

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

O.A No. 201 of 2022

Lt Col Mohit Singh Pathania

.....

Applicant

Versus

Union of India and Ors.

.....

Respondents

For Applicant

:

Shri S. S. Pandey, Advocate

For Respondents

:

Gp Capt Karan Singh Bhati, Sr. CGSC for
R 1- R 3

CORAM

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

ORDER

This application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by a serving Lt Col who is aggrieved by his non-empanelment to the rank of Col. He has made the following prayers:-

- (a) Call for entire records pertaining to the tenure of the applicant with 53 RR Battalion where the CR earned by the applicant was not expunged in its entirety despite its inherent aberration/inconsistencies of the IO and RO and despite finding inconsistencies with the pen picture and box

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grading of the SRO which resulted in non-empanelment of the applicant and thereafter quash the same.

(b) Call for entire records pertaining to the tenure of the applicant with 90 Armoured Regiment (90 Armd Regt) where the CR earned by the applicant for the reporting period from 01 Jan 2011 to 31 Dec 2011 was not expunged in its entirety despite its inherent aberration/inconsistencies of the IO, RO and SRO despite finding inconsistencies with the previously earned CR as earned by the applicant from his previous CO, resulting in non-empanelment of the Applicant and thereafter quash the same.

(c) Direct the respondents to remove any other assessment of the entire reckonable period of the applicant found to be inconsistent and thereafter grant him fresh consideration by way of special review by directing the Respondents to give due weightage to the applicant for the intelligence staff course at par with the DSSC/ TSOC examination by directing setting aside of the portion of policy prescribing different marks denial with further direction to reconsider the applicant after all such modification in profile as prayed above by granting a fair opportunity for consideration by No 3 SB to the rank of Colonel and promote him to the Rank of Colonel with all consequential benefits of back wages, continuity of service and seniority 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

The applicant was commissioned into 90 Armd Regt on 14.06.2003. He did well on various courses of instruction, participated in various sporting events and did a tenure with 53 RR Battalion in high altitude area. The applicant was considered by No 3 SB in Oct 2018 but was not empanelled. It is the applicant's case that he was not empanelled due to the CR's earned while serving in 53 RR and certain lukewarm reports subsequently earned while serving with his Regiment in 2011.

2. It is the applicant's case that while serving with 53 RR Battalion, he had suffered frost bite and had to be evacuated. During that period, one of his personal letters to his wife was examined as part of the random censorship of personal mail and it was seen that the applicant had made some remarks for which he was verbally counseled by the CO. It is the applicant's case that consequent to this, the CO held a grudge against the applicant and gave him a lukewarm report in the CR covering the period 14.08.2007 to 31.12.2007, including certain adverse remarks in the pen picture.

3. The applicant then submitted a non-statutory complaint dated 02.05.2008 which was disposed of at the level of GOC 15 Corps vide order dated 13.08.2008. Vide this order, the applicant was granted partial redressal in which certain figurative assessments by the IO, RO and, the box grading and pen picture of the SRO were expunged on grounds of inconsistency.

4. The applicant continued to serve with diligence and though he did not get nominated for the Staff College Course, he was detailed to attend the Intelligence Staff Course (ISC) serial No 3 from July 2014 to Nov 2014 on which he performed well and obtained an instructional grading.

5. Consequent to his non-empanelment for promoting to the rank of Col, the applicant filed a second non-statutory complaint dated 25.12.2018 in which he impugned the CR covering the period 8/2007 to 12/2007. This complaint was rejected vide order dated 28.12.2019. The applicant then filed a statutory complaint dated 27.01.2020 in which he impugned CR covering the period 8/2007 to 12/2007 and 1/2011 to 12/2011. However, this statutory complaint too was rejected vide order dated 04.06.2021. Aggrieved by this, the OA has been filed.

Arguments by the Counsel for the Applicant

6. The counsel reiterated the service profile of the applicant and highlighted his achievements including the tenure in RR and his performance on the Int Staff Course.

7. The counsel then took us through the details of the non-statutory complaint dated 02.05.2008 and the partial redressal granted vide order dated 13.08.2008. The counsel then submitted a copy of this order along with extracts of the CR covering the period 8/2007 to 12/2007. He then elaborated that though IO's figurative assessment's in Para 10 (c) (d) and (f), RO's assessment at Para 10(c); the SRO's box grading and pen picture were expunged on grounds of inconsistency, the competent authority had failed to notice the remarks at Para 12(a) "Special Achievements" and the IO's pen picture at Para 14. The counsel stressed that in spite of the partial redressal, since these remarks had not been expunged, it had caused great prejudice to the applicant resulting in his non-empanelment.

8. The counsel then referred to the Int Staff Course done by the applicant in 2015 and drew our attention to the course report at Annexure A-5. The counsel then drew our attention to Para 6 of the MS

Branch Policy letter dated 04.01.2011 (Annexure A-6/ Page 92) and added that the Int Staff Course was to be given the same weightage marks as the DSSC Course in the quantification system. He then drew our attention to Para 3 of the Appendix to MS Policy letter dated 23.12.2017 and elaborated that in the new policy the marks assigned to the Int Staff Course were lesser than that assigned to the DSSC Course. He asserted that though both the courses were given the same weightage in the old policy, the Int Staff Course was given lesser weightage in the new policy and that this has caused prejudice to the applicant resulting in his non-empanelment. The counsel vehemently asserted that the new policy should not have been given retrospective effect. The counsel then elaborated on the statutory complaint and its rejection and asserted that the competent authority has once again failed to examine and appreciate the issues raised. He concluded that it was therefore imperative that these CR's were reviewed, adverse remarks expunged and necessary relief granted by allowing this OA.

Arguments by Counsel for the respondents.

9. The counsel drew our attention to the prayers made by the applicant and emphasized that they pertain only to issues connected with various CRs and that the applicant had not challenged his

non-empanelment. The counsel then reiterated the details of the non-statutory and statutory complaints and emphasized that all the CRs forming part of the reckonable profile had been examined while processing the complaint and that the complaint had been disposed of based on the merits of the case. He further added that the disposal order of the statutory complaint too had not been challenged by the applicant. Referring to the arguments on the marks assigned for courses, the counsel stated that the policy of 2011 on quantification had been superseded by the policy of 2017. He further emphasized that the Int Staff Course done by the applicant was graded lower than the DSSC Course based on the parameters of nomination, course duration and content of the course. Further referring to the assertion of the applicant at Para 4-11 of the OA, the counsel emphasized that though the box grading was 7, it cannot be changed in a judicial review. The counsel concluded by stating that the impugned CRs had already been examined as part of the complaint and did not merit any further interference. He further added that the applicant had not been empanelled due to his overall comparative merit amongst those considered and prayed that the OA be dismissed being bereft of any merit. He further added that the documents pertaining to the

examination of the applicant's complaint, CR Dossier and relevant Board Proceedings of the No. 3 SB would be submitted to the Court for its perusal.

Consideration of the Case

10. Having heard both parties, the only issue which are required to be considered are whether the respondents were justified in rejecting the non-statutory complaint dated 25.12.2018 and the statutory complaint dated 25.01.2020; and whether any of the CR merits any further interference. We have examined the file pertaining to the examination of complaints; CR Dossier and the Board Proceedings of the No 3 SBs.

Complaints

11. The applicant had made three complaints. The first complaint was a non-statutory complaint dated 22.05.2008 in which he had impugned the CR covering the period 08/2007 to 12/2007, earned whilst serving in 53 RR. This was disposed of at the level of GOC 15 Corps vide Order dated 09.08.2008 in which partial redressal was granted; in that the IO's figurative assessment's in Para 10 (c) (d) and (f), RO's assessment at Para 10(c); the SRO's box grading and pen picture were expunged on grounds of inconsistency. The second non-statutory complaint dated

25.12.2008 was filed against the non empanelment by No 3 SB in Oct 2018 in which the applicant again impugned the CR covering the period 08/7-12/7 earned during his short tenure in 53 RR. It was the case of the applicant that the problems faced by his Coy were brought to the notice of CO who was indifferent to these issues and that his mentioning of these issues in his personal letter to his wife had been flagged during censorship. That the CO then looks an adverse view of the incident and rated him poorly. Though partial redressal had been granted, it was inadequate as per the applicant. The applicant had prayed that his entire reckonable profile be scrutinized with special attention on the expunged CR and inconsistency if any be removed /expunged. The examination of the complaint has reviewed the 11 CRs which were part of his reckonable profile from 01/2010 to 05/2018. The examination has recorded that CR covering the period 08/07- 12/07 being prior to the reckonable period, is not part of the quantified merit for the SB. However, being an Intense Counter Insurgency Operation report, the report is shown on the applicant's data sheet for value judgment. All the reports in the reckonable period are above average to outstanding reports, which are performance based, objective, corroborated and consistent with the overall profile of the applicant.

Thus, the competent authority concluded that the impugned CR and none of the other CRs in the reckonable profile merit any further interference and accordingly the complaint was rejected. Consequent to the rejection of the non-statutory complaint, the applicant filed a statutory complaint dated 25.01.2020 against the non-empanelment by No 3 SB in Oct 2018. In this complaint, the applicant impugned two CRs, one being the CR covering the period 08/2007 -12/2007, which had been impugned earlier in the non-statutory complaint. The second CR covering the period 04/2011 to 12/2011, a report he earned as a Sqn Ldr in his Regt. In this complaint the applicant had prayed that the adverse remarks mentioned in the pen picture in CR 08/2007 -12/2007 and any figurative assessment of '7' be expunged; entire reckonable period including CR 01/11 – 12/11 be scrutinized for subjectivity and inconsistency and these be expunged. Both these CRs had already been examined in detail as part of the non-statutory complaint dated 25.12.2018 and competent authority held that all the CRs were well corroborated and consistent with the overall profile of the applicant and therefore did not merit any further interference. The examination also concluded that the applicant had not been empanelled due to his

overall comparative merit amongst those considered. Accordingly, the statutory complaint was rejected vide order dated 04.06.2021.

CR Dossier

12. In addition to CR (08/2007-12/2007), the applicant has earned 11 CRs in the reckonable profile from 04/2010 to 05/2018. These include four criteria reports as a Maj and one criteria report in the rank of Lt Col. All these reports are above average/ outstanding with positive recommendation for promotion and without any weak/adverse remarks. In the overall reckonable profile, the applicant has 61% outstanding box grading while the balance 39% are above average. In the five criteria reports the applicant has 53% outstanding box grading with the balance 47% being above average.

CR-08/2007 to 12/2007

13. This CR is prior to the commencement of the reckonable profile and was earned by the applicant in the rank of Capt as Coy 21/c in 53 RR Battalion deployed in the intense CI Operation in J & K valley. The CR is boxed 7/7/expunged by IO/RO/SRO and has a sprinkling of '7's. It is seen from the records that the applicant served in 53 RR from 14.08.2007 to 31.12.2007. In this period the applicant had suffered

'Third Degree Frost Bite (Lt) foott' on 14/12/2007 and had to be evacuated. Consequent to hospitalization and re-categorization, the applicant was attached to a unit at Delhi from 04.03.2008. The pen picture by the IO is reproduced below:

14. Initiating officer

.....The officer has proved mentally weak in adverse conditions and failed to motivate his sub unit wherein personally the officer sustained cold injuries, when tasked to lead his coy independently.

The offr prefers personal interests over organizational and service requirements and exhibit manipulative behavior and over career consciousness in his dealings.

Capt Mohit is socially adaptable however overtly verbose with moderate interpersonal likings.

Xxx

As 21/C of Ref Coy, the officer was tasked to relieve his Coy Cdr, when in adverse, harsh weather conditions, he proved to be weak both physically and mentally and had to be evacuated for frost bite.

(a) Adverse Remark/Performance of LMC officer

The offr having been placed in Low Med Cat has not served in CI Ops environment and is presently under review.

14. The pen picture by the IO is reproduced below:

16. Review Officer

Mohit's performance during the period under review has been satisfactory. I agree with the Initiating officer's remarks in the pen picture. Officers personal conduct requires improvement. The officer's letter was intercepted while he was deployed on the LC for some time. The contents of the letter showed that he puts his self interest before the Org. Though as a young officer he understood the nuances of CI Ops and had participated in a few ops, but certainly this officer needs to improve himself in the personal

discipline and conduct. If the officer shows improvement in the qualities as mentioned above, he can be better soldier.

15. Although this report has been earned in the rank of Capt and is outside the reckonable profile, since this is an operational report in an intense CI environment, such reports though outside the reckonable period are shown on the data sheet of the officer under consideration by a Selection Board, as per the provisions of Para 6 (c) of MS Branch Policy letter dated 23.12.2017. Since these remarks by the IO are observations of the applicant's immediate superior, on the grossly inadequate performance of the applicant in an operational environment, duly corroborated by the RO too, we find absolutely no reason to interfere with these remarks in a judicial review here. Relevant extracts of MS Branch Policy letter dated 23.12.2017 is reproduced below:-

Confidential Reports

6. *The allocation of marks for CRs is based on the following parameters :-*

(a) Primacy of CR. *Primacy of CR vis-à-vis other parameters like performance on Courses and Gallantry Awards has been maintained.*

(b) Criteria CS vis-à-vis Other CRs. *Greater weightage has been given for performance on Criteria appointments as compared to Non- Criteria appointments, ie, Staff/ Instructional/ Extra Regimental Employment appointments. The term Criteria Reports will be inclusive of Part Criteria reports for the purpose of this policy.*

(c) **War/ Operational Reports Earned Outside Reckonable Profile.** ***These CRs will be reflected in MDS for the purpose of Board Members Assessment.***

(d) Extrapolation of Reports. xxxxxx

16. CR 01/2011-12/2011. This report has been earned in the rank of a Maj as a Sqn Cdr in his Regt, and is the second criteria report in the appointment. The report is boxed 8/8/8 by IO/RO/SRO. It is seen that the RO has held the IO's assessment as justified, and the SRO has held the assessment by both the IO and RO as justified. The applicant has one figurative assessment of '7' by the SRO in Para 24(c) 'Vision and Conceptual Ability'. Apart from this, the pen pictures are all laudatory and the report has no weak /adverse remarks; and has positive recommendations for promotion and foreign assignments. Though the examination of the complaint has considered this in detail and held that the assessment, including that of the SRO is in conformity of the overall assessment by the IO and RO in this report, we are of the opinion that considering the overall reckonable profile of the applicant in the reckonable profile, the assessment of the SRO at Para 24(c) is inconsistent with the overall profile. We are therefore of the opinion that this assessment be expunged on grounds of inconsistency.

17. None of the other CRs in the reckonable profile merit any further interference.



No 3 SB

18. The applicant has been given all his entitled considerations by No3 SB. He has not been empanelled due to his overall comparative merit amongst those considered. The results of the three considerations are summarized below :-

Ser	No 3 SB	Consideration	Batch Year	Results
(a)	Oct 2018 (Armd Corps 2003 Batch)	Fresh	2003	NE Merit – 89.516 Last offr – 91.135
(b)	Sep 2019 (Armd Corps 2004 Batch)	First Review	2004	NE Merit- 89.192 Last offr- 91.383
(c)	Feb 2021 (Armd Corps 2005 Batch)	Final Review	2005	NE Merit- 90.630 Last offr – 91.413

Conclusion

19. In the light of the above consideration, we conclude that the adverse remarks by the IO and RO regarding the operational performance of the applicant in the CR covering the period 08/2007-12/2007 does not merit interference. Of the CRs in the reckonable period, none except the CR covering the period 01/2011-12/2011 merit any further interference. In the CR covering the period 01/2011-12/2011, the figurative assessment of the SRO at Para 24(c) 'Vision and Conceptual Ability', be expunged on grounds of inconsistency. The


applicant has not been empanelled due to his overall comparative merit amongst those considered. However, with the expunction of the SRO's assessment as mentioned earlier, the applicant is now entitled to special review considerations as per the policy in vogue.

20. In view of the above, the OA is partially allowed. We direct that the SRO's assessment at Para 24(c) 'Vision and Conceptual Ability', in the CR covering the period 01/2011-12/2011 be expunged on grounds of inconsistency and the applicant be granted special review considerations as per policy.

21. No order to costs

22. Pronounced in open Court on this th 29 day of September, 2023.


(RAJENDRA MENON)
CHAIRPERSON


(P.M. HARIZ)
MEMBER (A)

/Jyoti/