

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

156.

OA 343/2024 WITH MA 4449/2024 AND MA 4870/2024

Col Dev Kumar Panwar ..... Applicant  
Versus  
Union of India & Ors. .... Respondents

For Applicant : Mr. S S Pandey, Advocate  
For Respondents : Mr. Harish V Shankar, Advocate

CORAM

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

ORDER  
13.11.2024

MA 4870/2024

Counter affidavit has been filed. There being some delay in filing the counter affidavit, this application has been filed seeking condonation of delay. Delay condoned. Counter affidavit is taken on record.

2. MA stands disposed of.

MA 4449/2024

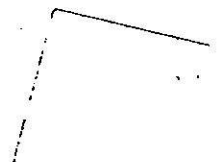
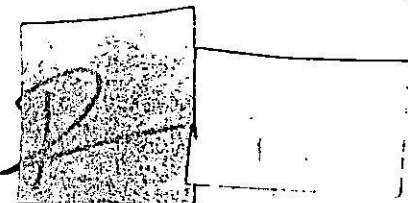
3. This application has been filed for closing the right of the respondents to file the counter affidavit. Since the counter affidavit has been filed and taken on record, this MA has rendered infructuous and is disposed of as such.

4. MA stands disposed of

5. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 the applicant has filed this application and the relief claimed in Para 8 reads as under:-

- (a) *Call for the records based on which the respondents issue the applicant the show cause notice and subsequently awarded the applicant the unjust award of 'Displeasure'.*
- (b) *Quash the award of 'Displeasure' awarded to the applicant.*
- (c) *Direct the respondents to carry out all necessary correction in the profile of the applicant consequent to setting aside of the impugned orders as mentioned above.*

6. As far as the question of quashing the punishment of displeasure awarded to the applicant is concerned after the filing of this application by the applicant on 23.01.2024 a policy regarding the award of censure and its effects was elaborately dealt with in a detailed policy issued by the Joint Armed Forces Order No. 01/2023, dated 30.10.2023. This policy letter was subsequently considered by a Coordinate Bench of this Tribunal in the case of Lt Col Sandeep Mishra Vs Union of India & Ors. and Lt Col Sumit Acharya Vs Union of India & Ors. (OA 1605/2022 and OA 1702/2022, decided on 27.09.2024). In these cases, the applicants were similarly



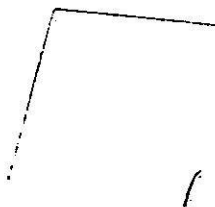
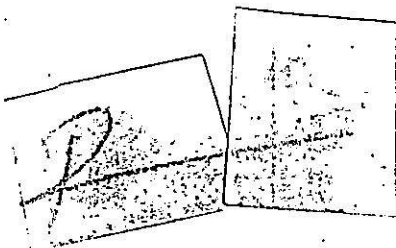
awarded censure arising out of the same incident that involved the present applicant. The applicants in the aforementioned OAs were subordinates of the present applicant in this case.

7. In the detailed order passed on 27.09.2024 by the Coordinate Bench of this Tribunal took note of the policy as outlined in Order 01/2023 dated 30.10.2023 which was reproduced extensively in Para 7 and interpreted in Paras 8, 9, and 10. The conclusions and directions issued by the Tribunal in Para 11 were as follows:

*3. Subsequently all the three Service HQs issued their respective new policy based on the Joint Armed Forces Order dated 30.10.2023. The Army HQ issued its directions vide policy letter dated 22.04.2024. It reinforces that censure is an administrative action reflecting the customs of service, applicable to minor infractions rather than serious misconduct involving moral turpitude, fraud, or dishonesty. Furthermore, the procedures for awarding censure, reporting, and redressal are detailed, ensuring consistency across the services. Censure remains a significant part of an officer's record, influencing career aspects while also providing a mechanism for review and redressal within specified timelines. It specified that the censure while being operative may be taken in consideration for an officer's career in various ways, including their posting to sensitive appointments, re-employment, deputation or secondment, and selection for career courses, UN missions, or foreign postings and the duration for which it will be applicable would be same as specified in Para 13 of the order dated 30.10.2023. However, old cases will continue to be governed by the old policy of 2017. This letter is reproduced below:*

**POLICY ON AWARD OF CENSURE TO OFFERS OF THE ARMED FORCES IN PURSUANCE OF JOINT ARMED FORCES ORDER NO 01/2023 DT 30 OCT 2023**

*1. This policy letter must be read in conjunction with Joint Armed Forces Order No 01/2023 wrt award of Censure to officers of the Armed Forces which has been issued by Govt of India (Ministry of Defence) vide letter No 560/US*



(P)/D (N-11) 2022 dt 30 Oct 2023. In case of any conflict or doubt, the Joint Armed Forces order No 01/2023 shall have overriding effect.

2. This policy letter is being issued under Para 16 of the Joint Armed Forces No 01/2023 in order to bring into effect the procedure to be adopted on effect of award of censure taking into consideration unique service conditions of the Army. The Joint Armed Forces Order No 01/2023 provides for laying down the detailed procedural modalities for the purpose of carrying its provisions into effect, on the aspects, mentioned specifically thereat as also incidental to or connected with the award of Censure, considering the unique service conditions of the respective Service etc. In pursuance thereof, this policy is hereby issued and it should be read in conjunction with the said Joint Armed Forces Order.

3. **Applicability** The award of Censure is an administrative action, in keeping with the customs of the service which can take the form of 'Reproof', 'Displeasure' or "Severe Displeasure of the Authority/ Officer awarding the Censure. This policy is applicable to Officers, including MNS officers and re-employed Officers. Censure except Reproof (in terms of Para 327 of Regulations for the Army (Revised Edition), 1987) is not awardable to Warrant Offrs and Other Ranks. The award of Censure to JCOs shall continue to be governed by the existing policy on the subject.

4. Censure is awarded for an act, conduct, omission or offence of a minor nature and NOT in cases involving moral turpitude, fraud, dishonesty, financial irregularity and misappropriation. The latter are to be tried by a Court Martial or by a prosecution in a civil court in accordance with Para 432 of the Regulations for the Army (Revised Edition)-1987. An act/ omission where there is an absence of criminal intent can be dealt with by award of censure. An offence will not be disposed-off prematurely by award of censure, without reference to a superior authority who may consider disciplinary action under the Army Act 1950.

5. Presiding Officer/ Members of Board of Officers/ Court of Inquiry/ Summary of Evidence/ Court-Martial will not be subjected to administrative action with regard to lapse concerning a bonafide formulation of an opinion. However, there is no legal embargo to initiate action against such Presiding Officer/ members as aforesaid for any proved misconduct in performance of such duties. Care will be taken by the authorities not to initiate action which may convey an impression of interference or exerting command influence over the Officer assigned to undertake statutory functions.

6. Cases though not of minor nature but still do not involve question of moral turpitude, fraud, theft, dishonesty, financial irregularity or misappropriation, and where trial by a Court Martial is not practicable being time-barred or is inexpedient due to other reasons, may if found appropriate, be forwarded to Integrated Headquarters of Ministry of Defence (Army). Adjutant General's Branch, D&V Directorate at the discretion of the GOC-in-C for consideration of the award of censure by the COAS/ Central Government.

#### Competent Authority to award Censures

7. **Reproof.** The authorities to award 'Reproof, manner of administering the same, its effect and the application of mind to the case before award of Reproof has been laid down in Para 327, Regulations of the Army (Revised Edition), 1987.

8. **Displeasure and Severe Displeasure.** The newly promulgated Joint Armed Forces Order No 01/2023 on Award of Censure to Offrs of the Armed Forces dt 30 Oct 2023 gives out the authority competent to award a Censure, along with the operative period and role of chain of command in Para 5 & 6 of the policy. The effect of censure on the career prospects of the Officer has been given in Para 18 below.

Procedure for the Award of Displeasure/ Severe Displeasure

9. Broad procedure for the award of Censure has been covered in para 7-10 of the Joint Armed Forces Order No 01/2023 dt 30 Oct 2023. Certain explanatory provisions are reiterated in the succeeding paras.

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12. Para 10 of the Joint Armed Forces Order No 01/2023 states that in case the recipient Officer brings out any new facts in his reply to the SCN, these should first be investigated by the Competent authority before taking any further action, if considered appropriate. The term "if considered appropriate" would mean that the Competent Authority would investigate those fresh facts stated in the reply to SCN, only if they are not only verifiable but relevant and prima facie having a direct bearing on the act, conduct, omission or offence in question, necessitating any kind of investigation.

Award of Censure to Personnel of Other Services

13. Award of Censure to Navy/ Air Force Personnel. Army authorities shall be empowered to award censure to Navy/ Air Force personnel serving in or attached to the Inter-Services Organisation (ISO), duly notified in accordance with Inter-Services Organisation (Command, Control and Discipline) Act, 2023. However, such Navy/ Air Force personnel when serving in or attached to an organisation not duly notified as ISO, the Army authorities will not award Censure and if such a step is necessitated in the interest of discipline, the details of the case along with connected documents will be forwarded to the Integrated Headquarters of Ministry of Defence (Army), Adjutant General's Branch, D&V Dte through staff channel.

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Reporting of Award of Censure

16. Once a decision has been taken to award a censure, the concerned authority through the Command Headquarters will inform this fact by the fastest means with full particulars of the officer to the following authorities at Integrated Headquarters of Ministry of Defence (Army):-

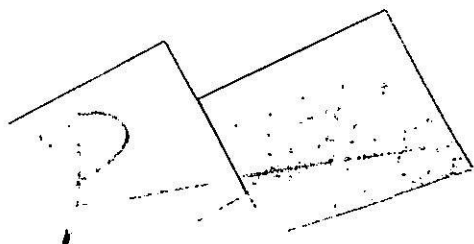
- (a) Adjutant General's Branch, D&V Directorate.
- (b) MS Branch (MS-4 CR/ MS-X for Brigadiers and above).
- (c) Concerned controlling group of the MS Branch.

17. Once a censure has been awarded, the awarding authority will inform the next higher Commander in chain of the same. In addition, a copy of the censure, viz, Severe Displeasure or Displeasure, duly received by the affected officer, will also be forwarded to Army Headquarters (AG's Branch/ DV Dte and MS Branch/ MS-4) for the purpose of record keeping. In case of Brigadiers and above, the same will be endorsed to MS (X) instead of MS-4(CR).

18. Recording of Censure. Aspects related to recording of Censure have been given in para 13 of the Joint Armed Forces Order No 01/2023 on Award of Censure to Offrs of the Armed Forces dt 30 Oct 2023. The record of all discipline/ administrative action is being maintained centrally under the aegis of Adjutant General's Branch, D&V Directorate/ DV-2 (Records).

Effect of Censure on Career Prospects

19. The award of a censure does not debar an officer from being considered for promotion and other career aspects and censure, by itself, may not affect his promotion/selection. However, while it is operative, it is taken cognizance of as part of the officer's overall record of service in assessing the



officer as per relevant policies governing such promotion/selection. As per Para 5 of the Joint Armed Forces Order No 01/2023, during the operative period of censure, it shall be considered by the Selection/Promotion Board only once and it shall cease to be operative thereafter for the purpose of Selection/Promotion Board.

20. The censure order, while it is operative, may be taken into consideration for the purpose of:-

- (a) Posting an Officer to sensitive appointment,
- (b) Re-employment, (c) Deputation/ Secondment,
- (d) Nomination/Selection for Career Courses,
- (e) Selection for UN Mission/ Foreign posting.

(1) For any other purpose as laid down from time to time by the MS Branch policies on the subject including the aforesaid aspects  
Redressal of Grievances

21. Redressal against the award of censure may be submitted and processed in terms of Para 304 of the Regulations for the Army (Revised Edition) 1997. Details on the subject are covered in Para 14 & 15 of the Joint Armed Forces Order No 01/2023 dated 30 Oct 2023.

22. ADG DV/ DV-1 (P) policy on the subject 'Award of Censure in Officers promulgated vide letter No 32008/ AG/ DV-1 (P) dt 11 Aug 2017 is hereby superseded. However, it shall continue to apply in all the cases where Censure has been awarded under the aforesaid policy dt 11 Aug 2017.

23. Nothing contained in this Policy shall render invalid any action taken or acts performed, immediately after the promulgation of Joint Armed Forces Order No 01/2023 and prior to the issuance of this policy.

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8. The applicants here have been awarded the censure of 'Severe Displeasure' of the GOC-in-C Command on 14.06.2022 as per the old Censure policy dated 11.08.2017. As per this old policy dated 11.08.2017, the validity of a censure by the GOC-in-C Command is operative for 10 years from the date of award. As per the new common ensure policy issued vide Joint Armed Forces Order 01/2023, a censure of 'Severe Displeasure' awarded by the GOC-in-C Command is to be operative for the period as specified by awarding authority up to a maximum of THREE years from the date of award. Also, during the operative period, if a Censure has been considered once as a part of a Selection Board Promotion Board, it will cease to be operative thereafter. However, the new policy states 'However, censures awarded earlier will be operative for the period as per original award and the provisions of the instant policy will come into effect from the date of issue of the Censure Policy by MoD/DMA'. Both the applicants have since been considered by No 3 SB and promoted to the rank of Col and are presently commanding their respective units.



9. This would imply that if both these applicants (Censure in Jun 2022) are being considered for a foreign assignment/important appointment in 2028 along with their batch mates, one of whom has been awarded a similar censure by a GOC-in-C as per the new policy in Dec 2023, the censure of the applicants would still be operative as they would have only completed 06 years from the date of award, while the censure awarded to their batch mate in Dec 2023 will no longer be operative since the maximum period of validity of a censure by the GOC-in-C is only three years. This, in our view is a travesty of injustice as the applicants and their batch mates are unequal in their disciplinary status, merely because of the direction that past cases will be governed by the old policy. In our considered view it is, therefore, imperative that the validity of all the past cases which are operative as on the date of issue of the new policy, that is 30.10.2023, must be regulated as per the revised validity criteria and necessary endorsements made in the record of the concerned officers by the authority which awarded the censure under the old policy.

10. Having heard both parties at length during the in camera hearing, and considering the details of the case and taking into account the operating conditions in the GS (Ops) Branch of the Command HQ, we are of the view that the ends of justice would be met if the validity of the censure dated 14.06.2022 awarded to both the applicants be up to the date of this order. Necessary endorsements be made in the dossier of the applicants accordingly.

11. We, therefore, partially allow both the OAs and direct the following:

(a) The validity of the censure dated 14.06.2022 awarded to both the applicants here be limited to the date of this order, (i.e.,) 27.09.2024.

(b) Necessary endorsements be accordingly made in the dossier of the applicants and other records at various HQs.

(c) Since these censures have already been considered by the No 3 Selection Board in in the case of both the applicants, it will be no longer operative for further promotion Boards, as given in the new policy dated 30.10.2023.

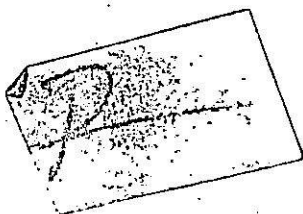
(d) Respondents are directed to review the Joint Armed Forces Order 01/2023 on Censure Policy and the Service specific instructions subsequently issued by the respective Service HQ, and issue necessary amendments to the effect that the validity of all operative censures issued under the old policy



*will be regulated as per the validity parameters laid down in the new policy dated 30.10.2023, from the date of its issue and necessary endorsements made in the concerned records.*

8. In light of the above, this application is also required to be allowed in the same terms as followed in the case of Lt Col Sandeep Mishra and Lt Col Sumit Acharya. However, when the matter was taken up today, we were informed by the learned counsel of the parties that the applicant's case had been considered by the No. 2 Selection Board and vide an order passed on 21.10.2024 the applicant had been granted promotion to the rank of Brigadier. This fact is evidenced by the order produced before us dated 21.10.2024. Therefore, it can be noted that despite the displeasure awarded to the applicant the applicant has now been promoted. The issue now is whether the censure and displeasure awarded to the applicant should be quashed.

9. In our considered view, the matter is no more *res integra* as it has already been decided by the Coordinate Bench of this Tribunal on 27.09.2024 in the case of Lt Col Sandeep Mishra and Lt Col Sumit Acharya, (supra) who were subordinates to the applicant. Consequently, in the applicant's case also the award of displeasure shall be covered by the same



order impugned in the aforementioned OAs, i.e. Lt Col Sandeep Mishra and Lt Col Sumit Acharya (supra). The censure or displeasure shall not be given effect to in any future consideration particularly in the matter of promotion or otherwise in the case of the applicant.

10. Therefore, in the case of the applicant, the validity of the censure awarded shall have the same effect as indicated in Para 11 of the order passed by the Coordinate Bench of this Tribunal in the case of Lt Col Sandeep Mishra and Lt Col Sumit Acharya (supra).

11. In view of the above, the OA is allowed and disposed of.

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[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

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

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