

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

D.

OA 769/2023 WITH MA 1137/2023

Lt Col Bharat Singh Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Ms. Ayushi Sharma, Advocate for
Mr. S S Pandey, Advocate
For Respondents : Mr. Waize Ali Noor, Advocate

CORAM

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

ORDER
26.07.2024

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 C.P. MOHANTY]
MEMBER (A)

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ORDER

MA 1137/2023

Keeping in view the averments made in the application and in the light of the decision in Union of India and others Vs. Tarsem Singh [(2008) 8 SCC 648], the delay in filing the OA is condoned.

2. MA stands disposed of.

OA 769/2023

3. This application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant who is a serving Lieutenant Colonel (Lt Col) of Army Service Corps (ASC) and is aggrieved by the wrongful action of the Respondents retaining technically invalid assessment for the preparation of

the quantified merit resulting by his non-empanelment to the rank of Colonel (Col) by all three chances of No 3 Selection Board (SB). He has prayed for the following reliefs:-

(i) Call for the relevant records including the ACR records, Selection Board Proceedings wherein the Applicant was not empanelled, and records based on which the two Non-Statutory Complaint and post non empanelment Non Statutory and Statutory Complaint filed by the Applicant has been rejected vide order dated 29.1.2016, 25.3.2016, 4.10.2019 and 26.03.2021 and thereafter quash all such orders including the impugned orders along with the orders of non empanelment of the Applicant.

(ii) Direction may be passed to the Respondents to expunge the CRs in its entirety for the period 01.01.2010 to 22.07.2010, 23.07.2010 to 31.12.2010 and 20.06.2011 to 31.12.2011, or any other ACR in the reckonable profile which is found to be containing below benchmark assessment and consequent to upward revision of his profile after removal of such technically invalid and subjective assessment promote the Applicant with all consequential benefits if the Applicant is found to be above the last empanelled officer of any of the Board in which the Applicant was previously considered with all consequential benefits such as seniority, back wages and continuity in service.

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

4. The applicant was commissioned in Army Service Corps on 08.12.2001 and initially was on attachment with 11 Maratha Light Infantry in Counter Insurgency Areas in Poonch Sector till Oct 2003. He was awarded with 'Sena Medal' on 26.01.2006 for his gallantry acts during the period between 2003-2004.

5. Learned counsel for the applicant submits that the applicant was posted at 874 Animal Transport Battalion, Udhampur between 05.05.2009 to 07.06.2011 where he contends that though he had not been appointed as Company Commander, the Initiating Officer (IO) had initiated a Confidential Report covering period 01.01.2010 to 22.07.2010 in the capacity of Company Commander. The applicant was holding the rank of Major at that time and as per Unit Officer's Strength Return (IAFF-3008) for the period the appointment of the Company Commander (Coy Cdr) was tenable by the officer to the rank of Lt Col/Col Time Scale only.

6. Learned counsel elaborates that the applicant performed the duties of Adjutant and 'B' Coy 2IC during his entire assessment but in (IAFF-3008) the appointment was reflected as 'A' Coy 2IC in January and February 2010 and 'B' Coy Commander in March to July 2010 without his knowledge. As per him, the applicant was shown on criteria appointment without meeting the basic requirement of Lt Col Rank for the appointment when his senior officer was present in the coy reflects foul play. The Company Commander's appointment was an important command criteria and operational report and had

been signed by him under duress. The applicant was in pre-Staff Course w.e.f 14.02.2010 to 11.04.2010 hence, it is not possible to take over the appointment of Company Commander.

7. The learned counsel for the applicant submits that the applicant was posted at ASC Centre at Bangalore as Instructor Class B. It was discovered in his ACR for the period 20.06.2011 to 31.12.2011 that the Applicant had not completed mandatory physical service of 90 days under his IO and his RO. The report was thereafter, sent to the SRO who endorsed the remark of 'Inadequate Knowledge', due to which, the report initiated by the RO became a 'One Man Report'. And hence, the Learned Counsel submits that the CR is technically invalid.

8. The applicant preferred a Non Statutory Complaint on 20.06.2015 against his CR covering from 20.06.2011 to 31.12.2011 which was disposed of by order dated 29.01.2016 whereby the Applicant was granted partial redressal by way of expunction of the figurative assessment at Para 24 (d) assessment by the RO to the Applicant.

9. The applicant while challenging his ACR for the period from 01.01.2014 to 18.06.2015 submits that while he was posted at NDA Khadakwasla and preferred a Non Statutory

Complaint dated 22.06.2015, for which he received a redressal by order dated 25.03.2016 whereby the applicant was granted partial relief by expunction of weak remarks of the RO.

10. The learned counsel for the applicant argues that when the applicant was considered for SB No 3 Board (Fresh) in Oct 2018 even those CRs were retained in which inconsistencies had been well established which led to his non-empanelment. Thereafter, he preferred a Non Statutory Complaint dated 13.12.2018 whereby he challenged the technical validity of the ACRs for the period of 01.01.2010 to 22.07.2010, 23.07.2010 to 31.12.2010, 20.06.2011 to 31.12.2011, 01.01.2012 to 30.05.2012 and also, the assessment of RO in the CR for the period 01.01.2014 to 18.06.2014 for which applicant was granted relief to the extent that his qualification in Senior Officers Course (SO-62) which was not recorded earlier was reflected in his dossier and he was considered as Special Review (Fresh) case by No 3 SB vide order dated 04.10.2019.

11. During the pendency of disposal of his Statutory Complaint the applicant was considered by SB 3 as First Review case in March-April 2020 and held to be non-empanelled,

while the Statutory Complaint of the Applicant was rejected by the Respondents vide order dated 26.03.2021.

12. Stressing further, the learned counsel for the applicant submits that it is the duty of the respondents to carry out an internal assessment of any ACR received by them as per Para 16(c) of the AO 45/2001/MS to ensure that the ACR is performance based, objective and is consistent between all reporting officers.

13. It is argued by the applicant that the appointment of the applicant as 'B' Company Commander in the CR did not match with the Directory of Appointments and IAFF-3008 rendering it technically invalid as per Para 16 (c) of Army Order 45/2001/MS, however, the respondents have legitimized the ACRs on the ground that the Applicant has authenticated the same which is in contradiction the law laid down by the Hon'ble Tribunal in the case of *Lt Col MKS Raghav Vs. UoI.*

14. Per Contra, the learned counsel for the respondents submits that the impugned ACRs are technically valid, objective and corroborated as per Army Order 45/2001/MS and that Reporting Officers are best suited to assess an officer in his ACR and having found that the CR to be objective and not suffering

from any subjectivity, no grounds have been made by the petitioner to intervene in CRs keeping in view the scope of limited judicial review in the present case.

15. With respect to CR period 01.10-07.10 and 07.10-12.10, it is the case of the Respondents that the Pen Picture by IO at Para 12 and Pen Picture by FTO at Para 20 in CR Form, also mentions that the applicant was Coy Cdr. and the said Pen Picture was shown to the applicant and endorsed and signed by the applicant on 22.07.2010 and that the scrutiny of CR Dossier reveals that at the end of CR form for CR for the period 07.10-12.10, the 'Record of Service (Change in Year)' which is attached has been duly signed by the applicant on 31.01.2011 wherein, it is mentioned at Para 4 (a) that applicant held the appointment of Coy Cdr and further at Para 5 for the entry "Any other personal particulars changed during the years", "NIL" has been mentioned. Thus, the applicant was tenanted the appointment of Coy Cdr, which the applicant was aware of.

16. Elaborating further, the learned counsel for the respondent further submits that the applicant has averred that he was deployed at Tangdhar and hence he had absolutely no

interaction with his RO, SRO and HTO. In respect of the said averment made by the applicant the answering respondent's respectfully rely upon the judgement of this Hon'ble AFT passed in OA No 905/2015 in case titled Brig Mandeep Singh v UOI & Ors. , wherein, at Para 13, this Hon'ble AFT held that:

"13. As regards the issue of inadequate interaction by the RO or SRO, we would like to highlight that as per the policy produced before us, it is not mandatory for the SRO to have physically interacted with the applicant."

17. It has also been submitted by the respondents that the CR for period 07/10-12/10 was initiated by Lt Col Eldy P Elias, Offg CO 874 AT Bn under the provision of Para 22 (b) read with Para 26 (c) of AO 45/2001/MS, wherein, sanction was given by the then, Chief of Staff, Northern Command (SRO). Para 22(b) of the Army Order provides that:

"An officer can initiate, review or endorse CRs as applicable to his officiating appointment in respect of all officers junior in rank serving under him the same unit, HQs or establishment after obtaining sanction of the SRO".

18. It is argued by the Respondents that in the instant case, the perusal of the CRD reveals that the sanction was accorded by SRO and the same was conveyed on 08.02.2011 and accordingly, CR was initiated on 21.03.2011 by the Offg CO. Perusal of Part I, Para 4(b) of CR form reveals that during the CR

pd 07/10-12/10, the applicant has authenticated, certified and endorsed that from 23.07.2010 to 30.11.2010 (4 months), he tenanted CR of Coy Cdr. Pen Picture by IO at Para 12 and Pen Picture by FTO at Para 20 in CR Form, also mentions that the applicant was Coy Cdr. The said pen picture was also shown to the Applicant and endorsed and signed by the applicant on 21.03.2011.

19. With respect to CR period 06/2011-12/2011, the learned counsel for the respondents submits that the record reveals that CR for said pd was initiated under the provision of Para 24 of AO 45/2001/MS and sanction of SRO, Ex GOC ATNK & K Area was accorded on 19.03.2015 to IC-42325P Brig Lokesh Minocha, Ex Comdt, ASC Centre (North) to initiate CR of the applicant. Accordingly, the CR was initiated by RO on 21.03.2015. It is also submitted that the endorsement of CR by SRO is dealt with under para 41 of AO 45/2001/MS. Para 41 (a) (i) to (v) provides the condition wherein the SRO has to mandatorily endorse the CR. In the instant case, the SRO was not mandatorily required to endorse the CR as per Para 41 (a). Para 41 (b) provides that in order to avoid one man report, the SRO preferably should endorse the report, however, he is

not mandated/obligated to endorse it compulsorily. Thus, the said CR is technically valid and has been accepted.

20. Learned counsel submits that Hon'ble AFT PB in OA 963/2023 vide its order dt 31.05.2023 in the case of Lt Col Vishwajeet Singh Vs. UOI & Ors .held that even though Para 4b of CR Form was left blank, however, the appt has been duly endorsed at Para 4a and corroborated by Str Return (IAFF 3008) and therefore capturing of CR as Criteria Report is based on the appt held during the period of report. It has also been held at Para 27 that "Even if the period of criteria report has not been indicated in the CR, it could only be captured against the appointment of Sub Depot Cdr, as reflected and authenticated". Copy of order at as Annexure RW-3. Whereas, in case of Applicant, he was posted to the Unit and in Army, the CO is vested with the authority to assign roles to officers under his command. The same is duly reflected in the CR Forms at various places including the Pen Picture as well as IAFF 3008 to corroborate and the Applicant was assessed on his performance as Coy Cdr. There was no requirement of any intimation to Applicant that his appointment is criteria appointment. Thus,

Respondents have acted in due compliance of laid down policies and there has been no violation of any such policy.

21. We have heard the arguments on behalf of the parties and perused the records submitted before us. Two questions placed before us through the prayers of the applicant in this OA are firstly, whether the impugned CRs qua the applicant merit expunction on technical grounds and his secondly to assess if his consideration in NO 3 SB is as per policy?

22. At the outset we have perused the Confidential Reports Dossier of the applicant to dwell into the impugned CRs for period 01/01/2010 to 22/07/2010, 13/07/2010 to 31/12/2010 and 20/06/2011 to 31/12/2011 to examine if the CRs have been initiated as per policy in vogue. The CR form itself provides for a certificate at Para 5 which is signed by the ratee and countersigned by IO/RO and FTO/FSCRO which reads to the effect :-

“ it is certified that the requisite physical service conditions as per SAO 3/S/89 under the IO/RO (as applicable) and FTO/FSCRO (where applicable) for initiation/endorsement of the report are fulfilled (This certificate is irrevocable)”. The certificate rendered by the Ratee gives the appointment held by him/her during the period of report. It is essential for us to place on record the appointments held by ratee as certified by him.

S. No	Appt	From	To	Service in		Op Rakshak
				Months Peace	Fd/HAA	
<u>CR 01/01/2010 to 22/07/2010</u>						
(a)	Coy Cdr	01.01.2010	21.05.2010	04	-	SCCIA Peace, 71 Sub Area xxxxx
	Coy Cdr	22.05.2010	22.07.2010	-	02	SCCIA HAA/Fd xxxxx
<u>CR 13/07/2010 to 31/12/2010</u>						
(b)	Coy Cdr	23.07.2010	30.09.2010	02	-	SCCIA Peace, xxxxx
	Coy Cdr	01.10.2010	21.10.2010	-	21 days	SCCIA HAA/Fd xxxxx
	Coy Cdr	22.10.2010	30.11.2010	01	-	SCCIA Peace, 71 Sub Area xxxxx
	Coy 2IC	01.12.2010	31.12.2010	01	-	SCCIA Peace, 71 Sub Area xxxxx

That apart, the paramount cards with entire service records of the applicant drawn every year and duly authenticated by him have been filed in the CR dossier as per policy laid down by MS Branch, IHQ of MoD (Army). Therefore anomalies if any in actual appointments held as per strength return IAFF-3008 raised by the unit of the applicant and the same reflected in the impugned CRs should have been contested by the applicant while signing the certificate. On perusal of the records placed by the applicant we do not find any such representation by him to the competent authority anywhere thus bringing us to the conclusion that consent of the applicant was available to the

reporting officers while initiating the CRs by virtue of his signatures affirming the correctness of data in the CR form. Therefore it is our view that the applicant has no locus standi now to challenge the CRs on technical grounds that his reports were not initiated as per his actual appointment held in the unit. As regards the validation of data reflected in personal records of the applicant, it is pertinent to reproduce extract of MS letter No A/17159/A/MS4 CR Policy dated 22.07.2014 as under ; which places the responsibility on the applicant to authenticate the correctness of his personal data in Paramount Cards' filed with the CR forms :-

““Tele: 35630

Military Secretary's Branch
Integrated HQ of MoD(Army)
DHQ PO, New Delhi - 11

A/17159/4/MS 4 CR Policy

21-Jul 14

Headquarters
Southern Command (MS)
Eastern Command (MS) Western Command (MS)
Central Command (MS)
Northern Command (MS)
Army Training Command (MS)
South Western Command (MS)
IDS (MS & SD)
SFC (MS)
ANC (MS)

PARAMOUNT CARD WITH CR

1. Refer:-

(a) MS Branch letter No A/17101/MS 4 Coord dt 04 Oct 12.

(b) MS Branch letter No A/17159/4/MS 4 CR Policy dt 05 Feb 14.

2. It has been obs that despite instrs for attaching Paramount Card with CR, a large No of CRs are being recd at MS branch without Paramount Card and

in most cases it has not been authenticated by ratee and IO. It is reiterated that the purpose of attaching Paramount Card with CR is primarily to enable iden of anomalies in detls reflected in offr's Paramount Card and initiation of timely corrective action to resolve the same.

3. The fwg issues are reiterated for compliancc:-

(a) Print of Paramount Card taken from MS Web is att with CR.

(b) Anomaly, if any, will be highlighted in the Paramount Card by the ratee.

(c) Paramount Card shall be signed by the ratee and countersigned by his IO.

(d) Requisite docus for updation / rectification will be fwd to concerned sec of MS Branch.

4. All offr's should ensure that complete details reflected in Paramount Card incl home town, state, mobile No are correct and updated. Reporting offr's are requested to scrutinise the Paramount Card while processing the CR and ensure that instrs laid down are complied with. Any amdt being sought should be verified by the IO.

5. In case of offr's who do not have access to Army Intranet, a copy of Paramount Card can be obtained from the nearest fmn HQ / unit or the offr's can apch their Controlling Gp / MS Branch for a copy of same.

6. The above may please be disseminated to all fmns / units under your jurisdiction.

*Sd/-xxxxxxx
(Vinay Gupta)
Col
Col MS 4C
For Military Secretary*

Copy to:-

*All Corps & Areas Headquarters (By AWAN only). All Category 'A' Establishments.
Directorate General of Rashtriya Rifles.*

Directorate General of Assam Rifles.

Directorate General of National Cadet Corps,

Directorate General of National Security Guards. Directorate General of Resettlement.

Directorate General of Special Frontier Force. Directorate General of Border Roads.

Directorate General of Quality Assurance (Administration-4). Defence Research and Development Organisation (Personnel-4). Chief of the Army Staff's Secretariat. Chief of the Army Staff's Secretariat (Complaint Advisory Board). All Branches/Directorates at Army Headquarters.

Internal

All Secs of MS Branch"

Moreover, there is no such policy placed on record by the applicant or the respondent to suggest that the CO of a unit has to assign variously applicants to the officers of his unit strictly as

per principle of seniority. Thus the CRs for period 01/01/2010 to 22/07/2010 and 13/07/2010 to 31/12/2010 are held to be technically valid and merit no interference. That apart, we do not endorse the submission of the applicant that the documents were signed by him under duress; as it fixes that accountability squarely on the applicant himself. As regards the applicant's physical presence in unit or frequent interaction with IO being essential for earning a better report from him, it is our well-considered view that this is neither an essential nor a desirable factor to extract a high-quality report. The deployment of officers and soldiers in forward areas and away from HQ on operational duties is necessary in the Armed Forces. The evaluation of his performance does not mandate the frequent physical interaction with his IO all the time and therefore the absence from HQ cannot be attributed as a reason for earning a report of quality lesser than expectation.

23. At this stage, we have considered it appropriate to refer to the files of Complaint Advisory Board (CAB); COAS Secretariat wherein the following CRs qua the applicant had been challenged by him on various grounds :-

(a) CR Jan 2010 to Jul 2010

(b) CR Jul 2010 to Dec 2010

(c) CR Jun 2011 to Dec 2011

(d) CR Jan 2014 to Jun 2014

24. While addressing the question of validity of CR 13/07/2010 to 31/12/2010 on the grounds of Second-in-Command (2IC) as officiating CO initiating the report and that there is no ratee-reporting officer relationship, we find that the sanction of Chief of Staff HQ Northern Command as SRO has been accorded as per provisions of Para 22(b) of AO 45/2001/MS vide letter dated 08.02.2011 and further there is no merit in the argument as the ratee's acceptance of officiating CO as IO in itself suggests that at the time of report the applicant had no objections to it and it is only as an afterthought he has preferred to make this representation.

25. We have also given due consideration of CR 20.06.2011 to 31.12.2011 while the applicant was an Instructor in ASC Centre (North). The report is an overall above average assessment with laudatory pen pictures and positive recommendations for promotion. The report has been rendered 'One man report' as SRO has not endorsed the same with remarks 'Inadequate Knowledge'. We do not find any illegality

in this endorsement as it is as per provision of AO 45/2001/MS which states "SRO should preferably endorse the report to avoid one man report' and therefore it is advisory and not mandatory. However, the applicant has been granted a partial redress by way of expunction of RO's assessment in Para 24(d) of CR. There being no further bias or subjectivity which merit interference, we are not inclined to indulge in any further analysis. That apart, based on a Non-Statutory Complaint dated 22.06.2015, the applicant has been granted partial redress in impugned CR 01/14 to 06/14 and competent authority has found the applicant eligible for consideration by No 3 SB as Special Review (Fresh) case for promotion to the rank of Col.

26. We consider it necessary to give deliberate consideration of the entire reckonable CR profile of the applicant once again in the interest of justice with a view to set aside aberration if any. We have observed that the applicant's CR profile for consideration by NO 3 SB commences with CR 06/09 – 12/09 and reports have been considered for his entire service profile upto cut off CR for his last consideration as Final Review case. All the reports in his entire profile are a healthy mix of Above Average (8) and Outstanding reports (9) with expunction

affected in CR 06/11 – 12/11 and 01/14 – 06/14 as discussed earlier and we do not find any reason to expunge any report wholly or in part on either tech grounds or for reasons of arbitrariness or subjectivity or bias.

27. Having given our careful consideration to entire CR profile of the applicant we find that the applicant has challenged almost all the report in his reckonable profile with 'Above Average' box gradings though his Non-Statutory Compliant dated 13.12.2018 against non-empanelment to the rank of Colonel by NO 3 SB and subsequently Statutory Complaint dated 07.11.2019 which has been disposed off as 'Rejected' vide order dated 26.03.2021. The applicant is now before us though the instant OA challenging three of the five CRs already disposed off by the competent authority. Having found no fresh or additional grounds for further interference as the three report placed before us have been examined by the respondents as per policy in vogue with adequate details, we do not find any ground for any judicial review. In this context our observations in the case of Lt Col Vikram Singh Bhadoria Vs. UoI in OA 187/2017 are reproduced as under :-

"18. Army Order 45/2001/MS lays down the policy on rendition of CRs of officers. Para 93 states that it's the ratees responsibility to

ensure correctness of details filled in Part-I of the CR form, and authenticate the details prior to handing over the CR form to the IO. Para 94 states that the officer reported upon will authenticate the details given in Part I of the CR form at the space provided for this purpose and that the details with reference to physical service under IO/ FTO (or RO when he is initiating report under provisions of the AO) authenticated by the ratee and concerned reporting officer are irrevocable, and no complaint /representation will be permissible for this aspect. And it is seen in the CR form that Para 6 of Part-I states 'The details given in para 1 to 5 are correct', and at Para 7 this is authenticated by the ratee, IO and the FTO/FSCRO with their signatures and date. Para 93 to 96 of Army Order AO 45/2001/MS are reproduced below.

Completion of the CR Form by the Officer Reported Upon

93. The Officer reported upon will be personally responsible for the correct completion of the portion pertaining to personal data, in accordance with records maintained in the unit, in Part I of the CR form. He will hand over the completed form to the IO as under :-

(a) Before the due date for Initiation of an ACR; or

(b) Before he vacates the appointment, for Initiation of an ICR under Paragraph 84, or an Early ACR under Paragraph 72 above, as the case may be; or

(c) When called upon to do so.

94. The officer reported upon will authenticate the details given in Part I of the CR form at the space provided for this purpose. The details contained in Part I will need communication to the ratee when these have either been compiled by the IO or have been amended by the IO, after the ratee has submitted the CR form. The details with reference to physical service under IO/ FTO (or RO when he is initiating report under provisions of the AO) authenticated by the ratee and concerned reporting officer are irrevocable, and no complaint/representation vide Chapter VII of this AO, will be permissible for this aspect.

95. In addition to the details in Part I, the ratee will also complete the Acknowledgement Cards, which will be returned to the ratee duly filled by the concerned reporting officers (or by Staff Officers authorised to handle the CRS as per Paragraph 13 above).

96. In case, a ratee falls to submit the CR form as provided in Paragraph 93 above, the report may be initiated by the IO (or RO when initiating CR under I provisions of the AO) without

authentication by the ratee in Part I. However, while invoking this provision, it must be ensured that sufficient evidence exists to prove mala fide intentions on part of the ratee, for delaying or avoiding the report. CRs Initiated under this Paragraph will be enfaced accordingly at Part 1.”

28. Further, one of the aspect of judicial review, the observations of this very bench in the case of Brig Vishal Mohanlal Murada in OA 1256/2022 at Para 17 to 20 resonate have while adjudicating the case under consideration :-

“17. We find that all the recommendations are positive in nature and there is no technical invalidity that has been observed. It is our considered opinion that the Courts are not an expert to assess the competence of the employee and override the assessment of the reporting officers to upgrade Above Average (8) to Outstanding (9) in absence of any malafide on record.

18. We are of the opinion that we are neither privy to the performance of the employee nor the interpersonal aspects of the organizational health, and this aspect has been adequately answered by Honorable Supreme Court in the case of Union of India Vs Lieutenant General RS Kadyan (2000) 6 SCC 698 and Major General IPS Dewan Vs Union of India and Ors (1995) 3 SCC 383 (Supra).

19. If the courts were to upgrade all above average (8) Confidential Reports to Outstanding (9), we will be swarmed by applicants seeking the intervention of courts for upgradation of their CR ratings which would cause grievous injury to the overall health of the Armed Forces and render the entire system of Confidential Report and Quantification System of Selection redundant. Thus, we do not consider it prudent to upgrade the Confidential Report ratings through our judgment.

20. It is pertinent for us to refer to the case of Brigadier Mandeep Singh Vs Union of India (OA No 905/2015) deserves mention wherein the Armed Forces Tribunal has noted:-

“Firstly, we would like to reiterate that the guidelines have no statutory effect. Thus it is clear that box gradings are assessments to be made by the Reporting officers who are in the best position to assess the officer in his individual

qualities and also his performance when compared to his peers. They are legally entitled to do so and being responsible officers senior in the chain of Command to the applicant, are eminently competent to do so. Unless any clear infraction of rules, orders, regulations or instructions in the recording of the impugned CRs are brought to our notice, we would not be in a position to interfere in the matter in any way”.

20. In a similar case of *Union of India Vs SK Goel and Ors 2007; 14 SCC 641*, the Hon’ble Apex Court has observed :-

“It has to be held that the Tribunal was in error in going into the question whether the applicant had been rightly graded as ‘outstanding’ in ACR for the years 1990-91 and 1991-92. The observations of the Tribunal that of the two ‘outstanding grading’ does not flow from various parameters given and the reports entered there in, cannot thereof, be upheld and are accordingly set aside”.

“Evaluation made by an expert committee should not be easily interfered with by the Courts which do not have the necessary expertise to undertake the exercise that is necessary for such purpose”.

29. It is now pertinent to place on record our observation on the aspect of consideration of the applicant in promotion boards No 3 SB. The applicant has been considered four times by No 3 SB as follows :-

(a) ASC 2001 Batch (Fresh) -Conducted in October 2018.

(b) ASC 2002 Batch [Special Review (Fresh)] – Conducted in September 2019 and compared with his original batch i.e. 2001 batch.

(c) ASC Special Review (First Review) conducted in March 2020.

(d) ASC 2003 Batch (Final Review) conducted in October 2020.

30. It is or observation that the applicant has been considered by Quantification System on all four occasions but non-empanelled due to his merit within the batch of officers under consideration for promotion against specified vacancies. Our finding are tabulated below :-

<i>No 3 SB</i>	<i>Vacancies of Promotion</i>	<i>Order of Merit of Applicant</i>
<i>(a) Fresh 2001 Batch</i>	<i>23</i>	<i>34</i>
<i>(b) Special Review (Fresh)</i>	<i>21</i>	<i>Not recorded as the comparison was with Benchmark of 2001 Batch</i>
<i>(c) Special Review (First Review)</i>	<i>-</i>	<i>Compares with Benchmark of 2002 Batch. Not applicable</i>
<i>(d) Final Review</i>	<i>17</i>	<i>27</i>

31. During the course of arguments Learned Counsel has relied upon the judgement of this Tribunal in case of *Brig Ratan Kumar Vs. UoI & Ors.* in OA 1906 of 2018. The case referred to by Learned Counsel does not help this case as the applicant was granted partial relief due to apparent bias against the applicant by the reporting officer. The second case relied on the Learned Counsel is that of *Lt Col MKS Raghav Vs. UoI* in

OA No. 75 of 2009 wherein partial relief was granted to the applicant by the Tribunal due to error apparent on part of the respondents; purely based on facts of that case which are not applicable in this case under consideration.

32. Therefore, in view of our aforesaid analysis, we are of the considered opinion that since the Respondents have acted as per the policy in vogue, it would not be appropriate for us to sit in judicial review, with nothing on record to show any biasness or malafide on part of the Respondents, and hence, the present OA 769/2023 is liable to be dismissed.

33. Consequently, this OA is dismissed.

34. Pending miscellaneous application, if any, stands closed.

35. No order as to costs.

Pronounced in the open Court on 26 day of July, 2024

JUSTICE RAJENDRA MENON)
CHAIRPERSON

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

Akc