

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

OA 101/2017

Wg Cdr AG Sonna

... Applicant

VERSUS

Union of India and Ors.

... Respondent

For Applicant:

Mr. Ajit Kakkar, Advocate

For Respondent:

Mr. Karan Singh Bhati, Sr. CGSC

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON

HON'BLE LT. GEN P M HARIZ, MEMBER(A)

ORDER

The present application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant, a retired Wing Commander (Wg Cdr) of Logistics (Lgs) branch of the Indian Air Force (IAF). He is aggrieved on not being granted time bound promotion to the rank of Group Captain (TS). The applicant has made the following prayers:

- (a) To call for records on the basis of which the Respondents have formulated the policy instructions dated 28.08.2013 whereby the Respondents have changed the assessment criteria for consideration retrospectively in the time scale promotion of Gp

Capt on completion of 26 years of service and thereafter quash the same.

(b) The direction may be issued to the respondents to consider the applicant for time bound promotion to of Gp Capt (TS) as per policy of 12.01.2009.

(c) To further direct the Respondents to release time bound promotion of the applicant to the rank of Gp Capt and consequential benefits.

(d) To direct the respondents to extend his service till the age of 57 years after the promotion of Gp Capt (TS).

(e) Pass such and other orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

Brief Facts of the Case

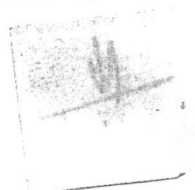
2. The applicant was enrolled on 24.07.1981 as an Airman and was subsequently commissioned in the Administrative Branch of the IAF as a Pilot Officer on 15.12.1990. Due to his hard work and sincerity, he was promoted to the rank of Wg Cdr on 16.12.2004, whereby he had completed more than 13 years of commissioned service. The applicant was duly considered for promotion thrice for the select rank of Gp Capt in PB-2/2012, PB-2/2013 and PB-2/2014 in accordance with the HRP in vogue, but was not empanelled for promotion.

3. The applicant having completed his tenure of choice posting in Delhi was subsequently posted outside Delhi in the year 2014. Aggrieved by his posting the applicant filed WP(C) 3866/2014 in the Delhi High Court for reconsideration of posting till completion of education of his child. The Delhi High Court granted a longer stay for a period of 6 months, and thereafter the applicant was posted out of Delhi in Nov 2014.

4. The applicant forwarded a non-statutory complaint dated 20.12.2016 seeking the status of his time scale promotion. The respondents vide letter dated 20.01.2017 intimated that he was not given substantive promotion wef 15.12.2016, since he did not meet the Minimum Performance Assessment Criteria (MPAC) in accordance with HRP 03/2013.

5. The respondents had issued a promotion policy HRP 01/2009 dated 12.01.2009 wherein three years ARs were considered and the aggregate grading of three years was to be 18 marks for promotion from Wg Cdr to Gp Capt (TS). Subsequently, the respondents issued a new policy, HRP 03/2013 dated 28.08.2013. As per this new policy an aggregate total of 33 marks in last 5 ARs with minimum grading of all least 6.5 in each year's AR and minimum 7 in two of the ARs in last 5 years was required. And the last AR must not be an adverse AR.

6. The applicant was released from service on 31.01.2017 when he attained the retirement age of Wg Cdr which is 54 years. That the



applicant is aggrieved by his non-promotion to the rank of Gp Capt and non-grant of extension of three years on his retirement date. Further he is aggrieved by the new policy HRP 03/2013 dated 28.08.2013. Hence the instant OA.

Arguments by the Counsel for the Applicant

7. The counsel took us through the service profile of the applicant and highlighted his achievements and emphasized that in spite of his good professional record, the applicant was not promoted to the rank of Gp Capt (TS).

8. The counsel then elaborated that he had been considered for promotion to the select rank of Gp Capt thrice in PB-2/2012, PB-2/2013 and PB-2/2014 and had remained non-empanelled. The counsel then stated that from 2012 to 2014 the applicant had been posted at Delhi. In May 2014, the applicant had applied for extension of leave at Delhi on grounds of children 's education. However, since the Respondents rejected the request, the applicant filed WP(C) 3866/2014 in Delhi High Court seeking extension of tenure. Thus, based on the Court's directions, the applicant's tenure at Delhi was extended to Nov 14, after which he was posted out of Delhi. It is the apprehension of the applicant that this may have been a reason for not being promoted as Gp Capt (TS).

9. The counsel further stated that on completion of 26 years of service in 2016, the applicant was considered for promotion to the rank of Gp Capt (TS), but was not promoted. Aggrieved by this, the applicant submitted a non-statutory complaint dated 20.12.2016 which was rejected by the Respondents and the applicant was informed that he was not promoted since he did not meet the Minimum Performance Assessment Criteria (MPAC) as laid down vide HRP 03/2013.

10. The counsel then emphasized that the applicant had been considered as per HRP 03/2013 instead of being considered by HRP 01/2009. He further added that as per the MPAC laid down in HRP 01/2009, only the last three ARs of the applicant were required to be considered, wherein he was required to obtain a minimum total of 18 marks. The counsel then elaborated on the details of HRP 03/2013 dated 28.08.2013 and added that the MPAC had been changed causing grave prejudice to the applicant. He stated that as per HRP 03/2013, the last five ARs were now required to be considered with a minimum total of 33 marks, with at least 6.5 in each AR and at least two ARs with a minimum of 7.

11. The counsel further elaborated that while originally only ARs of 2014, and 2015 were required to be considered, the new HRP resulted in the ARs of 2012 and 2013 also being considered. The counsel vehemently asserted that instead of applying the new policy prospectively from 2018, the

Respondents had unjustly applied it retrospectively from 2015 causing grave prejudice to the applicant. The counsel also stated that the applicant was apprehensive that the Respondents had moderated his ARs illegally and this too had caused prejudice to the applicant.

Arguments by the Counsel for the Respondents

12. The counsel explained the process of grant of substantive promotion issued vide letter dated 28.08.2013 and mentioned that grant of any promotion in the IAF was not a matter of right, but contingent to meeting the specified Qualitative Requirement (QRs).

13. The counsel stated that the officers were earlier considered for promotion as per HRP 01/2009 and that this was later replaced by HRP 03/2013. The counsel emphasized that HRP 03/2013 had been issued in Aug 2013 and was to be applicable prospectively from 2015 in order to sensitise the IAF personnel to the implications of this HRP, and provide adequate lead time for officers to achieve the required standards. The counsel mentioned that applicant was not granted the substantive promotion to the rank of Gp Capt (TS) since he did not meet the Minimum Performance Assessment Criteria (MPAC) in accordance with HRP 03/2013 dated 28.08.2013.

14. The counsel clarified that the application dated 20.12.2016 was examined and appropriately replied by the respondents vide letter No. Air HQ/C 22029/2/9/TS/PO-3(D) dated 20.01.2017, wherein he was informed that he was not promoted as he did not meet the MPAC. The counsel emphasized that the applicant had adequate notice to the impending change in the policy on grant of promotion to GP Capt (TS). The adequacy of this duration is borne out by the fact that all his other course mates were promoted on time, which also further fortifies the fact that he was a clear underperformer.

15. The counsel strongly denied the allegations made by the applicant that the respondents had tampered/moderated/ illegally reduced the grading awarded by IO/RO/SRO. He further mentioned that ARs were dealt with as per the provisions of AFO 06/2012 when in the grading given by the last reporting officer was taken as the final grading of the AR. He further elaborated that review of all ARs for officers upto the rank of Gp Capt (TS) was carried out by a Board of officers and that such review is uniformly carried out for all officers and that therefore the applicant's apprehension was entirely misplaced due to his inadequate understanding of the policy and provisions. The counsel further added that the annualized performance feedback in the 18th, 20th and 22nd year of service had been

intimated to the applicant and that these indicated that the applicant was well below his peer group average.

16. The counsel mentioned that HRP 01/2009 dated 12.01.2009 was superseded by HRP 03/13 dated 28.08.2013. This HRP was applicable prospectively, and adequate gestation period was given in order to sensitise the IAF personnel as to the implications of this HRP, and provide adequate lead time for officers to achieve the required standards. He then concluded stating that the OA was bereft of any merit and therefore deserved to be dismissed.

Consideration of the Case

17. Having heard both parties, the issues that are required to be adjudicated are:

(a) Whether the Respondents were justified in considering the applicant for promotion to the rank of Gp Capt (TS) as per the provisions of HRP 03/2013 dated 28.08.2013.

(b) Whether the Respondents are entitled to review the ARs of the applicant.

Application of HRP 03/2013

18. The policy on grant of substantive promotion to the substantive rank was initially governed by HRP 01/2009 dated 13.01.2009. This has

since been superseded by HRP 03/2013 dated 28.08.2013. The issue at hand are the QRs which have been amended. The relevant extracts of HRP 03/2013 are given below:

1. *Subsequent to Govt approval of AVSC report, substantive promotion up to the rank of Wg Cdr and Gp Capt (TS) is granted to officers on their meeting the specified criteria. An analysis of promotion policy highlighted that the QRs stipulated for grant of time-bound Substantive promotions resulted in officers getting promoted even after being awarded punishment / censures for acts related to grave misconduct, moral turpitude or lack of integrity. Despite negative marks certain officers were getting promoted, owing to increase in the average AR gradings of the officers since the issuance of the earlier policy in 2009 The provisions to defer / withhold the promotion of officers against whom criminal cases are pending in civil courts are contentious. There was no clause for delaying / deferring promotions in respect of Fg Offrs who were held blameworthy in acts related to grave misconduct, moral turpitude or lack of integrity after administrative and disciplinary actions. Hence, the need for review in the QRs for grant of time bound substantive promotions.*

2. *The aim of this HRP is to lay down QRs and guidelines for grant of Substantive promotions up to the rank of Wo Cdr and Gp Capt (TS). The provisions contained in this policy are applicable to all Permanent Commissioned officers, Short Service Commissioned officers. Branch Commissioned officers and Service Entry Commission officers of all the Branches, other than Medical and Dental Branches.*

4. Qualitative Requirements (QRs): *The BoO would consider the following QRs prior to clearing the promotion of an officer:*

(a) Qualifying years of Service: *As per Govt. approval for grant of substantive promotions to the rank Flt Lt Sqn Ldr Wg Cdr and Gp Capt (TS) the officers with following reckonable years of Commissioned service will be considered:*

| Rank | Reckonable Permanent /Short Service Commissioned Service |
|--------------|--|
| Flg Offr | On Commissioning |
| Flt Lt | 2 Years# |
| Sq Ldr | 6 years* |
| Wg Ddr | 13 years* |
| Gp Capt (TS) | 26 years* |

Note 1: *In case a punishment, awarded as a consequence of disciplinary proceedings has an effect on the length of service then the reckonable service would vary according to the period awarded therein.*

Note 2: *For Engineering PC Branch officers, substantive promotion to the rank of Flt Lt would be granted on confirmation of commission and grant of ante- date.*

Note 3: * - With ante-date seniority where applicable for PC officers.

(b) AR Grading and Performance Assessment Criteria

(i) The minimum performance assessment criteria for grant of substantive promotions are as follows-

| Rank | ARs for consideration | Minimum Assessment Criteria |
|------------------------|---|--|
| Fg offr to Flt Lt | - | - |
| Flt Lt to Sqn Ldr | - | - |
| Sqn Ldr to Wg Cdr | - | - |
| Wg Cdr to Gp Capt (TS) | Last three years' reports would be considered for promotions till 31 May 2015. | Must have an aggregate grading of 18 In the last three years report with a grading of at least 6 in each year's report. The last AR is not an adverse AR Requirement of latest AR if due is mandatory. |
| | Last five years' reports would be considered for promotions from 01 Jun 2015 onwards. | An aggregate total of 33 in the last five years' report with a min grading of at least 6.5 in each year's AR and min 7 in two of the ARs in the last five years. The last AR is not an adverse AR Requirement of latest AR if due, is mandatory. |

(ii) If any one year's AR in the last three /five years (as applicable) is not available, the AR of the preceding year (of the three/five-year period) may be considered to make up the requirement of three/ five years ARs. However, requirement of last AR will be mandatory for all promotions except in those cases where AR has been raised in last two months/ no AR could be raised due to service reasons (like being on long courses posted abroad etc). In such cases the previous year's AR would be considered by the BoO as the last AR.

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19. The comparative details of the QR on AR criteria in both the HRPs is as given below:

| HRP | ARs for consideration | Minimum Assessment Criteria |
|---------------------------------------|---|--|
| HRP 2009 Wg Cdr to Gp Capt (TS) | Last three year's report would be considered. | (i) Must have an aggregate grading of 18 in the last three year's report with a grading of at least 6 in each year's report (ii) No adverse in the last report (iii) Requirement of latest AR, if due, is mandatory. |
| HRP 2013 Wg Cdr to Gp Capt (TS) | Last three year's reports would be considered for promotions till 31 May 2015. | (i) Must have an aggregate grading of 18 in the last three year's report with a grading of at least 6 in each year's report. (ii) The last AR is not an adverse AR. (iii) Requirement of latest AR, if due, is mandatory. |
| | Last five year's reports would be considered for promotions from 01 Jun 2015 onwards. | (i) An aggregate total of 33 in the last five year's report with a min grading of at least 6.5 in each year's AR and min 7 in two of the ARs in the last five years. (ii) The last AR is not an adverse AR requirement of latest AR if due, is mandatory. |

20. The Respondents are entitled to review existing policy and amend them as per the requirement of the establishments and changing circumstances. In this case, the reason for the revised policy is as given in Para 1 of the HRP 03/2013, which is reproduced below:

1. *Subsequent to Govt approval of AVSC report, substantive promotion up to the rank of Wg Cdr and Gp Capt (TS) is granted to officers on their meeting the specified criteria. An analysis of promotion policy highlighted that the ORs stipulated for grant of time-bound Substantive promotions resulted in officers getting promoted even after being awarded punishment / censures for acts related to grave misconduct, moral turpitude or lack of integrity. Despite negative marks certain officers were getting promoted, owing to increase in the average AR gradings of the officers since the issuance of the earlier policy in 2009. The provisions to defer / withhold the promotion of officers against whom criminal cases are pending in civil courts are contentious. There was no clause for delaying / deferring promotions in respect of Fg Offrs who were held blameworthy in acts related to grave misconduct, moral turpitude or lack of integrity after administrative and disciplinary actions. Hence, the need for review in the QRs for grant of time bound substantive promotions.*

21. The fact that the Respondents are entitled to revise and amend policies, or issue fresh policies has been upheld by AFT(PB) in its order dated 04.09.2023 in the case of **Wg Cdr Shalini Upadhyay Vs. Union of India & ors** in OA 814/2020. The relevant extracts are as under:

58. Thus, we have no hesitation in upholding the decision of the Service HQ having to issue fresh policy with change in circumstances as mentioned above, and elaborated earlier in the examination. Needless to state that all such changes are governed by the organisational requirement in ensuring constant operational preparedness of the Air Force.....

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71. Based on the above consideration we conclude the following: -
(p) Air HQ is authorised and entitled to make changes in their HRP from time to time, based on changing circumstances and organisational needs, as has been done from AOP Directives to HRP 04/2004, and to HRP 01/2019.

22. The Supreme Court in its judgment dated 14.09.2011 of **Hardev Singh Vs. Union of India** (Civil Appeal No. 3973 of 2010) has held that

when an officer is being considered for promotion, he is to be considered by the policy in vogue then. The relevant extracts are given below:

21. The above facts would make it clear that the cases of the appellant and others were never considered by the SSB in 2008 or prior to 1st January, 2009. It means that the cases were considered as per the new policy and, therefore, all submissions made on behalf of the appellant that the policy was changed after the process of selection had been started are not correct and, therefore, they are to be discarded.

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23. Thus, the Respondents were justified in considering the applicant for grant of substantive rank of Gp Capt (TS) as per HRP 03/2013 and we find no malafide in this action. The applicant has not been granted promotion only because he did not meet the laid down QR pertinent to AR criteria.

Review of ARs

24. The policy on rendition of AR is laid down in AFO 06/2012. The relevant aspects are extracted below:

18. The RO will be the officer senior to the IO and higher in the chain of command. The SRO will be the officer senior to the RO and higher in the chain of command. Grading / Av Grading given by the SRO or the last officer in the reviewing chain would be considered as the final grading of an AR. If the remarks of the reporting and reviewing officers are at variance, then the remarks annotated by the last reporting / reviewing officer would be considered as the final remarks. The final marks awarded to an appraisee would be reviewed in light of his/her performance profile. Any anomalies in assessment would be reviewed at Air HQ. Review of ARs for officers up to the rank of Gp Capt (TS) will be carried out by a board of officers (BOO) presided over by an officer who is of the same or higher rank than the last reviewing officer. Amongst numerous aspects, the appraisee's performance profile, job content, location and IO/RO/SRO combination are to be taken into account when carrying out this review and awarding the final marks.

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Review of ARs at Air HQ/Command HQ

48. Review of all ARs must be carried out at Command HQs/ Air HQs. The ARs of all officers up to the rank of Gp Capt (TS) should be reviewed by the senior most officers working under the respective branch head at Command HQ. These reviewing officers are to be designated by name by the AOC-in-C of the respective HO in writing. The letter authorising these officers for review at Command HQ should be sent to DPO-4 at Air HQs. The ARs of all officers of the rank of Gp Capt (Select) and above should be reviewed by AOsC-in-C at Command HQ and by PSOs at Air HQ.

49. Whenever the RO / SRO is posted at Command/ Air HQ, their review would be construed as Command HQ / Air HQ review. The reviewing officers at Air HQs /Command HQ should check correctness of the AR as mentioned in this AFO and should also include the following in their review: -

(a) ARs of Wg Cdrs holding appointments of Unit Commander, COO, CEO and C Adm O at Units / Stations / Wings should be reviewed by the AOsC-in-C at the Command HQ and the respective PSOs at Air HQ. ARs of Sqn Ldrs / Flt Lts holding the appointments of CO of units should be reviewed at the level of respective Branch heads /PSOs at Command 1 Air HQ.

(b) The rank of reviewing officer at Command HQs/ Air HQ should at least be the same as that of the last reviewing officer in the appraisal channel. If the reviewing officer so detailed is junior in service (even if of the same rank) to the officer who last reviewed the AR, then he/she should endorse the report if in agreement. In case he/she is not in agreement with the last reviewing officer, he is to put up the report for review to the next higher level. There is no mandatory period of contact with the appraisee for the Command review.

(c) Check the assessments, recommendations and remarks of the reporting officers for any inconsistencies and anomalies. Take necessary corrective action and detail the same in the remark's column. |

(d) Reviewing officers at Command HQ / Air HQ, who are not 10 / RO / SO, may give their overall assessment in Professional / Behavioural traits. They should enter the numerical grading in the boxes provided in their remarks column only if they are not in agreement with the SRO's grading. If they are in agreement with the SRO's assessment then they should put a cross mark in the boxes. Whenever a reviewing officer wants to change the numerical assessment assigned by the previous reporting officer, reasons for doing so must be adequately brought out in narrative form in the remark's column.

(e) All ARs with grading of 7.5 and above in either Professional factors or in Behavioural factors or in both and all Adverse ARs are to be reviewed by AOsC-in-C at Command HQ or respective PSOs at Air HQ.

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25. The policy on review of ARs by Air HQ has already been examined in our order dated 04.03.2024 in the case of **Gp Capt AP Ranganathan** Vs. **Union of India** in OA 987/2020, where we held the following:

22. The final review of ARs at Air HQ is governed by Para 18 of AFO 06/2012. Para 18 provides for review of AR in comparison to the past five-year performance profile of the officer. Since the record of past five-year performance profile is only available at Air HQ, the review contemplated in Para 18 can only be done by the competent authority at Air HQ and not by any authority in a lower formation including AOC-in-C at the Command HQ. On the basis of performance profile of the appraisee, the Air HQ reviews the final grading/marks without any change of assessment made in the remark's column. The issue of Final Review of AR at Air HQ has been examined and upheld by this Tribunal in numerous cases;

- (a) Gp Capt VT Parnaik Vs. Union of India [OA 600 Of 2010] dated 04.02.2011*
- (b) Gp Capt TM Rao Vs. Union of India [OA 155 Of 2011] dated 06.01.2012*
- (c) Gp Capt RK Khattri Vs. Union of India [OA 376 Of 2013] dated 15.01.2014*
- (d) Gp Capt NPS Thaprial Vs. Union of India [OA 724 of 2019] dated 15.03.2019*

Thus, we have no trouble in upholding the primary view undertaken at Air HQ as part of the organizational system of maintaining objectivity and conformity in the appeal system.

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We therefore find that the Respondents are entitled to review the ARs, a policy which is uniformly applied to all officers. Thus, we find no malafide in this action of the respondents.

Conclusion

26. In the light of the above consideration we conclude that the Respondents are entitled to review AR as per AFO 06/2012 and grant substantive promotion to the rank of Gp Capt (TS) as per HRP 03/2013 and that there has been no malafide in the action of the Respondents.

The applicant was not granted promotion only because he did not meet the minimum QR laid down for AR Criteria in HRP 03/2013.

27. The OA is therefore, dismissed being bereft of any merit.

28. No order as to costs.

Pronounced in open Court on this day 1st of April, 2024.



(RAJENDRA MENON)
CHAIRPERSON



(P M HARIZ)
MEMBER(A)

/ashok/