

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

C.

OA 804/2023 WITH MA 1268/2023

Brig Gopal Kapoor Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. S S pandey, Advocate
For Respondents : Mr. Neeraj, Sr. CGSC

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER
18.07.2024

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


[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

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

O.A. No. 804 of 2023
with
M.A. No. 1268 of 2023

In the matter of :

Brig Gopal Kapoor

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Shri S.S. Pandey, Advocate

For Respondents : Shri Neeraj, Sr. CGSC

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

Invoking the jurisdiction of the Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as 'AFT Act'), the applicant has filed this OA and the reliefs claimed in Para 8 read as under :

"(a) Calling for entire records based on which the Respondents have retained any below bench mark assessment less than outstanding of the IO/RO/SRO in the CRs of covering the period

from 23.12.2011 to 31.08.2012, 01.09.2012 to 17.01.2013 and 18.01.2013 to 04.08.2013 as part of reckonable profile of the Applicant which otherwise merited expunction and thereafter granting him only partial relief vide impugned order dated 16.10.2019 as received vide order dated 18.10.2019 confining the relief to limited attributes of the SRO of only one ACR covering the period from Dec 2011 to Aug 2012 without interfering other assessments including Box Grading despite gross subjectivity, unfairness and non compliance of applicable instructions apart from gross inconsistencies in the impugned ACRs and thereafter quash the same including the order dated 16.10.2019 to the extent of relief denied to the Applicant.

- (b) Direct the Respondents to remove the entire assessment of the RO/SRO including the Box Grading if the same is below the bench mark of outstanding assessment by the IO of the CR*

covering the period from 23.11.2011 to 31.08.2012.

(c) Direct the Respondents to remove the assessment of the IO in the Box Grading which is totally unfair and contrary to the guidelines for such assessment as also the assessment of RO/SRO in the CR covering the period from 01.09.2012 to 17.01.2013 in its entirety including the box grading if the same is below outstanding ('9').

(d) Direct the Respondents to remove the entire assessment of the RO/SRO including the Box Grading if the same is below the bench mark of outstanding assessment by the IO of the CR covering the period from 18.01.2013 to 04.08.2013.

(e) Direct the Respondents to remove any other assessment of the entire reckonable period of the Applicant found to be inconsistent and issue the Respondents a direction not to use the assessments of the CRs as per the details mentioned above in any manner including for

the purpose of determination of the inter se quantified merit of the Applicant as per the applicable policies.”

2. The facts of the case in brief are that the applicant was commissioned in Armoured Corps of the Indian Army on 11.06.1994. It is the case of the applicant that based on his exemplary performance over the years, he was promoted to the rank of Col in his first consideration itself and was assigned the Command of the most prestigious and historically significant Regiment of Armoured i.e. Poona Horse, which he commanded from 15.7.2011 to 05.8.2013. Due to re-orbiting of the Regiment, all operations of the Regiment were conducted under the aegis of Northern Command, however, the ACR channel was prescribed by the respondents under Western Command.

3. The applicant earned three ACRs during his entire command period i.e. 23.12.2011 to 31.8.2012; 01.09.2012 to 17.01.2013 and 18.01.2013 to 04.08.2013 where the operational task of the Regiment was under Northern

Command. During the first ACR period from 23.12.2011 to 31.08.2012, the Regiment under the applicant performed very well in inter-regimental competitions, which earned him a commendation Card by GOC-in-C Western Command. It is stated that inspite of impressive credentials of the regiment in the assessment and 'Outstanding' grade by the IO during the period of the impugned ACR, the applicant was apprehensive that RO and SRO may have graded him just above average (Grading '8'), which was inconsistent with the ground performance of the applicant.

4. That the applicant earned his second command tenure ACR for the duration 01.9.2012 to 17.01.2013, which was just about four months' report in which the applicant was on leave for almost one month and therefore the report in question was just about the 90 days' duration. The applicant again is apprehensive that despite his excellent performance, he may have been downgraded to 'Above Average' from 'Outstanding' by the senior ROs who had no interaction with him during the above period. It is stated that the extracts of the ACR assessment of the IO revealed that the IO had given

maximum 9s and few 8s, however box-grading was given as '8', which is incongruous to overall assessment with no justification and thus the respondents should have expunged the said CR on this ground.

5. The third ACR was initiated for the period 18.01.2013 to 04.08.2013 and the new IO had assessed the applicant as Outstanding and he was appreciative of the achievements of the Regiment under the applicant's command. It is stated that after getting assessment of Outstanding from the IO, the RO and SRO downgraded his assessment from outstanding and the same was inconsistent and unjustifiable as the new SRO had just joined for 30-35 days and had no interaction with the applicant.

6. In these circumstances, the applicant filed a Statutory Complaint dated 01.01.2019 challenging all the above three ACRs on the ground of subjectivity and inconsistency as the same could affect his career prospects in future. The said Statutory Complaint was disposed of by Respondent No. 1 vide order dated 16.09.2019 and the applicant was granted

partial-redressal which expunged the assessment of the SRO at Para 24(a) to (e) of the CR for the period 23.12.2011 to 31.08.2012, however, it is alleged that the Box Grading of the SRO i.e. 8, was not changed, which is unjustifiable and unsustainable. Thereafter, in December, 2019, the applicant was considered for the promotion by No. 2 Selection Board (SB) with his batch for the rank of Brig, results of which were declassified in February, 2020 and the applicant was promoted to the rank of Brig on 01.09.2020. It is alleged by the applicant that despite his hard work and various achievements of the Regiment under his command, due to which his unit was conferred with unit citation by the General Officer Commanding, Western Command and having contributed significantly in the achievements of the unit, he was downgraded in the ACRs and despite that also, he got promoted to the rank of Brig in September, 2020, however, as the impugned ACRs still forms part of his profile which will affect his future career prospects, the applicant has filed the present OA for assailing the impugned ACRs.

7. The learned counsel for the applicant alleged that the respondents have committed error in their actions of prescribing an ACR channel when as per prevailing norm a lot of emphasis is given to post the officers in a way that the ROs are aware of the day-to-day performance of the officers whose report is initiated by them and the respondents failed to carry out their obligatory duties as prescribed in the SAC and other instructions to ensure not only the technical validity of the ACRs but also to ensure that the same is performance based, objective, consistent with the profile of the officer and free from anomaly and any bias; the respondents had been unfair to the applicant as, while disposing of the Statutory Complaint, only partial relief was granted to the applicant by expunging only the part assessment of the SRO in the CR for the period 23.12.2011 to 31.8.2012, whereas the applicant deserved expunction of all three impugned ACRs, which are all illegal, arbitrary, unfair, inconsistent and totally contrary to the applicable norms as well as unfair. It is submitted that the applicant was at a disadvantage position of having been operationally

placed under Northern Command while being assessed by the Western Command in his ACRs, whereas his other batch-mates did not have to face such unfairness.

8. It is submitted on behalf of the applicant that since the respondents themselves have acknowledged the fact that the assessment in the ACR has to be strictly as per the performance observed by the ROs, therefore, the respondents ought to have considered the fact that the tasks performed by the applicant and observed by the ROs which provides vital input to judge the capability of an officer as has been the case in respect of all other officers except the applicant which itself is the subjectivity and on this ground alone as the ROs were not aware of the ground performance of the applicant, the downgrading of the assessment of the ACRs for the impugned period should be held unjustifiable and unsustainable and deserve to be removed from the applicant's profile. It is further submitted that as the IO having assessed the applicant outstanding, any down-gradation of such assessment by the RO/SRO due to lack of interaction is unsustainable and inconsistent for the

duration of the ACR from 23.12.2011 to 31.08.2012 being a perverse assessment contrary to demonstrated performance of the applicant as his regiment had numerous achievements to its credit, the same was also appreciated and commended by award of on the spot commendation by GOC-in-Command Western Command who unfortunately did not get the chance to endorse the applicant's assessment as SRO; the applicant had served for less than three months under the SRO when he initiated the first Report and must have agreed with the RO to downgrade the applicant not only on the figurative assessment applicable to SRO but box grading as well wherein the figurative assessment having been removed the question of retaining the Box Grading doesn't arise unless the same was outstanding apart from the assessment of the RO.

9. It is submitted that the subjective assessment by the RO for the duration of the ACR 23.12.2011 to 31.08.2012 tinted the assessment of the SRO, therefore, such assessment was liable to be expunged on account of lacking objectivity and inconsistency which was done partially by the

respondents vide their order dated 16.10.2019 of Respondent No. 1 in respect of ACR for the period 23.12.2011 to 31.08.2012, expunged the assessment of the paras 24(a) to (e) of the SRO's assessment, the five QAPs (Qualities to Assess Potential), have been ordered to be expunged on grounds of inconsistency, it is evident that entire figurative assessment of SRO (all five) has been ordered to be expunged. Accordingly, it is inferred that the SRO has not carried out a fair evaluation of the applicant and the box grading alone could not have been permitted to be on the record unless the respondents can establish from the record that the same was outstanding and did not merit any interference, and accordingly the entire assessment of the SRO needed to be expunged. The applicant also stated that it was very unusual that the same Corps Cdr would have endorsed all the three reports of the applicant.

10. The learned counsel for the applicant submitted that ACR for the period 01.09.2012 to 17.01.2013 was the most intense training period for the regiment and the contribution of the regiment was appreciated by GOC 10 Infantry Div,

however, during this period none of the Reporting Officers ever visited the operational area or interacted with the applicant, therefore could have not objectively assessed the applicant for the impugned period of just four months. Moreover, the IO failed to communicate the CR before leaving the station and sent the applicant extract which shows that he did not follow the mandate of the policy and the same was also a factor of subjectivity due to lack of in person communication without any justified reasons. It was submitted by the counsel that the applicant has served in the Army in a most exemplary manner and has always been graded outstanding/near outstanding based on which he was promoted to the Selection Grade Col and Brig and as the applicant has also done all the career courses and has a very balanced profile in field, peace, counter Insurgency area, staff; his performance in the ranks of Col and Brig was appreciated by every officer who has had the occasion to closely monitor his performance.

11. The learned counsel of the applicant thereafter took us through the various provisions of the AO 45/2001 dealing with rendition of the CR.

12. The learned counsel for the applicant placed reliance on the order of the AFT (PB) dated 29.04.2015 in the case of **Maj Gen K K Sinha, SM, VSM Vs. UOI & Ors. [O.A. No. 74 of 2015]** wherein the applicant's CRs for the impugned period were directed to be expunged on the ground that reduction in the box grading awarded by the IO as well as SRO were found subjective and inconsistent and the matter was remitted back to the respondents to reconsider the petitioner's case for promotion to the rank of Lt Gen afresh by convening a Special Promotion Board in accordance with the guidelines laid down in the promotion policy. The learned counsel also relied upon the order of the AFT, RB, Chandigarh dated 20.07.2013 in the case of **Lt Col Vinay Lakhera Vs. Union of India and others [O.A. No. 1168 of 2011]** whereby the impugned ACR was set aside fully and non-empanelment by No. 3 Selection Board was also quashed with a direction to the respondents to consider the

petitioner therein afresh for promotion in the rank of Col in the next scheduled No. 3 SB. Based on the above, the learned counsel pleaded that the OA may be allowed.

12. *Per contra*, the learned counsel for the respondents, submitted that the Army has a pyramidal rank structure and thus the number of vacancies in higher ranks are limited and further added that only those officers whose records of service within a particular batch are found better, are selected to fill-up the vacancies available in the higher rank. The learned counsel submitted that all officers of a particular batch are considered together with same cut-off ACRs and inputs and on the basis of individual profile and comparative batch merit of the officers, they are empaneled/non-empanalled. The learned counsel submitted that the assessment of officers in ACR was regulated by Army Order 45/2001/MS (which has now been replaced by Army Order 02/2016/MS) and other relevant policies at any given time and the gradings are numerical from 1 to 9. The entire assessment of an officer in any ACR consists of assessment by three different Reporting Officers i.e. Initiating Officer (IO),

Reviewing Officer (RO) and Senior Reviewing Officer (SRO), whose assessments are independent of each other; the assessment of 'Outstanding' is denoted by numerical '9' which is reserved for exceptional special achievements of the officer reported upon during the reporting period which is beyond the performance of an officer with Above Average performance, and therefore, the officers have no right to claim an 'Outstanding' assessment in the CR and it is only for the reporting officers who have observed the officer who are competent to assess the performance objectively, and do not fall within the purview of the judicial review unless there is any contravention of any rule or procedure or the officer reported upon establish bias/malafide through positive averments with supporting facts to the satisfaction of the court.

13. The learned counsel further submitted that the Selection Board, while considering an officer for promotion, takes note of number of factors, and not just the ACR, such as war/operational reports, Course Reports, ACR performance in command and staff appointments honours

and awards, disciplinary background etc. into consideration and it is upto the Selection Board to assess the suitability of the officer for promotion. The learned counsel for the respondents submitted that while disposing of the Statutory Complaint filed by the applicant, the overall profile, comments of Reporting Officer, relevant documents and recommendations of the competent authorities in chain were considered, and concluded that all three impugned ACRs 12/11-08/12, 09/12-01/13 and 01/13-08/13 are fair, objective, performance based and technically valid except the assessments made by SRO in Para 24(a) to (e) of CR 12/11-08/12 which were found inconsistent. The competent authority thus granted partial-redressal to the applicant by expunging the assessments of SRO at Para 24(a) to (e) of CR 12/11-08/12 and disposed of the statutory complaint of the applicant.

14. The learned counsel for the respondents further submitted that the assessment of CRs for the period 23.12.2011 to 31.08.2012, 01.09.2012 to 17.01.2013 and 18.01.2013 to 04.09.2013 was done on the basis of extant

policies and norms and the same were found to be objective, consistent and were accepted by the Competent Authority. With regard to the contention of the applicant regarding inadequate notice for advance intimation of 'Outstanding' grading due to short duration in the CR/short notice, it has been stated that the necessary provisions are provided at Para 3(a) of MS Branch letter No. A/17151/MS 4 Coord dated 31.10.2011, wherein it is provided that *"Any reporting officer intending to grade an officer 'Outstanding' must give a minimum of 90 days' notice to the higher tier reporting officers to enable them to gauge the performance of the ratee. However, under certain circumstances, when it is not possible to do so, adequate notice must still be given to the reporting chain"*. It is submitted that the IO has followed the laid down instructions on initiation of CR for the period 01.09.2012 to 07.01.2013 and the applicant was communicated of the open portion of the CR vide letter No. 42171/ACR/Dy MS (B) Sectt dated 04.02.2013; while it is desirable that there is a correlation in the endorsement of

Box Grade, Figurative and Pen Picture, however, ROs are free to assess the officer as they deem appropriate.

15. The learned counsel for the respondents placed reliance on the order of the AFT (PB) in the case of **Brig Mandeep Singh Vs. UOI [O.A. No. 905 of 2015]** wherein the Tribunal examined the aspect of need of interaction of Ratee with RO and SRO is not essential as they have their own ways to assess the performance of the Ratee and in Para 12 thereof, it was held that the guidelines are there to assist the Reporting Officer in CR endorsement and it cannot override the AO. The learned counsel submitted that the CR so received is scrutinized in detail at MS Branch as per extant policies to identify any inconsistency and accepted by the Competent Authority, if found in order. It is also submitted on behalf of the respondents that as provided in Para 39 of the AO 02/2016/MS and Para 43 of AO 45/2001/MS, which was applicable at that time, service entitlement of SRO is minimum of 30 days' calendar service which was met in the present case, and if the SRO feels unable to make an assessment for want of sufficient knowledge, he has the

option of endorsing 'Inadequate Knowledge' under the provisions of Para 38 of AO 02/2016/MS and Para 41 of AO 45/2001/MS (applicable at that time). In view of the aforesaid submissions, the learned counsel for the respondents prayed that the OA lacks merit and substance and the same may be dismissed.

ANALYSIS

16. We have heard the parties at length and perused all the documents, CR dossiers of the applicant, various policies and the documents produced by both the parties.

17. The applicant has impugned the three ACRs for the period covering 23.12.2011 to 31.8.2012; 01.09.2012 to 17.01.2013 and 18.01.2013 to 04.08.2013.

18. The applicant had grievance against CRs for the period 12/11 to 08/12; 09/12 to 01/13 and 01/13 to 08/13 which he earned in the rank of Colonel for which he had submitted a Statutory Complaint dated 01.01.2019 against the said CRs. The said complaint of the applicant was examined in the light of the applicant's overall profile, comments of Reporting Officer, relevant documents and recommendations

of the competent authorities in chain. After consideration of all aspects of the complaint and viewing it against the redress sought, it emerged that the impugned CRs 12/11-08/12, 09/12-01/13 and 01/13-08/13 are fair, objective, well-corroborated, performance based and technically valid except the assessments made in Para 24(a) to 24(e) by SRO in impugned CR 12/11-08/12 which merits interference on the grounds of inconsistency. Therefore, the Competent Authority granted partial redress to the applicant by way of expunction of the aforesaid assessment of the SRO in CR 12/11-08/12 on grounds of inconsistency and subject to the partial redress as above, the Competent Authority disposed of the Statutory Complaint vide order dated 16.10.2019.

19. Having perused the relevant records and the CR dossiers of the applicant, it is our view that the ACRs covering the period from 01.09.2012 to 17.01.2013 and 18.01.2013 to 04.08.2013 are fair, objective, well-corroborated, performance based and technically valid ACRs, which match with the overall profile of the applicant and do not merit any interference from the Tribunal.

20. In so far as the ACR of the period covering 23.12.2011 to 31.08.2012 is concerned, the applicant was granted a partial relief based on the statutory complaint filed by the applicant and the assessment of the SRO in the impugned ACR was expunged based on the grounds of inconsistency as follows :

Para	Assessment
Para 24(a)	'Foresight and Planning'
Para 24(b)	'Delegation'
Para 24(c)	'Vision and Conceptual Ability'
Para 24(d)	'Tolerance for Ambiguity'
Para 24(e)	'Professional Competence to handle Higher Appointments'

However, the box-grading of the SRO was not interfered with by the respondents. From the records, it is seen that the box-grading of the SRO is matching with the overall box-grading profile of the three impugned ACRs and it is, therefore, considered prudent not to interfere with the box-grading of the SRO for the period of CR from 23.12.2011 to 31.08.2012.

21. The contention of the applicant that he was at a disadvantage as the operational task of his Regiment was under Northern Command whereas the ACR channel was under the Western Command is also not tenable. It is often seen in the Indian Army that a particular unit of one 'Command' is placed under the operational control of another Command due to operational reasons/exigencies and enough safeguards are put in place to ensure that the IO/RO/SRO of the officers in such circumstances do their due diligence in assessing the 'Ratee' upon whom they are reporting.

22. It is also important to note that all the three impugned CRs were considered by the SB No. 2 held in Dec 2019 during the promotion board from the rank of Col to Brig rank. The applicant had raised no objection on any of the three impugned ACRs at that point of time. The SB No. 2 having gone through these three impugned ACRs and the officer having been empanelled for promotion from the rank of Col to Brig rank, these CRs have to be deemed as accepted and settled CRs. The applicant having raised no objection at

that point of time is deemed to have accepted the impugned ACRs.

23. In fact, the act of the applicant in accepting the impugned ACRs when the SB No. 2 was held in 2019 and having obtained promotion from the rank of Col to Brig now debars the applicant from challenging the ACRs, the *doctrine of estoppel* will come into play and its effect comes in the way of the applicant in now challenging the ACRs. The applicant permitted the respondents to accept the ACRs in question when the same were placed before the SB No. 2 for his promotion to the rank of Brig in the year 2019 without any objection. Based on this conduct of the applicant, the department promoted the applicant from the rank of Col to Brig and now permitting the applicant to change his position would be unfair and not permissible in law. In our considered view, the *principle of estoppel* as laid down in the case of **Pratima Chowdhury Vs. Kalpana Mukherjee & Anr. [AIR 2014 SC 1304]**, prevents the applicant from reverting back to a position contrary to that existed when the SB No. 2 considered his case, is not permissible in law.

CONCLUSION

24. In view of the above, the OA 804 of 2023 is dismissed being devoid of merit. Consequently, M.A. No. 1268 of 2023 also stands closed.

25. There is no order as to costs.

Pronounced in open Court on this 18th day of July, 2024.


[JUSTICE RAJENDRA MENON]
CHAIRPERSON


[REAR ADMIRAL DHIREN VIGN]
MEMBER (A)

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