

COURT NO. 1, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No. 5206 of 2024
with
M.A. No. 5464 of 2024

In the matter of :

Brig Sushil Kumar Kaushik **... Applicant**

Versus

Union of India & Ors. **... Respondents**

For Applicants : Shri Ankur Chhibber, Advocate

For Respondents : Shri K.K. Tyagi, Sr. CGSC

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

Invoking the jurisdiction of the Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as 'AFT Act'), the applicant has filed this OA and the reliefs claimed in Para 8 thereof read as under:

- “i. Quash and set aside the impugned result of the board proceedings of the Promotion Board (Medical) No.1, issued vide result order dated 22.09.2023 for the Promotion Board (Medical)***

No.1 convened on 07.09.2023, result Order dated 16.03.2023 for the Promotion Board (Medical) No.1 convened on 10.01.2023, result Order dated 01.07.2022 for the Promotion Board (Medical) No.1 convened on 22.03.2022 and result order dated 22.09.2023 for the Review Promotion Board (AFMS) No. 1 convened on 07.09.2023 to the extent that the Applicant was not empanelled for promotion to the rank of Major General as he was placed under “NS” i.e. Not Selected Category for the said purpose.;

- ii. Quash and set aside the order dated 10.05.2024 whereby Applicant’s statutory complaint dated 11.12.2023 against the result order dated 22.09.2023 of Promotion Board (Medical) No.1 convened on 07.09.2023 was rejected, order dated 09.08.2023 whereby the Applicant’s statutory complaint dated 12.04.2023 against result Order dated 16.03.2023 for the Promotion Board (Medical)**

No.1 convened on 10.01.2023 was rejected, order dated 02.11.2022 whereby Applicant's statutory complaint dated 14.07.2022 against result order dated 01.07.2022 for the Promotion Board (Medical) No.1 convened on 22.03.2022 was rejected;

- iii. Call for the records pertaining to the ACR of the Applicant and consider the tenability of the gradings awarded in the ACRs that were under the zone of consideration and to expunge the grading awarded by the Initiating officer in ACR for assessment period 01.01.2019 -02.10.2019 and grading awarded by Reviewing Office in ACR for assessment period 01.01.2020 to 14.08.2020 which are inconsistent with the gradings that are consistently awarded to the Applicant; and**
- iv. Call for the records based on which impugned results dated 22.09.2023, 16.03.2023, 01.07.2022 pertaining to the Regular Promotion Board (AFMS) No.1 and Result dated**

22.09.2023 pertaining to Review Promotion Board (AFMS) No.1, were passed by the Respondents grading the Applicant “Not Selected” for promotion to the rank of Major General on respective occasions and thereafter quash them all; and

- v. Direct the Respondents to order for conducting a Special Promotion Board (AFMS) in respect of the Applicant, consider him afresh for promotion to the rank of Major General in AMC pursuant to the improved ACR grading and the corresponding revision in the value judgment marks; and**
- vi. Direct the Respondents to grant all such consequential benefits admissible to the Applicant retrospectively;**
- vii. Pass any other order/orders as deemed appropriate by this Hon’ble Tribunal in the facts and circumstances of the present case.**

BRIEF FACTS

2. The facts of the present case, in brief, are that the applicant, a serving officer of Army Medical Corps (AMC), was commissioned in the AMC of the Indian Army on 28.06.1989. During the course of his service, he kept on getting promotions from time to time and attained the rank of Brigadier (Brig) on getting Select rank promotion on 16.08.2018. When the applicant became eligible for consideration for promotion to the next rank of Major General (Maj Gen) in due course, he was considered for promotion to the said rank by the Promotion Board (AFMS) No. 1 held on 22.03.2022 and reconciled on 02.05.2022 in terms of promotion policy dated 05.02.2016. In the Board of March, 2022, the applicant's ACRs were considered for the period from 2016 to 2020. The results of the said Promotion Board were declassified on 01.07.2022, but the applicant was not empanelled for promotion. Aggrieved by the non-empanelment, the applicant submitted a Statutory Complaint dated 14.07.2022 and sought review of his CRs from 2018-2020. The said Statutory Complaint of the applicant was rejected by the respondents vide order dated 02.11.2022.

3. Thereafter, the applicant was again considered by the Promotion Board (AFMS) No.1 held on 10.01.2023 as a second chance in which the applicant's ACRs for the years 2017 to 2021 were considered. The result of this Promotion Board was declassified on 16.03.2023 and the applicant was again not empanelled for promotion to the rank of Maj Gen. Against his non-empanelment, the applicant again submitted a Statutory Complaint dated 12.04.2023 challenging the assessment and grading awarded by IO&FTO in the ACR 2019 to the competent authority wherein he was granted partial redress vide order dated 09.08.2023 whereby the assessment of RO & FTO in ACR of the applicant for the year 2019 was expunged on the grounds of inconsistency. The aforesaid expunction of the assessment of RO & FTO in the ICR 2019 of the applicant necessitated a review of his case for promotion to the rank of Maj Gen and Review Promotion Board was held on 07.09.2023 against first and second chances. In the said Promotion Board, the applicant's ACRs for the years 2018 to 2023 were taken into consideration. However, when the result of the said Review Board was declassified on 22.09.2023, the applicant was again not empanelled for promotion. This led to filing of

another Statutory Complaint dated 11.12.2023 and also impugned the assessment made by IO and SRO in his ICR for the year 2019 and assessment made by RO & SRO in his ICR for the year 2020. The said Statutory Complaint was considered by the competent authority and was rejected vide order dated 10.05.2024 vide non-speaking order. Hence, the present OA.

CONTENTIONS OF THE PARTIES

4. The learned counsel for the applicant submitted that the applicant has exemplary service record during the course of his 35 years' tenure and the applicant was posted in various field areas and had actively participated in almost all the major military operations, and therefore, the applicant got promotions from time to time. The learned counsel contended that at the time of first Promotion Board held on 22.03.2022, as per the extant policy, the ACRs for the last five years were to be considered, however, in that Promotion Board, ACRs for the years 2016-17, 2017-2018, 2018-19 and 2019-20 were considered; that in view of his overall service track record, the applicant was confident enough about his selection for promotion and against this, the applicant had to file statutory

complaint dated 14.07.2022, however, the respondents rejected the same without giving any reasons; that same happened in the subsequent Promotion Boards held on 10.01.2023 and 07.09.2023 wherein the applicant was not empanelled and thus filed Statutory Complaint dated 12.04.2023, which was disposed of by the competent authority vide order dated 09.08.2023 granting partial redressal to the applicant, and statutory complaint dated 11.12.2023, which was rejected vide order dated 10.05.2024.

5. The learned counsel for the applicant submitted that as per the policy in vogue, all officers that are eligible for promotion to the post of Major General are considered vide a promotion board titled as Promotion Board (AFMS) No.1, wherein all the officers under the zone of consideration are assessed on the basis of their *“overall performance including Board Marks and other marks on account of qualification, gallantry awards, etc.”*; that the total marks awarded out of which an applicant is assessed is 95 out of which 90 marks are assigned to Average of ACR (and ACR is graded out of 9 and average of all the ACR under consideration is extrapolated to the sum of 90), apart from that, there are a maximum of 2

marks for professional qualification and a maximum of 1 mark for field tenures/gallantry; and also a maximum of 2 marks are appropriated for Value Judgement or Board Marks which is awarded by the sole discretion of Promotion Board, making it a total of 95 marks.

6. The learned counsel further submitted that the average of ACR is Promotion Board (AFMS) No. 1, the running average of numerical rating of all reporting officers in the channel of reporting will be taken for calculating the overall average ACR average for each report of each officer being considered; that since the applicant belongs to a specialist/technical cadre, apart from the 3 tier reporting structure including Initiating Officer (IO), Reviewing Officer (RO) and Senior Reviewing Officer (SRO), there is a tiered structure of the technical officer as well that award grading in the ACR and this includes First Technical Officer (FTO), Senior Technical Officer (STO) and Higher Technical Officer (HTO). In his statutory complaints, the applicant raised concerns against grading awarded by IO & FTO in the ACR-2019 and against RO in the ACR-2020.

7. The learned counsel contended that in every promotion board in which applicant was considered for promotion, his

ACR for the year 2019 and 2020 fell under the zone of consideration and on account of this, any erroneous grading in the said ACRs would have had a serious impact on the applicant's prospects for career advancement, however, the respondents failed to consider this aspect and apprehension of the applicant.

8. The learned counsel submitted that the IO & FTO (Brig A.K. Jindal) reporting in ACR-2019 graded him in a biased manner due to refusal of the applicant to accede to unethical demands made by the IO&FTO as he sought assignment of substantial resources to him in order to spend his tenure in luxury and even an enquiry was also initiated against him on the said issue. The learned counsel cited the judgment of the Hon'ble Supreme Court in **S. Parthasarathi Vs. State of AP [(1974) 3 SCC 459]**, wherein test of reasonable likelihood of bias was set out.

9. The learned counsel for the applicant submitted that in the ACR for the period 01.01.2020 to 31.12.2020, there was bias on the part of the SRO while awarding grading due to the reason that during the assessment period i.e. in the initial period of Covid pandemic when owing to the confusion and

lack of information regarding the virus, a lot of chaos was caused and various policies were issued which did not turn out to be correct as it did not achieve desired result and the applicant being an expert in “Preventive & Social Medicine” registered his reservations against the approach adopted by the high command of the 4th Corps which could be labelled as red-tapism, however, such actions on part of applicant invited reproach thereby causing him to not press for his opinion any further and then the future course of events turned out to show that the applicant was right in his apprehensions which created embarrassing situation for the Lt Gen Shantanu Dayal (RO).

10. The learned counsel for the applicant submitted that the respondents’ consideration of the applicant’s grievance against his non-selection was not proper and in contravention of principles of natural justice. In this regard, it is submitted that since the entire policy pertaining to grading of ACR and also the Board proceeding are confidential in nature, the applicant can only raise apprehension pertaining to specific instances which in his opinion had placed his prospects in a precarious position and thus there is an added responsibility

on the competent authority to duly apply its mind to such apprehension and compare the grading awarded to the applicant in his overall ACR profile with those grading that he had challenged. The learned counsel cited the judgment of the Hon'ble Supreme Court in **Institute of Chartered Accountant Vs. L.K. Ratna [AIR 1987 SC 71]**, wherein it was observed that *“The principle of natural justice must be read into the unoccupied interstices of the structure unless there is a clear mandate to the contrary”*.

11. The learned counsel further contended that, on one hand, the applicant had proved bias on part of the IO&FTO in ACR for 2019 and SRO in ACR for 2020, and on the other hand the respondents themselves have failed in performing their duty of diligently considering the applicant's apprehensions against specific instances of grading and, therefore, the impugned orders are unjust and improper and thus need to be set aside.

12. The learned counsel for the applicant during the oral hearing held on 08.10.2025 submitted that for the ICR of the 2019, the applicant has been given partial relief by the Central Govt. based on the Statutory Complaint filed by the applicant

on 12.04.2023. The Central Govt. vide its order dated 09.08.2023 had expunged the entire assessment of RO&FTO in the ICR 2019 on ground of inconsistency. The learned counsel further submitted that the FTO and the IO of the applicant being the same officer, the entire assessment of the IO should also be expunged for the said impugned ICR of 2019.

13. The respondents have filed the counter affidavit on 29.04.2025 and after giving factual matrix of the applicant's commissioning and various promotions etc., the learned counsel submitted that the applicant was duly considered in all the three Promotion Boards for promotion to the rank of Maj Gen held on 22.03.2022 (Chance 1), 10.01.2023 (Chance 2) and 07.09.2023 (Chance 3), however, in all the three Boards, the applicant was not found fit for selection due to comparative merit on account of very limited number of vacancies. The applicant's Statutory Complaints dated 14.07.2022, 12.04.2023 and 11.12.2023 were duly considered by the competent authority. While the Statutory Complaints dated 14.07.2022 and 11.12.2023 were rejected by the competent authority vide order dated 02.11.2022 and 10.05.2024 respectively, however, partial redressal was

granted to the applicant in respect of the Statutory Complaint dated 12.04.2023 by way expunction of the entire assessment of RO & FTO in ACR of 2019 vide order dated 09.08.2023.

14. The learned counsel for the respondents submitted that the perusal of complaints reveals that the applicant had sought multiple review of the assessments in the ICR 2019 and ICR 2020 in a sequential manner by alleging fresh imputations in successive complaints of the alleged incidences which were in his personal knowledge at the time filing of first Statutory Complaint. Therefore, the imputations appear to have been made as an afterthought and requires to be discarded at the outset.

15. The learned counsel submitted that the perusal of the original records would reveal that at every stage, the case of the applicant has been considered objectively and without any bias or pre-determination; that the fairness on the part of the respondents is evident from the fact that the applicant was accorded an interview by the Additional Director (ADG), CAB during the processing of second complaint dated 12.04.2023; additionally, while examining the multiple statutory complaints submitted by the applicant, the assessments of all

the reporting officers in the entire reckonable profile of the applicant have been thoroughly analyzed by the intermediary authorities including DGMS(Army), DGAFMS, Adjutant General (AG), Complaint Advisory Board (CAB), COAS and appropriate redress in form of expunction of ratings followed by review board has already been granted by the competent authority, however the applicant did not make the grade due to limited number of vacancies in the Select rank of Maj Gen and other officers having better grades being available before the selection committee.

16. The learned counsel submitted that the applicant has averred imputations of personal bias and wrongdoing in the present OA against Lt Gen AK Jindal (then Brig and IO in the ICR 2019) and Lt Gen Shantanu Dayal, RO in the ACR 2020. However, both officers have not been made a party to the OA having not done so, all the allegations are unsustainable in law and therefore the present OA is liable to be dismissed being suffering from serious error of non-joinder of parties; and that with regard to the impugned CRs, it was submitted that applicant was appropriately graded above outstanding to near exceptional outstanding by all reporting officers with

matching pen picture in ICR 2019; that the said ACR was first analyzed during the processing of complaint dated 14.07.2022; it was re-analysed in the light of additional inputs in complaint dated 12.04.2023 and adequate redress in the form of expunction of numerical assessment of RO & FTO in ICR 2019 was granted by the competent authority. However, mere expunction of the assessment of FTO (Brig AK Jindal) in ICR 2019 neither establish any mala fide or bias nor does it necessarily mean that grading by Brig AK Jindal as IO was vitiated or prejudiced; and that the assessment of all other reporting officers in the ICR 2019 was found to be fair, objective, well corroborated, consistent and performance based without any evidence of bias or subjectivity. In view of the above, the learned counsel prayed for dismissal of the OA.

A N A L Y S I S

17. Heard the submissions made by the learned counsel for the parties and have also perused the records including ACRs, policies etc. produced before us.

18. We have perused all the three Statutory Complaints filed by the applicant and the connected files disposing off the

Statutory Complaints. The second Statutory Complaint of the applicant dated 12.04.2023 had provided partial relief to the applicant in which the entire assessment of the RO & the FTO were expunged by the Central Government vide its order dated 09.08.2023. The FTO (same as IO) had awarded him 8.5 grading which according to the Central Govt.'s analysis in the file disposing off his Statutory Complaint does not corroborate with his pen-picture written by the FTO. The Central Govt. has also noted in the 2nd Statutory Complaint file (filed on 12.04.2023) that the applicant has not been graded '**8.5**' assessments by way of the Reporting Officer in vertical and horizontal continuum in the reckonable profile and further opined that the applicant has been graded 'Near Exceptionally Outstanding' to 'Exceptionally Outstanding' in his reckonable profile.

19. The pen-picture of the applicant written by IO was also scrutinised by us in the impugned CR of 2019. The applicant's pen-picture written by the IO describes him to be an efficient officer and reads as under:-

"13. Remarks of IO

"A smart well turned out physically fit medical offr with good military bearing. The offr has

commanded 155 BH in a befitting manner providing good patient OPD and indoor services to clientele in an around Tezpur garrison. The offr is endowed with good soft skills and has exhibited quality organisational capability during his command.

Date : 22 Oct 19

Sd/- A.K. Jindal AVM”

Moreover, the applicant in his entire reckonable profile has been graded ‘Near exceptionally outstanding’ to ‘Exceptionally outstanding’ and the assessment of 8.5 grading by the IO in the impugned CR of 2019 does not match with the applicant’s overall profile as well as the pen-picture rendered by the IO in the impugned CR of 2019, and is set aside.

20. In so far as the applicant’s ACR of 2020 is concerned, the same is well corroborated, consistent and does not need any interference from this Tribunal.

21. In view of the above, it is directed that the entire assessment of the IO in the impugned CR of 2019 be set aside and the applicant be afforded a Special Promotion Board (AFMS) based on his changed profile. The said board be conducted within three months from the date of the order and a report made to this Tribunal.

22. O.A. No. 5206 of 2024 stands disposed of in terms of the above. Accordingly, M.A. No. 5464 of 2024 also stands disposed of.

23. There is no order as to costs.

Pronounced in open Court on this 29th day of October, 2025.

**[JUSTICE RAJENDRA MENON]
CHAIRPERSON**

**[REAR ADMIRAL DHIREN VIG]
MEMBER (A)**

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