

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

OA 1062/2022

Lt Col Pratap Rajnish Singh ... Applicant
Versus
Union of India & Ors. ... Respondents

For Applicant : Mr. S S Pandey, Advocate
For Respondents : Gp Capt Karan Singh Bhati, Sr CGSC

CORAM :

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

ORDER

Invoking the jurisdiction of this tribunal under Section 14 of Armed Forces Tribunal Act, 2007, the applicant has filed the OA with following prayers:-

(a) Call for the records based on which the Respondents have retained the assessment of the FTO/HTO in the ACRs covering the period from May 2008 to Dec 2008, Jun 2010 to Dec 2010 and Aug 2015 to May 2016, or any other CRs including the CRs covering the period from Jan 2011 to Sep 2011, Sep 2011 to Dec 2011 which needed deeper scrutiny and use the same to consider the Applicant for promotion leading to his non empanelment and thereafter rejecting the Complaints filed by the Applicant including the Statutory Complaint vide order dated 03.03.2021 and thereafter quash all such orders including order dated 03.03.2021.

(b) Direct the Respondents to remove any inconsistent assessments/ inherent aberrations by any of the reporting officers particularly FTO/HTO in the ACRs covering the period from May 2008 to Dec 2008, Jun 2010 to Dec 2010 and Aug 2015 to May 2016, or any other CRs particularly the CRs covering the period from Jan 2011 to Sep 2011, Sep 2011 to Dec 2011 resulting in non-empanelment of the Applicant and thereafter grant him fresh consideration by way of special review by directing the Respondents to give due weightage proportionate to the immense contribution in OP Nangali I & II and OP Mandala where he lost his right leg in the service of the nation in the capacity of war wounded disabled soldiers in the true spirit of MS Branch Policy No 04547/MS Policy dated 13 Jan 2012 on Career Prospects of Battle Casualty (War Wounded) Officers by giving him a fair opportunity for SB-3 and promoting him to the Rank of Colonel with all consequential benefits of back wages, continuity of service and seniority etc by giving due credit to the serious injury.

Brief Facts of the Case

2. The applicant is a serving Indian Army Battle Casualty (War Wounded) disabled Infantry Officer commissioned on 13.05.2000, who suffered below knee amputation with 60% orthopedic disabilities while participating in Operation and later on transferred to Army Education Corps (AEC). The applicant while serving in Infantry sustained injury on 29.03.2006 wherein he lost his right leg while performing duties of Company Commander in an Intense Counter Insurgency operation on Line of Control and was awarded Parakram Padak (Wound Medal) for devotion to duty. The applicant was posted in various field areas and participated in OP RAKSHAK, OP MANDALA, OP NANGLI-I and OP NANGALI-II. He was later transferred to AEC owing to disability in 2007 by way of Inter Arm Transfer. The applicant was considered by the No 3 Selection Board for the promotion to the rank of Selection Grade Colonel, wherein he was held to be 'Not Empanelled' in all his chances.

3. The Applicant submitted a Non Statutory Complaint dated 01 Oct 2016 against CR 08/15-05/16. As per the competent authority, the said complaint was duly examined in comparison to his overall profile and relevant documents found

that no professional differences of the complainant with the FTO are visibly reflected in the ratings given by the FTO who is an AEC Officer, and that the FTO has been fair and just in his ratings. Accordingly, the competent authority rejected the Non Statutory Complaint dated 01 Oct 2016 vide a detailed order dated 29 Mar 2017.

4. The applicant submitted another Non Statutory Complaint dated 01 Dec 2017 aggrieved by his non-empanelment by No.3 SB (Fresh) held in Sep 2017, and it was the opinion of the competent authority that all CRs including the impugned CRs 05/08-12/08, 06/10- 12/10 and 08/15-05/16 in the reckonable profile were well corroborated, performance based and technically valid, and thus, the competent authority rejected the Non Statutory Complaint dated 01 Dec 2017 vide a detailed order dated 09 May 2018.

5. When held to be non empanelled to the rank of Colonel by No 3 Selection Board (First Review) held in Oct 2018, the Applicant submitted a Statutory Complaint dated 25 Feb 2019, which was rejected by the competent authority on the grounds that all CRs in the reckonable profile including the impugned CR 05/08-12/08, 06/10 - 12/10 and 08/15 - 05/16 were well corroborated, performance based and technically valid,

and hence, Statutory Complaint dated 25 Feb 2019 was dispensed of vide detailed order dated 03 Mar 2021.

Submissions on behalf of Applicant

6. It is the case of the applicant that he was granted Permanent Commission on 13.05.2000 in the regiment of Sikh Light Infantry of the Corps of Infantry. Applicant submits that in the year 2008, the applicant after a prolonged treatment finally got discharged in Low Medical Category but being a Battle Casualty considering the obligation of the organization to retain a Battle Casualty Officer was given option to get himself transferred to Army Education Corps by way of Inter Arm Transfer and the applicant accepted the same. Post his transfer to AEC, the applicant has tenanted prestigious staff and instructional appointments despite being a Battle Casualty (War Wounded) with a challenge of being an amputee which is evident from the fact that the applicant was instrumental in creation of CTL (Computer Training Lab) and Sports Infrastructure in 47 Infantry Brigade/32 Infantry Brigade where he was posted as an Education Officer. Later on, during his tenure with AEC Training College and Centre, the applicant was appreciated by the Chief Instructor for excellent work as an Instructor for Personality Development Programme-16 which

was held from 05.11.2010 to 17.01.2011 and same was reflected in DO No. 20012/PDP/B/CI dated 22.01.2011.

7. Learned counsel representing the applicant submits that despite the applicant having a orthopedic disability of being an amputee officer with low medical category he was denied an opportunity of getting posted to CAT A establishments/Sainik Schools and Military Schools. The applicant felt that his induction in AEC was not taken well by the officers originally commissioned in AEC which is generally a known fact in such Inter Arm Transfer. It is his apprehension that in his very first ACR covering the period from 16.05.2008 to 31.12.2008, when he was assessed by his IO, the then Dy Cdr 32 Bde and the RO, the then Cdr 32 Infantry Bde, he may not have been assessed outstanding in the Box Grading probably because IO and RO may not have taken into consideration that the applicant was still unmarried and was battling the traumatic experience of having lost his right leg at such a young age and yet he believes that the assessment was near outstanding.

8. Elaborating further, learned counsel submits that as an AEC officer, the applicant was required to be assessed by the AEC Corps Technical Officers as Technical Part of Reporting where the Col Education of the HQ 11 Corps/Principal Sainik School Chittorgarh was the First Technical Officer and the Col

Education of the HQ Western Command was the Higher Technical Officer for the CR covering the period 16.05.2008 to 31.12.2008, and that despite the near outstanding assessment of the IO and RO and NIR by the FTO, the then Col Education HQ 2 Corps/Principal Sainik School Chittorgarh as the applicant did not complete the 90 days of physical service, the HTO (Col Education, HQ Western Command) severely damaged his assessment with several '7s'.

9. Learned counsel submits that the downgraded assessment of the applicant with '7s' in his figurative assessment was communicated to the applicant in the extract by the Respondent No 3 vide the letter dated 09.07.2012 and was signed by the HTO in 2010 after 4 years which was not at all commensurate with the grading of the other reporting officers as also the on ground performance of the applicant but he remained under the bonafide relief that such assessment will be removed by the Respondent No. 3 during the internal assessment.

10. It is further submitted by the applicant that due to most discriminatory and arbitrary policy of the Respondents of not posting the Battle Casualty (Disabled) AEC Officers in the CAT A Training Establishments, he was again posted to HQ 47 Infantry Brigade where he was again assessed by the IO for the CR covering the period 11/06/2010 to 31/12/2010 (then Dy Cdr

HQ 47 Bde) and the RO (then Cdr HQ 47 Infantry Bde) where he may not have been assessed outstanding in the Box Grading but near outstanding. Since, the Applicant did not have the requisite service of 90 days under the FTO (then Col Education 21 Corp), the HTO (then Col Education HQ Southern Command) assessed him as FTO on technical aspects and downgraded such assessment with '7s' and same was not communicated to the applicant before sending the same to the MS Branch which was fwd vide letter dated 27.04.2011.

11. With respect to the communication of the gradings, applicant submits that the extracts of the HTO (then Col Edn HQ Southern Command/HAD Indian Military Academy, Dehradun) for the period 01 Jan 2011 to 26 Sep 2011 and 27 Sep to 31 Dec 2011 was not received by the applicant while the FTO (then Col Edn HQ 21Corps) shared the extracts with the applicant and rated him nearly outstanding for the period of the CR covering the period 01.01.2011 to 26.09.2011 and 27.09.2011 to 31.12.2011 where he rated the applicant nearly outstanding. The extracts for the period 01.01.2012 to 13.06.2012 initiated by the FTO/HTO, (then Col Education HQ 21 Corps/HQ Southern Command) were not forwarded to the applicant.

12. Drawing our attention to the third impugned CR, learned counsel submits that in July 2015, the applicant got posted to BEG Centre, wherein he discharged his duties with utmost dedication and complete devotion, while performing dual appointment of Officer-in-Charge Clerks Training School/HRDC (Human Resource Development Centre) of Bengal Engineer Group Centre, and that since the appointment of the applicant was under the technical monitoring and direct supervision of his IO & RO at BEG & Centre, his FTO (Col Education, Southern Command) was not involved in his assessment in any of the duties performed by him at BEG & Centre nor was he aware of the Charter of the Duties of the applicant for which he sought clarification on 02.09.2016.

13. Referring to the factual background, learned counsel submits that the applicant vide his DO letter dated 08.02.2016 had informed to BGS (Training), HQ Southern Command about the shortcomings and inadequacies of Southern Command HRDC which was under the First Technical Officer i.e. Col Education, Southern Command, and therefore he did not like it and openly expressed his displeasure. The applicant personally met the then BGS (Training), HQ Southern Command well in advance at his office to apprise him about the possibility that the FTO may not have assessed him objectively in his technical

reporting for the year 2015-16 which was crucial and also the cut-off ACR for the No. 3 SB.

14. Addressing further, learned counsel submits that despite near outstanding assessment by the IO and RO, the then Col Edn, HQ Southern Command, with malafide intention and malice did not grade the applicant in technical reporting in the CR covering the period from Aug 2015 to May 2016 as per his demonstrated on ground performance that too, when he was not even aware of the charter of the duties of the applicant, whereas the IO and RO graded the applicant outstanding. Moreover, the FTO downgraded the applicant to a blanket '8' from 'Outstanding' to 'Very Good' in all the performance variables which was contrary to the policy governing the initiation of ACRs and was liable to be set aside on this ground itself.

15. Arguing further, learned counsel submits that the applicant thereafter wrote a complaint DO letter dated 12.08.2016 to the then BGS (Training), HQ Southern Command and Officiating GOC, MG&G Area, bringing out the details of the wrongdoings in the technical reporting for the CR 2015-2016 by Col Education, HQ Southern Command. However, no action was taken on the same of which the

applicant was informed vide HQ South Western Command their letter dated 23.09.2016.

16. Addressing the illegality of the aforesaid CRs, learned counsel submits that despite having a large number of achievements on the operational front which were appreciated and endorsed by various IOs of the applicant, the CRs of the applicant post his conversion to AEC were subjective due to the upright and forthcoming outlook of the applicant, wherein he wanted to bring in welcome changes for the betterment of the organization. Moreover, the impugned CRs of Jan 2008-Dec 2008, June 2010 - Dec 2010 and Aug 2015-May 2016 are neither consistent with his demonstrated performance throughout his career because this Tribunal must appreciate the fact that a team commander who is credited with having accomplished many feats and having lost a right leg in such fray, and who was willing to continue in his parent arm despite being a low medical category, and even, after his conversion brought laurels to his new service, i.e. AEC deserves nothing but the best in his CRs. Therefore, the three subjective CRs in the whole career of the applicant deserves to be expunged.

Submissions on behalf of the Respondents

17. Per contra, learned counsel for the respondents submits that the Army has a pyramidal structure and the vacancies for promotion to higher ranks are limited. The promotion boards select the best officers from a particular batch who are considered based on the Confidential Reports, performance in career courses, Honours and Awards and overall service profile which are considered for drawing a merit list. The merit lists are placed before the board members of the Promotion Board and further subjected to award of Value Judgments marks out of 5/100 for preparation of final merit list from which the officers who are within the criteria of vacancies available are promoted to the next rank.

18. Placing reliance on the aforesaid argument, learned counsel submits that in case any officer gets relief through the mechanism of Statutory/Non Statutory complaints he is entitled Special Consideration with the dispensations affecting the changed profile, and that the Outstanding grading of '9' is awarded based on the exceptional performance of the ratee officers and cannot be claimed as a right.

19. Drawing our attention to the consideration by No.3 SB for promotion to the rank of Colonel, learned counsel submits to the effect:

Consideration by No.3 Selection Board		
Fresh Case	Sep 2017	Not Empanelled
First Review Case	Oct 2018	Not Empanelled
Final Review Case	Oct 2019	Not Empanelled
Final Review (W) Case	Feb 2020	Withdrawn
Final Review (W) Case	Sep 2020	Withdrawn
Final Review (W) Case	Sep 2021	Not Empanelled

20. Arguing on the issue of award of marks in CR, learned counsel submits that it is solely based on the assessment by the Reporting Officers who have observed the officer's performance during the period of report and thus are competent for objective assessment and that such assessments fall outside the purview of judicial review unless the Confidential Reports are technically

invalid or in contravention to rules and regulations or a bias/arbitrariness is clearly established to the satisfaction of the Court.

21. It is the case of respondents that only upon considering all aspects of the non-statutory and the statutory complaint and the redress sought by the applicant, it has been determined that the contested Confidential Report (CR) for the period Jan 2008-Dec 2008, June 2010 - Dec 2010 and Aug 2015-May 2016 are fair, objective, well-corroborated, performance-based, and technically valid. As there is no evidence of bias or subjectivity, the impugned CR does not warrant any interference.

Considerations

22. We have heard the submissions of learned counsel on behalf of both parties and carefully perused the material placed before us including the pleadings, Confidential Dossiers and Statutory Complaints of the applicant. The only issue for adjudication before us is whether the impugned Confidential Reports have been appropriately dealt with by the Competent Authority for redressal and whether the applicant is entitled to be empanelled for promotion in any of the No.3 SBs conducted with respect to the applicant for the promotion to the rank of Colonel?

23. At the outset, before analysing the documents placed before us as also the submissions of the rival parties, we feel it essential to take note of the exceptional operational contributions of the applicant in the Corps of Infantry. The applicant has participated in challenging operational environments in OP RAKSHAK wherein he conducted OP NANGALI-I and OP NANGALI-II as anti-terrorist operations. We also express our empathies to the applicant of having lost his right leg during the conduct of operation for which he was awarded Parakram Padak (Wound Medal) for his demotion to duty. In consonance to the policy, being a Battle Casualty Officer he was retained in military service and transferred to Army Education Corps (AEC). We are sanguine, as much as us, the Indian Army itself and his reporting officers in various assignments that the applicant has held would have taken note of the bravery and sacrifice of the applicant and accordingly judged him while rendering Confidential Reports of the applicant.

24. However, having taken note of the same, it is our considered view that the legally we cannot direct the various reporting officers to initiate Outstanding reports in favour of the applicant. The applicant post his transfer to AEC has served in various Headquarters and training establishments under

different superior officers from all arms and services who have generated Confidential Reports based on his performance and in our fair assessment would be well aware of the physical disabilities of a war wounded officer for which they are expected to have granted him due credence where necessary. Similarly, the competent authorities while analysing the two Non-Statutory and one Statutory complaint seem to have taken note of the above aspect.

25. We have perused the board proceedings of successive No 3 SBs which have considered the applicant for promotion to the rank of Colonel. Our findings are recorded as under:

(a) The applicant was considered as a fresh case in NO 3 SB held from 27.09.2017 to 07.10.2017. The board had considered officers for Corps of AEC for three vacancies out of 19 candidates. The applicant was not empanelled due to low quantified marks out of 95 and correspondingly less Value Judgment Marks due to which he is placed at Order of Merit 14 out of 19 candidates.

(b) In the Promotion Board No 3 SB conducted from 22.10.2018 to 31.10.2018, the applicant was considered as a Fresh Review Case for five vacancies in AEC. The applicant is at Order of Merit 25 and therefore non-empanelled for promotion.

(c) The applicant was considered as a Final Review case by NO 3 SB held from 16.09.2019 to 25.09.2019. In the said board the applicant was considered for 04 vacancies in which he was 'Withdrawn' and therefore not assessed by the board.

(d) No 3 SB held from 24.02.2020 to 02.03.2020 considered the applicant as a Final Review (Withdrawn) case and once again he was 'Withdrawn' in this board and not assessed.

(e) The applicant was also similarly not assessed by No 3 SB held from 28.09.2020 to 01.10.2020; being listed in the category of officers 'Withdrawn'.

(f) Lastly, in the No 3 SB held from 20.08.2021 to 23.08.2021, the applicant was considered a Final Review (Withdrawn) case of 2000 batch and he was 'Not Empanelled' for promotion due to being low in merit compared to the bench mark of last officer empanelled.

Having perused the board proceedings of No 3 SB in detail, we have thus come to a conclusion that the successive boards have been held as per policy in vogue and the non-empanelment of the applicant as also his interim withdrawals from the boards are as per policy in vogue and

therefore we do not find any infirmity or illegality in the conduct of the same.

26. We have also perused the Confidential Reports Dossier of the applicant wherein his entire service and ACR records have been filed. In addition we have also examined the files of concerned branch of MS Branch & Complaint Advisory Board of COAS secretariat wherein the complaints of the applicant have been analysed after perusal of board proceedings of No 3 SB and the entire CR record.

27. It is our observation that quite contrary to the averments on behalf of the applicant, none of the CRs are near 'Outstanding' as perceived by him. In all the reports placed on record the applicant has been consistently graded above average in box gradings with majority of above average and a few outstanding gradings in various qualities. The Non-Statutory complaint dated 01.10.2016 against CR from August 2015 to May 2016 has been rejected by GOC-in-C Southern Command on 27.03.2017. However, while going through the analysis of the Personal Performance Sheet it is our earnest observation that all the FTOs and HTOs from report May 2008 to December 2008 to and August 2015 to May 2016 have been noted as 'strict' raters and resultantly their gradings are comparatively in the lower bracket vis-à-vis the grading of IO, RO and SRO of the

applicant in majority of the reports placed on record. Therefore arbitrariness and bias by FTO and HTO cannot be ruled out.

28. Having observed in our scrutiny of the reports, we do not consider it appropriate to arbitrarily expunge all such gradings by strict FTOs and HTOs as neither do we have insight into the professional performance of the applicant nor the expertise to expunge the ratings of strict raters by a judicial order. It is considered essential and in interest of justice that an expert body of officers assigned the responsibility of analysing the complaints of the officer exercise more empathetic judiciousness while disposing off the complaint of this applicant as we have observed that assignments the applicant has held after his transfer to AEC, are well away from the direct observation or supervision of the FTO and HTO and therefore we can not entirely rule out subjectivity or arbitrariness in award of gradings by them; which are independent of gradings of IO, RO and SRO as is seen from the movement of two parts of the CRs i.e. technical portion of the CR being initiated by the technical channel simultaneously and in this case there is substantial reason to note that there is limited insight of the technical reporting channel into the performance of the ratee.

29. In light of the above observation we consider it appropriate that the complaint of the applicant is re-analysed de

novo in interest of justice and also in consideration of the fact that the applicant is a war wounded officer who has been transferred to AEC from Infantry. If redressal is granted to the applicant, he shall be eligible for re-consideration by No 3 SB as a Special Review Case.

30. The case is remanded back to the respondents with aforesaid directions which shall be given affect within three months from the date of this order. If still aggrieved, the applicant shall have the liberty to re-agitate his prayer in accordance with law.

31. No order as to costs.

32. Pending miscellaneous application, if any, stands closed.

Pronounced in the open Court on ¹⁸ day of September, 2024.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

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

/akc/