

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

A.

OA 1842/2022 WITH MA 4650/2023

Brig Kaushal Sreedharan	Applicant
Versus		
Union of India & Ors.	Respondents

For Applicant	:	Mr. S S Pandey, Advocate
For Respondents	:	Maj A.R. Subramaniam, OIC, Legal Cell

CORAM

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

ORDER
05.12.2023

Vide our orders of even date, we have dismissed the OA. Faced with the situation, learned counsel for the applicant makes an oral prayer for grant of leave to appeal under Section 31 of the Armed Forces Tribunal Act, 2007, to the Hon'ble Supreme Court. We find no question of law much less any question of law of general public importance involved in the matter to grant leave to appeal. Hence, the prayer for grant of leave to appeal is declined.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

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

O.A No. 1842/2022 with MA 3646/2022

**Brig Kaushal Sreedharan
Versus.
Union of India and Ors.**

..... Applicant

..... Respondents

**For Applicant : Shri S.S. Pandey, Advocate
For Respondents : Shri Rajesh Kumar Das, Sr. CGSC**

CORAM

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

ORDER

1. This OA has been filed under Section 14 of the Armed Forces Tribunal Act, 2007, by the applicant who is a serving Brigadier of the Army Aviation Corps and is aggrieved by his non-empanelment to the rank of Maj Gen in spite of being the only officer under consideration. He has made the following prayers:

(a) Call for the records including file noting based on which the respondents have found the applicant unfit for promotion as per impugned communication dated 17.06.2022 and also the records based on which the respondents have scheduled the No 1 SB for the next batch during the pendency of the statutory complaint filed by the applicant and thereafter quash these orders including the policies to this extent.

(b) Direct the respondents to reconsider the case of the applicant under Regulation 108 of the Regulations for the Army and promote him with all consequential benefits by altering his non

empanelment to empanelment as done in case of Brig Nalin Bhatia after the judgment of Hon'ble Supreme Court in his case.

(c) Pass any other order/orders as deemed appropriate by the Hon'ble Tribunal on the facts and circumstances of the present case.

(d) In the interim, direct the respondents not to hold the No 1 SB for Army Aviation Corps of 1989 batch or any other earlier batch tentatively scheduled in Oct 2022. Alternatively, retain a vacancy of Maj Gen till the OA is decided.

Brief Facts of the Case

2. The brief facts of the case are that the applicant was commissioned into the Regiment of Artillery on 11.06.1988 and subsequently, opted for Aviation and became a helicopter pilot in 1993. As a pilot, the applicant had participated in various operations and has held important Aviation appointments. He was awarded the COAS Commendation Card in 1999 and 2005, the GOC-in-C's Commendation Card in 2008 and the Force Cdr's Appreciation Certificate in 2011 whilst deployed in a UN Mission. As a Lt Col, the applicant was given independent command of a Recce & Observation Flight (R&O Flt) in the North East during which, his unit was awarded the COAS Flight Safety Trophy.

3. The applicant was promoted to the rank of Col as a Special Review (Fresh) case in 2007 based on partial redressal granted in the non

statutory complaint dated 4.08.2011 filed by the applicant. On being promoted as Col, he commanded 669 Army Aviation Sqn (R&O) from 19.10.2007 to 25.09.2009. He held very important appointments as a Col and was subsequently promoted to the rank of Brig in 2016 and held the important appointment of Comdt HQ 14 Corps Aviation Base, and alongside was entrusted with the task of raising the first Avn Bde of the Army in high altitude area. As a Brig, the applicant had undertaken critical operational and technical tasks. In 2016, the applicant had been issued a 'Reproof' for having utilised his personal laptop for certain official work.

4. It is the applicant's case that during the Periodic Medical Examination in 2018-19, the examination had recorded that though the applicant was overweight by 22%, that it was not due to obesity, but due to his built and high bone density. The fact that the applicant was physically fit was also endorsed in the PME/AME and reflected in the CR for 2019 and 2020. It is the applicant's case that in spite of this, in his CR (07/20-05/21), initiated by DG Army Aviation, the IO had endorsed in the pen picture that the applicant was overweight. In the light of these remarks, the applicant submitted a non-statutory complaint dated 04.08.2021, which however, was rejected vide Order dated 19.01.2021.

5. It is also the applicant's case that though as per the recommendation of AVSC-II, Army Aviation was to get an additional vacancy of Maj Gen in 2012, this vacancy was released to the Aviation Corps only in May 2022. As a result of this delay in release of additional vacancy, six Brigs had retired without being considered for promotion to the rank of Maj Gen. The applicant referred to the case of Brig Sudhir Nagpal of Army Aviation, a 1987 batch officer, who had filed OA No. 1934/2021, ***Brig Sudhir Nagpal Vs. Union of India and Ors.*** aggrieved by his non-consideration for promotion to Maj Gen by No 1 SB in Oct 2021, and had to retire on 28.02.2022. That after the retirement of Brig Nagpal, Army Aviation got another vacancy of Maj Gen in May 2022 and the respondents then held a No 1 SB on 26.05.2022 in which, the applicant was the only officer under consideration. The result was promulgated vide the impugned order dated 17.06.2022 (Annexure A-1) stating that the applicant was not empanelled.

6. Aggrieved by his non-empanelment, the applicant filed a statutory complaint dated 11.07.2022. In the meantime, the respondents on 02.08.2022 issued the schedule for No 1 SB in Oct 2022 to consider the officers of 1989 batch of Army Aviation. The applicant was to be considered as a First Review Case by the No 1 SB in Oct 2022. Aggrieved by the situation, the OA has been filed.

Progress of the Case

7. Pending adjudication of this OA, the applicant had filed MA 364/2022 in which the applicant made the following prayers:

(a) Direct the respondents to put on hold the further processing and de-classification of the result of No 1 SB of Army Aviation Corps in which 1989 Batch has been considered till final disposal of the present OA.

(b) Disclose the reasons for denial of promotion as recorded by the No 1 SB as mandated by the policy to enable the applicant to bring the legal impropriety of the same.

8. The respondents filed a detailed counter affidavit on 17.11.2022 and prayer for interim relief was heard on 23.11.2022. After due consideration of the case and the interim prayer, this Tribunal vide order dated 23.11.2022 rejected the prayer for interim relief:

*"3. Even though, various grounds are raised in this OA, primarily, the prayer made is based on the fact that for a single post, which was available, the claim of the applicant has not been considered in accordance to the policy and the system in vogue and relying upon a judgment passed in OA No.1934/2021 - **Brig Sudhir Nagpal Vs. Union of India and Ors.** decided by this Bench on 12th October, 2022, it is argued that in spite of directions issued by this Tribunal the respondents have not followed the mandate of the directions in its letter and spirit and in a illegal manner the Promotion Board has been conducted.*

4. Respondents have filed a detailed counter affidavit to the OA on 17th November, 2022.

5. *The only question warranting consideration at this stage is as to whether the results of the Selection Board to the post of Maj Gen held in November 2022 should be stayed? In our considered view, in the facts and circumstances that have come on record, we see no reason to stay the consideration or prevent the respondents from de-classifying the result of the Selection Board. Whatever action is taken by the respondents based on the recommendations of the Selection Board, that would be provisional and subject to final decision of this OA and it would not cause any prejudice to the rights of the applicant to claim promotion to the post in case after final hearing he is entitled for the same.*

6. *Even though, during the course of hearing learned counsel for the applicant placed heavy reliance on an interlocutory order passed in OA 2637/2021 on 31st January, 2022 to say that in that case the de-classification of the result to the post of Lt Gen was stayed and, therefore, similar relief be granted to the applicant also. We are of the considered view that in that OA, which has been relied on, the facts were entirely different and we had found that in spite of recommendation by the Selection Board, the applicant therein was not granted promotion and in the peculiar facts and circumstances of that case de-classification was kept in abeyance which was subsequently vacated by this Tribunal.*

7. *Keeping in view the totality of the facts and circumstances of this case, for the present, we find no ground to grant any interim relief and the prayer for the same is rejected."*

9. The case was subsequently heard on 07.12.2022 wherein the respondents provided the Board proceedings of the No 1 SB held on 26.05.2022 for our perusal. Having examined the records, the Tribunal upheld the Board proceedings and directed that the applicant was at liberty to ventilate any other grievances as deemed appropriate:

"6. Accordingly, the matter was heard today wherein the counsel for the applicant stated that although the counter affidavit has

been filed by respondents but they have failed to indicate the reasons for the applicant's non-empanelment and in the absence of any reasons being disclosed he is unable to represent against any of the causes that might have been assigned for his non-empanelment. Accordingly, the counsel vehemently stated that the proceedings of the No.1 SB held on 26th May, 2022 be perused by the Court and the reasons for non-empanelment of the applicant as recorded in the No 1 SB proceedings be examined, and these be then intimated to the applicant so that he could then ventilate his grievances as per law.

7. The Respondents have produced the Board proceedings of No.1 SB held on 26th May, 2022 for our perusal. We have examined the Board proceedings and it is seen that the applicant was considered as a single agenda. The Board having examined the applicant's overall profile and the necessity of high caliber officers to meet the emerging requirement of the organization, the Board concluded that that the applicant was not suitable to be recommended for empanelment to the rank of Maj Gen in the Army Avn Corps. Accordingly, the Board recommended that the applicant be not empanelled. The Board Proceedings were subsequently, approved by the Competent Authority and result promulgated vide Annexure A-1.

8. In view of the above facts, the applicant is at liberty to ventilate any other grievance as deemed appropriate before this Tribunal."

Consideration of the Case

10. Having heard both parties at length, the only issue for consideration is whether the respondents were justified in not recommending the applicant for empanelment to the rank of Maj Gen. The respondents have submitted the files pertaining to the examination of the complaints, the Board Proceedings of the No 1 SB and the CR dossier of the applicant. These have been examined by us.

Complaints

11. The applicant had filed a non-statutory complaint dated 04.08.2021 against CR 07/20-05/21 with a prayer that the IO's pen pictures be reviewed for correctness, in view of medical documents submitted and that balance of the CR be examined for any aberration/ inconsistencies. The competent authorities concluded that the IO's pen picture and endorsement of the applicant being overweight was only a statement of fact and that it was not seen as an adverse statement and has therefore not caused any prejudice to the applicant. Accordingly, the complaint was rejected vide Order dated 19.01.2022.

12. The applicant filed a statutory complaint dated 11.07.2022 against his non-empanelment by No 1 SB in May 2022. The applicant stated that he has been impacted by the organisational constraints of single agenda till 1988 batch; limited vacancy on higher command course; limited vacancy on NDC and the fact that Army Avn had only one vacancy in the rank of Maj Gen. The applicant had prayed that in the light of these constraints, the result of No 1 SB of May 2022 be reconsidered. The competent authority concluded that the applicant had not been empanelled on account of his overall profile as assessment by the Board. Accordingly, the statutory complaint was rejected vide Order dated 27.01.2023.

CRs

13. In the overall reckonable profile, the applicant had earned a total of 15 CRs. 10 CRs were in the rank of Col which included two in criteria appointments. The applicant had 68% outstanding box grading and balance 32% are above average. In the rank of Brig the applicant had earned five reports of which, 93% box grading were outstanding and balance 7% were above average. All CRs have healthy pen pictures with positive recommendations for promotion/ career courses/ foreign assignments. In CRs as Col, during the internal assessment, the complete report of RO in CR 09/11-08/12 and 09/12-07/13 have been expunged on grounds of inconsistency. As regards the remarks of the IO in CR 07/20-05/21, no prejudice has been caused to the applicant as it has merely been considered as a statement of fact and not as a adverse/weakness remark.

No 1 SB

14. As regards the reasons for not recommending the applicant for promotion, we have already examined the Board Proceedings of No 1 SB held in May 2022. The applicant was not recommended for promotion as the Board concluded that he was not suitable for higher ranks in Army Avn Corps considering that high profile officers require high order of thinking skills and matching professional qualification.

Additional Vacancy in Army Avn

15. The issue regarding limited vacancies in select rank in Army Avn Corps has been examined in detail in our Order dated 12.10.2022 in OA 1934/2021 **Brig Sudhir Nagpal v Union of India & Ors.** Relevant extracts are reproduced below:

"24. The Respondents should have been alive to the possibility of utilisation of the Maj Gen's vacancy by the Gen Cadre inductee from the time Brig A Rai was inducted into the Gen Cadre; that on his subsequent empanelment as Maj Gen, he would consume the ONLY vacancy of Maj Gen authorised to AAC. In all fairness, the Respondents should have examined the issue well in time and taken necessary approvals for provisional release of an additional vacancy of Maj Gen for AAC, so that the other officers of the AAC had a fair chance for consideration for promotion to the rank of Maj Gen. The inaction on the part of Respondents adversely impacted the applicant, as his batch (1987) could not be considered by No 1 SB in Oct 2021 and he then had to retire on 28.02.2022 without any consideration for promotion to rank of Maj Gen, when the law holds that, fair consideration for promotion is the right of every officer. We, therefore, conclude the following:

(a) The applicant is entitled to a fair consideration for promotion to the rank of Maj Gen.

(b) The applicant has been denied this fair consideration for promotion due to the inability of the Respondents to timely ensure the availability of requisite vacancy to consider the applicant's batch for promotion to the rank of Maj Gen within Army Avn Corps, in the peculiar circumstances arising out of the implementation of the policy on 'Induction into Gen Cadre' as applicable to other Arms.

(c) Considering the limited vacancies of select ranks available in Minor Corps, the current policy of utilising such vacancies by officers of Minor Corps inducted into Gen Cadre and thus resulting in officers remaining in the Corps being denied a fair consideration for promotion due to lack of vacancy requires a review and amendment.

25. In view of the above considerations, we allow the OA and direct the Respondents to:

(a) Convene a No 1 SB and consider the applicant for promotion to the rank of Maj Gen with his status as of Oct 2021.

(b) If found fit, promote him against a pool vacancy to be identified by the Respondents for the requisite period. In case, such a pool vacancy is not available, Respondents to create a supernumerary vacancy for the requisite period and promote the applicant. This process be completed within two months of this Order.

(c) If promoted, the applicant be reinstated into service from his date of retirement with all consequential benefits, including back wages.

(d) Respondents to review the policy of utilisation of vacancies when officers of Minor Corps are inducted into Gen Cadre, and issue necessary amendments in order to ensure that the select rank vacancies available to the Minor Corps are retained with the Corps, and are available to the officers of the Corps for a fair consideration of promotion. This be completed before the next SB."

16. In view of the above consideration, we conclude that the respondents were justified in not recommending the applicant for empanelment considering his profile and the organisational requirement of high calibre officers in the limited higher ranks in the Army Aviation Corps.

17. The OA is therefore, dismissed.

18. Pending miscellaneous application(s), if any, stands disposed of.

Pronounced in the open Court on this.....^{5th} day of December, 2023.

(RAJENDRA MENON)
CHAIRPERSON

(P.M. HARIZ)
MEMBER (A)

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PRINCIPAL BENCH, NEW DELHI

6.

MA 4650/2023 in OA 1842/2022

Brig Kaushal Sreedharan

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Applicant

Versus

Union of India & Ors.

.....

Respondents

For Applicant : Mr. S S Pandey, Advocate

For Respondents : Dr. Vijendra Singh Mahndiyan, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON

HON'BLE LT. GEN. P.M. HARIZ, MEMBER (A)

ORDER
19.12.2023

MA 4650/2023

In view of the final order passed in OA No. 1842/2022, the
application is rendered infructuous.

MA stands disposed of.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

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