

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

OA 1256/2022

Brig Vishal Mohanlal Murada

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Ms. Indira Goswami, Advocate
with Applicant-in-Person

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 Armed Forces Tribunal 2007, the applicant who is a serving Brigadier of Army Supply Corps (ASC) has filed this OA challenging his non-empanelment to the rank of Major General by Number 1 Selection Board (No 1 SB) held in October 2019, praying for following reliefs :

- (a) ***To set-aside the impugned order dated 24.02.2021 of the Respondent No 2 through which the applicant was not promoted to the rank of Major General.***
- (b) ***To expunge/set-aside the impugned Interim Confidential Report (ICR) covering the period from 01 Jul 2016 to 23 Feb 2017.***

OA 1256/2022
Brig Vishal Mohanlal Murada Vs UoI & Ors.

- (c) **To expunge/set-aside any other Annual, Interim, Early and Special Confidential Report (CR)/Part of the CR in the reckonable profile which are not in sync with Overall profile of the applicant.**
- (d) **To promote applicant as Major General in interest of natural justice.**
- (e) **To direct the respondents to consider the applicant as fresh case during the Selection Board-1 held from 18th April-22nd April 2022.**

2. The applicant was commissioned into the Indian Army in Army Supply Corps (ASC) on 17 December 1988 and by his consistent performance in various appointments during his service both in peace and field areas, he was promoted to the rank of Brigadier on 20.05.2015.

3. During his service he has earned Confidential Reports from various officers and has been graded as an "outstanding" officer in most of his reports. Consequent to his promotion to the rank of Brigadier, when he was posted to Headquarters 11 Corps, Jalandhar for a criteria appointment of two years, the applicant was graded at '8' (Above Average) in the Interim Confidential Report (ICR) for the period 01.07.2016 to 23.02.2017 due to various reasons wherein he claims to have been compelled to perform certain unauthorized acts which

were beyond his powers/authority and therefore he refused to do the assigned tasks.

4. The applicant filed a Statutory Complaint dated 07.03.2020 against his non-empanelment by No-1 SB as a Fresh Case which was held in Oct 2019. Later, he filed another Statutory Complaint on 23.02.2022 against his non-empanelment by No 1 SB (Final Review) held in Oct 2021 which was his third and last chance for consideration by promotion board to rank of Major General. The first statutory complaint dated 07.03.2020 was rejected vide Ministry of Defence Order dated 24.02.2021; allowing him no relief against the impugned Confidential Reports of 09/2016-02/2017. Similarly, his statutory complaint dated 23.02.2022 was also disposed off as 'Rejected' vide order dated 27.07.2022.

5. Ld. Counsel for the applicant submits that due to his hard work and dedicated service in all his assignments and excellent results in career courses, the applicant has been found fit for promotion to higher ranks and accordingly promoted to the rank of Brigadier in his career of 23 years.

6. Deliberating on his service profile, Ld. Counsel submits that he has attended various prestigious courses such as Senior Command Course, Defence services Staff College and Higher Defence Management Course and has mostly been graded Outstanding (9) by Initiating Officers (IO) and First Technical Officers (FTO) in various ranks in his entire career.

7. Submitting on the issue of CR, Ld. Counsel submits that the applicant was posted to Headquarters 11 Corps at Jalandhar on 20.05.2015 for a criteria appointment of two years tenure where he served for 14 months from 20.05.2015 to 30.06.2016, and as per the knowledge of the applicant, he was graded 'Outstanding' (9) in Annual Confidential Report (ACR) for period 20.05.2015 to 30.06.2016 by his IO and FTO.

8. Arguing further on the issue, Ld. Counsel submits that in continuation to his aforesaid period of service in the same appointment in the same station for a period of 8 months from 01.07.2016 to 23.02.2017, the applicant was graded (8) in the Interim Confidential Report (ICR) by a different FTO namely Maj Gen Arvind Katoch, wherein the IO, Maj Gen Balwinder Singh had however graded him '9' (Outstanding).

9. Stressing further, Ld Counsel for the applicant submits that the FTO Maj Gen Arvind Katoch compelled the applicant to do certain tasks which were beyond his authority and therefore, he refused to abide by his orders causing major differences which he avers is the main reason for low grading in Confidential Report leading to his non-empanelment in the No 1 SB.

10. It is submitted by the Ld. Counsel that the impugned Annual Confidential Report was not in consonance with his overall profile for which he squarely blames the FTO for having made unreasonable demands for his personal administration and that in spite of his professional contribution, it was the FTO whose impression was biased which in turn affected the opinion of the higher reporting officers.

11. Highlighting the role of the Military Secretary's Branch to change and alter or set aside the Confidential Reports, Ld. Counsel submits that the Confidential Report should have been suo-moto interfered with; by virtue of the lower grading caused due to personal bias and arbitrariness of the reporting officers.

12. Aggrieved due to the aforesaid reasons resulting in his non-empanelment, Ld. Counsel submits that the applicant should have been promoted in the first board in 2019 due to his superior profile. In the second No. 1 SB in June 2020, in which 16 officers were considered; including 05 officers for the batch of the applicant's not empanelled earlier and a fresh batch of 1989 only two officers were promoted to the rank of Major General which excluded the name of the applicant. A year later in the No 1 SB conducted, 15 Brigadiers were considered with the applicant's name in the category of Third Review but only 02 Brigadiers were promoted.

13. Ld. Counsel further avers that consequently, the Statutory Complaint preferred by the applicant to the MoD against his non-empanelment on the ground that it is attributed squarely to the impugned Confidential Report was rejected by the Respondent which is in violation of principle of natural justice and thus, bad in law.

14. Per contra, Ld Counsel for Respondents submits that the Army has a pyramidal structure and the vacancies for promotion to higher ranks are limited. The promotion boards

select the best officers from a particular batch who are considered based on the Confidential Reports, performance in career courses, Honours and Awards and overall service profile which are considered for drawing a merit list. The merit lists are placed before the board members of the Promotion Board and further subjected to award of Value Judgments marks out of 5/100 for preparation of final merit list from which the officers who are within the criteria of vacancies available are promoted to the next rank.

15. Placing reliance on the aforesaid argument, Ld Counsel submits that in case any officer gets relief through the mechanism of Statutory/Non Statutory complaints he is entitled Special Consideration with the dispensations affecting the changed profile, and that the Outstanding grading of '9' is awarded based on the exceptional performance of the ratee officers and cannot be claimed as a right.

16. Arguing on the issue of award of marks in CR, Ld. Counsel submits that it is solely based on the assessment by the Reporting Officers who have observed the officer's performance during the period of report and thus are

competent for objective assessment and that such assessments fall outside the purview of judicial review unless the Confidential Reports are technically invalid or in contravention to rules and regulations or a bias/arbitrariness is clearly established to the satisfaction of the Court.

17. It is further submitted on behalf of the respondents that Hon'ble Supreme Court has held that the courts should not substitute the findings of the Selection Boards by their own judgment; placing their reliance on the following cases:

- a) Union of India Vs Lieutenant General RS Kadyan, (2000) 6 SCC 698*
- b) Major General IPS Dewan Vs Union of India and Others, (1995) 3 SCC 383,*
- c) Air Vice Marshal SL Chhabra, VSM Vs Union of India, 1993 Supp(4) SCC 441*
- d) Major Surinder Shukla Vs Union of India and Others, (2008) 2 SCC 649.*

Consideration

14. We have heard the submissions of Ld. Counsel on behalf of both parties and carefully perused the material placed before us including the pleadings, Confidential Dossiers and Statutory Complaints of the applicant. The only issue for adjudication before us is whether the impugned Confidential

Report has been appropriately dealt with by the Competent Authority for redressal and whether the applicant is entitled to be empanelled for promotion in any of the No 1 SBs conducted in 2019, 2020 and 2021.

15. We find that the narrative of dispute between the FTO namely Major General Arvind Katoch and the applicant is descriptive in the OA including the telephone conversations between both officers leading to alleged bias in the impugned Confidential Report. At this stage, we are neither inclined nor find it appropriate to examine or adjudicate on the aspect of interpersonal conflict between the two parties as the same is an Administration matter. However, it is relevant for us to place on record, if any injustice is found to have been meted out to the applicant, due to unlawful bias and arbitrariness, based on perusal of the Statutory Complaints.

16. On examination of the Statutory Complaint of 07.03.2020 against the non-empanelment in No 1 SB held in October 2019, we find that the impugned Confidential report for the period has been analysed in detail by the competent authority with the pen pictures having no adverse remarks

and they are overall laudatory, while the gradings including the box gradings of all reporting officers are a mix of High Above Average (8) and Outstanding (9).

17. We find that all the recommendations are positive in nature and there is no technical invalidity that has been observed. It is our considered opinion that the Courts are not an expert to assess the competence of the employee and override the assessment of the reporting officers to upgrade Above Average (8) to Outstanding (9) in absence of any malafide on record.

18. We are of the opinion that we are neither privy to the performance of the employee nor the interpersonal aspects of the organizational health, and this aspect has been adequately answered by Honorable Supreme Court in the case of **Union of India Vs Lieutenant General RS Kadyan (2000) 6 SCC 698 and Major General IPS Dewan Vs Union of India and Ors (1995) 3 SCC 383 (Supra)**.

19. If the courts were to upgrade all above average (8) Confidential Reports to Outstanding (9), we will be swarmed by applicants seeking the intervention of courts for upgradation

of their CR ratings which would cause grievous injury to the overall health of the Armed Forces and render the entire system of Confidential Report and Quantification System of Selection redundant. Thus, we do not consider it prudent to upgrade the Confidential Report ratings through our judgment.

20. It is pertinent for us to refer to the case of **Brigadier Mandeep Singh Vs Union of India (OA No 905/2015)** deserves mention wherein the Armed Forces Tribunal has noted:-

"Firstly, we would like to reiterate that the guidelines have no statutory effect. Thus it is clear that box gradings are assessments to be made by the Reporting officers who are in the best position to assess the officer in his individual qualities and also his performance when compared to his peers. They are legally entitled to do so and being responsible officers senior in the chain of Command to the applicant, are eminently competent to do so. Unless any clear infraction of rules, orders, regulations or instructions in the recording of the impugned CRs are brought to our notice, we would not be in a position to interfere in the matter in any way".

20. In a similar case of **Union of India Vs SK Goel and Ors 2007; 14 SCC 641**, the Hon'ble Apex Court has observed :-

"It has to be held that the Tribunal was in error in going into the question whether the applicant had been rightly graded

as 'outstanding' in ACR for the years 1990-91 and 1991-92. The observations of the Tribunal that of the two 'outstanding grading' does not flow from various parameters given and the reports entered there in, cannot thereof, be upheld and are accordingly set aside".

"Evaluation made by an expert committee should not be easily interfered with by the Courts which do not have the necessary expertise to undertake the exercise that is necessary for such purpose".

21. Dwelling further on the aspect of examination of the other Confidential Reports of the applicant in the rank of Brigadier, we observe that there is no evidence of any bias or arbitrariness in any of the four reports examined and thus, there is no cause of action therein.

22. We find that the similar impressions have also resonated in the disposal of the second statutory complaint by the Respondents. The entire CR profile of applicant has a mix of Above Average (8) and Outstanding (9) box gradings by reporting officers. Since, the ratee officer is not privy to the entire contents of the Confidential Report except for the part which he/she signs as read, most rating being Outstanding as perceived by the applicant are not true, and therefore, in

conclusion, we do not find any cause for us to affect an upgradation in the subject Confidential Report.

23. The second aspect that merits our attention and analysis is the consideration of the applicant by the three successive No.1 Selection Boards from 2019 to 2021. The conduct of promotion boards are based on Quantification system which is governed by following Policy letters :-

(a) Letter No 04502/Ms Policy dated 23 December 2017-**Quantification System of Selection.**

(b) Letter No 04502/Ms Policy dated 23 December 2017-**Promotion Policy : Special Selection Board & No 1 Selection Board.**

24. The Promotion Boards consider all the Confidential Reports in the reckonable profile of the candidates for award of marks as per Quantification System of selection. It is also pertinent to note here that as far as gradings awarded by the FTO, Higher Technical Officer (HTO)/Head of Arms/Services (HOAS) are concerned, the only rating that is recorded in Confidential Report is the box grading and along with the pen picture as the Technical Reporting Officers do not award any

gradings to the Officer other than the Box Grading unlike the regular reporting channel officers namely IO, RO and SRO.

25. We have perused the board results of No.1 Selection Board in which the applicant has been considered, the analysis of which provided herein:-

(a) **No 1 Section Board : October 2019.** The board has considered fifteen candidates for one vacancy. The applicant is placed at Serial 5 as per merit and the difference of marks of the applicant in relation to the last empanelled candidate is 1.642.

(b) **No 1 Selection Board : June 2019.** This promotion board considered 13 candidates for two vacancies. The applicant is in order of Merit No 9, wherein his total marks out of 100 are 1.749 less than last candidate empanelled.

(c) **No 1 Selection Board : October 2019.** Of the 15 candidates considered by this promotion board for two vacancies, the applicant is at Order of Merit 13 with 1.646 less marks than the last empanelled officer.

26. Concluding, in view of our aforesaid analysis, we are of the considered opinion that even if hypothetically the applicant was to be granted relief, it would have led to replacement of one '8' grading by '9', which would have had negligible impact on his merit position, and therefore, this OA is liable to be dismissed.

27. Consequently, this OA 1256/2022 is dismissed.

28. Pending miscellaneous application, if any, stands disposed of.

29. No order as to costs.

Pronounced in the open Court on 27 day of September, 2023.

(RAJENDRA MENON)
CHAIRPERSON

(C.P MOHANTY)
MEMBER (A)

ps/akc/