

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

O.A. No. 595 of 2017
with
M.A. No. 509 of 2017

In the matter of :

Col H.C. Sharma ... **Applicant**

Versus

Union of India & Ors. ... **Respondents**

For Applicant : Shri S.S. Pandey, Advocate

For Respondents : Ms. Barkha Babbar with Ms. Dipanjali Tyagi, Advocates

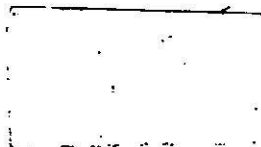
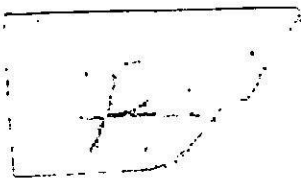
CORAM :

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

ORDER

Invoking the jurisdiction of this 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) Direct the Respondents to review the Applicant's entire profile and direct them to set aside any aberration, not in consonance



with his performance, be set aside, including the ACRs for the years 2008 and 2010, which may be expunged from the Applicant's record of service for being technically invalid; and

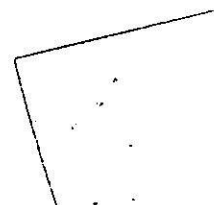
- b) Direct the Respondents to constitute a fresh Board, for promotion to the rank of Brigadier, without any loss of seniority, by including the already granted partial relief, passed vide letter bearing No. 15(65)/2014/D(Medical) Government of India, Ministry of Defence, dated 15 July, 2014; and*
- c) Direct the Respondents to hold the aforementioned Board under the supervision of this Hon'ble Tribunal; and*
- d) Grant such other reliefs as may be deemed fit and proper for the ends of justice in law, equity and natural justice as deemed appropriate in view of the facts and circumstances of the case.*

2. During the course of hearing on 23.09.2024, learned counsel for the applicant, on instructions, submitted that the



applicant does not press for the prayer (a) and wish to pursue only prayers (b) and (c) only. Hence, we will consider the present OA with regard to these prayers only.

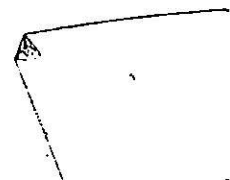
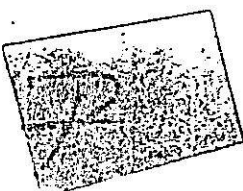
3. The facts of the present case, in brief, are that the applicant was commissioned into the Army Medical Corps (AMC) of Indian Army on 01.01.1986 in the rank of Capt and in due course of time was promoted to the rank of Col (Select) and retired in that rank on 31.12.2019. The applicant explained about his performances in academic field and qualifications, such as various degrees/diplomas achieved by him between the period 1984 and 2007. It is the case of the applicant that he was considered for promotion by Selection Board No. 2 for promotion to the rank of Brigadier (Brig), held in November 2013, November 2014 and January 2016 but he was not empanelled to the rank of Brig and despite that the applicant continued to perform his duties with sincerity and hard work. Aggrieved by such non-empanelment, the applicant filed a statutory complaint dated 14.12.2013 *qua* the SB No. 2 (Medical) held on 20.11.2013, which was disposed of by the respondents vide GoI, MoD letter No. 15(65)/2014/D(Medical) dated 15.07.2014 granting



partial relief to the applicant on the ground inconsistency by way of expunction of 'Entire assessment of SRO in ACR 2009' and 'Entire assessment of HTO in ACR 2011'.

4. The applicant filed another statutory complaint dated 24/26.12.2014 against his non-empanelment by the SB No.2 (Medical) held on 20.11.2013, Review Board dated 17.11.2014 and SB No. 2 (Medical) on 26.11.2014, which was rejected being devoid of merit vide GoI, MoD letter No.15(03)/2016/D(Medical) dated 29.01.2016. Thereafter, against the non-empanelment for promotion to the rank of Brig in SB No. 2 (Medical) held on 22.01.2016, the applicant filed another statutory complaint dated 09.03.2016, which was dismissed by the respondents vide letter No.15(3)/2016/D(Medical) dated 21.09.2016. Aggrieved by the above, the applicant has filed the present OA.

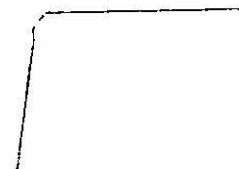
5. *Per contra*, the learned counsel for the respondents submitted that the promotions in the AFMS are based on the vacancy and the merit list is formulated after making due comparison among the officers being considered; that while a candidate has the right to be considered in the selection process as per the relevant rules but no one has any



fundamental or vested right towards empanelment. The learned counsel further submitted that as per the procedure followed in AFMS for selection and promotion to the select ranks of Col, Brig, Maj Gen and Lt Gen (and equivalent) serving in the Army, Navy and Air Force are held under a common Promotion Board as per the Promotion Policy letter of GoI, MoD No. 10(1)/2004/D(Med) dated 14.01.2004, modified vide letter No. 10(1)/2004/D(Med) dated 17.05.2006; these policies enumerate various parameters that guide the Selection Board (SB) and on finalization of the proceedings of the SB, they are required to be forwarded to the Ministry of Defence for approval. The learned counsel provided the parameters on which the selection criteria is based, which are as follows :

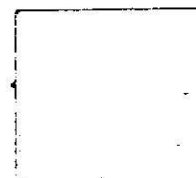
<i>“(a) Average marks of ACR extrapolated out of 90</i>	<i>: 90 marks</i>
<i>(b) Total Marks for various qualifications like MD, DM, M.Ch., MDS (in case of dental officers) etc.</i>	<i>: 02 marks</i>
<i>(c) Marks for Military Awards and decorations</i>	<i>: 01 mark</i>
<i>(d) Marks awarded by the members of the Board based on overall profile, exceptional achievements etc.</i>	<i>: 02 marks</i>
<i>Total Marks</i>	<i>: 95 marks”</i>

6. The learned counsel added that based on the above parameters, the final merit list is drawn and the first three



parameters are based on records and the last parameters is for the members of the Board to decide and CR average is not the only criteria for taking a decision and other factors, namely, qualifications marks, military awards and marks by board members are also taken into consideration for deciding the promotional prospects of the officers in AFMS. It has been further stated on behalf of the respondents that the promotions in the AFMS are vacancy based and the selection is based on comparative merit and hence the applicant was considered for promotion to the rank of Brig as per the provisions laid down in the promotion policy and thus there is no infringement of any rules and regulations and there was no violation of any legal or vested rights of the applicant.

7. The learned counsel also provided the details of the promotion boards held on 20.11.2013, 26.11.2014 and 22.01.2016 with the merit positions of the applicant. The learned counsel referred to a judgment of the Hon'ble Supreme Court in **Dalpat Abasaheb Solanki Vs. B.S. Mahajan [1990 (1) SLR 849]** to submit that the courts have limited jurisdiction and not to scrutinize the assessments made by the Selection Boards. With the aforesaid arguments

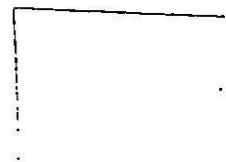
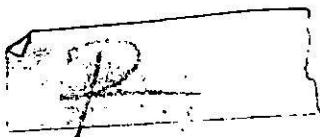


put forth, the learned counsel prayed that the OA deserves to be dismissed.

ANALYSIS

7. We have heard both the parties at length and perused all the documents including CR Dossiers of the applicant, files *qua* Statutory Complaints, the records of the various Selection Boards in which the applicant was considered for the promotion to the rank of Brig and various policies/documents/Army orders produced by both the parties.

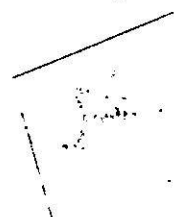
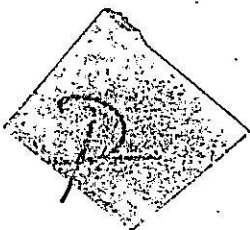
8. The applicant had filed his first statutory complaint dated 14.12.2013 against his non-empanelment by the SB No. 2 (Medical) held on 20.11.2013. The applicant was granted partial relief by way of expunction of the entire assessment of SRO in ACR of year 2009 and entire assessment of HTO in ACR of year 2011. Based on this relief, the applicant was provided a Review Board. The applicant filed his second statutory complaint dated 24/26.12.2014 against his non-empanelment by Review board held on 17.11.2014 and SB No. 2 (Medical) held on



26.11.2014 which was rejected by the respondents being devoid of merit vide its letter No. 15(03)/2016/D(Medical) dated 29.01.2016 and similarly the third statutory complaint filed by the applicant against his non-empanelment to the rank of Brig was raised by the applicant on 09.03.2016 which was dismissed by the respondents vide letter No. 15(3)/2016/D(Medical) dated 21.09.2016.

9. We have perused all the files connected with the three statutory complaints raised by the applicant and find that the issues raised by the applicant in the statutory complaints have been examined in detail by the respondents and relief was provided to the applicant where due in his first statutory complaint.

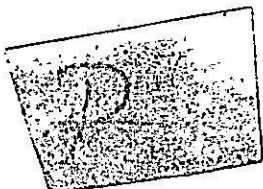
10. While disposing of the second statutory complaint dated 26.12.2014 of the applicant against supersession by PB No. 2 (Medical) held on 20.11.2013, Review Promotion Board (Medical) held on 17.11.2014 and PB (Medical) No. 2 held on 26.11.2014, the Central Govt. found the impugned CRs for the years 2008 and 2010 as fair, objective, well-corroborated, consistent and performance based and in the absence of any evidence of bias or subjectivity, none of the



CRs merit interference, and rejected the statutory complaint of the applicant stating that the officer could not be empanelled on account of his overall profile and comparative merit assessed by the PB No. 2 (Medical).

11. The applicant's third statutory complaint dated 09.03.2016 submitted against his non-empanelment in PB No. 2 (Medical) dated 22.01.2016 was forwarded to the Ministry of Defence. The MoD, vide its order dated 21.09.2016, rejected the said statutory complaint being devoid of merit on the ground that the impugned ACRs of 2008 and 2010 were found fair, objective and consistent and performance based and that there being no evidence of bias or subjectivity, none of the CRs merit any interference and that he could not be empanelled on account of his overall merit and comparative merit as assessed by the PB No. 2 (Medical).

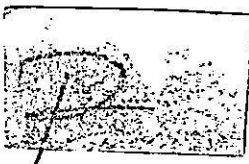
12. Having perused the Promotion Board proceedings, we find that the applicant was considered in the three Promotion Board No. 2 (Medical) held on 20.11.2013, 26.11.2014 and 22.01.2016 (three chances) and a Review Board held on 17.11.2014 along with other officers. The details of the



results of all the three PB No. 2 (Medical) and a Review Board are tabulated below:

Sr. No.	Date of Promotion Board No. 2	Considerations	Total officers considered	No. of Officers empanelled	Merit position of the applicant	Remarks
(1)	20 Nov 2013	Chance 1 (Fresh)	161	50	81	Nil
(2)	17 Nov 2014	REVIEW	15	05	07	The cut-off marks for promotion was 90.45 whereas the applicant had <u>90.2</u> marks.
(3)	26 Nov 2014	Chance 2	129	28	36	Nil
(4)	22 Jan 2016	Chance 3	147	39	52	Nil

13. With the considerations as listed above, we are of the view that the applicant has been granted all his considerations due to him in the normal course and on getting partial relief based on his first statutory complaint. The applicant has been correctly compared with the other officers as brought out in the tabulated chart at Para 12 and has been rejected by all the Promotion/Selection Boards on account of him being lower in merit than the **last/weakest officer selected** in the respective batches.

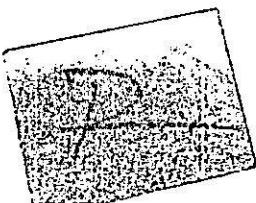


14. While the ACRs of the period from 2008 and 2010 were also perused by us and we find the same as well-corroborated, consistent and match with his over-all performance and do not merit grant of any relief and, consequently, does not warrant any interference from the Tribunal.

15. The respondents have followed the laid down procedures as per the promotion policy and rules and regulations stipulated on the subject and the applicant was duly considered in all the three PB No. 2 (Medical) and the Review Board, and finding the applicant in lower in *inter se* merit, he was not empanelled for promotion to the rank of Brig in all the three PB No. 2 (Medical) and Review Board. Therefore, there being no infirmity or illegality in the matter, no interference is required from the Tribunal.

CONCLUSION

16. In view of the above, the OA 595 of 2017 is dismissed being devoid of merit. Consequently, pending miscellaneous application(s) also stands closed.



17. There is no order as to costs.

Pronounced in the open Court on this 19th day of
November, 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

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