

The active service of an officer during War and Battle Awards and Honours earned during such action, is one of the several factors to be taken into consideration by the Special Selection Board in recommending promotion.

[Case Brief] Lakhwinder Singh Vs. Union of India & Ors.

<u>Case name:</u>	Lakhwinder Singh Vs. Union of India & Ors.
<u>Case number:</u>	Civil Appellate Jurisdiction (Slp © Nos: 8501 Of 2007)
<u>Court:</u>	Hon'ble Supreme Court of India.
<u>Bench:</u>	J. V.S. Sirpurkar J. Altamas Kabir
<u>Decided on:</u>	10 July 2008
<u>Relevant Act/Sections:</u>	The Army Regulation Act,1987

➤ **BRIEF FACTS AND PROCEDURAL HISTORY:**

1. That the Petitioner has actively fought various combats and participated in various operations from 1984 to 2003. That the Petitioner was promoted to the rank of Major General in 2001.
2. The Petitioner was further nominated for the rank of Lt. General by two Special Selection Board which consists of Chief of Army Staff, Vice- Chief of Army Staff and Six Senior Most Lt. Generals who all together make recommendation for the promotion to the rank of Lt. General and the final decision is of Ministry of Defence.
3. The Special Selection Board Meetings were held in 2004 and 2005 respectively where in 2004 Petitioner's promotion was denied as there was lack in vacancy with respect to the candidates. In 2005 his promotion as once again denied while the other candidate was given the promotion.

The procedural history is as follows: -

- i. The Petitioner filed a non-statutory complaint with the COAS on 17 Jan 2005 which was remained unattended.
- ii. Then the Petitioner filed another Statutory complaint and approached the Ministry of Defence challenging the supersession on 29 Aug 2005.
- iii. Failing to get the desired remedy, the petitioner then filed a writ petition before H.C of Delhi stating that he was eligible for the rank of Lt. General but was frequently rejected.
- iv. The petitioner was totally unsatisfied by the judgement of HC, and further filed the Special Leave Petition in SC challenging the impugned judgment and order dated 22 March 2007 delivered by Delhi High court.

➤ **ISSUE BEFORE THE COURT:**

1. Whether the decision made by the Central Government was biased, arbitrary and discriminatory?

➤ **RATIO OF THE COURT**

1. Appearing for the petitioner, learned senior counsel, Mr. Patwalia, repeated and reiterated the case made out by the petitioner in his Writ Petition and emphasised the fact that despite the recommendation of two Special Selection Boards, consisting of the COAS, the Vice-Chief of Army Staff and the six senior Lt. Colonels in the Army, the Central Government had wrongly withheld promotion to the petitioner from the rank of Major General to the rank of Lt. General. Mr. Patwalia submitted that the senior-most officers of the Indian Army, who were acquainted with the qualities of the officers under consideration, had made the recommendations for promotion of the petitioner to the post of Lt. General, and accordingly, such recommendation by two successive Boards, should not have been rejected.
2. It was submitted that except for indicating that in comparison to the other recommended candidates, the petitioner had a weak profile, no other satisfactory reason had been given by the respondents for rejecting the recommendation made by the Special Selection Boards in the petitioner's favour.
3. Appearing for the respondents, learned senior counsel, Mr. Doabia, submitted that the petitioner was first recommended for promotion to the rank of Lt. General, along with three

other officers, by the Special Selection Board on 27th February, 2004, but when the said recommendation was taken up for consideration by the Central Government, it was discovered that the Special Selection Board had presumed four vacancies when only three vacancies were available.

4. Thereafter, on a comparison of the profiles of all the officers, the petitioner was found to have the weakest profile and was graded “unfit” for promotion. Even when the second recommendation was made by the Special Selection Board on 1st April, 2005, on a comparison of the profiles of the officers recommended, the petitioner was once again found to have the weakest profile and accordingly graded “unfit”. It was submitted that such consideration to hold the petitioner “unfit” in comparison to the others recommended officer, was a decision taken not by the COAS alone, in his individual capacity, but by the Ministry of Defence in a representative capacity, which also included the COAS.
5. It was observed that the Petitioner has the weakest profile amongst other candidates and graded unfit for the promotion according to the box grading. It is also no doubt true that the Special Selection Board consists of the highest-ranking officers of the Indian Army, but its suggestions are only recommendatory in nature and under the Army Regulations, can be varied or interfered with by the Appointing Authority, as has been done in the instant case.
6. It is also no doubt true that the Special Selection Board consists of the highest-ranking officers of the Indian Army, but its suggestions are only recommendatory in nature and under the Army Regulations, can be varied or interfered with by the Appointing Authority, as has been done in the instant case. It is unfortunate that the recommendations were made in excess of the vacancies available which necessitated a comparison to be made of the profiles of the recommended candidates in which process the petitioner got eliminated, but having gone through the official records, which were produced before us, we find that the entire question was considered and dealt with by the Central Government in a manner which was completely free from bias and based on the service records of the different officers.
7. It is only on an overall assessment that the profile of an officer is prepared and had been so prepared in the instant case where a comparison had to be made in filling up the available vacancies.
8. It is further observed that the COAS has the only power to recommend and nominate the candidate as the final and binding decision is of Central Government.

➤ **DECISION HELD BY COURT:**

The Special Leave Petitions stands dismissed as the petitioner has weakest profile amongst the other candidates and graded unfit for the promotion further the official records which were produced before the court, it is found that the entire question was considered and dealt with by the Central Government in a manner which was completely free from bias and based on service records of different officers.