

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

A.

OA 588/2020

Col Rajbir Singh

... Applicant

Versus

Union of India &Ors.

... Respondents

For Applicant : Shri S. S. Pandey, Advocate for

Shri Anand Shankar Jha, Advocate

For Respondents : Shri Harish V Shankar for R 1-3 and

Mr, Santosh Pandey for R-4,

Advocates

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON

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

O R D E R

11.08.2023

Vide our detailed order of even date, we have dismissed the main OA No. 588/2020. Faced with this situation, learned counsel for the applicant makes an oral prayer for grant of leave for impugning the order to the Hon'ble Supreme Court in terms of Section 31(1) of the Armed Forces Tribunal Act, 2007.

After hearing learned counsel for the applicant and going through our order, in our considered view, there appears to be no point of law much less any point of law of

general public importance involved in the order, therefore
prayer for grant of leave to appeal stands dismissed.

[RAJENDRA MENON]
CHAIRPERSON

[P. M. HARIZ]
MEMBER (A)

/jyoti/

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

**OA 588/2020
with
MA 722/2020**

**Col Rajbir Singh
Versus
Union of India and Ors.**

**..... Applicant
..... Respondents**

For Applicant : Mr. S.S. Pandey, Advocate with
Mr. Anand Shankar Jha, Advocate
For Respondents : Mr. Harish V Shankar, Advocate for R 1-3
Mr. R. Balasubramaniam, Sr. Advocate with
Mr. Santosh Pandey, Advocate for R-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 of the Army Ordnance Corps (AOC) and is aggrieved by his non-empanelment to the rank of Brig by the No 2 Selection Board (SB) held on 12.06.2019. He has prayed for the following :-

- (a) Set aside the impugned order, MS Branch Letter dated 09.08.2019.
- (b) Direct the respondents to reinstate complete assessment of the IOs expunged from the two CRs covering

period 01.09.2016 to 31.08.2018 and re-calculate the marks for the quantifiable parameters for No 2 SB.

(c) Call for the records of proceedings of No 2 SB held on 19.06.2019 in respect of the AOC 1992 batch and all other relevant records including the internal notings leading to the approval of the results by the MoD to ascertain the objectivity of the marks awarded to the applicant and R-4 by the SB.

(d) Set aside the award of the BMA marks awarded to the applicant and R-4 by No 2 SB in case such marks are not found to be justifiable in accordance with the overall profile of the applicant & R-4 and other criterion required to be considered for award of the BMA marks.

(e) Direct the respondents to re-calculate the BMA marks in respect of the applicant and R-4, in accordance with the overall profiles and other relevant parameters and amend the result of No 2 SB declassified vide impugned order dated 05.10.2019 to include the name of the applicant in the list of empanelled officers and grant him promotion according to his seniority in his batch.

OR

(f) In the alternative, direct the respondents to hold No 2 Special Review SB to consider the applicant as a fresh case at the earliest to award him promotion in original seniority with his batch.

(g) Issue any other orders as this Hon'ble Tribunal may deem fit in the facts of the case.

(h) In the interim, stay the promotion of respondent No.4 till final disposal of this OA.

Brief Facts of the Case

2. The applicant was commissioned into the AOC on 19.12.1992 and worked diligently all along. The applicant held challenging appointments in various sectors, done well on courses of instruction and also served in a UN Mission in 2006. He has been conferred six Commendation Cards and the UN Force Cdr Appreciation Certificate.

3. It is the applicant's case that he was informed by the MS Branch in 2018 that the IO's report in two CRs covering the period 01.09.2016 to 31.08.2018 had been expunged since they were held as inflated report. The applicant had represented against the expunction vide his application dated 12.07.2019. However, this was disposed of by the respondents on the grounds that these reports have been expunged as per the policy and provisions of

Army Order 02/2016/MS. It is the applicant's case that this unilateral expunction of two CRs had caused great prejudice in his consideration by the No 2 SB.

4. The applicant has impleaded respondent No.4 and it is his case that based on the applicant's overall service profile, respondent No.4 who has been empanelled could not have been higher than the applicant in the quantified merit. Hence it is the case of the applicant that he has been awarded disproportionately low Board Member Assessment (BMA) marks in violation of the policy dated 23.12.2017 to lower his overall merit and deny him empanelment. It is also the applicant's case that whilst his two outstanding CRs have been expunged, a weak CR of respondent No.4 was also expunged, thus, making it possible for respondent No.4 to be empanelled.

5. Aggrieved by the non-empanelment, the applicant filed a statutory complaint dated 09.10.2019, wherein, the applicant has stated his apprehension that his non-empanelment could only be due to subjectivity in the award of BMA marks and the fact that the IO's report in two CRs from 01.09.2016 to 31.08.2018 had also been expunged. In the statutory complaint, he, therefore, prayed that his complete reckonable profile be examined in the light of previous

records and the award of BMA marks be checked and verified for subjectivity. He also prayed that the two expunged IO's reports be restored. This complaint, however, was rejected vide order 12.10.2020 on the grounds that the applicant was not empanelled due to his overall profile. Aggrieved by the above this OA.

Arguments by the Counsel for the Applicant

6. The counsel elaborated on the service profile of the applicant, including the sectors served in, appointments held, qualifications achieved and added that the applicant was aggrieved by the wrongful action of the respondents in denying him promotion to the rank of Brig by the No 2 SB held in Jun 2019 and promoting respondent No.4 in his place and thereafter rejecting the statutory complaint vide order dated 13.10.2020 without having correctly examined the issues in the complaint.

7. The counsel stated that the applicant had been seriously prejudiced by the actions of the respondents whereby they had expunged the CRs covering the period 01.09.2016 to 31.08.2017 and 01.09.2017 to 31.08.2018, just prior to the conduct of the No 2 SB in order to reduce the quantified merit of the applicant, on the grounds that these reports were inflationary.

He further emphasized that it was a deliberate attempt to promote respondent No.4 for which not only was the applicant's two outstanding reports expunged being inflated reports, but the weak CRs of respondent No.4 were expunged. Further the applicant was also awarded disproportionately low BMA marks by the Board.

8. Referring to the expunged reports, the counsel drew our attention to the MS Branch letter dated 08.08.2018 (Annexure A-2/page 59) and to Para 148 of the Army Order 02/2016/MS and stated that CRs can be expunged only if the assessment was grossly inconsistent with the reckonable profile of the applicant. Further elaborating on the policy, the counsel stated that CRs are required to be checked for objectivity, consistency and corroboration with the past profile and that CRs which were identified as grossly inconsistent or with inflationary/ deflationary/ subjective reporting, after due examination at the appropriate level may be expunged by the COAS. The counsel emphasized that in the applicant's case the first CR had been expunged on the grounds of assessment invalidity and not on gross inconsistency as mandated in the rules. He further added that the second CR had been

expunged being technically invalid as it had been initiated by an IO who was not entitled to initiate a CR on the applicant being a Col.

9. The counsel emphasized that while both the CRs had been initiated by the same IO, when the first one was accepted as being technically valid, and had been expunged being inconsistent, the second CR could not have been expunged on grounds of being technically invalid, when a CR by the same IO had been earlier accepted as valid. The counsel emphatically stated that the expunction of the CRs was a case of clear perversity and gross miscarriage of justice. The counsel drew our attention to Para 147 and stated that as per the policy when a CR is placed under observation for technical defects, clarification is to be sought from the reporting officer and then the CR is to be accepted/set aside based on the clarification provided. However, in the case of the applicant, no such clarification was sought.

10. The counsel further explained that the respondents had not taken into consideration the Dept of Def Production letter dated 15.09.2017, wherein, the channel of reporting had been intimated to the MS Branch, which had never objected to or

queried it. Moreover, on receipt of MS Branch letter dated 23.04.2019 regarding the technical validity of CR, the MS Branch was again informed of the channel of reporting sent earlier. The counsel emphatically stated that the actions of the respondents was a clear case of malice in law to cause irreparable loss to the applicant by bringing down his merit on the eve of the conduct of the SB. The counsel then relied on the ratio of the judgment dated 20.02.2015 in the case of **Brig V G Gole Vs. Union of India & Others**, and stated that the CRs of the applicant be restored, the merit be reassessed and he be promoted.

11. Referring to the award of BMA marks, the counsel stated that there were eight vacancies and that the applicant had been awarded disproportionately low BMA marks with the sole aim of lowering the merit of the applicant and improving the merit of respondent No.4 to facilitate his empanelment. The counsel drew our attention to the Tribunal order dated 22.07.2020, wherein, it has been held that respondent No.4 had been brought into the promotable category only by award of more BMA marks and the applicant had been moved from the 8th position to 10th position by being awarded less BMA marks. The counsel then submitted a detailed comparative chart giving the details of the applicant and respondent No.4, and

took us through the details and concluded that the applicant was substantially ahead of respondent No.4 on various grounds and emphatically stated that the details substantiated the applicant's plea that he was overall well ahead of respondent No.4 and the respondents had held the No 2 SB with mala fides only to promote respondent No.4. The counsel then relied on the following judgments:-

- (a) Apex Court judgment in **Brigadier Nalin Kumar Bhatia Vs. Union of India and Ors.** [(2020) 4 SCC 78].
- (b) AFT (PB) order dated 01.07.2013 in OA 304/2012, **Brig Ajay Singh Panwar Vs. Union of India.**
- (c) AFT (PB) order dated 20.02.2015 in OA 337/2013, **Brig VG Gole Vs. Union of India.**
- (d) AFT (PB) order dated 02.09.2017 in OA 1093/2017, **Maj Gen Manomoy Ganguly Vs. Union of India.**

12. The counsel concluded by vehemently asserting that the action of the respondents in promoting respondent No.4 was contrary to the policy, based on extraneous and irrelevant consideration as also fraught with legal mala fides, and that the applicant's case be reconsidered; the two CRs be restored and the applicant be then promoted, with all consequential benefits.

Arguments by the Counsel for the Respondents

13. Arguments were made by Mr. Harish V Shankar, Advocate representing respondents No.1 to 3 and Mr. R Balasubramaniam, Senior Advocate representing Respondent No.4.

14. Adv Harish V Shankar commenced the arguments and briefly explained the concept of non-select and select ranks; the assessment of officers in CRs; the selection process to select ranks; the salient aspects of the 'Quantified Selection System' and stated that each officer was entitled to three considerations for promotion to the next rank. The counsel then took us through the service profile of the applicant and stated that he was a 1991 Batch AOC officer who was considered for promotion to the rank of Brig by No 2 SB in Jun 2019 and was not empanelled based on his overall profile and comparative merit amongst those considered. The counsel further added that consequent to being non-empanelled, the applicant had filed a statutory complaint dated 09.10.2019 which was finally disposed of vide order dated 12.10.2020 and that the disposal had been delayed due to the then prevailing Covid pandemic and lockdown.

15. Referring to the prayers in the OA, the counsel asserted that the applicant seeks examination of the consideration of another

officer who was considered by the same No 2 SB. The counsel also drew our attention to prayer Para 8(b) seeking restoration of the expunged reports of the IO in two CRs and asserted that the applicant had been informed of this well in time and the plea that he was informed only two weeks prior to the No 2 SB, as mentioned in the applicant's application dated 12.07.2019 (Annexure A-2/pg 56) was contrary to the facts held on record. The counsel further stated that though the complete argument had been on bias; by the applicant's own admission in Para 17 of the rejoinder dated 02.09.2020, he has stated that he had not alleged any bias against himself and that he had only stated that the members had awarded BMA marks without considering the criterion given in Para 12 of the policy letter.

16. Referring to the arguments made on award of BMA marks, the counsel vehemently stated that the BMA marks have been awarded by the members after considering all issues relevant to the applicant. The counsel stated that the contention of the applicant that he should have been awarded BMA marks proportionate to the quantified merit was totally misconceived and that it was up to the Board to award BMA having considered various factors. The counsel further asserted that variation in merit due to BMA has been duly

explained by the SB as mandated by the competent authority. The counsel further asserted that assessment of BMA grading will have to be subject to rigors similar to that of a judicial review of administrative decisions and added that it was only the absence of a reason in support of a variation in BMA marks in relation to the quantified merit that can warrant any interference and that here that was not the case as the Board had explained the reasons for the variation. Thus, the Hon'ble Tribunal could not look into the reasons given and evaluate the same as it would amount to the Tribunal substituting the reasoning of the SB by the reasoning of the Tribunal. Thus, the contention of the applicant that the BMA marks were arbitrarily awarded was ill founded.

17. Referring to the expunction of two CRs, the counsel explained the chronology of events and stated that when CR-1 (09/2016 – 08/2017) was received in MS Branch, it was scrutinised as part of the internal assessment as per the provisions of Para 146-148 of AO 02/2016/MS, and was found to be inflationary and against the reporting norms. Accordingly, as per the policy on the subject, the IO's report was expunged by the orders of the COAS and the applicant and his IO were informed vide letter dated 08.08.2018. When CR-2 (09/2017 – 08/2018) was received, it

was similarly examined and it was observed that the CR had been initiated by an officer who was not entitled to initiate a CR on the applicant. Elaborating the details, the counsel stated that since the applicant was a Col, the IO had to be a Brig/Principal Director and that it had been initiated by Dir P&C, who was not competent to initiate the CR, therefore, it was held technically invalid. Since the IO's report was technically invalid, the RO's report was taken as the first level of assessment and the applicant was intimated vide letter dated 28.04.2019. Even with the RO's report as the first level of assessment, the report was still inflationary and violative of reporting norms; accordingly, the complete CR was expunged. As per policy, only expunction of the first level of reporting is communicated to the ratee. Accordingly, in relation to CR-2, the applicant and the RO (who now was the first level of assessment) were informed of the expunction vide letter dated 23.05.2019.

18. Further referring to the arguments by the counsel for the applicant that since both CR-1 and CR-2 were both initiated by the same IO, the respondents could not have held only CR-2 invalid having accepted CR-1 which was also initiated by the same IO, the counsel explained the details of this issue. The counsel stated that CR-1 was accompanied with a letter dated 05.09.2017 stating that

as per the establishment norms of Directorate of P&C, the IO of the applicant; Dir (P&C) was a Brigadier level officer. It was only found out later that the Dir level officer was not entitled to initiate the report of the applicant. However, since by then the CR had already been expunged being inflationary, no further action with regard to technical validity was required to be taken.

19. Referring to the comparison of the applicant's profile with that of respondent No.4, the counsel asserted that this was a mere perception of the applicant and further added that apart from the CRs, the SB takes into account numerous factors based on which an officer is selected/rejected. He further emphasised that promotions are primarily made on the assessed fitness of an officer to hold the senior rank. Thus, the contention of the applicant that he should have been awarded BMA marks proportionate to the quantified marks was totally misconceived. He further emphasised as per the policy on the subject, the Board had given requisite reasons for the variation in BMA marks and this had been accepted and the results approved by the competent authority.

20. Referring to Apex Court judgment in the case of **Brigadier Nalin Kumar Bhatia** (supra) relied upon by the counsel for the applicant, Mr Harish V Shankar stated that this did not help the

applicant as the circumstances there was entirely different to the case at hand, in that there it was a case of a single agenda who was not promoted, while that was not the case here. The counsel concluded by reiterating that the two CRs had been expunged as per policy in vogue and that the applicant had not been empanelled due to his overall profile and comparative merit amongst those considered. The counsel strongly urged that the OA be dismissed as its without any merit.

21. Mr R Balasubramaniam appearing on behalf of respondent No.4 drew our attention to the prayers in the OA and stated that respondent No.4 had nothing to do with the issues raised in prayers at Para 8(a) and (b). The counsel further stated that the prayer at Para 8(c) entailed a judicial review of the No 2 SB and then he reiterated the issues stated by Mr Harish V Shankar regarding the limited scope of judicial review of the board proceedings. Further referring to the prayer clause 8(d) and (e) the counsel asserted that this entailed expunging the BMA marks awarded to respondent No.4 and such a plea amounts to seeking negative equality which was not admissible. Drawing our attention to Para 36(a) of the rejoinder to the reply filed by respondent No.4, the counsel asserted that the applicant's arguments here were that the postings and assignments

given to him were not in his control and that it was decided on the administrative exigencies, proficiency and profile. The counsel then asserted that this was true in the case of respondent No.4 too, and therefore, respondent No.4 too cannot be held accountable for his posting profile and appointments held. The counsel then asserted that the applicant had not challenged the non-empanelment and neither had he challenged the results. Thus, in the absence of such a challenge, there cannot be a challenge to only a process which is part of the promotion consideration and its outcome. The counsel concluded that respondent No.4 was considered for promotion to the rank of Brig along with the applicant and he has been empanelled based on his overall profile and comparative merit. Thus, no matter what the grievance of the applicant is, it cannot be at the cost of reversing the empanelment of respondent No.4 which has been approved by the competent authority after due deliberation and consideration by the Selection Board.

Consideration of the Case

22. Heard both parties at length. On examining the prayers made here in this OA and the redressal sought in the statutory complaint dated 09.10.2019 it is seen that the issues are similar. Thus, the only issue which merits consideration is whether the respondents

were justified in rejecting the statutory complaint and also to examine the records pertaining to the No 2 SB of Jun 2019 in which the applicant was not empanelled. The respondents have submitted the records pertaining to the examination of the statutory complaint, the No 2 SB Board Proceedings and its approval, and the CR dossier.

We have, therefore, examined the following:-

- (a) CR dossier to ascertain the details pertaining to the expunction of two CRs being inflationary; any CR which may merit interference; any other issue pertaining to the service profile of the applicant.
- (b) Examination of the statutory complaint.
- (c) Board Proceedings of No 2 SB held in Jun 2019.

Examination of CR Dossier

23. The CRs in the reckonable period have been examined. In the reckonable profile, the applicant has earned 19 CRs that include five CRs in the rank of Maj, six CRs in the rank of Lt Col and eight CRs in the rank of Col. These include a total of eight criteria reports in these ranks as OC/OIC/Comdt. Overall, 52% of the box grading by the IO/RO/SRO are '8' and 48% are '9', while 54% of the box grading by the Technical Reporting officers is '9' and 46% are '8'.

All CRs in the reckonable profile are clear 'Above Average' to

'Outstanding' reports with a fair sprinkling of '9'/^8' in various figurative assessments without any adverse/weak remarks by any of the reporting officers. Hence, none of the CRs merit any further interference.

24. On examination of the CR dossier, it is also seen that two CRs have been completely expunged. CR-1 (01.09.2016 – 31.08.2017) has been expunged vide Noting PC A/18205/Expn/MS4D2 dated 07.08.2018 and CR-2 (01.09.2017 – 31.08.2018) has been expunged vide Noting A/18205/Expn/MS4D2 dated 23.05.2019. With reference to CR-1 the examination has recorded that the report is a near perfect nine assessment endorsed by a civilian IO and RO, and a civilian SRO having endorsed an outstanding box grading. Since it was a near perfect nine report and with the report being well beyond the acceptable variation in comparison to past CR average, as per policy in vogue, the complete CR was recommended to be expunged and was approved by the competent authority. In the case of CR-2, having held the assessment of IO as technically invalid, the CR was examined with the assessment of the RO as the first level of assessment. Here too, the examination recorded that it was once again a near perfect nine report which is inflationary with the variation in relation to past average being beyond the

permissible limits again. Thus, this CR too was expunged on the approval of the competent authority. Both the expunctions have been intimated to the applicant vide letters dated 08.08.2018 and 23.04.2019 as required under the provisions of Para 137 of Army Order 2/2016/MS. ***On further perusal of the dossier it is seen that during the period 10.08.2016 to 28.08.2021 when the applicant was posted in the Dept of Def Production, he had earned a total of five CRs, of these four CRs including the two impugned CRs have been expunged.*** Dept of Def Production letter dated 15.09.2017 has been examined on file, and based on queries answered by the Dept of Def Production and DoPT instructions, it was concluded that Dir(P&C) is equivalent to a Colonel and not a Brigadier as intimated in the letter dated 05.09.2017. Thus, the channel of reporting was once again promulgated vide MS Branch letter dated 15.03.2019 addressed to MoD/Dte of P&C. Both these letters are reproduced below :-

MoD/Dte of P&C latter dated 0509.2017

MINISTRY OF DEFENCE
DEPARTEMENT OF DEFENCE PRODUCTION
DIRECTORATE OF PLANNING AND COORDINATION

Reporting Channel in respect of Planning Officer in Dte of P&S

1. Please refer to your signal No 382625/MS-3B dated 03 Aug 2016 recorded on your file No. A/12071/DDP/51562/2016/MS73B regarding posting of IC-51562A Col Rajbir Singh, PO (AS).

2. As desired, the reporting channel in respect of IC-51562A Col Rajbir Singh, who has joined this Dte as Planning Officer (Aerospace Systems), is given as under:-

Officer reported upon (Ratee)	IO	RO	SRO
Col Rajbir Singh PO(AS)	Director (P&C)	Jt Secy (AS)	Addl Secy(DP)

3. In the above context, it is stated that as per establishment norms of Dte P&C, the 10 in the instant case i.e. Director (P&C), HoD, is a Brigadier level officer. This post in the past has also been held by Brigadier of Indian Army.

4. Above is for your information and necessary action please.

Sd
(RA (harma)
Jt Director
(A&C)

MS-4D (Channel)
MS Branch, South Block
New Delhi

MoD ID No F.No 18(1)/2013/PO(AS)/DP/(A&C) dated 05 Sep 2017

MS Branch letter dated 15.03.2019

MILITARY SECRETARY'S BRANCH
MS-4D (CHANNELS)

CHANNEL OF REPORTING: OFFIRS POSTED TO DTE OF P&C

1. Pl ref your Note No 18(1)/2013/PO(as)/DP(A&C) dt 05 Sep 2017.
2. Channels of reporting in respect of offrs posted to Dte of Plg& Coordination will be as under :-

Ser	Rk	IO	RO	SRO
(a)	Brig	Maj Gen /Jt Secy/ Equivalent	Addl Secy	MGO
(b)	Col	Brig/Principal Dir/Equivalent	Maj Gen /Jt Secy/ Equivalent	Addl Secy
(c)	Lt Col	Col/Dir/Equivalent	Brig/Principal Dir/Equivalent	Maj Gen /Jt Secy/ Equivalent

3. Ibid channel of reporting will be applicable from the date of assumption of appt and for the tenure of the officer.

4. **Copy of this letter may please be att with CR of the officer.**

Sd
(BS Multani)
Col
Col MS 4D

MoD/ Dte of P&C

25. Tenures at Delhi. The service dossier of the applicant indicates that in Aug 2013 the applicant was posted on a three year tenure to Delhi as Secretary AWHO. Subsequently, in Aug 2016, the applicant was posted on two year deputation tenure (extendable by one year to total three year tenure) to MoD/ Dept of Def Production. In Jul 2018, a request was received from Dept of Def Production for grant of one year extension. This was acceded to and the applicant's tenure in Dept of Def Production was extended by one year making the deputation tenure a total of three years. In Jul 2019, a request for further extension of one year was received. However, this was turned down by the MS Branch since the officer had already completed six years in Delhi, and the officer was posted to HQ 16 Corps, an active field formation along the Line of Control. Despite the fact that the applicant's posting had been issued to HQ 16 Corps, the MoD/D(MS) unilaterally granted a further extension of one year. On completion of this extended tenure till Jun 2020, the applicant was posted to HQ 8 Mtn Div, yet another active field formation. It was then intimated by Dept of Def Production that based on a case initiated by them directly with MoD for further extension, the MoD had granted a further extension of one year (i.e.,) up to Aug 21. ***In total, the applicant had served in Delhi***

continuously for eight years from Aug 2013 to Aug 2021. The fact that the applicant had sought and arranged his extension without the concurrence of the Service HQ and had evaded his posting on two occasions to an active field formation has been endorsed in the service dossier of the applicant.

Complaints

26. The applicant had filed a total of four statutory complaints dated 30.09.2013, 21.07.2014, 25.05.2018 and 09.10.2019.

27. The applicant filed the statutory complaint dated 30.09.2013 against CR 01/07 – 01/08. The main issues raised in this complaint were that he had been assessed 'Outstanding' in all his CRs since 2004 and had been conferred six Commendation Cards and the UN Force Commander's Appreciation Certificate. That during his UN tenure with an Inf Bn Group, he had been selected to be the Military Assistant to the Deputy Force Commander and that because of his duties, he was apprehensive that though the IO had rated him 'Outstanding' in the open portion, he might have harmed him in the hidden portion, and that this would have had a cascading effect on the assessment by the RO and SRO. The complaint also stated that the applicant was considered for HC/HDMC nomination in 2014 and

was not nominated and it is the applicant's belief that this was because of the CR for 2007-08. The applicant had, therefore, prayed that CR 01/07 – 01/08 be expunged completely, and if that was not possible, expunge the 'unseen portion', and thereafter be considered afresh for HC/HDMC. The competent authority vide order dated 09.10.2014 granted partial redressal in that assessments in Para 24(a) to (e) and Para 26(d) and (e) were expunged being inconsistent.

28. The statutory complaint dated 21.07.2014 was against CR 06/08 – 05/09 whilst being posted at CMM, Jabalapur, on the grounds that while the IO had rated him 'outstanding', the RO may have harmed him due to the applicant not acceding to certain requests which were un-professional and the fact that the relationship between the IO and RO were not cordial and that the RO himself was undergoing a CoI. The applicant had, therefore, prayed that the RO's assessment be examined for inconsistencies, if any, and that these be expunged; and be considered afresh for HC/HDMC 2015. The competent authority gave the applicant requisite redressal vide its order dated 19.01.2015 in that the entire report of the RO was expunged on the grounds of subjectivity.

29. The third statutory complaint dated 25.05.2018 was against six CRs; 09/09 – 03/10, 06/10 – 11/10, 02/11 – 08/11, 09/11 – 08/12, 10/12 – 08/13 and 09/14 – 08/15. The applicant had prayed that the assessment by various reporting officers in these CRs, during his entire command tenure as Lt Col/Col from Aug 2009 to Aug 2013 be reviewed and aberrations/subjectivity/inconsistencies be expunged. He also prayed that the CRs for the period Sep 2014 to Aug 2015 be also reviewed and subjectivity/inconsistencies if any, be set aside. The competent authority vide its order dated 20.02.2019 granted partial redressal, in that it held that all the CRS were consistent, objective, performance based and technically valid except the box grading of the RO in CR 09/14 – 08/15 which was found to be inconsistent and was, therefore, expunged.

30. The fourth statutory complaint dated 09.10.2019 is against his non empanelment in No 2 SB Jun 2019. The applicant had stated that he has an excellent service record and achievements and that based on this, in the last 14 years he has always earned 'Outstanding' CRs from his IOs. Therefore, his non-empanelment could be attributed to an aberration/subjectivity in award of Board Assessment Marks (BMA) in the No 2 SB Jun 2019 and that expunction of the IO's report in two CRs from 01.09.2016

to 31.08.2018 would have had an adverse effect on his quantified merit and is likely to have impacted the award of BMA marks. The applicant had, therefore, prayed that his complete profile be examined and compared with the last officer found fit and if found better in quantified score and parameters of BMA, consider him afresh by No 2 SB with his original seniority. Also, that the BMA awarded be examined and the inter-se variation be checked to assess objectivity. And that reasons for expunging the IO's assessment in the CR 09/206 – 08/2017 and 09/2017 – 08/2018 be examined and assessment restored. The competent authority examined the details and vide its order dated 12.10.2020 rejected the complaint on the grounds that the applicant was not empanelled on account of his overall profile, relative merit and comparative evaluation. The order also held that the SB had awarded BMA as per policy which is applied uniformly to all similarly placed officers and that no injustice had been done on account of this. And also that the expunction of IO's report in two CRs was carried out in accordance with the policy on the subject.

No 2 SB

31. No 2 SB Proceedings. We have examined the proceedings of the No 2 SB Jun 19. The schedule of No 2 SB

Jun 2019 and the tentative list of officers likely to be considered was promulgated vide MS Branch letter dated 14.05.2019. The No 2 SB for AOC Batch 1992 was conducted from 17.06.2019 to 21.06.2019. A total of 48 AOC officers were considered for promotion to the rank of Brig against a total of eight vacancies calculated as per the 'three year Rolling Block PRV'. The 48 officers under consideration included 36 fresh cases of 1992 Batch including the applicant. The applicant was at serial 08 as per quantified merit and at serial 10 in the final overall merit. A detailed note in the Board Proceedings explained the reasons for the changed position of the applicant in the merit list. When the Board Proceedings were forwarded for approval of the competent authority, the issue of the changed position in the merit list was further queried by the MoD and the reasons were once again elaborated to MoD, and finally the Board was approved by the competent authority on 30.09.2019. Amongst the various reasons ascribed for having given respondent No.4 more BMA marks than the applicant, one of the reasons is that the applicant had extended tenures in HQs. In fact, 09 out of the 12 non-criteria reports had been earned by the applicant in Delhi alone. Thus, the applicant was not empanelled due to his overall profile and final position in the comparative merit. We, therefore, find that

the No 2 SB has been conducted and Board Proceedings approved by the competent authority as per the policy on the subject including the explanation provided by the respondents for the shift in merit position, and that there is no mala fide in the laid down process.

Conclusion

32. In view of the above consideration we conclude the following:-

(a) CR-1 was initially accepted based on the premise that the IO was a Brig equivalent officer as intimated vide MoD/Dept of Def Production/Directorate of Planning and Coordination letter dated 25.09.2017. This CR was expunged being a near perfect nine point report and thus being inflationary and in gross variation to the past average CR assessment.

(b) CR-2 was held technically invalid since internal assessment revealed that the IO was actually not a Brig equivalent officer and was thus not entitled to initiate the applicant's CR. Thus, the RO's assessment was taken as the first level of assessment. However, this too was expunged being a near perfect nine point report and thus being inflationary and in gross variation to the past average CR assessment.

(c) As per the provisions of Para 137 of Army Order 2/2016/MS, the applicant was informed of both the expunctions.

(d) The No 2 SB was held as per policy. While the quantified merit of the applicant was higher than that of respondent No.4, the overall merit was lower than respondent No.4 and was, therefore, not empanelled. The shift in merit position of the applicant and respondent No.4 has been explained by the SB, and subsequent queries of MoD in this regard have also been answered by the Army HQ. Satisfied with the reasons given for the shift in merit position, the competent authority approved the No 2 SB results.

(e) The statutory complaint dated 09.10.2019 has been examined in detail and has been rejected being bereft of any merit.

(f) The applicant has not been empanelled to the rank of Brig by the No 2 SB based on his overall comparative merit and there is no mala fide in the process.

33. In view of the above consideration, the OA is dismissed being bereft of any merit.

34. No order as to costs.

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

Pronounced in open Court on this 11th day of August, 2023.


(RAJENDRA MENON)
CHAIRPERSON


(P.M. HARIZ)
MEMBER (A)

Neha