

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

A.

OA 249/2019

Col Jitendra Beniwal

Versus

Union of India & Ors.

... Applicant

... Respondents

For Applicant : Mr. Indra Sen Singh, Advocate  
For Respondents : Gp Capt Karan Singh Bhati, Sr. CGSC for R 1-4

CORAM :

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

ORDER  
07.11.2023

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.

[RAJENDRA MENON]  
CHAIRPERSON

[P. M. HARIZ]  
MEMBER (A)

Neha

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**OA 249 of 2019**

<b>Col Jitendra Beniwal</b>	.....	<b>Applicant</b>
<b>Versus</b>		
<b>Union of India and Ors.</b>	.....	<b>Respondents</b>

<b>For Applicant</b>	:	Mr. I.S. Singh, Advocate with Mr. Abhishek Singh, Advocate
<b>For Respondents</b>	:	Gp Capt Karan Singh Bhati, Sr. CGSC for R 1-4

**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 the applicant who is a serving Col in the Army and is aggrieved by his non-empanelment to the rank of Brig by the No 2 Selection Board (SB) and rejection of his statutory complaint. He has made the following prayers:

- (a) Call for the entire record leading to the rejection of the applicant's statutory complaint dated 23.01.2018 and set aside the impugned order dated 31.07.2018 passed by respondent No 1.
- (b) Call for the entire service record/ dossier of the applicant and after perusal thereof set aside the box-gradings awarded by the reporting officers in the applicant's

Confidential Reports (CRs) pertaining to the period July 2008 to May 2011 being illegal, arbitrary, inconsistency and non-objective.

(c) Call for the entire record of proceedings leading to the decisions of the respondents thereby rejecting the applicant for nomination/detailment to the Higher Command Course and after perusal thereof set aside the said decisions and further direct the respondents to take appropriate remedial measures in this regard to undo the harm caused to the applicant due to said illegal decisions.

(d) Call for entire record of proceedings of all the No 2 SB whereby the applicant has been found unfit for promotion to the rank of Brig and set aside the same so far as the same pertain to the applicant, the same being illegal, unfair and non-est.

(e) Direct the respondents to re-consider the case of the applicant for promotion to the rank of Brig as a fresh case on the basis of the applicant's modified record of service after setting aside the box gradings awarded in the applicant's impugned CRs pertaining to the period July 2008 to May 2011 as prayed above; and

(f) Issue any other order and direction as deemed appropriate by this Hon'ble Tribunal under the facts and circumstances of this case.

**Brief Facts of the Case**

2. The applicant was commissioned into SIKH LI (an infantry battalion) on 09.06.1990. During his service career, he served in various sectors and performed well in the various appointments held by him. Based on his professional competence, he was promoted to the rank of Col in Jan 2008 and commanded 5 SIKH LI. In 2013, he was awarded Sena Medal (Distinguished) and has also been awarded the COAS Commendation Card and GOC-in-C Eastern Command's Commendation Card.

3. The applicant was considered for nomination to Higher Command Course (HCC) in Feb 2011, Feb 2012 and Feb 2013, however, he was not nominated. Subsequently, the applicant submitted a statutory complaint dated 12.03.2015 impugning CRs (01/09-08/09) and (09/09-05/10). The competent authority examined the overall profile, other relevant documents and recommendations of the AHQ and found that the assessments of the reporting officers in the impugned CRs were performance based, well corroborated and technically valid, except the entire



assessment of the RO in the CR (01/09-08/09) being subjective. Therefore, the competent authority vide order dated 08.12.2015 granted partial redressal and expunged the entire assessment of the RO in the CR (01/09-08/09).

4. In Feb 2017, the applicant was considered as a Fresh Case by No 2 SB for empanelment to the rank of Brig. However, the applicant was not empanelled and aggrieved by the same, he filed a non-statutory complaint dated 23.05.2017 against his non-empanelment. In the meantime, in Nov 2017, the applicant was considered as a First Review Case by No 2 SB for empanelment to the rank of Brig. However, the applicant was not empanelled. In the meantime, the competent authority vide order dated 22.12.2017 disposed of the non-statutory complaint dated 23.05.2017 by granting partial redressal and expunged the assessment of the SRO under Para 24(a) 'Foresight and Planning' and Para 24(c) 'Vision & Conceptual Ability' in the CR (06/01-05/02) on the grounds of inconsistency.

5. Thereafter, the applicant filed a statutory complaint dated 23.01.2018 against his non-empanelment to the rank of Brig by No 2 SB held in Nov 2017. Meanwhile, in terms of the partial redressal granted vide order dated 22.12.2017, the applicant was

considered as a Special Review (Fresh) Case in Jul 2018, and again he was not empanelled. Subsequently, the competent authority rejected the statutory complaint dated 23.01.2018 vide order dated 31.07.2018. Thereafter, in Dec 2018, the applicant was considered as a Special Review (First) Case by No 2 SB but was not empanelled on account of his overall profile and relative merit. Hence, this OA.

6. The applicant has impugned the following CRs in his complaints and in the OA:

Ser No.	CR	Period	Rank	Appointment
(a)	CR 1	06/00-05/01	Maj	Coy Cdr
(b)	CR 2	06/01-05/02	Maj	Coy Cdr
(c)	CR 3	09/08-01/09	Col	CO
(d)	CR 4	01/09-08/09	Col	CO
(e)	CR 5	09/09-05/10	Col	CO
(f)	CR 6	09/10-01/11	Col	CO

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

7. The counsel for the applicant took us through the service profile of the applicant in detail and highlighted the various appointments held by the applicant in various sectors, the courses done and the awards conferred. The counsel then added that

despite the applicant's exemplary record he had not been empanelled by No 2 SB to the rank of Brig.

8. The counsel submitted that the impugned CRs earned by the applicant in the rank of Colonel as CO of 5 SIKH LI had come in the way of his nomination for the prestigious Higher Command Course (HCC)/ Higher Defence Management Course (HDMC) as well as his promotion to the rank of Brig.

9. The counsel then highlighted that the applicant had always been an 'outstanding' performer and was promoted to the rank of Col in Jan 2008 and commanded 5 SIKH LI w.e.f July 2008 to Mar 2011 and had earned four CRs as CO of this unit.

10. Referring to CR-3 (09/08-01/09), the counsel submitted that the overall box grading of '8' awarded by the IO not only suffered from inconsistency but also did not truly reflect the applicant's overall performance. The counsel stated that the applicant was also apprehensive that the other reporting officers may have assessed him in a similar manner. The counsel added that the CR-3 was also technically invalid being contrary to Para 35 (b) (iii) of Guidelines for Rendering Confidential Reports, 2013 which states that- *"Box grading is not meant to be a mathematical average of the awards in individual qualities. However, a total mismatch between awards in*

*the box grade and individual qualities is also not in order. For instance, award of predominantly '9's in PQs/DPVs/QsAP with an award of '8' in the box, may not be in order."*

11. Further, referring to CR-4 (01/09-08/09) and CR-5 (09/09-05/10), the counsel submitted that the overall box gradings of '8' awarded by the reporting officers in the impugned CRs did not reflect the actual performance of the applicant. Moreover, they too were technically invalid, being contrary to Para 35 (b) (iii) of Guidelines for Rendering Confidential Reports, 2013. The counsel further added that the RO's (Respondent No.4) report was biased and subjective. The counsel then elaborated that the bias was evident from the RO's DO letter dated 22.06.2010 to the applicant, wherein, he had pointed out three major issues found lacking in the applicant's unit. The counsel further added that the entire assessment of the RO in CR-4 had already been set aside by the respondents vide order dated 08.12.2015 and that, therefore, the RO's report in CR-3 too was required to be set aside.

12. The counsel then relied upon the judgment of the Hon'ble Supreme Court in the case of **A.K Kraipak & Ors.** Vs. **Union of India & Ors.** AIR 1970 SC 150, wherein, the Hon'ble Court held that- *"Under those circumstances it is difficult to believe that he*

*could have been impartial. The real question is not whether he was biased. It is difficult to prove the state of mind of a person. Therefore, what we have to see is whether there is reasonable ground for believing that he was likely to have been biased. There must be a reasonable likelihood of bias. In deciding the question of bias, we have to take into consideration human probabilities and ordinary course of human conduct".* The applicant also relied upon the Hon'ble AFT, RB, Chandigarh order dated 30.07.2013 in OA 1168/2011, **Lt Col Vinay Lakhera Vs. Union of India and Ors.**

13. The counsel then referred to CR-6 (09/10-01/11) and highlighted that the overall box grading of '8' awarded by the reporting officer suffers from inconsistency and was again also contrary to Para 35 (b) (ii) of Guidelines for Rendering Confidential Reports, 2013.

14. The counsel pointed out that after relinquishing the command of 5 SIKH LI, the applicant was posted as Col GS HQ w.e.f Mar 2011 to Sept 2013 and, thereafter, as Group Cdr (Ops) HQ NSG New Delhi w.e.f Sep 2013 to Apr 2017. In these appointments, the applicant had earned four CRs each, all of them were 'outstanding' reports. In fact, without exception all the CRs of the applicant in his

reckonable profile earned prior to, and subsequent to, the impugned CRs were all 'outstanding' CRs. Therefore, the counsel concluded that the box grading given in the impugned CRs were inconsistent with the applicant's overall profile which was clearly 'outstanding'. The counsel concluded by vehemently asserting that these CRs merit interference in order to ensure natural justice.

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

15. The counsel briefly recapitulated the methodology of rendering CRs and then elaborated how 'outstanding' reports were exceptions which were required to be justified in the pen picture. He then elaborated the details of consideration by No 2 SB.

16. The counsel submitted that the applicant was considered for nomination to Higher Command Course (HCC)/equivalent courses in 2011, 2012 and 2013. However, he was not nominated being lower in the order of merit (OOM). The counsel further added that nominations were made as per the MS Branch Policy letter No.04485/MS Policy dated 11.11.2010, and that the contention of the applicant regarding the nominations on HCC/equivalent courses being primarily based on an officer's performance as a CO alone was misplaced.



17. The counsel further reiterated that the applicant submitted a statutory complaint dated 12.03.2015, impugning CR-4 (01/09-08/09) and CR-5 (09/09-05/10). The competent authority vide order dated 08.12.2015 had granted partial redressal and expunged the entire assessment of the RO in the CR-4. Consequent to the grant of redressal by the competent authority vide order dated 08.12.2015, there was a change in the reckonable profile of the applicant. Therefore, as per policy dated 28.06.2013 on HCC/equivalent courses which was applicable in 2015, the applicant was considered afresh for HCC/equivalent course in the year 2016 and was not nominated being lower in order of merit. Thereafter, the counsel drew our attention to Para 11 of this policy letter and stated that the applicant was no longer eligible for consideration for nomination to HCC/HDMC as his Promotion Board, i.e., No 2 SB was scheduled in Feb, 2017.

18. The counsel reiterated that based on the existing policy of promotion, the applicant was considered as a Fresh Case by No 2 SB held in Feb 2017. However, the applicant was not empanelled due to his overall merit. Aggrieved by the same, the applicant filed a non-statutory complaint dated 23.05.2017 against his non-empanelment. In the meantime, the applicant was considered as a

Review Case by No 2 SB held in Nov 2017 and was not again empanelled due to his overall merit. The competent authority vide order dated 22.12.2017 disposed of the non-statutory complaint dated 23.05.2017 by granting partial redressal by way of expunction of SRO's assessment in Para 24(a) 'Foresight and Planning' and Para 24(c) 'Vision & Conceptual Ability' in the CR-2 (06/01-05/02) on the grounds of inconsistency. In the meantime, the applicant again filed a statutory complaint dated 23.01.2018 against his non-empanelment to the rank of Brig by No 2 SB held in Nov 2017.

19. Thereafter, the applicant with his changed profile was considered as a Special Review (Fresh) Case in Jul 2018, however, he was not empanelled again. Subsequently, the competent authority rejected the statutory complaint dated 23.01.2018 filed by the applicant vide order dated 31.07.2018. Thereafter, the applicant was considered as a Special Review (First) Case by No 2 SB in Dec 2018 but was not empanelled on account his overall profile and relative merit.

20. The counsel asserted that the counsel for the applicant had misquoted the guidelines dated 05.04.2013. The assessments of higher reporting officers were subject to their own independent objective assessment of the ratee based on his demonstrative

performance during the reporting period. The counsel further asserted that the policy nowhere mandated that the overall box grading should be '9' when the majority of columns/parameters of the CR are '9'. Further, the parameters to determine recommendation of Honours & Awards vis-a-vis for assessment in CRs were two different issues and cannot be correlated.

21. The counsel further submitted that the applicant's complaints were examined with due care by the competent authority and all issues advanced by the applicant were taken into account before reaching the final decision. Further, the counsel submitted that the judgments referred to were not relevant to the peculiar facts of this case. The counsel, therefore, prayed that the OA be dismissed being bereft of merit. The counsel relied upon the following cases:

- (a) **Union of India** Vs. **Lt Gen RS Kadyan**, [(2000) 6 SCC 698]
- (b) **Maj Gen IPS Dewan** Vs. **Union of India**, [(1995) 3 SCC 383]
- (c) **AVM S L Chhabra, VSM** Vs. **Union of India**, [1993 Supp (4) SCC 441]
- (d) **Dalpat Abasaheb Solunke** Vs. **BS Mahajan**, [(1990) 1 SCC 305]

(e) **Lt Col Amrik Singh** Vs. **Union of India**, [(2001)10 SCC 424]

(f) **Major Surinder Shukla** Vs. **Union of India**, [(2008) 2 SCC 649]

### **Consideration of the Case**

22. Having heard both parties at length, the only issue which needs to be considered is whether any of the CRs including the impugned CRs merit any further interference? The respondents have submitted the records pertaining to the examination of complaints, details of Higher Command Course Considerations, the Board Proceedings of the No 2 SB and also the CR dossier, all of which have been examined by us.

### **Complaints**

23. The applicant has made a total of six complaints; four statutory and two non-statutory. The details are summarized below:

Ser	Complaint	Date	Reason	Disposal
(a)	Statutory No.1	12.03.2015	Against CRs CR 4-01/09-08/09 CR 5-09/09-05/10	Partial redressal order dated 08.12.2015 complete assessment of RO in CR-4 (01/09-08/09) expunged
(b)	Non-Statutory No.1	23.05.2017	Non empanelment No.2 SB (Fresh) Mar 17 CR 1 -06/00-05/01 CR 2-06/01-05/02 CR 4-01/09-08/09 CR 5-09/09-05/10 Review complete profile	Partial redressal Order dated 22.12.2017 Two figurative assessment of SRO in CR-2 expunged

(c)	Statutory No.2	23.01.2018	Non empanelment (First Review ) No 2 SB – Nov 2017 CR-4-01/09-08/09 CR-5-09/09-05/10	Rejected Order dated 31.07.2018
(d)	Statutory No.3	31.10.2019	Non empanelment Spl Review First No 2 SB Dec 18	Rejected Order dated 23.07.2020
(e)	Non-Statutory No.2	07.11.2019	Non empanelment Final Review No 2 SB Jun 19 CR-4 01/09-08/09 CR-5 09/09- 05/10	Rejected Order dated 19.06.2020
(f)	Statutory No.4	05.10.2020	Non empanelment Final Review No 2 SB Jun 19 CR-4 01/09-08/09 CR-5 09/09-05/10	Rejected Order dated 06.09.2021

24. The main grievance in these complaints is regarding two CRs earned as CO of 5 SIKH LI; CR-4 (01/09-08/09) and CR-5 (09/09-05/10). In that, in spite of the excellent performance of the unit and various achievements, the RO had made a biased and subjective assessment and, therefore, the RO's assessment in both these had to be set aside. Based on the statutory complaint No.1 dated 12.03.2015, the complete RO's assessment in CR-4 has been expunged. However, from the examination of CR-5, it is seen that it is a clear 'above average' CR with no '7' point assessment. It had complimentary pen pictures highlighting specific attributes/achievements of the applicant and positive recommendations by all reporting officers. Thus, being well corroborated, performance based and technically valid, it did not merit any interference.

25. The second set of CRs impugned in the complaints is CR-1 (06/00-05/01) and CR-2 (06/01-05/02). These were impugned in the non-statutory complaint dated 23.05.2017. Both these CRs were earned in the rank of Maj as a Coy Cdr in his unit 5 SIKH LI. While CR-1 pertains to when the unit was deployed in active CI ops in Jammu and Kashmir, during the period of CR-2, the unit was in a peace station in J&K. The examination of this complaint concluded that CR-1 was a clear 'above average' report with positive pen pictures and recommendations; thus, did not merit any interference. In respect of CR-2, the examination established that two of the figurative assessments by the SRO were inconsistent and, accordingly, these were expunged.

26. Thus, it is seen from the records that all the complaints have been examined in great detail and redressal has been granted where it was merited. The examination, therefore, concluded that the applicant was non-empanelled due to his overall comparative merit. We find no mala fide in the examination of the complaints and uphold the decisions of the competent authority in these complaints.



## CRs

27. The applicant was considered as a fresh case by No 2 SB held in Mar 2017. The reckonable profile of the applicant consisted of 17 CRs which include four in the rank of Maj, three in the rank of Lt Col and ten CRs in the rank of Col. These include a total of six criteria reports; two as a Maj and four as a Col. All the CRs are clear above average/outstanding reports. As part of the partial redressal granted in statutory complaint dated 12.03.2015 and non-statutory complaint dated 23.05.2017, two figurative assessments of SRO in CR-2 and the complete assessment of the RO in CR-4 (01/09-08/09) have been set aside. At that juncture, the applicant had 45% of his box grading as 'outstanding' with the balance 55% being 'above average'. However, in the criteria reports, the applicant had 6% 'outstanding' and 94% 'above average' box gradings. CR-1 and CR-2, both earned as a Maj (Coy Cdr) are boxed as 8/8/8 by the IO/RO/SRO.

28. During the command tenure, the applicant earned the following CRs - (a) CR-3 (01.09.2008 to 25.01.2009), (b) CR-4 (26.01.2009 to 31.08.2009), (c) CR-5 (01.09.2009 to 31.05.2010) and (d) CR-6 (01.09.2010 to 15.01.2011). In the various complaints made, the applicant has only impugned CR-4 and CR-5. However, in

the OA and during the arguments by the counsel for the applicant, CR-3 and CR-6 have also been impugned.

29. CR-3 is boxed as 8/8/8 by the IO/RO/SRO and is a clear 'above average' report with positive pen picture. The applicant has been recommended for promotion, foreign assignment and career courses. The pen pictures are complimentary and acknowledges the applicant's efforts and there is no '7' points/weak remarks.

30. With respect to CR-4 and CR-5, both were earned as CO. CR-4 is boxed as 8/Expunged/8 and CR-5 is boxed as 8/8/8. While both the CRs have been endorsed by the same IO and RO, two different SROs have endorsed CR-4 and CR-5. All reports earned after the command of the unit whilst on staff from 03/11 to 08/18 (at the time of final review in Jan 19) are predominantly 'outstanding' reports.

31. CR-6 is boxed as 8/9/8 by the IO/RO/SRO and is a clear 'above average' report with positive pen picture. The applicant has been recommended for promotion, foreign assignment and career courses. While the RO has held the IO as strict, the SRO has held the IO as justified and the RO as liberal. Having examined the complete CRs in the reckonable profile, we find that none of the CRs merit any further interference.

32. HC Course Consideration: As seen from the records, the applicant is an Infantry Officer of 1991 seniority and was considered thrice (as was the norm then) for nomination for HCC/HDMC but was not selected based on his comparative merit. The details of his consideration are tabulated below:

Ser No.	Year	Vacancy	Total number considered	OOM last offer nominated	Applicant OOM
(a)	2011	58	414	68	250
(b)	2012	72	395	95	260
(c)	2013	68	430	88	318

33. Based on the applicant's statutory complaint dated 12.03.2015, he was granted partial redressal by the competent authority vide order dated 08.12.2015 whereby the complete assessment of the RO in CR-4 (01/09-08/09) was expunged. With the changed profile, the applicant was entitled to fresh looks based on the MS Branch Policy letter dated 28.06.2013 regarding nomination of officers on HCC/HDMC. Accordingly, the applicant was given his first consideration in 2016. In this, a total of 379 Infantry Officers were considered for a total of 74 vacancies. The last nominated officer was at 82 in the OOM while the applicant was at Serial 285 in the OOM. Thus, the applicant was not nominated due to his comparative merit amongst those under consideration. While

the applicant should have got the next consideration in 2017, however, as per the provisions of Para 11 of the policy letter dated 28.06.2013, the applicant was not eligible for consideration now as his No 2 SB for promotion to the rank of Brig was scheduled in Mar/Apr 2017. Para 11 of the policy letter is extracted below:

*"11. Promotion Zone Ban: Officers will not be eligible for HCC/HDMC/ HACC/ NHCC if their promotion board is scheduled before 01 June of the year of the courses."*

#### No 2 SB

34. The applicant was given his fair consideration by No 2 SB as per the policy in vogue. The officer was not empanelled due to his overall comparative merit amongst those under consideration. The details of the consideration are summarised below:-

<u>Ser</u>	<u>No 2 SB</u>	<u>Consideration</u>	<u>BYOS</u>	<u>Remarks</u>
(a)	Feb 2017 Inf 1991 Batch	Fresh	1991	NE OOM 89.994 Last off 91.048
(b)	Nov 2017 Inf 1992 Batch	First Review	1992	NE OOM 89.977 Last offr 90.707
(c)	Non statutory complaint dated 23.05.2017. Partial redressal granted vide order dated 22.12.2017.			
(d)	Jul 2018 Inf 1993 Batch	Special Review First	1991	NE OOM 90.535 Last offr 91.048
(e)	Dec 2018 Inf D/W cases	Special Review First	1992	NE OOM 90.413 Last offr 90.707
(f)	Jun 2019 Inf D/W cases	Final Review	1993	NE OOM 90.855 Last offr 91.612

## **Conclusion**

35. With the above consideration, we conclude that all the complaints have been examined in detail with due diligence and redressals have been granted where appropriate. We do not find any mala fide in the examination of the complaints. We, therefore, uphold the order dated 31.07.2018 disposing of the statutory complaint dated 23.01.2018. None of the CRs merit any further interference. The applicant has been granted all the entitled consideration for nomination for HC Course. The applicant was not nominated for HCC and has not been empanelled due to his overall comparative merit in the consideration for both.

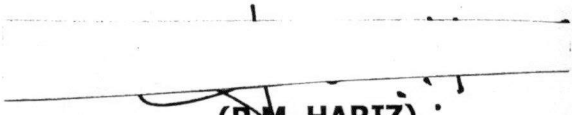
36. The OA is, therefore, dismissed, being bereft of any merit.

37. No order as to costs.

38. Pending miscellaneous application(s), if any, stands closed.

Pronounced in open Court on this 7<sup>th</sup> day of November, 2023.

  
(RAJENDRA MENON)  
CHAIRPERSON

  
(P.M. HARIZ)  
MEMBER (A)

Neha