

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

**OA 1731/2018
with
MA 1909/2018**

Wg Cdr Nivedita J Katoch	Applicant
Versus		
Union of India and Ors.	Respondents

For Applicant	:	Mr. A.K. Aggarwal, Advocate
For Respondents	:	Gp Capt Karan Singh Bhati, Sr. CGSC with Mr. Rajesh Kumar Das, Sr. CGSC

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

ORDER

MA 1909/2018

Keeping in view the averments made in this application and finding the same to be bona fide, in the light of the decision in the case of **Union of India and others** Vs. **Tarsem Singh** [(2008) 8 SCC 648], the instant application is allowed condoning the delay in filing the OA.

2. The MA stands disposed of.

OA 1731/2018

3. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has filed this OA praying to direct the respondents to:

- (a) Set aside the impugned orders dated 16.02.2017 and 29.05.2017 as contradictory to the respondent No.1 Central Government's Order dated 30.07.2015
- (b) Call for the CR dossier of the applicant containing her ACRs from 2006-07 to 2013-14.
- (c) Call for the original proceedings of the applicant's PB (Med) – No 3 for the year 2015, clearly indicating the cut off marks for the promotion.
- (d) Direct the respondent authorities to remove the aberrant ACR of 2006-07 from the applicant's CR dossier.
- (e) Direct the respondent authorities to also remove any other ACR that may be inconsistent/aberrant in the applicant's CR dossier.
- (f) Direct the respondent authorities to convene review of applicant's PB (Med) – No 3 for 2015 based on her CR dossier so modified in accordance with the applicable policy as on 19.12.2014 as mandated in the order dated 30.07.2015.
- (g) Direct the respondent authorities to convene review also of applicant's PB (Med) – No 3 for 2016 (in which ACR of 2006-07 was still material), based on her modified CR dossier in the even she doesn't succeed in the review of the PB (Med) – No 3 for 2015.

- (h) Direct the respondent authorities to retrospectively promote the applicant in case her merit is found equal or above the cut off mark consequent upon the review.
- (i) Direct release of all consequential benefits to her with retrospective effect.
- (j) Award costs of litigation to the applicant.
- (k) Pass any other or such further order/(s) as may be deemed just and proper in the facts and circumstances of the instant matter

Brief Facts of the Case

4. The applicant was commissioned into the Medical Branch of Indian Air Force on 05.10.1996. She was first considered for promotion to the rank of Gp Capt (Col equivalent) by PB (Med) No 3 AMC (Spl) on 19.12.2014 but was not empanelled. The applicant then filed a statutory complaint on 20.01.2015 against her non-empanelment. Vide order dated 30.07.2015 she was granted partial redressal by way of expunction of numerical grading by FTO in her ACR 2006-07 on the grounds of inconsistency. The applicant was reconsidered with a modified CR profile by a Review Promotion Board on 29.01.2016 for her first chance but was again not empanelled. Subsequently, she was considered for PB (Med) No 3 AMC (Spl) for her second chance on 29.01.2016 and

was again not empanelled. The applicant filed another statutory complaint on 22.03.2016 against her ACR 2006-2007, which was rejected by MoD vide ID Note No.15(38)/2017/D (Medical) dated 16.02.2017. The applicant was again considered for promotion by PB (Med) No 3 AMC (Spl) on 28.11.2016 for her third chance and remained non-empanelled. The applicant's subsequent statutory complaint dated 06.03.2017 against her non-empanelment was also rejected by MoD vide ID Note No. 15(101)/2017/D (Medical) dated 29.05.2017. Consequently, the applicant filed the present OA.

Arguments by the Counsel for the Applicant

5. The counsel briefly recapitulated the service profile of the applicant and emphasized that she was a medical specialist in 'Aviation Medicine'. The counsel then explained the organisational setup of the medical services in the armed forces and emphasised that the DGAFMS controlled the medical services of all the three Services through the respective Service DGMS, who heads the medical service of each Service. The counsel then stated that since the applicant was a doctor in IAF, apart from the CAS, both DGAFMS and DGMS (Air) have been made party to this case.

6. The counsel then drew our attention to Para 4(v) of the OA and elaborated on the channel of reporting and highlighted the

administrative (Adm) channel of reporting consisting of the IO/RO/SRO and then explained the professional channel of reporting consisting of the First Technical Officer (FTO)/Senior Technical Officer (STO) and the Head of Arms (HoA). The counsel then explained that in the case of specialists, a Professional Capability Report (PCR) was also initiated. The counsel further emphasized that the professional channel of reporting was vital as the other reporting officers often took a view based on the assessment of the FTO/STO on the professional competence of the medical officer.

7. The counsel then took us through the three considerations of the applicant by PB (Med) No 3 AMC for promotion to the rank of Gp Capt (equivalent to Col) and stated that the applicant had remained non-empanelled for promotion in all the three chances. The counsel then took us through the three statutory complaints dated 20.01.2015, 22.03.2016 and 06.03.2017 filed by the applicant against her non-empanelment. The counsel then elaborated that the applicant was granted partial redressal in her complaint dated 20.01.2015, wherein the numerical assessment of the FTO in the CR 2006-2007 was expunged on grounds of inconsistency (Annexure A-5). The counsel further stated that the two subsequent complaints had been rejected. He then emphasized

that once redressal had been granted the review consideration ought to have taken place in time.

8. The counsel then stated that the partial redressal had been granted in Jul 2015, the review consideration of the applicant took place only in Jan 2016 by PB (Med) No 3 AMC, wherein the applicant again remained non-empanelled, due to which the applicant filed the complaint dated 22.03.2016 wherein she impugned the CR 2006-2007. The counsel then emphasised that during the pendency of the complaint dated 22.03.2016, the applicant was again considered by PB (Med) No 3 AMC in Nov 2016, wherein the applicant once again remained non-empanelled and the complaint dated 22.03.2016 was rejected vide order dated 16.02.2017 (Annexure A-1). The counsel emphasised that thus it was not certain whether the applicant had been granted the entitled special review after the partial redressal granted in her first complaint.

9. The counsel then stated that on being non-empanelled in her consideration in Nov 2016, the applicant filed the third complaint dated 06.03.2017, which was also rejected vide order dated 29.05.2017 (Annexure A-2). Furthermore, replying to the counter affidavit filed by the respondents, the details of the merit position of the applicant in all the considerations as given on Page

No.85 of the OA may be verified by the Court from the records. The counsel prayed that the Court call for the Board Proceedings and the same be examined in detail.

10. Further, elaborating on the CR of 2006-2007, the counsel emphasised that the FTO's average assessment was '7.70' while in all other reports it was '8.75'. Further that since it was below '8', the review had not benefitted the applicant. It was, therefore, imperative that the complete CR 2006-2007 was expunged and necessary relief granted to the applicant. The counsel further placed reliance on the following judgements:-

(a) The Hon'ble Delhi High Court judgement dated 11.09.2002 in the case of **Lt. Col. Sukhwinder Singh Vs. Union of India and others.**

(b) The AFT (RB), Chandigarh judgement dated 30.05.2013 in the case of **Lt. Col. KJ Singh Vs. Union of India and others** (OA 1427 of 2011).

Arguments by the Counsel for the Respondents

11. The counsel for the respondents argued that they had fully implemented the GoI order dated 30.07.2015, granting the applicant partial redressal by expunging the numerical grading by the FTO in the ACR for 2006-2007. After this redressal, the applicant was reconsidered with the modified ACR profile in the Review

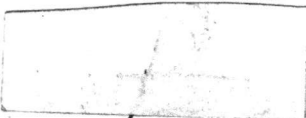
Promotion Board against her first chance held on 29.01.2016. However, she was not empanelled for promotion to the rank of Gp Capt (Col equivalent) due to her overall profile and comparative merit as assessed by the Review PB (Med) No 3 AMC (Spl).

12. The counsel also contended that the statutory complaints dated 22.03.2016 and 06.03.2017, filed by the applicant against her non-empanelment in her second and third considerations were examined in detail by the intermediary authorities, including DGMS (Air), DGAFMS, AOP, Chief of Air Staff, and MoD, and were finally rejected by the competent authority since these complaints lacked merit. The counsel emphasised that the necessary redressal in CR of 2006-2007 had already been granted vide order dated 30.07.2015.

13. The counsel further submitted that the applicant's OA should be dismissed on grounds of delay and laches, as it was filed after a delay of 297 days. He further asserted that mere allegations of discrimination were insufficient without specific details of arbitrariness, which the applicant had not furnished. Additionally, the remedy sought by the applicant is specifically barred by the Armed Forces Tribunal Act, 2007, under Section 14, making her claim legally infirm.

14. The counsel argued that the judgement relied upon by the applicant pertained to the expungement of the assessment by only one reporting officer (RO), whereas, in this case, the entire assessment by the FTO was expunged. They contended that the applicant's contentions were, therefore, misplaced and baseless.

15. The counsel further submitted that the procedures for selection and promotion of AMC, AD Corps, and MNS Officers, along with the criteria for promotion, zone of consideration, and related parameters, were detailed in the GoI promotion policy letters dated 14.01.2004, as amended on 17.05.2006 and 05.02.2016. These policy letters outline the approach paper, vacancies, zone of consideration, frequency of boards, number of officers to be selected, number of ACRs to be taken, method of calculation for various promotion boards, and the number of considerations each officer is entitled to. The counsel then stated that the PB proceedings were recommendatory in nature and were required to be approved by the competent authority. The counsel further emphasised that all the promotion boards wherein the applicant had been considered were conducted per these policies, and the applicant had failed to qualify for empanelment due to her low comparative merit amongst those considered. The counsel then took



us through the details of the merit position of the applicant in her various considerations. The counsel further placed reliance on the following judgements of the Hon'ble Supreme Court:

(a) **Dalpat Abasaheb Solanki** Vs. **BS Mahajan** [1990 (1) SLR 849].

(b) **Air Vice Marshal S.L. Chhabra VSM** Vs. **Union of India and Anr** [1993 SCR (3) 669].

(c) **Lt. Gen RS Kadyan** Vs. **UOI** [2000 AIR SCW 2692].

16. The counsel concluded that the applicant had been granted the three considerations as stipulated by the policy and a Special Review (Fresh) consideration in view of the partial redressal granted in her CR of 2006-2007. The applicant has not been empanelled due to her overall comparative merit amongst those considered. The counsel prayed that since the OA lacked merit, and therefore it be dismissed.

Consideration

17. Having heard both parties at length, the issue to be adjudicated is whether any CRs in the reckonable profile for promotion to the rank of Gp Capt by PB (Med) No 3 AMC warrant any interference. The respondents have submitted the CR dossiers, files pertaining to the examination of the complaint and the board proceedings of the PB (Med) No 3 AMC.

Complaints

18. The applicant has filed a total of three statutory complaints. The first statutory complaint dated 20.01.2015 was filed against her non-empanelment by PB (Med) No 3 AMC in her first consideration on 19.12.2014. Vide order dated 30.04.2015, the applicant was granted partial redressal, in that the numerical assessment of the FTO at Para 27 of the CR was set aside on grounds of inconsistency. The applicant was then considered as a Special Review (Fresh) case by PB (Med) No 3 AMC held on 29.01.2016 and remained non-empanelled. On remaining non-empanelled, subsequently, the applicant was also considered for promotion in her second chance on 29.01.2016 itself, and was non-empanelled.

19. The applicant then filed a second statutory complaint dated 23.03.2016 against CR 2006-2007, wherein the applicant had prayed that this CR be completely expunged if found inconsistent with the applicant's overall profile and then she be re-considered afresh by PB (Med) No 3 AMC. However, this was rejected by the competent authority vide order dated 16.02.2017.

20. In the meanwhile, the applicant was considered by PB (Med) No 3 AMC on 28.11.2016 in her final consideration and remained non-empanelled. The applicant then filed the third statutory complaint dated 06.03.2017. This complaint was examined in detail

and the examination concluded that the assessment of various reporting officers in the CRs in the reckonable period was fair and objective; and that there was no evidence of bias or subjectivity. That the applicant had not been empanelled due to her overall merit amongst those considered. Accordingly, the complaint was rejected vide order dated 29.05.2017.

CR

21. The applicant was considered in her first chance by PB (Med) No 3 AMC in Dec 2014. The CRs from 2003-2004 to 2013 were taken into consideration as part of the reckonable profile for the promotion board. There are a total of 12 CRs in the reckonable profile which includes 03 NIRs from 2003-2006. The average of the CRs considered varies from '7.95' to '8.82' with the final CRs average calculated as '8.41'. On examination of details of all CRs, it is seen that the lowest average of CR is in the CR of 2006-2007 at '7.95'. This CR has been assessed as 8.10/8.10/8/7.70/8 by the IO/RO/SRO/FTO/PCR(Adv).

22. In the applicant's statutory complaint dated 20.01.2015, the applicant was granted partial redressal and in that, the numerical assessment of the FTO at Para 27 of the CR was expunged on the grounds of inconsistency. The applicant was then considered by the Special Review Board held on 29.01.2016 with her revised

profile. It is seen from the board proceedings of the review board that though the ACR average had improved from the earlier '8.41' to '8.44', in the overall merit, the applicant was still lower than the last empanelled officer in the promotion board of 2014 and was therefore non-empanelled.

23. The complete analysis of CR 2006-2007 indicates that CR was earned in the rank of Sqn Ldr while serving as a Graded Specialist (Aviation Medicine) at 3 AF Sqn Ambala. The pen picture of the IO is laudatory; however, the numerical assessment of '8.10' does not corroborate the pen picture. Further, the IO's numerical assessment in this CR is at gross variation with the assessment of various IO's in the rest of the eight CRs which vary from '8.30' to '8.95'. It is, therefore, considered that this assessment is an aberration and merits interference. The IO's pen picture is reproduced below:

"A smartly turned out medical officer with high sense of loyalty and integrity. She demonstrates very high initiative and presence of mind. Decisive most of the times and has an exemplary social conduct. Being a single parent for most of her stay she faces many hurdles and at times affected her attitude towards her service but with exceptional devotion to duty she continued working hard. And asset to any fighter Sqn as a specialist MO."

24. It is also seen from the CR that both the RO and SRO have given a numerical assessment of '8.10' and '8', and in the pen picture both have mentioned "I agree with the IO/I agree with the comments of the IO". Thus, it appears that the assessment by both the RO and SRO is based on the numerical assessment of

the IO to begin with. Further, in comparison to the RO's assessment in this CR, the assessment of the ROs in the remaining CRs, vary from '8.40' to 8.95. Further, analysis of the assessment by the SRO indicates that out of the nine endorsements by SROs, 07 are 'Outstanding' (9) while 02 are 'Above Average' (8) which includes the CR of 2006-2007.

25. Further, analysis of the numerical assessment in the PCR by the Senior Advisor indicates that the numerical assessment of the Advisor in the impugned CR is '8', while in the remaining eight CRs it varies from '8.25' to '8.75'. However, the numerical assessment in the PCR by the Consultant is predominantly '8.50' barring one which is '8.00'. With the above numerical assessment, the average of this CR 2006-2007 is '7.95' which is in gross variation to the net average of the remaining eight CRs which vary from '8.38' to '8.86', and the period average between '8.58' and '8.82'.

26. In summary, with reference to the CRs in the reckonable profile, the complete CR 2006-2007 is required to be set aside on the grounds of being inconsistent with the overall profile. The other CRs are in sync with the overall profile of the applicant and does not merit any further interference.

Conclusion

27. In view of the above consideration, the OA is allowed and we direct the following:

(a) The complete CR 2006-2007 be set aside on the grounds of inconsistency.

(b) The applicant be considered as a Special Review (Fresh) case with her changed profile for promotion to the rank of Gp Capt and, if empanelled, her seniority be accordingly restored.

28. No order as to costs.

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

Pronounced in open Court on this 17th day of September, 2024.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

(LT GEN P.M. HARIZ)
MEMBER (A)

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