his promotion.

5. A detailed reply has been filed by the respondent. It was submitted that the formulation of policy to be followed in the Army is in the realm of executive function of the Government and the Chief of the Army Staff. The policy decision has been arrived after detailed discussion in the Army Commander's Conference for betterment of the organization and to give equal opportunity to batches of different arms/ services. The vacancies were fairly distributed based on well defined and transparent parameters. The distribution is enabling satisfactory promotional prospects to all Arms / Services in Brigadier rank. The comparative selection rate of Mechanised Infantry are more or less at par with Infantry in

Brigadier rank in the last eight batches. It is also pointed out that the petitioner will be considered in due time for promotion to the rank of Brigadier, he is trying to champion the cause of Mechanised Infantry comrades. The petitioner was commissioned in Mechanised Infantry in June, 1987 and he has been in the staff appointment in Mechanised Forces Environment. Petitioner was considered by the third Selection Board as a Mechanised Infantry Officer in September, 2005 and was empanelled to the rank of Colonel. It is also pointed out that the petitioner has been through out in the Mechanised Infantry and also been approved to the rank of Colonel against the vacancy in Mechanised Infantry, Therefore, he is stopped from raising the plea after a lapse of 25 years that Mechanised Infantry is not a different Arm and is part of Infantry. It is pointed out that Mechanised Infantry is a different Arm and is not a part of Infantry and in this connection, respondent invited our attention that the creation of Mechanised Infantry Regiment was done under the orders of President of India on 04.05.1977 titled as "Reorganisation of Infantry Battalions (Mechanised). The Government of

India, Ministry of Defence vide its letter No.A/30401/1/SD 2/510-C/D(GS-I) granted sanction of the President for "creation" of Mechanised Infantry, raising of Mechanised Infantry Regimental Centre and raising of Record Office and creating a Army HQ (Adjutant General) by order letter dated 23.03.1979 and issued instructions for raising of Mechanised Infantry Regimental Centre and Record Office. It would be necessary to reproduce the order of 20.5.1979 because it is very crucial to the issue, which reads as under:

Secret

No. A/30401/1/SD 2/510-C/D(GS-I)
Government of India
Ministry of Defense
DHQ PO New Delhi-110011
20 March 1979

To

The Chief of the Army Staff

FORMATION OF MECHANISED INFANTRY REGIMENT

Sir,

1. I am directed to convey the sanction of the President for the following measures :-
 - (a) Creation of a Mechanised Infantry Regiment.
 - (b) Rising of a Mechanised Infantry Regimental Centre, as per PE placed at Appendix 'A'.
 - (c) Rising of Records Office for the Mechanised Infantry. Regiment as per PE V/210/1946/10.
2. The civilian staff requirement of the record office as per PE referred to at (c) above will be met by equivalent reduction and re-employment of civilian staff from the existing Record Offices.
3. The PE of the Regimental Centre as at Appendix 'A' will be subject to review by the ASEC within two years from the date of completion of rising.
4. The 'Composition tables of the Regular Army' issued vide Ministry of Defense letter No. 82607/SD 2/1468/C/D (GS-I) dated 2 Sep 75 will be amended accordingly.
5. Necessary administrative instructions will be issued by you.
6. These issues with the concurrence of Ministry of Finance (Dof) vide their u.o. No.39/S/GS.I of 79.

Yours faithfully,

sd/-
(Balwant Singh)
Desk Officer

Copy to:-

The Controller General of Defense Accounts
The Director of Audit, Defense Services
The Controller of Defense Accounts, EC Patna, CC Meerut, WC Meerut, (O) Pune, NC Jammu, (ORs) Madras/Meerut.

6. Then the Director General of Military Training was constituted on 01.02.1984 which stipulated special to Corps promotion paper in promotion examination Part D w.e.f. February, 1985. The Infantry Battalions were converted/raised to Mechanised Infantry Battalions in a phased manner and for each conversion / raising the approval of Cabinet Committee on Parliamentary Affairs was obtained. The list of Infantry Battalions converted /raised to Mechanised Infantry Regiment.

DETAILS OF INF BNS CONVERTED/RAISED TO MECH INF REGTS.

CENTRE AND RECORDS FOR MECH INF REGT

Ser No	Units	Old designation of converted units	Year of raising	Date of conversion to BMP Bn	Conversion Auth MoD letter No. And dated	Whether approval of CCS obtained.
1.	Mech Inf Regt, Mech Inf Regt Centre and Records Office for Mech inf Regt		20 Mar 1979		A/30401/1/SD-2/510-C/D (GS-I) dt 20 Mar 1979	
2	1 MECH INF	1 MADRAS	01 Dec 1969	30 Jan 1986	A/37614/G S/MIC-3/447B/D (GS-IV) dt 30 Jan 1986	CCPA approval accorded in 1982-83 for raising of Mech Inf. Compy of the same not held with office.
3	2 MECH INF	1 JAT (LI)	15 Aug 1970	08 Feb 1991	A/36714/G S/MIC-3/116/D (PROC)/9 dt 08 Feb 1991	Approved by CCPA Vide No. CCPA/6/79 dt 11 Apr 1979. Copy of the same not held with this office.
4	3 MECH INF	1/8 gr	14 Jun 1971			
5	4 MECH INF	1 SIKH	15 May 1970			
6	5 MECH INF	14 KUMAON	01 May 1978			
7	6 MECH INF	1 GARH RIF	15 Jun 1970			
8	7 MECH INF	1 DOGRA	15 Apr 1970			
9	8 MECH INF	7 PUNJAB	11 Aug 1971			
10	9 MECH INF	7 GRENADIERS	11 Aug 1971			
11	10 MECH INF	20 MARATHALI	11 Aug 1971		A/36714/	Approved by CCPA. Vide No. CCPA/6/79 dt

12	11 MECH INF	18 RAJ RIF	11 Aug 1971	08 Feb 1991	GS/MIC-3/116/D (Proc)/9 dt 08 Feb 1991	11 Apr 1979. Copy of the same not held with this office.
13	12 MECH INF	16 MAHAR	03 Apr 1975			
14	13 MECH INF	18 RAJPUT	02 Apr 1981			
15	14 MECH INF	16 JAK RIF	04 May 1977	16 Jan 1981	A/30052/1/SD2/127-C/D(GS-I)dt 16 Jan 1981	
16	15 MECH INF	-	15 Dec 1981	Initially raised in BMP-II bns		
17	16 MECH INF	-	01 Jan 1982			
18	17 MECH INF (R&SP) (TR)	-	28 Jul 1983 (R & Sp) bn	29 Dec 2000	7 (7)/94-D (GS-I) dt 29 Dec 2000 (Restructuring to (Tr)bn.	Approved by CCS vide No. 7 (7)/94-D (GS-I). Copy of the same not held with this office.
19	18 MECH INF	-	04 May 1977	16 Dec 1982	A/30052/82-83/SD2/1406-C/D(GS-I)dt 16 Dec 1982	-do-
20	19 MECH INF (R & SP) ()	-	15 Sep 1983 (R & SP) bn	29 Dec 2000	7 (7)/94-D (GS-I) dt 29 Dec 2000 (Restructuring to (Tr) bn.	-do-
21	20 MECH INF	-	01 Mar 1984	Initially raised in BMP-II bns		
22	21 MECH INF	-	01 Mar 1984			
23	22 MECH INF	-	31 Mar 1984	Initially raised in BMP-II bns		
24	23 MECH INF	-	11 Feb 1985 (R & Sp) bn	29 Dec 2000	7(7)/94-D (GS-I) dt 29 Dec 2000 (Restructuring to 9Wh) bn	Approved by CCS vide No 7 (7)/94-D (GS-I). Copy of the same not held with this office.
25	24 MECH INF (R&SP) (TR)	20 RAJPUT	09 Sep 1212 AD	03 Dec 1992 (R&S) (Tr)	88011/Conversion/Inf 3/1968-C/D (GS-1) dt 03 Dec 1992	-do-
26	25 MECH INF (R&SP) (WH)			29 Dec 2000	7 (&)/94-D (GS-I) dt 29 Dec 2000	-do-

7. The Brigade of Guards Battalion was amongst first to be converted into Mechanised Infantry Regiment. Therefore, at the intermittent stages, the conversion of Guards Battalions to become as Mechanised Infantry Battalion continued. It is also pointed out that the expression 'Corps' as defined in Section 3 (VI) of the Army Act means – *"any separate body of persons subject to this Act which is prescribed as Corps for the purpose of all or any of the provision of the Act."* The Army Rule 187 lists out separate bodies are 'Corps' for the purposes of different provisions of the Act. Therefore, it was pointed out that Army Rule 187 or AA Sec 3 (vi) does not deal with different Arms/Service.
8. The Mechanised Infantry are to operate in a close conjunction with Armour, the Directorate General of Armoured Corps was redesignated in 1986 as Directorate General Mechanised Forces (DGMF) and a separate Mechanised Infantry Cell was created. This Directorate was established with a view to bring synergy at Army HQ among Arms which operated together on the battle field. Initially, it consisted of Armoured Corps, Mechanised Infantry and Aviation. Later, Aviation was

segregated from DGMF and formed its own independent Directorate. It is also pointed out that considering the growth of Mechanised Infantry, the proposal for independent Directorate headed by Addl. Director General (Mechanised) has already been under consideration. The composition of DGMF comprises of 2x DDG's; one each from Mechanised Infantry and Armoured and 3 x Directors each from Mechanised Infantry and Armoured. It is submitted that Mechanised Infantry is treated as a separate arm for the purpose of allocation of Arms/Services to cadets on commissioning and cadets names separate choice of opting for Infantry and Mechanised Infantry. For the purpose of allocation of vacancies for various select ranks, nomination of Career Courses, Mechanised Infantry is an Independent Arm and till date no representation was received from any officer from Mechanised Infantry that he should be considered as an Infantry Officer. It is also pointed out that a study group was also constituted to study whether the Infantry division is an independent arm or part of the Infantry. Though, the recommendation was that Mechanised Infantry regiment should remain under the Directorate General

Mechanised Forces and status quo be maintained and basic Infantry training should be carried out at Kamptee and various other suggestions were given. It is also pointed out that Mechanised Infantry has been placed under the DGMF after detailed interaction keeping in mind the operational role. It is pointed out that any change to the existing arrangements will have adverse operational implications, which are not operationally acceptable in the interest of the organisation and security of the country. A comparative table was also given to show that Mechanised Infantry is a separate arm and it always remain the part of the Armoured element and has operational role akin to Armoured and it was never constituted part of the Infantry Divisions. The distinction between the two has been detailed which reads as under:

S. No.	HEAD	Mechanised infantry regiment	Infantry battalion
1.	Commission	Officers have separate option for mechanised infantry as distinct Arm and allocation is also as a separate Arm.	Infantry is also is separate Arm for choice and allocation of Arm by the officers.
2.	Promotional Exam Part D	Special to corps papers.	No such special to corps paper
3.	Composition	Companies Headquarter Company O3*Mechanised companies Platoons Recce, Signal, Adm Medium, Light Repair Workshop	(a) Companies HQ Support Company, 4*Rifle Companies Platoons Transport, Adm, 81 mm Mortar, Assault, Signal, Recce, and Surveillance platoon
4.	Composition strength as per War Establishment	26*officers, 52*JCO's, 6*JCO's/CHM(technical),	(a) 21*officers, 42*JCO's, 793*OR's

		721*OR (Total:805) There is technical officer, Subedar (technical) Offr from EME authorized as incharge of LRW	(total:856) (b) No technical officer of technical JCO authorized (c) No such authorization for EME officer.
5.	Transport authorization	Specialized vechiles e.g. Lorry Zil 131/5/7.5 Ton with electronic Missile Control, Tractor Recovery, FRT's (tracked) ARV's Carrier Motor tracked etc.	No such specialized vehicles authorized in war establishment.
6.	Weapons and Ammunition	ICV Armament (BMP-2/2K) – 30 mm Cannon, Missile	No such weapon and Ammunition authorized.
7.	Terrain of operation	Only operates in Deserts and plains in Mechanised infantry environment.	Infantry operates in all operational areas ranging from Siachin, High altitude, Line of control, CI/CT, plains/and deserts.
8.	Battle Groups	Always from mixed groups with armoured combat command at Brigade level, combat groups at battalion/regiment level and combat team at Company/Squadron	Do not from part of combat groups/teams etc.
9.	Command channel	Always constitute part of Armoured Division, Armoured Brigade (in Rapid strike Division, Armoured Independent) Brigadier, Independent Mechanised Brigade BUT NEVER PART OF INFANTRY DIVISION OF BRIGADE.	NEVER PART OF ARMOURED DIVISION OR ARMOURED BRIGADE OR MECHANISED BRIGADE AND ALWAYS PART OF INFANTRY DIVISION OR BRIGADE
10.	Officers Cadre	Mechanised officers considered by SB for promotion as separate Batch and vacancies are allocated separately for mechanised infantry.	Infantry officers are considered as separate Batch and vacancies are allocated separately for infantry.
11.		Separate mechanised infantry regimental centre, Mechanised Records Officers JCO's/NCO's Cadre managed separately and independent of infantry for promotions, Honours and Awards, Honorary Commission.	Different Regiments have own Regimental Centre and Records offices.
12.	Directorate	Under Directorate General of Mechanised Forces (DGMF) having components of armoured and mechanised	Under Directorate General (Infantry)

9. Therefore, the contention of the respondent was that this is a policy decision of the government and it does not suffer from any violation of article 14 or 16 of the constitution. Looking to the betterment of the functioning of the army and to provide equal opportunities to all the officers this new organisation i.e. Mechanised Infantry has been raised and persons belonging to the mechanised infantry be considered equally along with other officers on their turn. It is also pointed out that in view of the decision given by the Hon'ble Supreme Court given in the cases of *P.U.Joshi & Ors. Vs. Accountant General Ahmedabad & Ors. [(2003) (2) SCC 632]*, that what would be the policy for the betterment of the organisation should be left to the respondent as they are better judge to organise the set up and for the better efficiency of the administration. Their Lordships have observed as under:

We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of policy and within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the

Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service.

10. It is also pointed out that the trifurcation of the General Cadre taken in the Army Commanders' Conference held in 2001, approximately 13 batches have been considered for promotion to the rank of Brigadier (General Cadre) and Selection Boards duly approved by the Ministry of Defence. It is also pointed out that the decision to trifurcate the General Cadre into separate vacancies of Combat Arms Armoured Corps, Mechanised Infantry and Infantry was based upon the fact that Colonels in consideration for the rank of Brigadier earn their criteria CRs in different environment and therefore considering them for promotion to Brigadier on basis of a common pool of vacancies does not

provide a level playing field. It is pointed out that without recourse to this system, disproportionate number of officers of a single Arm were being promoted to Brigadier which was not considered to be in organisational interest. The entry in the General Cadre, is from amongst Colonels who have earned their credentials in their respective Arms. It is also submitted that due to aforesaid reasons, Selection Boards of different Arms of same batch have been held on different dates for several years.

11. This whole exercise has been done for the betterment of the institution and just because petitioner doesn't stand to gain is no ground to find fault with the policy decision done by the Government. The petitioner has been in this Mechanised Infantry Regiment right from his commissioning and getting promotions in this line only upto the Colonel and now when the question came for the promotion to the rank of Brigadier, he raised the issues which he hitherto accepted. So far as selection to the rank of Brigadier has been made from the Mechanised Infantry and petitioner who has been promoted to the post of Colonel, never made a grievance that he

should be treated as a part of the Infantry. It is only when the case from promotion from the Colonel to Brigadier where vacancies has been distributed pro-rata and because of the strength of the Infantry in Mechanised Infantry, his chances of promotion have become lesser than from the officers in Infantry Division, he has woken to challenge this.

12. Our attention was also invited to a order of the Ministry of Defence delegating the administrative powers to the Service HQs and in that it is pointed out that all this power for promotion of the Brigadier has been given to the Service HQs and in this connection our attention was invited to the order of delegation, power has been delegated to the Military Secretary in the Army, to the COP in the Air Force and AOP in the Navy. The delegation reads:

MINISTRY OF DEFENCE

Subject: Delegation of Administrative Powers to Service Headquarters

It is intimated to all concerned that the listed administrative powers (as enclosed have been approved by Rakha Mantri to be delegated to Service Head Quarters.

2. Concerned Wings / Branches / Sections in the Ministry of Defence are requested to issue individual orders after following the required procedure on the subjects, relevant to them.

(B.B.Thakur)
Director (CMIS)

All Joint Secretaries in Deptt. of Defence
M of DID No.34(3)/2001/D(O&M) dated 03.08.2001

ENCLOSURE				
DELEGATION OF ADMINISTRATIVE POWERS TO SERVICES HQS				
S.No.	Subject	Approving Authority	Authenticative Authority	Remarks
PERSONNEL RELATED MATTERS				
1.	Advance recruitment upto 50% of new raisings and accretions with prior approval of CCS and pending Govt. Sanction	AG/COP/AOP	Dy Dir/Astt Dir / AAG/DAAG	
2.		-do-	-do-	
3.		-do-	-do-	
4.		-do-	-do-	
5.		-do-	-do-	
6.		-do-	-do-	
7.	Recruitment publicity	-do-	-do-	
8.	Re-employment of officers upto the rank of Brig. and equivalent only against deficiencies as per Govt. orders of 08.06.2001	-do-	-do-	
9.	Termination of re-employment of officers upto the rank of Brig. and equivalent	-do-	-do-	
10.	Premature retirement of officers upto the rank of Brig. and equivalent on all grounds	-do-	-do-	
11.	Deputations abroad of all officers upto the rank of Brig. and equivalent and PBOR after the approval of Screening Committee	DCOAS (T&C)/AG/MS/COP/AOP/AOA	-do-	
12.	Appointments of Officers upto the rank of Cmde / Air Cmde	CNS/CAS	-do-	
13.	Utilisation of sanctioned posts within the overall authorised cadre in respect of officers upto the rank of Central / State Government organisations / PSUs within the sanctioned strength	MS/COP/AOP	-do-	
14.	Deputation of officers upto the rank of Brig. and equivalent to Central / State Government organisations / PSUs within the sanctioned strength	-do-	-do-	
15.				

13. Therefore, it was pointed out that the promotion to the post of Brigadier has been now delegated to the Service HQs. In

this connection our attention was also invited to the syllabus of the Army War College, Manual of Infantry and it was pointed out that for Mechanised Infantry separate set of papers were also prescribed along with Infantry and it was also pointed out that the Infantry training right from the beginning consist of separate papers along with general training.

14. We have considered rival submissions of the parties. Mr. Pandey, Counsel for the petitioner emphasised that there is no separate independent Corps or Army of the Mechanised Infantry and there is no sanction by the Government, therefore, the Mechanised Infantry should be treated as part of Infantry and selection to the rank of Brigadier should be among all the officers of Infantry including Mechanised Infantry. He has also submitted that the fixation of Pro Rata vacancies and promotion done upto the level of Brigadier is without any legal sanction from the government. Both these issues, he has tried to raise in reference to the various communications which has been transpired by various administrative levels. As against this,

Mr. Balasubramaniam, learned counsel for the respondent has emphasised that in fact this is a policy matter and a policy decisions should be left to the government because they are in better position to appreciate the intricacy of the services and there is no violation of the rights of the petitioner. Therefore, this policy decision for the Army and Ministry of Defence is the best judge for it. In this connection, he has invited our attention to the observation made by the Apex Court (*Supra*).

15. We have bestowed our best of consideration to the submissions of the parties. The crucial question is whether the creation of the Mechanised Infantry Regiment is a part of the larger part of the Infantry or not. Our answer is in negative. An order dated 20.3.1979 has been clearly understood by all the parties that this organisation has been created as a independent organization from the Infantry. The option to join Mechanised Infantry has been asked to the officers at the inception and once they are earmarked for Mechanised Infantry they have to qualify certain papers on the subject apart from the general training. Therefore, this

mechanised infantry has been created right from 1979. A separate directorate is there and all officers when they go for promotion courses during their service tenure, separate papers are there for Mechanised Infantry. Therefore, this has been understood by all parties right from the beginning that this is separate organisation which has come up. The petitioner himself was commission officer in the Mechanised Infantry and he has been regularly getting his promotion right upto the Colonel in Mechanised Infantry and only after the AV Singh Committee Report that the selection for Colonel and onwards is on merit whereas promotion upto the Lt. Colonel is on time scale. Now, promotion of Colonel onwards is by way of selection and petitioner himself was selected to the post of Colonel in Mechanised Infantry and this has been enforced for the last 2001 onwards because for the first time the selection of Mechanised Infantry forces has taken place between 2001 and 2002 when officers who have completed more than 15 years of service and their case for promotion has come up for consideration. Some correspondence was also produced by the Counsel for the

petitioner to justify that even group study is of the view that they should be treated as a part of the Infantry. This is for the organisation that in what way they think it better to utilise their forces as it dependent upon the recommendation of the persons who are well-versed in the subject. Learned Counsel tried to make a oblique references that this is because of benefit of certain vested interest other than the issues which are germane to the organisation and he wanted to make a reference that Commander Conference is fixation of pro-rata was all done without knowledge of the government. We regret that this is not correct. Both the parties right from the beginning know that Mechanised Infantry is a separate organisation which has come up through the order dated 21.5.1979 by the Government of India, though it do not specify to be treated as a Arm but fact of the matter is that this has been so treated by the Ministry of Defence and it is acted upon like that only. All the parties including Govt. who is rule framing authority has treated the order of 20.5.1979 as creation of Army / Corp then no other authority is required. Since both the parties have

understood this letter of 20.5.1979 of creating an independent Arm and Directorate and other establishment has been created in that light and to say that there is no Government sanction is far from correct. A long understanding of the subject between the parties shows that there already an acceptance by the Ministry of Defence which is a competent authority that this is a separate independent organisation like Infantry it is also Corps or Arm of Indian Army. Therefore, the grievance of the petitioner who is in this organisation start from his commissioning service cannot be heard to say that there is no legal sanction of the Government. It is unthinkable that the Government who has created this organisation in 1979 will be unmindful that this is not an independent organisation, will be far from correct. Government has understood it and all the officers belonging to Mechanised Infantry Regiment understands it and nobody has so far challenged except this challenge at this belated stage when all the parties have understood that Mechanised Infantry is an independent Corps or Arm. The allegation of Mr. Pandey that some persons with vested

interest and for improving their prospects of promotion has devised this policy, is only a perception of the person who has felt that his chances of promotion is jeopardize, therefore, he has tried to rake upto this issue cannot be accepted. This order of 20.5.1979 has been understood by the government and there is a clear understanding in the government that it is a independent Arm and all promotions are taking place in this organisation, though the posts are less of Brigadier because of looking into the number of officers in the Mechanised Infantry as against the Infantry that is no ground to take it that there is no sanction of the government as petitioner only feels aggrieved because persons of his batch in infantry get quicker promotion than the persons from his stream i.e. Mechanised Infantry will get promotions later is no ground to say that this is a part of the Infantry and he should be treated as man of Infantry and be considered along with the batch of Infantry cannot be accepted. Since it has been accepted by the Government and all the parties have gone on trial on this issue, it is belated now to change the course and we hold that

mechanised infantry is not part of the infantry. Hence, the contention of the learned counsel for the petitioner is rejected.

- 16 Next contention of the learned counsel for the petitioner is that the promotion to the post of Brigadier has been given by HQ, there is no such sanction of the Government, this is also not correct as we have pointed out that there is a government order dated 3.8.2001, where the power of the promotion to the rank of Brigadier has been delegated by the Government to the Military Secretary, therefore, this argument is also without any basis. The fixation of the pro-rata basis of the vacancies cannot be faulted as this has been done on the recommendations at the Army Commanders' Conference and Government has acted upon and it means that it is the action of the Government. After all Army Commanders' conference always make recommendations and same cannot be acted upon unless it is accepted by the Government. Therefore, this contention of the learned counsel for the petitioner is without any merit.

17. Hence, as a result of above discussion, we are satisfied that there is no merit in this petition and same is accordingly dismissed.
18. No order as to costs

[Justice A.K. Mathur]
Chairperson

[Lt. Genl. ML Naidu]
Member (A)

New Delhi
26th April, 2013

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

1.

OA 331/2012

Col LC Dahiya

.....Petitioner

Versus

Union of India & Ors

.....Respondents

For petitioner: Mr. SS Pandey, Advocate

For respondents: Mr. R Balasubramanian, Advocate

CORAM:

HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.

HON'BLE LT. GEN. M.L.NAIDU, MEMBER.

ORDER

26.04.2013

Learned counsel for the petitioner orally sought permission to file leave to appeal in Hon'ble Supreme Court. There is no question of law of public importance involved in this matter. This is not a fit case to grant leave to appeal before the Hon'ble Supreme Court as it does not involve any question of law of public importance.

The request for leave to appeal is declined.

(A.K.MATHUR)
CHAIRPERSON

(M.L.NAIDU)
MEMBER

New Delhi
Dated the 26th April, 2013
cs