

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

**OA 1078/2018 (TA 6/2013 (RB Kolkata)**

**Lt Col Ravinder Singh**

**... Applicant**

**VERSUS**

**Union of India and Ors.**

**... Respondent**

**For Applicant:**

In Person

**For Respondents:**

Ms. Jyotsna Kaushik,  
Advocate

**CORAM**

**HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON**  
**HON'BLE LT. GEN P M HARIZ, MEMBER(A)**

**ORDER**

1. This application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant, a serving Lt Col in the Army, who is aggrieved by his non-empanelment to the rank of Col and the rejection of his statutory complaint by the respondents vide order dated 06.09.2012. The applicant has made the following prayers:

- (a) Issue directions/orders to the respondents in an appropriate manner to call for the relevant records and after due satisfaction on the merits of the case to quash and set aside the Govt of India-Ministry of Defence Order dated 06.09.2012 as also the impugned ACRs for the period from 01.06.2003 to 31.05.2004 and from 01.06.2004 to 26.11.2004 qua the technical report of MG AOC Eastern Command in the capacity of HTO on the ground of established bias as also violation of Army rules on the subject as

also the limited portion of quality 'physical attributes' in the same ACR by the RO to meet the ends of equity, justice and fair play.

(b) Issue directions/orders to the respondents in an appropriate manner to quash and set aside the ACR for the period 01.06.2008 to 27.11.2008 only qua the Technical Assessment by MG AOC, Southern Command as the FTO, being technically defective, as also any ACR which is inconsistent with the overall profile to meet the ends of equity, justice and fair play, and

(c) Issue directions/orders to the respondents in an appropriate manner so as to have the applicant considered by the Selection Board for promotion to the rank of Colonel de novo less the impugned ACRs to meet the ends of equity, justice and fair play.

(d) To pass such other and further orders which their lordships may deem fit and proper in the existing facts and circumstances of the case.

### **Brief Facts of the Case**

2. The applicant is a serving Lt Col who was commissioned on 11.12.1993 into Army Ordnance Corps. He was promoted to the rank of Lt Col in his time and was considered for promotion to the rank of Col by No 3 Selection Board (SB) as a fresh case in Jul 2011; however, he was not empanelled. Aggrieved over his non- empanelment, the applicant submitted a statutory complaint dated 11.10.2011.

3. The competent authority found that all the CRs in the reckonable profile including the impugned CRs 06/03-05/04, 06/04-11/04 and 06/08-11/08 were well corroborated, performance based and technically valid. Therefore, the competent authority vide order dated 06.09.2012 rejected the statutory complaint. Aggrieved by the order, the applicant filed OA 18/2013 at AFT (RB), Lucknow which was transferred as TA

06/2013 to AFT (RB), Kolkata. This was subsequently transferred to AFT (PB), New Delhi and renumbered as OA 1078/2018.

**Arguments by the Applicant**

4. The applicant pleaded his case in person. The applicant briefly reiterated his complete service profile and highlighted his performance on courses of instructions and the appointments held. He further elaborated that he had excelled during his formative training and also served with PARA Regt from Jan 1996 to Feb 1999.

5. Referring to CR 1 and CR 2 for the periods 06/03 to 05/04 and from 06/04 to 11/04, the applicant narrated a series of events which according to him, led to biased rating by the HTO resulting in subjectivity in the assessment by the HTO in the impugned CR 1 and CR 2. The applicant elaborated on an incident regarding re-employment of DSC Platoon within the station which led the HTO forming a biased and subjective opinion of the officers of Veh Depot. Moreover, he asserted that the HTO never had any interaction with him during this period. Further, the applicant stated that he had been rated 7 points in 'Physical attributes' in the same CR by the RO, and emphasised that this too was inconsistent with his overall profile especially as he is physically fit and an active officer who had always participated in various sports and physical events.

6. Referring to CR 3 for the period 06/08-11/08, the applicant stated that the FTO's assessment was being challenged. The applicant stated that he never received any extracts of the FTO's report and that the extract was forwarded only in Mar 2010 by the MS Branch. The applicant emphasised that the FTO was not eligible to initiate his report as the FTO had already retired in Dec 2009. Moreover, the supporting documents attached with the CR clearly indicated that the period from

06/08 to 11/08 was 'together service' with the reporting officer as the HTO, whereas under the FTO, the main qualifying period had to be physical service. The applicant emphasised that the FTO's report was in clear violation of Paras 5, 124, 129 and 130 of Army Order 45/2001/MS. The applicant further emphasised that there was no procedure where extracts of FTO are forwarded by the MS Branch.

7. The applicant then drew our attention to HQ Southern Command letter dated 01.01.2009 under which the HTO had forwarded the applicant's CR for endorsement by SRO. He further drew our attention to Para 94 of AO 45/2001 regarding the fact that once details of service were authenticated in Part I of CR, the details were irrevocable and therefore if the MGAOC at HQ Southern Command had reported on the applicant as HTO, he cannot then report as the FTO. Thus, the CR was technically invalid.

8. The applicant stated that the competent authority had failed to take note of the issues raised in the three impugned CRs and therefore, prayed that the OA be allowed and the applicant be considered afresh by No. 3 SB. The counsel relied on the following Judgements:

(a) Judgement of Hon'ble Supreme Court in the case of **A K Krapaik** Vs **Union of India & Ors**, AIR 1970 SC 150.

(b) Judgement of Hon'ble Rajasthan High Court in CWP No. 2146 of 1996 titled as **Col Mahendra Pratap Singh** Vs **Union of India & Ors**

(c) Judgement of Hon'ble Delhi High Court in WP 5378/2002 titled as **Major Prithviraj Patnaik** Vs **Union of India & Ors**.

(d) AFT (PB) Order dated 16.12.2010 in T.A. No.486 of 2010 (Delhi High Court W.P. (C) No.7726 of 2008) **Col A K Singh** v. **Union of India & Ors**.

(e) AFT, Lucknow Bench Order dated 21.07.2016 in OA No.175 of 2014 **Lt Col Harsh Vardhan v. Union of India & Ors.**

(f) AFT, Chandigarh Bench Order dated 30.07.2013 in OA 1168 of 2011 **Lt Col Vinay Lakhera v. Union of India & Ors.**

(g) AFT (PB) Order dated 24.09.2012 in T.A. No.656 of 2009 **Maj S V Rao v. Union of India & Ors.**

(h) AFT (PB) Order dated 02.05.2011 in OA 201 of 2009 **Lt Col Subodh Shukla v. Union of India & Ors.**

### **Arguments by the Counsel for the Respondents**

9. The counsel briefly recapitulated the methodology of outstanding CRs; how 'Outstanding' reports were exceptions which were required to be justified in the pen picture and the details of consideration by No. 3 SB. Referring to the statutory complaint, the counsel for the respondent reiterated that complaint was duly examined by the competent authorities who rejected the complaint on the merits.

10. Referring to CR-1 and CR-2, the counsel denied any subjecting in the CRs. The counsel submitted that both the CR were rated as "Above Average" by IO, RO and FTO with positive pen pictures and recommendations for foreign assignment. The HTO had assessed the applicant 'Above Average' with complimentary pen picture. Both the CRs were performance based duly corroborated consistent and technically valid meriting no interference. The counsel also submitted that as per AO 45/2001/MS, there was no requirement of physical service or physical interaction between Ratee and HTO to make HTO eligible for rendering technical assessment on ratee. Thus, there was no merit in the contention of the applicant that HTO had no physical interaction with the applicant.

11. Referring to the contention of the applicant that RO rated the applicant 7 physical attributes, the counsel submitted that that RO assessed the applicant outstanding and above average in Personal Qualities (PQ's) Demonstrated Performance Variables and Qualities to Assess Potential (QSAP) with complimentary pen picture. The assessment of RO in physical attributes of 7 is also "above average" and therefore does not warrant any interference. But, the counsel vehemently argued that this assessment being the second level reporting is not shown to the ratee and the applicant be made to strict proof of knowledge of such assessment.

12. Referring to CR-3, the counsel submitted that the procedure of forwarding of extracts from CRD Library was in consonance with Para 130 of AO 45/2001/MS (Revised). Further the counsel submitted that the technical report in the instant CR could not be initiated by the previous FTO owing to limitations of applicant's physical service under the previous FTO. Thus, the technical report was initiated by the HTO being the other technical reporting officer as per the authorised channel of reporting. The counsel emphasised that the Reporting officer made his technical assessment of the applicant as HTO and not an FTO. Moreover, the HTO had assessed the applicant in the technical report as Above average with positive pen picture. The counsel also pointed out that in any case, the stipulation of 90 days physical service between Ratee and FTO would not apply in case of HTO. Therefore, the present application was devoid of any merit and needs to be rejected.

### **Consideration of the Case**

13. We have heard both the parties at length. The only issue that requires consideration is if the Respondents were justified in rejecting the statutory complaint dated 11.10.2011 and whether any CR merits



interference. We have examined the file and on examination of the complaint, the applicant's CR Dossier and the Board Proceedings of the No 3 SB produced by the Respondents in the Court.

### **Complaint**

14. Consequent to his non-empanelment by No 3 SB in July 2011 as a fresh case, the applicant had filed a statutory complaint dated 11.10.2011. The applicant had impugned three CRs, CR-1 (06/2003-05/2004), CR-2 (06/2004-11/2004) and CR-3 (06/2008-11/2008). CR-1 and 2 have been impugned on the grounds of bias and subjectivity by the HTO due to certain differences of opinion between the IO and the HTO regarding an issue pertaining to re-allocation of security troops between Veh Depot and Amu Depot at Panagarh. CR-2 is also impugned for the figurative assessment '7' of the RO in the personal quality 'Physical Attributes'. CR-3 has been impugned on the grounds of technical validity as the FTO's assessment has not communicated to the applicant and also that since the FTO had relied in Dec2009, he was not entitled to initiate the report in the first place. The applicant had prayed that the entire profile be viewed and aberrations/inconsistency, if any, if set aside and that he be then considered as a fresh case by No 3 SB.

15. The Competent authority examined the 10 CRs in the reckonable profile of the applicant from 11/2002 to 05/2010. All the CRs are clearly above average/ outstanding reports which are well corroborated, moderated, performance based and technically valid and therefore, the competent authority concluded that none of the CRs merit any interference and therefore rejected the complaint.

### **CR Dossier**

16. The reckonable profile has 10 CRs, with one CR in the rank of Capt, four CRs in the rank of Maj and five CRs in the rank of Lt Col. The

overall profile is above average to outstanding. In the overall profile, the applicant has 23% of his box grading as outstanding while balance 77% are above average. In the technical report, the applicant has 11% of his box grading as outstanding while balance 89% are above average.

17. CR-1 This CR is boxed 8/8/8/8 by IO/RO/FTO/HTO. The pen picture by IO/FTO and RO are positive with positive recommendation for foreign assignments and promotions. The HTO has positive recommendations for promotion but has not recommended for foreign assignments. Also, the HTO has given a figurative assessment of '7' in 'Awareness of futuristic technological development'. The pen picture of the HTO is positive.

18. CR-2 This CR is also boxed 8/8/8/8 by IO/RO/FTO/HTO. The IO/FTO has given a positive pen picture and recommendation for promotion and foreign assignments. The RO's figurative assessment of '7' in 'Physical Attributes' is matched by the pen pictures of the RO which states '*Ravinder is a stocky officer who is intelligent and professionally competitive*'. The RO has however not recommended for foreign assignments. In the HTO's assessment it has three '7' point assessments out of the 8 figurative assessments. The pen picture is positive with positive recommendations for both promotion and foreign courses. The pen picture reads: '*Ravinder is a professional officer who performs with dedication. Well conversant with Rules and Regulations. Handled the Civ work force with tact and cordial manner*'.

19. CR-3 The CR is earned in the rank of Lt Col as an OC of a Bde Ord Unit and has been boxed 8/8/-/8 by IO/RO/--/HTO. As regards the technical validity, the CR has been endorsed only by the HTO and not the FTO. Even the extracts forwarded by MS Branch vide letter dated 26.03.2010 (copy placed in CR Dossier) clearly indicate that FTO has not



endorsed the report. Against the FTO's column at Para 20, it is endorsed '*Not entitled to write, as rate not completed 90 days. Old FTO relieved from service on 14 Oct 08.*' The extracts have been signed by the applicant and dispatched vide HQ Andaman & Nicobar Command letter No.52354/RS/Gen dated 23.04.2010. Thus, the apprehension of the applicant are entirely misplaced in this regard.

20. Having examined the CRs in the reckonable profile, it is found that the applicant has a predominantly above average profile. The CRs are all well corroborated, technically valid and none of them merit any further interference.

### **No 3 SB**

21. The applicant has been fairly considered by the No 3 SB and has been granted all the three stipulated considerations. The officer is non-empanelled due to his overall comparative merit amongst those considered. The results of the consideration are summarised below:

Ser	No 3 SB	Consideration	Batch Year	Results
(a)	July 2011 (AOC 1993 Batch)	Fresh	1993	NE Merit – 87.880 Last offr – 88.861
(b)	June 2012 (AOC 1994 Batch)	First Review	1994	NE Merit- 88.257 Last offr- 89.563
(c)	Jan 2013 (AOC 1995 Batch)	Final Review	1995	NE Merit- 89.145 Last offr – 90.766

22. In view of the above consideration, we find that the statutory complaint has been fairly dealt with by the competent authority, who has rejected it on the merits of the case. The applicant has a predominantly above average profile and none of the CRs merit any

further interference. The applicant has not been empanelled due to his overall comparative merit.

23. The IA is therefore dismissed, being bereft of any merit.

24. No order to costs.

Pronounced in the open Court on this day of <sup>17</sup> Oct 2023.

  
**(RAJENDRA MENON)**  
**CHAIRPERSON**

  
**(P M HARIZ)**  
**MEMBER(A)**

/ashok/