

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

A.

OA 147/2019

Lt Col Ran Singh Rana

.....

Applicant

Versus

Union of India & Ors.

.....

Respondents

For Applicant : Mr. S S Pandey, Advocate

For Respondents : Mr. V Pattabhi Ram, Advocate

CORAM

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

ORDER  
12.12.2023

Vide separate detailed order passed today. OA stands dismissed.

Learned counsel appearing for the applicant makes an oral prayer for grant of leave to appeal to appeal for impugning the aforesaid order before the Hon'ble Supreme Court. However, there being no point of law, much less any point of law of general public importance involved in the order, which warrants grant of leave to appeal, the oral prayer is declined.

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[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

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[LT. GEN. P.M. HARIZ]  
MEMBER (A)

/sm/

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**VERSUS**  
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**... Applicant**

**... Respondent**

**For Applicant:**

Shri S S Pandey, Advocate

**For Respondent:**

Shri V. Pattabhi Ram, Advocate

**CORAM**

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

**ORDER**

1. The present 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 by the Selection Board to the rank of Colonel and rejection of his statutory complaint by order dated 06.08.2018. The applicant has made the following prayers:

- (a) Call for records including the Selection Board proceedings, CR dossiers on the basis of which the respondents have retained the assessment in the impugned CR covering the period from 01.01.2014 to 31.05.2014 and based on which he was not only denied the promotion in his two considerations but also his

complaint has been rejected vide impugned order dated 06.08.2018 and thereafter quash the same.

(b) Direct the respondents to consider the applicant for promotion afresh after setting aside the assessment of RO and SRO in the CR covering period from 01.01.2014 to 31.05.2014 in its entirety and further if there are any other prejudicial assessment/ recommendations, the same also should be removed before such consideration.

(c) Direct the respondents to promote the applicant to the rank of Col with effect from when the officers of 2001 batch have been promoted along with the consequential benefits such as seniority, arrears of salary and further promotions after giving him special review consideration with further direction to follow the policy dated 04.01.2011 for all purposes including award value judgment marks etc.

(d) Issue such other order/ direction as may be deemed appropriate in the facts and circumstances of the case.

### **Brief facts of the Case**

2. The applicant was commissioned as an SSCO into RAJ RIF on 03.01.2001. The applicant performed well and was granted Permanent

Commission (PC) in 2006 and was promoted to the rank of Lt Col on 03.11.2014. The applicant also served as 2IC with his Bn in HAA. The applicant was conferred GOC-in-C, Eastern Command Commendation Card in 2006.

3. The applicant was considered as a fresh case by No 3 SB held in Dec 2016 for empanelment to the rank of Col, however, he was not empanelled. Aggrieved, the applicant submitted a non-statutory complaint dated 01.02.2017 on his non-empanelment and also prayed for expunction and setting aside of CR (01/13-12/13) and impugned CR (01/14-05/14) and thereafter be considered afresh by No 3 SB.

4. The competent authority duly examined the non-statutory complaint dated 01.02.2017 and granted partial redressal to the applicant and expunged the entire assessment in CR (01/13-12/13) on technical grounds vide order dated 17.07.2017. Accordingly, the applicant was considered with the changed profile by the No. 3 SB in Oct 2017 as Special Review (Fresh), however, the applicant was again not empanelled.

5. Aggrieved by the non-empanelment, the applicant filed a statutory complaint dated 26.12.2017 and prayed that all his ACRs in the reckonable profile be examined and any inconsistency or aberrations be

expunged. The applicant also prayed for re-examination of CR (01/13-12/13) and impugned CR (01/14-05/14).

6. The competent authority examined the statutory complaint of the applicant in the light of the applicant's overall profile and relevant documents and found that all CRs in the reckonable profile of the applicant, including the impugned CR (01/14-05/14) in the reckonable profile were fair, objective, well corroborated, performance based and technically valid. There being no evidence of any bias or subjectivity, the examination concluded that none of the CRs warranted any interference.

7. The competent authority also noted that in the CR (01/13-12/13), the entire assessment of all the reporting officers had already been expunged, hence, any apprehension about this CR was devoid of merit. The officer was not been empanelled for promotion to the rank of Col on account of his overall profile, relative merit and comparative evaluation as assessed by No 3 SB as Special Review (Fresh) held in Oct 2017. Accordingly, the competent authority vide order dated 06.08.2018 rejected the statutory complaint dated 26.12.2017. Hence, this OA.

### **Arguments by the Counsel for the Applicant**

8. The counsel briefly recapitulated the service profile of the applicant and submitted that the applicant had always performed exceedingly well in all sphere and excelled in the courses and in spite of

his professional record, the applicant had not been empanelled to the rank of Col. He drew our attention to the non-statutory complaint dated 01.02.2017 against non-empanelment and stated that though the competent authority vide order dated 17.07.2017 had granted partial redressal to the applicant and expunged the entire assessment in CR (01/13-12/13) on technical grounds, the competent authority had failed to address the lack of objectivity in the impugned CR (01/14-05/14).

9. The counsel further added that the applicant had then filed a statutory complaint dated 26.12.2017 against non-empanelment and had impugned CR (01/14-05/14). However, this too was rejected vide order dated 06.08.2018.

10. The counsel further submitted that the applicant was apprehensive that in the two CRs i.e. CR (01/13-12/13) and impugned CR (01/14-05/14), though his IO had assessed the applicant as outstanding but higher reporting officers for reasons other than professional, may have downgraded his assessment. The counsel then pointed out that, out of these CRs, the first CR (01/13-12/13), had already been expunged in its entirety on grounds of technicality and therefore on the same grounds, the impugned CR too needs to be set aside. The counsel then highlighted certain incidents which, according to the applicant affected the assessment of the of the RO and SRO in the impugned CR.



11. The Counsel further reiterated since the applicant's profile was better than those who were empanelled, the most likely reason for his non empanelment was low 'Value Judgement' marks, whereas, with his profile, he ought to have got more 'Value Judgement' marks. The counsel thus concluded that because of the impugned CR, the applicant had not been empanelled and prayed that the issues raised against the impugned CR be reconsidered, the OA be admitted and necessary relief be granted. The counsel relied on the following Judgements:

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

(b) Order of AFT, RB, Chandigarh dated 30.07.2013 in OA No. 1168 of 2011 in case of **Lt. Col Vinay Lakhera** v. **Union of India & Ors**

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

12. 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.

13. The counsel reiterated that the applicant submitted a non-statutory complaint dated 01.02.2017 against his non-empanelment by No 3 SB as a fresh case in Dec 2016. The competent authority granted

partial redressal and expunged the entire assessment in CR (01/13-12/13) on technical grounds vide order dated 17.07.2017. Accordingly, the applicant was considered with the changed profile by the No. 3 SB in Oct 2017 as Special Review (Fresh), however, the applicant again not empanelled. Aggrieved, the applicant filed a statutory complaint dated 26.12.2017. The competent authority examined the statutory complaint in the light of applicant's overall profile and relevant documents and found that all CRs in the reckonable profile of the applicant, including the impugned CR were well corroborated, consistent, performance based and technically valid. The applicant had not been empanelled for promotion to the rank of Col on account of his overall profile, relative merit and comparative merit. Accordingly, the competent authority vide order dated 06.08.2018 rejected the statutory complaint dated 26.12.2017.

14. Referring to the impugned CR (01/14-05/14), the counsel asserted that the allegations against the RO and SRO were baseless and mere uncorroborated statements of the applicant. The counsel submitted that the impugned CR had already been examined by the competent authority on two occasions. All the CRs in the reckonable profile of the applicant including the impugned CR have complementary pen pictures and appropriate recommendations. They were well corroborated,



performance based and technically valid. The counsel pointed out that there was no adverse entry against the applicant and in his reckonable profile, the applicant had maintained an overall above average CR profile, consistent with the impugned CR. The counsel further stressed that the award of Board Member Assessment and value judgment had been done as per the parameters and laid down policy in vogue and the Selection Board had the complete profile of the applicant including the regimental and staff service.

15. The counsel reiterated that the applicant had not been empanelled for promotion to the rank of Col on account of his overall profile, and comparative merit as assessed by No 3 SB. The counsel then relied on the following:

- (a) **Union of India v. Lt Gen RS Kadyan**, (2000) 6 SCC 698
- (b) **Maj Gen IPS Dewan v. Union of India and Ors**, (1995) 3 SCC 383
- (c) **AVMS L Chabbra, VSM v. Union of India & Ors.**, 1993 Supp (4) SCC 441
- (d) **Dalpat Abasaheb Solunke v. BS Mahajan**, (1990) 1 SCC 305
- (e) **Lt Col Amrik Singh v. Union of India and Ors.**, (2001) 10 SCC 424
- (f) **Major Surinder Shukla v. Union of India and Ors.**, (2008) 2 SCC 649

### **Consideration of the Case:**

16. Having heard both the parties at length, the issue that requires consideration is whether the respondents have fairly disposed of the complaints and whether any CR merits interference. We have examined the CR Dossier, examination of complaints and the Board proceedings of the No 3 SB submitted by the respondents.

### **Complaints**

17. It is seen that the applicant has submitted one non-statutory and one statutory complaint. The non-statutory complaint dated 01.02.2017 was filed against non-empanelment to the rank of Col by No 3 SB held in Dec 2016, in which the applicant had been considered as a fresh case. The applicant had impugned CR-1 (01/13-12/13) and CR-2 (01/14-05/14). CR-1 had been impugned on the grounds that the SRO had returned the CRs for re-initiation since the CR was smudged. It was the applicant's case that as per Para 15 of AO 45/2001/MS, CRs once initiated are not permitted to be returned. CR-2 had been impugned on the grounds that the RO was biased with the applicant due to certain interpersonal issues between the spouses. The applicant had prayed that CR-1 be set aside on grounds of technical infirmity and lack of objectivity and that CR-2 be examined for any inconsistency/ aberrations and these be then set

aside. The competent authority examined the CRs in the entire reckonable period including the two impugned CRs and concluded that CR-1 was required to be set aside being technically invalid, since it had been returned in contravention to Para 15(d) of AO 45/2001/S. As regards CR-2, it was found to be in sync with the overall profile of the applicant, performance based and without any evidence of bias or subjectivity and therefore, did not merit any interference. Accordingly, vide Order dated 17.07.2017, the applicant was given partial redressal, in that, CR-1 was set aside completely being technically invalid.

18. The statutory complaint dated 26.12.2017 was filed against the non-empanelment by No 3 SB in Oct 2017 in which the applicant was considered as a Special Review (Fresh) case. The applicant had once again impugned CR-1 and CR-2 and had prayed that all CRs in the reckonable profile be examined for any aberration/ inconsistency and then be expunged. Both these are criteria reports as Coy Cdr in the unit. The applicant had prayed that CR-1 though had been set aside, it be examined for any inconsistency since the next CR (CR-2) was endorsed by the same RO and, that CR-2 be examined afresh for inconsistencies and they be expunged. The competent authority examined all the ten CRs in the reckonable profile. Since CR-1 had

been completely expunged, it did not merit any review. CR-2 was again examined and was found to be well corroborated, performance based and technically valid. This does not merit any interference. All the other CRs were also balanced and devoid of any inconsistencies and in tune with the overall profile of the applicant. Thus the complaint was rejected vide order dated 06.08.2018.

### **CRs**

19. We have examined the CRs in the reckonable profile. The applicant had earned ten CRs; nine in the rank of Maj and one in the rank of Lt Col. The nine CRs as Maj include five criteria reports. In the pre-reckonable period, the applicant has earned four CRs, all of which are clear 'above average' reports without any 7s/weak remarks. In the post reckonable period, the applicant has earned two CRs both of which are clear outstanding/ above average reports. In the overall reckonable profile, the applicant has 38% box gradings as outstanding, with the balance 62% being above average. In the criteria reports the applicant has 50% outstanding box gradings.

20. CR-2 is boxed 9/8/8 by the IO/RO/SRO respectively. All reporting officer have endorsed positive pen pictures with positive recommendations for foreign assignments and there are no 7s/ weak

remarks. The CR is in consonance with the overall profile which is predominantly above average. Thus it merits no interference.

### **No 3 SB**

21. The applicant was given a fair consideration by No 3 SB. He has not been empanelled due to his overall comparative merit amongst those considered. The details of consideration are summarised below:

Ser	No 3 SB	Consideration	Batch Year	Results
(a)	Dec 2016 (Inf 2001 Batch)	Fresh	2001	NE OOM – 89.608 Last offr – 90.141
(b)	Redressal - Entire assessment in CR (01/12-12/13) were expunged on technical grounds vide order dated 17.07.2017.			
(c)	Oct 2017 (Inf 2002 Batch)	Special Review (Fresh)	2001	NE OOM – 89.377 Last offr - 90.141
(d)	Oct 2018 (Inf 2003 Batch)	First Review	2002	NE OOM – 89.499 Last offr - 90.522
(e)	Mar 2019 D/W cases	Final Review	2003	NE OOM – 89.590 Last offr – 91.044

### **Conclusion**


22. In view of the above consideration, we conclude that none of the CRs merit any further interference. That the respondents have justly disposed of both the complaints. The applicant has not been empanelled due to his overall comparative merit amongst those considered.

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

Pronounced in the open Court on this day of <sup>12</sup> December,

2023.

  
(RAJENDRA MENON)  
CHAIRPERSON

  
(P M HARIZ)  
MEMBER(A)

/ashok/