

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

OA 1711/2022 WITH MA 2260/2023

Wing Cdr Pushpa Thakur

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant

: Mr. Y Venugopal, Advocate

For Respondents

: Mr. Anil Kumar Gautam, Sr. CGSC

CORAM :

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

ORDER

Invoking the jurisdiction of this Tribunal; under Section 14, the applicant who is a serving officer in Indian Air Force has sought following reliefs :

- (a) *To call for records of PB-2 (Education) for the last 10 years to ascertain that in all these Promotion Boards, the officers placed as No 1 in the Select Reserve List were promoted.*
- (b) *To call for records and ascertain the non-utilization of four of the following six Gp Capt vacancies available in Education branch on or before 31.03.2022; and direct the Respondents to promote the Applicant to the rank of*

OA 1711/2022

Wing Commander Pushpa Thakur Vs UOI & Ors.

Gp Capt in PB-2/2021 against the first non-utilised Gp Capt vacancy, with all consequential benefits :-

(i) Premature Retirement of Gp Capt Anuradha Sharma (26181) on 30.11.2020.

(ii) Retirement-Gp Capt SK Sharma (21368) on 31.12.2020.

(iii) Retirement-Gp Capt DK Kaushik (25686) on 30.04.2021.

(iv) Retirement-Gp Capt Job Mathews (20101) on 31.05.2021.

(v) Gp Capt vacancy-Principal Sainik school Gopalganj/Kalikiri, Andhra Pradesh.

(vi) Gp Capt vacancy-Sainik Schools Society, Min of Def, which arose on recalling of Gp Capt P Ravi Kumar (21371) Edn and posting him to Air Force Academy from 17.07.2021.

(c) To quash the Respondents order vide Air HQ 98865.453/PO-1/Adm(2) (27066) BM-II dated 13.05.2022 (Annexure A-1 Impugned Order) vide which the Respondents arbitrarily and illegally rejected the Applicant's Statutory Complaint dated 16.03.2022 (Annexure A-9).

Brief Facts of the Case

2. The applicant is an UNCAT Permanent Commission Education Officer who was commissioned on 22.06.2002 as a Short Service Commissioned Officer for 10 years. Post extension of 4 years of service she was granted permanent commission and presently holds the rank of Wing Commander.

3. The applicant was considered by Promotion Board No 2 (PB-2) in February 2021 as per the promotion policy of Air

OA 1711/2022

Wing Commander Pushpa Thakur Vs UOI & Ors.

Headquarters HRP 03/2018 for promotion to the rank of Group Captain and placed in Select Reserve List-1 (SRL-1) of Education Branch. However, she was not promoted to the rank of Group Captain by the respondents citing the reason that no vacancy is available. Later on, when she was considered for PB-2 in 2022, her name did not figure in the list of empanelled officers for promotion and thus, she continues to hold the rank of Wing Commander.

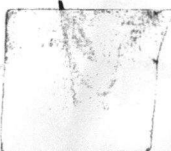
4. The applicant submitted a complaint addressed to Chief of Air Staff (CAS) under the heading "Statutory Complaint-Officers" seeking a redressal to her grievances. The complaint was replied to by Air Headquarters rejecting her submission on the ground of non availability of additional vacancies in the Education Branch during PB-2/2021 (i.e. 01.04.2021 – 31.03.2022) and that placement in the SRL is no guarantee of promotion since it is subject to availability of additional vacancy and therefore, it is not the right of the applicant to claim promotion for being in SRL.

Submissions by Ld Counsel for Applicant

5. Ld Counsel for applicant submits that the applicant who is a woman officer in the Education Branch has high educational, professional qualifications and a distinguished track record before and after her commission into Air Force. The applicant has held important assignments during her service based on the career progression path and performed very well in all the aspects. She has had the distinction of being Executive Director of two prestigious Air Force Schools together which are held otherwise by independent officers. She was also awarded the Chief of Air Staff Commendation in January 2021.
6. Ld Counsel explains the organization of Education Branch as a small branch with only about 25-30 officers in the rank of Group Captain and above and therefore occurrence of vacancies due to promotion, superannuation and mobility of officers on assignments outside as well as on study leave which are discernible and therefore calculation of vacancies are predictable with ease. It is his submission that while the applicant was

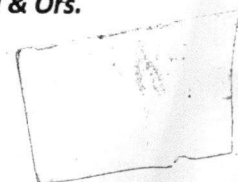
considered by PB-2/2021 held in February 2021, the vacancies were not notified by the respondents. The results were declassified on 03.03.2021 in which two officers namely Wing Commanders VS Dangwal and JS Parmar were placed in the Select Main List (SML) while the applicant was in Select Reserve List (SRL) which would have been utilized subject to availability of third vacancy.

7. Elaborating on the procedure for promotion, Ld Counsel for applicant refers to the Human Resources Policy (HRP) of Air Force wherein vacancy for Group Captain (Selection) is calculated for year of promotion i.e. w.e.f. 01 April – 31 March every year based on promotion to rank of Air Commodore and above as chain vacancies and the superannuation in the rank of Group Captain itself. Other than these vacancies which are predictable the vacancy position is also affected due to premature separation from service in ranks of Group Captain and above, deputations outside Air Force and occurrence of new vacancies due to any unforeseen reasons.



8. Taking us through the calculation of vacancies for promotions in the previous and current years of 2020 and 2021 Ld Counsel elaborates that three vacancies had occurred in year 2020 itself due to promotion of Group Captain HS Sidana to rank of Air Commodore on 01.04.2020 and superannuation of two officers namely Group Captains HCS Chauhan and SK Sharma on 30.11.2020 and 31.12.2020 respectively. However, the respondents cleared only two officers for promotion of which one was in SML and one in SRL on 16.04.2020 and 07.12.2020 against the vacancy of Group Captains HS Sidana and HCS Chauhan respectively. In addition another vacancy also occurred due to Premature Separation from Service (PSS) of Group Captain Anuradha Sharma of Education Branch on 30.11.2020.

9. It is therefore the argument of the Ld Counsel for Applicant that against the availability of 04 vacancies (01 Promotion and 03 retirement) occurring in the year 2020, only two officers were promoted in the same year; namely Wing Commander Pratibha



Bisht (SML) and Wing Commander RK Yadav (SRL-1). Therefore two vacancies unutilized were available for PB-2/2021 for Education Branch which would have been carried forward.

10. Furthering the argument on availability of vacancy for promotion year 2021, Ld Counsel for applicant submits that in addition to the 02 vacancies carried over, two additional vacancies were available due to retirement and another two officers due to depositions; thus making available a total of six vacancies as follows:

Ser No.	Name of Officer	Date of Retirement
(a)	Group Captain Anuradha Sharma	30.11.2020 - Carried Forward
(b)	Group Captain SK Sharma	31.12.2020 -Carried Forward
(c)	Group Captain DK Kaushik	30.04.2021 -Retirement during the year
(d)	Group Captain Job Mathews	31.05.2021 -Retirement during the year
(e)	Group Captain Vacancy-Principal Sainik School Gopalgunj/Kalikiri, Andhra Pradesh	Deputation Vacancy
(f)	Group Captain Vacancy-Sainik Schools Society	17.07.2021 -Deputation Vacancy

11. It is further averred that the two officers promoted from the SML were Wing Commander VS Dangwal on 06.05.2021 and Wing Commander JS Parmar on 01.06.2021. Therefore another four vacancies remained unutilized of which one vacancy could have been allotted to the applicant who was at SRL-1. Ld Counsel vehemently emphasizes that respondents have been consistently clearing the SRL every year and sometimes even ESRL in the interest of the affected officers. Therefore, in the principle of 'Legitimate Expectation' the applicant expected the similar treatment which was denied to her due to personal bias and discriminatory approach.

12. It is also the grievance of the applicant that the Group Captain vacancy of Principal Sainik School Gopalgunj was filled up few days after the promotion year on 06.04.2022 to deny it's availability within the promotion year despite the approval of Hon'ble Raksha Mantri having been accorded in March 2022 with a view to deliberately deny promotion to the applicant. Similarly, the second vacancy that should have

occurred in the assignment of Sainik School Society in the rank of Group Captain was not filled.

13. Stating the reasons for denial of promotion being attributable the same to professional differences due to restructuring of management of the Air Force schools from administration Branch to Education Branch, Ld Counsel submits that the applicant was posted out as Vice Principal of Sainik School Chittorgarh in July 2021 in the rank of Wing Commander; when she was awaiting the promotion orders. Thus it is the grievance of the applicant that she has been deliberately denied her legitimate right for promotion in spite of being placed in SRL-1.

Submissions on Behalf of Respondents

14. Per contra, Ld Counsel for the Respondents submits that SRL contains the names of officers who are provisionally approved for promotion subject to availability of additional vacancies. Disagreeing with the submissions of Ld Counsel for applicant, he argues that there have been instances in the past.

where SRL-1 has not been promoted in the PB year wherein very recently SRL-1 in PB-2/2020 of Meteorology Branch was not promoted in the PB year due to no additional vacancy accruing. There have also been precedents to the fact that SRL officers have been posted on assignments without putting on higher rank in the past.

15. Ld Counsel further submits that, in the Education Branch no additional vacancy accrued from 01.04.21 to 31.03.22 since no Group Captain (s) rank officer proceeded on PSS/Deputation etc and therefore, the applicant could not be promoted.

16. Ld Counsel further argues that the empanelment for promotion is strictly as per merit of the candidate within his/her branch and therefore the applicant's name not featuring in the select list from PB-2/2022 is due to her relative merit amongst the officers of the new batch/batches considered. He adds that there is no bias, injustice or arbitrariness in conduct of

promotion boards as the HR policy is equally applicable to all candidates.

17. Justifying the application of HR Policy, Ld Counsel submits that the HRP-3/2018 was applied w.e.f. PB-2019 wherein P ara 12(e) stipulates that the **"Marks for categorization will be additionally included from PB-2/2020 onwards, based on review of the progress in categorization in 2019"**. Review was carried out for assessing the progress of categorization in all branches prior to conduct of PB-2/2020 and due variance in progress of difference branches, the implementation was deferred till PB-2021 to provide level playing field and further deferred by one more year due to COVID-19. Since the categorization scheme of Education Branch was issued on 21.04.2015 the applicant had enough time to upgrade her category till conduct of PB-2/2022 when the applicant was considered for the second time and not empanelled for promotion.

18. Countering the suggestion of deliberate delay in posting officers to Sainik School Society, Ld Counsel clarifies that the selection is solely based on discretion of Sainik School Society from a panel of officers provided by the Air Force which is approved by Hon'ble Raksha Rajya Mantri. There was no delay in posting the officer as claimed by the applicant. Similarly, selection for applicant as Vice Principal of Sainik School consequent to her interview on 23.09.2020 was approved by Hon'ble Raksha Rajya Mantri in November 2020. Although the posting was issued in July 2021, the selection process had started well before the conduct of PB-2/2021 in September 2020. Thus applicants' posting as Vice Principal in the Wing Commander's rank was done in accordance with her suitability in the said rank. The applicant was initially selected for posting to Sainik School, East Siang (Arunachal Pradesh) w.e.f. December 2020. However, based on the request from applicant for a change of place on 24.11.2020, the Sainik School Society changed her posting to Sainik School Chittorgarh w.e.f.

July 2021. He refutes the allegation of delay in issuing posting order and attributes it squarely to the applicant's request for change of place; due to which her earlier posting had to be cancelled.

19. Ld. Counsel further argues that the vacancy availability state has been misunderstood and misrepresented by the Applicant as the vacancies of Principal, Sainik Schools and Sainik School Society are no additional vacancy; being merely relief vacancies which do not lead to emergence of fresh vacancies for promotion. There being no third vacancy for promotion, the applicant was not granted promotion despite being in SRL-1 in PB-2/2021.

Analysis

20. Having heard Ld. Counsels for both parties and perused the policy letters issued by the Ministry of Defence and Air Headquarters, the documents related to calculation of vacancies and the promotion board proceedings of the applicant, the questions that remain to be answered are firstly, whether

the calculation of vacancies was correctly done by the respondents which led to denial of promotion to the applicant despite being in SRL? Secondly, if the answer to the above question is affirmative, whether the applicant was correctly considered by PB2/2022 for promotion to the rank of Group Captain?

21. Since, the issue under dispute herein is that when an officer is promoted/retired/prematurely retired on 31st March of any year, when will the vacancy accrue for filling ? It is thus, relevant to refer to Air Headquarters Policy letter No Air HQ/22030/10/PO-2(D) dt 30.12.2015 which lays down the policy for promotion of Air Ranks i.e Air Commodore and above. Para 10 (a) of the letter is extracted below :-

"10 (a) Special Promotion Board and No 1 Promotion Board will take into account vacancies in the respective Air rank i.e. Air marshal, AVM and Air Cmde which will arise during the promotion year. For this purpose, vacancies arising on 31 Mar of the promotion year due to retirement/pre-mature retirements, will be counted against the vacancies arising during the same promotion year, though actually available only on 01 Apr of the next promotion year."

OA 1711/2022
Wing Commander Pushpa Thakur Vs UOI & Ors.

22. On a perusal of aforesaid letter, we find that the vacancies occurring inter alia against superannuation on 31st March of a particular year will be counted against the vacancies on the same year; although the promotion can only be affected on 01st April; which is the first day of next promotion year.

23. We have also carefully perused another promotion policy letter of Air Headquarters titled "Promotion Policy- Wing Commander to Group Captain (Select)" dated 28.02.2018. What is relevant to the case under consideration are Paras 3,15, 21 to 23 of the letter, which are reproduced below :-

"AFNET IP: 21115300

**Air HQ (VB)
New Delhi 110106**

Air HQ/C/98824/1/PO5

28 Feb 18

AIR HEADQUARTES HUMAN RESOURCE POLICY

PART I /PO/PR/03/2018

PROMOTION POLICY : WG CDR TO GP CAPT (SELECT)

References :- **xxx** **xxx** **xxx**

Appendices :- **xxx** **xxx** **xxx**

INTRODUCTION

Para 1 to 2 **xxx** **xxx** **xxx**

GP CAPT : PROMOTION BOARD-2 (PB2)

General

3. A promotion board year, (PB year) is from 01 Apr of a year to 31 Mar of the next year. For e.g; PB year 2019 will include the period from 01 Apr 19 to 31 Mar 20. PB-2 for selecting officers to the rank of Gp Capt (Select) is held once every year. The PB generally assembles

OA 1711/2022

Wing Commander Pushpa Thakur Vs UOI & Ors.

during Feb/Mar to select officers, for vacancies that arise in the PB year.

Para 4 to 14 xxx

xxx

xxx

15. Forecast vacancies (vacancies that are likely to accrue in a PB year) are known to the Board. Based on this input and the merit of the officers, the following lists are prepared :-

(a) Select Main List (SML). This list contains names of officers cleared by the PB. The list is restricted to the number of forecast vacancies. At the time of publishing the SML, names of officers are re-arranged in the order of their existing seniority.

(b) Select Reserve List (SRL). SRL will be published along with SML. To begin with, at the time of publishing the SML/sRL, vacancies are not available for officers placed in the SRL. SRL is prepared branch/stream wise and contains names of officers who could be cleared for promotion in case additional vacancies arise. The names in SRL are arranged in the order of merit. While publishing, the number of officers in SRL would be limited to one third of the number of officers of each branch/stream in SML. However, there shall be at least one officer in the SRL. It is possible that at the end of the PB year, no additional vacancies accrue or additional vacancies accrued are lesser than the number of officers in the SRL list. In such instances, no officer in the SRL will be promoted in the first instance or only that many officers, equal to the accrued additional vacancies, as per the order of merit in the SRL, will be promoted, in the second instance.

(c) Extended Select Reserve List (ESRL). There could also be instances wherein, more number of additional vacancies accrue, during the course of the PB year, than those published in SRL. In such instances, ESRL would be published, time to time during the PB year as and when such additional vacancies arise, after the due administrative processes are completed in the order of merit. It needs to be understood that ESRL is only an extension of the SRL and not a separate select list.

Para 16 to 20

xxx

xxx

xxx

Vacancy Position

21. The methodology of calculating vacancies has been misinterpreted by many officers. This has led to litigations in a few cases. It needs to be understood that the only known/foreseen vacancies are the chain vacancies which accrue due to promotions and superannuation in higher ranks. Any other/additional vacancies are due to unforeseen wastages which may accrue as a result of

unforeseen pre-mature separation from service (PSS) and other Non-Effective (NE) reasons.

22. The known/foreseen vacancies are used to work out the SML of each branch. Variations for reasons like withdrawal /revision of PSS dates, delayed or early return of officers from inter-service organizations and deputations can vary the available number of vacancies. It is for this reason that the vacancies are also called 'forecast' vacancies and are liable to change during the PB year.

23. The Select Reserve List (SRL) is announced to overcome administrative delays in obtaining necessary clearances from the approving authority, incase additional vacancies come up during the period. The Extended Select Reserve List (ESRL) is possible only if additional vacancies over and above the published SRL accrue during the course of the PB year. Based on the available vacancies, both foreseen as also unforeseen, all the officers on SML will first be promoted. If any more vacancies remain/accrue, then officers placed in the SRL will be promoted, starting with the officer placed highest in the SRL. If still vacancies remain/accrue, then officers placed in the ESRL will be promoted, starting with the officer placed highest in the ESRL. Vacancies are not carried forward to the next PB year unless there is no officer to promote in a particular branch /stream.

Para 24 to 34

xxx

xxx

xxx

*Sd/-xxxx
(B Suresh)
Air Mshl
AOP"*

24. However, contrary to the Air Headquarters letter No Air HQ/22030/10/PO-2(D) dt 30.12.2015 which lays down the policy for promotion of Air Ranks i.e Air Commodore and above, we do not find any clarification in this letter on the matter of occurrence of vacancy for select ranks of Group Captain and below. There is no policy letter produced before us which categorically explains the management of vacancies occurring

OA 1711/2022

Wing Commander Pushpa Thakur Vs UOI & Ors.

on 31st March every year for ranks below Gp Capt due to superannuation or any other cause. In absence of the same, we are of the opinion that the same policy as the management of vacancy for Air ranks as explained in letter dated 30.12.2015 would also apply here due to the principles of uniformity. While this is the enunciated policy of the Air Headquarters we are not convinced about the logic of application of this principle. It is our considered legal opinion that a promotion carried out physically on 01st Apr has to be counted against the vacancies of the next promotion year which commences on 01st April itself. We, therefore, find it pertinent to direct the Air Headquarters to review and express their definite policy directions on this issue.

25. That apart, as averred by Ld. Counsel for the applicant, if vacancy occurring due to promotion of Air Commodore HS Sidana was to be counted against the next promotion year i.e 01.04.2020 to 31.03.2021, it should not have helped the applicant; as the same vacancy would have been

available to another candidate of the previous batch of that of the applicant.

26. Having most diligently perused the documents with respect to the occurrence and filling up of the vacancies in the rank of Group Captain as demonstrated by the respondents, it has been revealed to us that there is a perceptual difference in the very understanding of the specific vacancies as they have occurred and the manner of promotions carried out by the applicant which deserve to be placed on record.

27. The documents produced before us elucidate that promotion of Wing Commander Pratibha Bisht is against the vacancy of Group Captain HCS Chauhan who superannuated on 30.11.2020 and not against vacancy of Air Commodore HS Sidana who was promoted to the rank of Air Commodore. We find that the aforesaid vacancy was utilized in the previous year having occurred on 31st March; with the promotion of Gp Capt Anuradha Sharma as per the promotion policy discussed earlier. The promotion of Air Commodore HS Sidana was also against

the chain vacancy occurring on superannuation of Air Vice Marshal LN Sharma on 31.03.2020; and as per the policy in vogue, that vacancy was included in period from 01.04.2019 to 31.03.2020, against which is Air Commodore Sidana was promoted. Therefore, this vacancy accruing on promotion of Air Cmde Sidana even if transferred to next year would have helped another candidate in the promotion year preceding the promotion year of the applicant.

28. Further during PB-2/2020, due to reversion of Group Captain Gaikwad from study leave into the active service, the second vacancy was not available affecting the promotion of fresh candidate, as Group Capt Sanjay Gaikwad was promoted against the retirement of Gp capt SK Sharma. The vacancy on premature separation from service of Group Captain Anuradha Sharma led to promotion of Wing Commander Ramkishan Yadav who was at SRL-1.

29. It is seen from records that although the vacancy in respect of Group Captain HCS Chouhan occurred on 30.11.2020,

OA 1711/2022

Wing Commander Pushpa Thakur Vs UOI & Ors.

Wing Commander Pratibha Bisht was promoted on a earlier time frame of 16.04.2020 in colloquially termed 'Local rank' of Group Captain and given substantive rank of Group Captain only after superannuation of Group Captain HCS Chauhan on 30.11.2020.

30. That being so, it is observed by us that there were no vacancies carried forward to the next promotion year which is of relevance to the applicant. The two vacancies that have occurred are qua retirement of Group Captain DK Kaushik and Group Captain Job Mathews which have been utilized for promotion of Wing Commander VS Dangwal (SML-1) and Wing Commander JS Parmar (SML-2) leaving thus no vacancy in the promotion year April 2021 to March 2022 for utilization by Wing Commander Pushpa Thakur; the applicant.

31. That apart, the documents brought before us by the respondents demonstrate that there is no additional vacancy that is added to the batch under consideration due to relief of Principal Sainik School Gopalganj/Kalikiri and Sainik School Society since these are the relief vacancies and not in addition to

the existing vacancies. The delay in relief is primarily due to organization and procedural formalities by the Ministry of Defence which is the competent authority.

32. Having analyzed the vacancy positions, it is also relevant to analyze the reasons for non selection of the applicant in PB-2/2022 which has considered two new batches including the unsuccessful candidates of the previous batches wherein the applicant too has been considered. The promotion board has approved three candidates of which two are in SML and one is in SRL. The candidate at SRL is Wing Commander P Chopra with a total aggregate of 558.10 marks and at order or Merit of 03. In the same board, the name of the applicant figures at Merit No 09 with total marks of 552.20. We have taken note of the grievance of the applicant that the new categorization courses and the policy was implemented abruptly in 2022 which has adversely affected her prospects for promotion.

33. It is our considered opinion that the policy which was implemented in 2015 and brought into the ambit of promotion

process in 2022 due to delays of COVID etc would have had uniform impact on all candidates under consideration without any singular disadvantage to the applicant in particular and therefore, we are not inclined to grant her the benefit for non-qualification as attaining the qualification was her responsibility towards herself for her own career progression.

34. Therefore, in view of our analysis, the OA is liable to be dismissed.

35. Consequently, the O.A. 1711/2022 is dismissed.

36. No order as to costs.

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

Pronounced in the open Court on ^M6 day of December, 2023.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

akc