

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

OA 490/2023

Brig Sanjay Kumar Roy Chowdhury Applicant
Versus
Union of India and Ors. Respondents

For Applicant : Mr. S S Pandey, Advocate
For Respondents : Mr. Anil Gautam, Sr. CGSC

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

O R D E R

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has filed the OA with following prayers:-

(a) Call for the records including the SB PB No. 1 Proceedings ACR records based on which the Applicant has been denied empanelment for promotion to the Rank of Maj Gen and the records based on which the Respondents have granted partial redressal to the Applicant in his Non Statutory Complaint dated 10.02.2022 and Statutory Complaint dated 04.01.2023 and thereafter quash all such orders of the non empanelment as well as the order dated 04.01.2023 to the extent of denial of relief to the Applicant.

(b) Direction may be passed to the Respondents to expunge the ACR of the year 2019 in its entirety including the assessment of the FTO as well as SRO/HTO ground of inconsistency and subjectivity and issue further direction to the Respondents to hold the Review Board for PB-1 the Applicant consequent to upward revision of his profile after removal of such below bench mark downgraded assessments, addition of value judgement marks to the revised profile of the Applicant and promote the Applicant with all consequential benefits if the Applicant is found to be above the last empaneled officer of

any of the Board in which the Applicant was previously considered with all consequential benefits such as seniority etc.

(c) Issue any other/direction as this Hon'ble Tribunal may deem fit in the facts of the case.

Facts of the Case

2. As per the records placed before us by the respondents, the applicant was commissioned in the Army Dental Corps on 26.04.1991. He was considered for promotion to the select rank of Major General by Promotion Board (AFMS) No. 1: AD Corps held on 22.03.2022 (Chance 01), by Review Promotion Board (AFMS) No. 1: AD Corps on 10.01.2023 (Chance 01), and again by Promotion Board (AFMS) No. 1: AD Corps on 10.01.2023 (Chance 02). On all the aforesaid occasions, he was graded as “Not Selected (NS).”

3. Prior to the aforesaid consideration by Promotion Board (AFMS) No. 1: AD Corps on 22.03.2022, the applicant had submitted a Non-Statutory Complaint dated 31.05.2021 against his ACR 2018, ICR 2019, and ACR 2019. The said complaint was disposed of by the Chief of Army Staff vide order dated 13.01.2022 granting partial redress, whereby the entire assessment of the HTO in ACR 2018 was ordered to be expunged.

4. Aggrieved by his non-selection by Promotion Board (AFMS) No. 1: AD Corps, the applicant thereafter submitted a Statutory Complaint dated 27.05.2022. Upon consideration, the Competent Authority granted further redress by directing expunction of the entire assessment of the SRO in ACR 2017 as well as that of the IO in ACR 2019, on grounds of inconsistency.

5. Consequent to the aforesaid redress, the applicant was again considered for promotion by Review Promotion Board (AFMS) No. 1: AD Corps dated 10.01.2023 for Chance 01, but was held as “Not Selected.” He was once again considered by Promotion Board (AFMS) No. 1: AD Corps on the same date for Chance 02, but was again graded as “Not Selected.” Being aggrieved by his repeated non-selection for empanelment to the rank of Major General, the applicant has preferred the present Original Application.

Submissions on Behalf of the Applicant

6. Learned counsel for the applicant contends that while disposing of the Non-Statutory Complaint dated 10.02.2022, only partial relief was granted and the inconsistency in the remaining challenged ACRs for 2018 and 2019 continued to adversely impact his merit for consideration to the rank of

Major General. It is urged that though the subjectivity and inconsistency in the ACRs was later recognized and expunged while deciding the Statutory Complaint, the said relief came only after the applicant had already been overlooked in his first consideration.

7. It is further submitted that the applicant was subjected to the Promotion Board on 22.03.2022 on the basis of an ACR profile that had not been fully corrected. Consequently, he was overlooked for promotion and graded as “Not Selected” vide order dated 02.05.2022.

8. The applicant thereafter filed Statutory Complaint dated 27.05.2022 seeking expunction of aberrated and inconsistent CRs, including the ACR of 2019, on grounds of subjectivity and non-corroborated assessment.

9. Learned counsel argues that despite the relief granted therein, the applicant was arbitrarily considered in the Review Promotion Board on 10.01.2023 with the impugned ACRs, and was once again not empanelled for promotion. It is urged that despite a marked improvement in his quantified merit, the respondents either retained the same value judgment marks or reduced them, which is asserted to be arbitrary and unfair.

10. Reliance is also placed on the case of Maj Gen R.M. Gupta (Retd.), wherein Respondent No. 1 had directed the holding of a Special Promotion Board so as to maintain consistency in value judgment marks after change in the quantified profile. It is submitted that denial of similar treatment to the applicant amounts to discriminatory conduct.

Submissions on Behalf of the Respondents

11. Per contra, learned counsel for the respondents, by way of their counter affidavit dated 26.05.2023, submits that the applicant has filed several complaints in the past and has been granted partial relief on multiple occasions. Reference is made to the statutory complaint dated 24.12.2013 against non-empanelment by PB No. 02 held on 20.11.2013, wherein partial relief was granted by way of expunction of the endorsement of SRO in ACR 2009 and ICR 2010.

12. It is further submitted that the applicant filed a non-statutory complaint dated 31.05.2021 against the assessment of DGDS as HTO in ACR 2018, ICR 2019, and ACR 2019, wherein redress was granted by way of expunction of the HTO endorsement in ACR 2018. Subsequently, upon filing of a Statutory Complaint against his non-empanelment by PB

No.1 held on 22.03.2022, partial relief was again granted by way of expunction of the SRO endorsement in ACR 2017 and IO endorsement in ACR 2019.

13. Learned counsel for the respondents highlights that the reporting system in AFMS is modern, scientific, and research-based, comprising a multi-tier evaluation mechanism. The RO/STO acts as “Moderator” and the SRO/HTO as “Balancer” while rendering CRs.

14. It is explained that the Initiating Officer (IO) grades the ratee on 10 qualities, the Reviewing Officer (RO) on 20 personal and leadership qualities, and the First Technical Officer (FTO) and Senior Technical Officer (STO) on 10 professional qualities. The average of the gradings so awarded is computed up to two decimal points without rounding off.

15. It is urged that promotions in AFMS are vacancy-based and comparative in nature. Selection of officers higher in merit does not imply that those not selected are unsuitable; it merely reflects availability of officers with comparatively superior profiles.

16. It is further submitted that the promotions in AFMS, including those in the Army Dental Corps, are governed by

the common Promotion Policy laid down vide Ministry of Defence letter No. 10(1)/2015/D (Med) dated 05.01.2016, as amended on 16.08.2017, and other directives from time to time. As per the said policy, the selection criteria for Promotion Board No. 1 are based on specified parameters :-

- (a) ACR average extrapolated out of 90 : 90 marks
- (b) Marks awarded by the members of the Board : 02marks
- (c) Marks for various Post graduate qualifications (Para 12 of promotion policy) : 0.50 marks
- (d) Marks for Post doctoral qualification (Para 13 of promotion policy) : 0.25 marks
- (e) Marks for gallantry awards (Para 14 of policy) : 01 mark

17. The final merit is drawn based on the sum total of the above parameters. Hence it is not just the CR average which decides the promotion prospects but factors like qualification marks, military awards, and marks by the board member also have a proportionate role in deciding the promotional prospects of the officers in AFMS. The policy also stipulates that on finalization of the proceedings of the Selection Board, all the Board Proceedings are forwarded to the Ministry of Defence for obtaining approval of Central Govt.

18. Appraisal System in AFMS: It is further submitted that the rendition of ACR in AFMS is a closed system as per Para 7.14 of AO 01/2010/DGMS and only in the contingencies mentioned in Para 7.15 of AO 01/2010 that the assessments are conveyed to the officer reported upon i.e. only if there are any adverse remarks.

19. It is also submitted that the Initiating Officer (IO), Reviewing Officer (RO) grade the ratee on 20 personal & leadership qualities and the First Technical Officer (FTO) and Senior Technical Officer (STO) grade the ratee in 10 laid down professional qualities. The average of grading awarded by each of these reporting officers at Para 13, 14 (by IO/RO) and at Para 27 & 30 (by FTO & STO) of the ACR form IAFF-1124 B is taken upto second decimal place without rounding off.

Consideration

20. We have heard the learned counsel for the parties and carefully perused the CR dossiers and all documents pertaining to the Complaint Advisory Board (CAB), the Chief of Army Staff Secretariat, and the concerned Branch of the Ministry of Defence which processed the non-statutory as well as statutory complaints submitted by the applicant.

21. Upon consideration of the entire record, we have formulated the following two issues which arise for adjudication in the present case:

(a) Whether the applicant is entitled to further relief in respect of the impugned CRs, and if so, to what extent.

(b) Whether, consequent to such relief, the applicant is also entitled to reconsideration by Promotion Board No.1 (PB-1) as a Review Case, and promotion thereafter, if found fit.

22. With regard to Question (a), we have examined the various non-statutory and statutory complaints preferred by the applicant before the Competent Authority and the reliefs granted thereon by the Ministry of Defence.

23. The record reveals that the applicant had submitted a non-statutory complaint dated 31.05.2021 against his CRs for the years 2018 and 2019. The same was partly allowed, whereby the entire assessment of the HTO in the ACR for 2018 was expunged on grounds of “inconsistency”. However, no relief was extended in respect of the CR for 2019.

24. The aforesaid relief was duly taken into account prior to his consideration by PB-1, where he was assessed as a

“Chance-01” candidate. Thereafter, the applicant filed a statutory complaint dated 27.05.2022 against his non-empanelment for promotion to the rank of Maj Gen by PB-1 (AFMS), AD Corps convened on 22.03.2022. This complaint was again partly allowed by the Competent Authority at the Ministry of Defence, whereby the entire assessment of the SRO in the ACR for 2017 and of the IO in the ACR for 2019 was expunged on grounds of inconsistency.

25. Consequent upon such redressal, the applicant was reconsidered for promotion on 10.01.2023. It is, however, pertinent to observe that while the IO’s grading of 8.4 in the CR for 2019 was expunged; the gradings of 8.5 each by the SRO and FTO were not interfered with. The Competent Authority failed to take note of the categorical remarks of the DGAFMS, the HTO in the said CR, who had endorsed in his pen picture that the applicant was “an exceptionally outstanding officer” and that he was “underrated by his IO, SRO and FTO” and that “this CR clearly requires moderation.” In our considered view, once the IO’s grading of 8.4 was found inconsistent and expunged, the gradings of 8.5 awarded by the SRO and the FTO (the latter being none

other than the IO in this case) also merited expunction on the same ground of inconsistency.

26. On a holistic appraisal of the applicant's CR profile, it is manifest that save for the gradings of 8.5 awarded by the SRO and FTO in the CR for 2019, his overall gradings have never fallen below 8.75. These gradings of 8.5 are therefore clearly inconsistent with his service profile and merit expunction. Accordingly, Question (a) is answered in the affirmative.

27. Adverting to Question (b), it becomes necessary to examine the applicant's consideration by successive Promotion Board No.1 (AFMS), AD Corps. The applicant was first considered by PB-1 (AFMS) – AD Corps held on 22.03.2022 for promotion to the rank of Maj Gen as a first-chance case. The Board considered five candidates against one available vacancy. The applicant was placed at Order of Merit No.3 on account of relatively lesser marks vis-à-vis two other candidates and was consequently not empanelled.

28. In the said Board, the applicant secured 1.67 marks as Average Marks by Board Members, while his CR quantified marks were recorded as 88.70, aggregating to a total of 90.37. Though the expunction of the 2018 CR had been

effected prior to this consideration, the aberrations pertaining to ACRs of 2017 and 2019 continued to remain on his record at the relevant time.

29. The applicant was thereafter considered twice by PB-1 (AFMS), AD Corps, on 10.01.2023, by the same Board Members, both as a Review Case and also as a Chance-02 case. In the Review Case, he was considered singly on the basis of his amended CR profile post-redressal, wherein his CR average improved to 89.30 from the earlier 88.70 recorded at the first Board. However, it is noted that the Board Members again awarded him 1.67 as Average Marks, identical to the earlier assessment. Thus, despite the marginal increase in his quantified total marks, the applicant was again not empanelled even after partial redressal of his CRs.

30. At this juncture, it would be apposite to place on record a letter dated 30.04.2022, which reads as under :

*“Ministry of Defence
Department of Defence
D (Medical)

Subject : Review Promotion Board (AFMS) No.1, AMC held on 07.03.2022.

Reference DGAfMS Note No. 14 dated 07.03.2022 recorded on the file No.18336/PB(A)1/Maj Gen (AMC)/Rev/2022/DGAfMS/DG-1(X), and DGAfMS letter dated 24.03.2022, on the subject cited above.

2. The recommendations of Review Promotion Board (AFMS) No.1 AMC held on 07.03.2022 have been examined in the Ministry. As per Para 20 of the policy, “... the cases of such officers will be

reviewed by the appropriate Promotion Board (AFMS) on the basis of modified record.” Therefore, any change beyond modified record is not envisaged in the policy.

3. In cases where such modification through a statutory compliant pertains to attributes listed in Para 16 of the said policy, the Review Promotion Board may exercise its discretion in the chance of Value Judgment Marks (VJM) and the same should be in line with the modification made in the statutory complaint.

4. In light of the above, the recommendation made by the Review Promotion Board (AFMS) No.1 AMC held on 07.03.2022 are unsustainable and incorrect vis-a-vis the extant policy and returned for appropriate action in accordance with the policy.

5. This issues with the approval of the Competent Authority.

*(A.H. Ganesh)
Under Secretary (Medical)
Tele No. 23019546*

Addl DGAFMS (HR)

MoD I.D. No.3(5)/2022-D (Med)

Dated 30.04.2022”

31. It is further observed that in the Selection Board convened on 22.03.2022, the applicant’s CR profile under consideration remained the same as that taken into account in his earlier consideration, albeit with the expunctions duly reflected in the Personal Particular Sheets (PPS) placed before the Board. In view of Paras 3 and 4 of the MoD letter dated 30.04.2022 reproduced hereinabove, it is manifest that the identical award of Board Member Marks in the Review consideration, as compared to those awarded in the applicant’s first-chance consideration, is not only contrary to the spirit of the said instructions but also indicative of premeditated bias. Such an assessment, being mechanical and

bereft of independent application of mind, is unsustainable in law.

32. It is also pertinent to note that on the very same day, the identical Board, comprising the same Members, considered the applicant as a Chance-02 case along with other candidates. For this purpose, the CRs from 2017 to 2021 were taken into account in accordance with policy, thereby excluding the CR of 2016 and including that of 2021. Significantly, while the applicant's CR average in this consideration was 89.10—lower than his quantified average of 89.30 in the Review Case—he was nevertheless awarded higher Value Judgment Marks of 1.83 by the Board Members. In this Board, three candidates including the applicant were considered for one vacancy in the rank of Major General in the AD Corps, wherein the applicant was placed at Merit List Serial No.2 and was once again not empanelled.

33. On a comparative analysis of the Value Judgment Marks awarded by the Board, we are constrained to observe that the very same Board, considering the same officer, awarded lower marks in the Review Case despite his higher quantified average, but awarded him higher marks in the

Chance-02 case when his quantified average was lower. This inconsistency in assessment is glaring and cannot be sustained. Accordingly, we hold that the applicant's consideration in the Review Case was vitiated and is liable to be set aside.

34. In light of the foregoing discussion, we issue the following directions:

(a) The ACR of the applicant for the year 2019 is ordered to be expunged in entirety on grounds of inconsistency.

(b) Consequent to the above, the applicant shall be considered afresh as a Review Case by a duly constituted Special Review Promotion Board, which shall also award Value Judgment Marks commensurate with his profile, within a period of two months from the date of pronouncement of this judgment.

35. However, it is noticed from the service record that the applicant stood superannuated on 31.07.2025 during the pendency of the present proceedings. In the event he is found fit and approved for promotion by the Review Board, he shall be granted notional promotion to the rank of Major General with effect from the date his immediate juniors were so

promoted with consequential pensionary benefits. He shall not, however, be entitled to arrears of pay and allowances for the intervening period in service.

36. With the aforesaid directions, the OA stands allowed and disposed of.

37. No order as to costs.

Pronounced in the open Court on 19th day of September, 2025.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

(LT GEN C.P. MOHANTY)
MEMBER (A)

Ps