

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

OA 1283/2021

Brig Rajeev Ohri, VSM **Applicant**
Versus
Union of India and Ors. **Respondents**

For Applicant : Mr. T. Parshad, Advocate
For Respondents : Dr. V.S. Mahndiyani, Advocate

CORAM

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

ORDER

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, this application has been filed by the applicant praying for the following:

- (a) Summon the relevant records relating to the consideration of and decision on the statutory complaint dated 04 May 2020 submitted by the applicant and quash the order of the Central Government dated 02 Mar 2021 rejecting the aforesaid statutory complaint.
- (b) Summon the relevant records relating to the Selection Board's No. 1 (No. 1 SB) which considered the petitioner for promotion to the rank of Maj Gen as a Fresh case in Jul 2019

and as a First Review case in Aug 2020, and quash the results of both the aforesaid No. 1 SB qua the applicant as unjust and illegal, being arbitrary and contrary to law.

(c) Direct the respondents to reckon the CR for 01 Aug 2018 – 30 Apr 2019 and 01 Jul 2019 – 30 Apr 2020, earned by the applicant in the appointment of 'Brig PMO SURAJ' as 'Non-criteria' CRs and NOT as 'Criteria' CRs, and quantify them accordingly in the No. 1 SB.

(d) Direct the respondents to consider the applicant afresh as the Fresh case for promotion to the rank of Maj Gen by No. 1 SB immediately.

(e) Pass any other order or direction that this Hon'ble Tribunal may consider appropriate under circumstances of the present case the

(f) Allow the present application with costs

(g) In the interim, direct the respondents to keep one vacancy in the rank of Major General in the Corps of Signals vacant till disposal of the present OA.

Brief Facts of the Case

2. The applicant was commissioned into the Army (Corps of Signals) on 09.06.1990 as a Technical entry with two years ante

date reckoning 1988. The applicant was promoted from time to time and was considered for promotion to the rank of Maj Gen by No 1 SB in Jul 2019 as a fresh case. The applicant was non-empanelled and, therefore, filed a statutory complaint dated 04.05.2020. In the meantime, the applicant was considered by No 1 SB in Aug 2020 as a first review case and remained non-empanelled. Subsequently, the competent authority rejected the statutory complaint vide order dated 02.03.2021.

3. It is the applicant's case that when the applicant was posted as DDG PMO SURAJ the appointment was a criteria appointment. However, in Jul 2018, the appointment of DDG PMO SURAJ was redesignated as a non-criteria appointment. In Apr 2019, when the cut off CR for the first consideration by No 1 SB scheduled in Jul 2019 was called for, the applicant's CR was initiated as in a non-criteria appointment. However, it was later seen from the records that this CR had been recorded as a criteria report by the MS Branch and so considered by the No 1 SB. Resultantly, there was no non-criteria report of the applicant in the rank of Brig and therefore his non-criteria report in the rank of Col was extrapolated in the reckonable profile and this had caused major prejudice to the applicant, resulting in him not being empanelled. In a similar

manner, the second cut off CR 7/19 to 4/20 initiated for the No 1 SB in Aug 2020 (First Review) was also initiated by his IO as a non-criteria CR. However, this too was recorded as a criteria report, once again causing major prejudice to the applicant. The applicant submitted applications to the MS & the COAS to review the order but was of no avail. Thus, aggrieved by the non-empanelment and the rejection of his statutory complaint, this OA has been filed.

Arguments by the Counsel for the Applicant

4. The counsel reiterated the service profile of the applicant and highlighted the applicant's achievements. The counsel then emphasized that the crux of the case was that two non-criteria reports had been recorded as criteria reports resulting in a situation that since there were no non-criteria reports in the rank of Brig, the non-criteria reports in the rank of Col had to be extrapolated for consideration by the No 1 SB.

5. The counsel then elaborated the details pertaining to the applicant's posting as DDG PMO SURAJ and how the criteria appointment of DDG was redesignated as a non-criteria appointment. He further elaborated how consequent to the re-designation of the appointment, the two CRs of the applicant initiated as reports in a non-criteria appointment had been recorded

as criteria reports by MS Branch. The counsel drew our attention to the letters dated 26.04.2012 (Annexure A-2) and 22.11.2018 (Annexure A-4) and elaborated on the redesignation of criteria appointments. The counsel then emphasized that once the appointment of DDG had been redesignated as a non-criteria appointment, and when the CR was also initiated as a report in a non-criteria appointment, there was no reason for the MS Branch to record it as a criteria report. The counsel then took us through the representation of the applicant dated 10.08.2020 (Annexure A-7) and the reply received from MS Branch (Annexure A-10). The counsel then elaborated that the respondent's contention had been that since the applicant had been holding the appointment of DDG prior to its redesignation, they were to be given the benefit of continuing in the appointment as a criteria appointment, as mentioned at Para 3 of the respondent's letter dated 22.11.2018 '*Criteria Appointments : Major Generals and Brigadiers*'. The counsel then emphatically stated that Para 3 of this was not applicable to the applicant. The counsel then drew our attention to the QSS policy dated 23.12.2017 and with special reference to Para 7 (*Distribution of CR Marks*), the counsel elaborated that for No 1 SB, non-criteria in the rank of Brig and Col were both relevant with 19 and 09 marks

respectively. Thus, with the absence of non-criteria appointment as Brig, the non-criteria of Col was extrapolated.

Arguments by the Counsel for the Respondents

6. The counsel briefly recapitulated the prayers made by the applicant and emphasized that while the applicant had prayed that his two CRs be recorded as non-criteria reports, he had not challenged the re-designation undertaken by the policy dated 22.11.2018. The counsel then drew our attention to both the policies, dated 26.04.2012 and 22.11.2018, and emphasized that Para 4 of the letter dated 26.04.2012 was identical to Para 3 of letter dated 22.11.2018, wherein, in both policies it was stated that *'Brigadiers presently tenanted appointments listed earlier as criteria appointments and deleted with the issue of this letter will be granted benefit of criteria status for the criteria tenure'*. Thus, while Para 4 of the earlier policy was not challenged, the same issue in Para 3 of the 2018 policy was now being challenged in this OA. The counsel then emphasised that this therefore implied that the policy of 2012 had been accepted then, yet the same issue was now being contested. The counsel then stated that the applicant had earned four CRs in the appointment of DDG PMO SURAJ and under the provisions of Para 3 of the 2018 policy, all the four CRs were

considered as criteria appointments, and that since the weightage to criteria reports was more, it was more beneficial to the applicant.

7. Further referring to the policy letter dated 26.07.2016 (Annexure A-3), the counsel explained that this was meant to ensure uniformity in how various designations/appointments were mentioned in correspondence, while policies of 2012 and 2018 were letters listing various appointments which are to be considered as criteria appointments. Thus, what was relevant for CR issues were the policies of 2012 and 2018, and the allowance these granted an officer in a re-designated appointment to continue in the appointment as a criteria appointment, even if there was a change in the criteria/non-criteria status of the appointment with the issue of these policies. Therefore, the designation included at Annexure A-5 was in tune with policy and the criteria/non-criteria of the appointment was indicated at Para 4 of the CR form. He further added that in the applicant's case even though as per the policy of 2018, he was to continue in the appointment as criteria, the status indicated at Para 4 of the CR was 'non-criteria'. The counsel then drew our attention to the MS Branch letter dated 15.5.2020 (Annexure A-10) where in the details have been explained to the

applicant with reference to his application dated 18.03.2020 (Annexure A-7).

8. The counsel then drew our attention to the statutory complaint dated 04.05.2020 filed by the applicant against his non-empanelment by No 1 SB in Jul 19 and said that the applicant had impugned six CRs in the rank of Brig and one CR in the rank of Col, all of which were found to be well corroborated, performance based and technically valid. Thus there being no bias or subjectivity, the complaint was rejected. He further, added that the applicant had not been empanelled due to his overall comparative merit. The counsel concluded by stating that the applicant had been posted to the appointment of DDG PMO SURAJ on 27.12.2016, when the said appointment was a criteria appointment as per policy of 2012. That the applicant had earned 04 CRs in this appointment. Since the applicant was already holding the appointment when the 2018 policy was issued, his CRs for the periods 08/18-04/19 and 07/19-04/20 were also considered as criteria reports as per the policy and accordingly recorded by MS Branch. Thus, as and when the MS Branch data base is updated with these inputs, the same is reflected in the Paramount Card of the officer too. The counsel emphasized that the CRs had been correctly recorded as criteria as

per policy and therefore, there was no merit in the OA and that it be dismissed.

Consideration

9. Having heard both sides, the issues that are required to be adjudicated are:

(a) Whether the respondents were justified in rejecting the statutory complaint dated 04.05.2020.

(b) Whether the respondents were justified in recording two CRs earned as Brig PMO SURAJ as criteria appointment.

(c) Whether the applicant was fairly considered by No 1 SB.

10. The respondents have submitted the CR dossier, file pertaining to the examination of the complaint and the Board Proceedings of the No 1 SB. These have been examined by us.

Policy

11. Vide policy letter No 04560/1/MS Policy 26.04.2012, the list of criteria appointments for Major Generals and Brigadiers of all Arms and Services was promulgated. For Signals there were 10 appointments including that of DDG PMO SURAJ. This list of criteria appointments was revised vide policy letter No 04560/1/MS Policy dated 22.11.2008 in which the criteria appointments for Brigadiers of Signals was reduced from the earlier 10 to six. The four

appointments removed from criteria appointments included DDG PMO SURAJ. Relevant extracts of both letters are reproduced below:

Policy Letter No 04560/1/MS Policy 26 Apr 2012

CRITERIA APPOINTMENTS: MAJOR GENERALS AND BRIGADIERS

1. Reference MS Branch letter No 04560/1/MS Policy dated 08 Jun 2004 (as amended).
2. MS Branch letter at reference lists out criteria appointments in the ranks of Major General and Brigadier. The competent authority has approved a revised list of criteria appointments in the rank of Brigadier. Criteria appointments in the rank of Major General, as existing, remain unchanged.
3. Consolidated list of criteria appointments in the rank of Major General and revised list of criteria appointments in the rank of Brigadier, are as given at Appendix A and Appendix B respectively to this letter.
4. Brigadiers presently tenanted appointments, listed earlier as criteria appointments and deleted with issue of this letter, will be granted benefit of criteria status for the entire tenure. Brigadiers posted to appointments newly included in the list of criteria appointments as per Appendix B to this letter, will be granted criteria status only for Confidential Reports initiated after date of issue of this letter.

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Sd/-
(Ashok Singh)
Col
Col MS (P, CM & C)
For Military Secretary

Appendix B
(Refers to Para 3 of MS
Branch letter No
04560/1/MS Policy
dated 26 Apr 2012)

CRITERIA APPOINTMENTS IN THE RANK OF BRIGADIER

Ser No Arms/Services Appointments

1 to 4	xxxxxx	xxxxxxxx
5	Sigs	(a) to (g) xxxx (h) DDG PMO SURAJ
6 to 13	xxxxx	xxxxxx

Policy Letter No 04560/1/MS Policy 22 Nov 2018

CRITERIA APPOINTMENTS: MAJOR GENERALS AND BRIGADIERS

1. Reference MS Branch letter No 04560/1/MS Policy dated 26 Apr 2012 (as amended from time to time).
2. Revised list of criteria appointments in the rank of Major General and Brigadier are as given at Appendices A and B respectively to this letter.
3. Brigadiers presently tenanted appointments, listed earlier as criteria appointments and deleted with issue of this letter, will be granted benefit of criteria status for the entire current tenure. Brigadiers posted to appointments newly included in the list of criteria appointments as per Appendix B to this letter, will be granted criteria status only for Confidential Reports initiated after date of issue of this letter.

Appendix B
(Refers to Para 2 of MS Branch letter
No 04560/1/MS Poli dated 22 Nov 2018)

CRITERIA APPOINTMENTS IN THE RANK OF BRIGADIER

Ser No Arms/Services Appointments

1 to 4	xxxxxx	xxxxxxxx
5	Sigs	(a) CSO Corps (b) Comdt AHQ Sigs (c) Cdr EW Gp (d) Cdr 5 Sig Gp (e) DDG SI Northern Z (f) Cdr 4 Sig Gp

12. At Para 4 of the letter dated 26.04.2012 it is stated '4. Brigadiers presently tenanted appointments, listed earlier as criteria appointments and deleted with issue of this letter, will be granted benefit of criteria status for the entire tenure. Brigadiers posted to appointments newly included in the list of criteria appointments as per Appendix B to this letter, will be granted criteria status only for Confidential Reports initiated after date of issue of this letter'.

13. The same provision has been provided in Para 3 of the letter dated 22.11.2018. '3. *Brigadiers presently tenanted appointments, listed earlier as criteria appointments and deleted with issue of this letter, will be granted benefit of criteria status for the entire current tenure. Brigadiers posted to appointments newly included in the list of criteria appointments as per Appendix B to this letter, will be granted criteria status only for Confidential Reports initiated after date of issue of this letter.*

Complaint

14. The applicant submitted the statutory complaint dated 04.05.2020 against his non-empanelment by No 1 SB held in Jul 2019, wherein the applicant was considered as a fresh case. The applicant had impugned a total of seven CRs one CR in the rank of Col (CR-1 03/9-08/9) and six CRs in the rank of Brig (CR-02 3/5-6/5; CR-3 7/5-9/15; CR-4 10/5-6/16; CR-5 7/16-12/16; CR-6 8/18-4/19 and CR-7 07/19-4/20).

15. CR-1 was earned as Dy Cdr of 115 Inf Bde, and the applicant's plea was that since the environment took some time to accept and acknowledge a Signals officer as the Dy Cdr, he apprehends that his IO did not rate him 'Outstanding'. CRs-2, 3, 4 and 5 were earned as Chief Signals Officer (CSO) of a Corps along the LAC. The applicant

had contended the technical reports by SO-in-C were inconsistent. CR-6 and 7 were earned as Brig PMO SURAJ. It was the contention that both these CRs though initiated as non-criteria reports were recorded as criteria reports. Resultantly, due to lack of non-criteria reports in the rank of Brig, his non-criteria reports from Cols rank was extrapolated, causing prejudice. The applicant had stated that with the revised policy of Nov 18, the appointment of Brig PMO SURAJ had become a non-criteria appointment and that though the policy stated that those already in criteria appointments will continue in criteria reports, the policy was silent on the status of those who had already earned their criteria reports, like the applicant. In the light of the above mentioned grounds, the applicant had prayed that his entire reckonable profile be reviewed and aberrations/inconsistencies, if any be set aside; that CR-6 and 7 be recorded as non-criteria reports and that he be reconsidered afresh by No 1 SB.

16. The examination reviewed 18 CRs forming part of the applicant's reckonable profile from 06/06 to 04/19. 11 CRs were earned in the rank of Col and seven CRs in the rank of Brig. At the time of the examination, CR-7 (7/19-4/20) was also included in the examination. The examination concluded that all CRs in the rank of

Col and Brig were all clear above average/outstanding reports with no figurative assessment of '7s' or any weak remarks. With reference to the non-criteria reports CR-6 and CR-7 being recorded as criteria reports, the examination concluded that it had been done as per policy and implemented uniformly for all similarly placed officers. As regards extrapolation of non-criteria reports from the rank of Col, this too was done as per policy and had been implemented uniformly since Dec 2017. The examination thus concluded that none of CRs merited any interference. That CR-6 and CR-7 had been recorded as criteria, and non-criteria reports in the rank of Col were extrapolated as per the policy in vogue, and as applied uniformly to all similarly placed officers. That the applicant was non-empanelled due to his overall comparative merit amongst those considered. Thus, the competent authority rejected the complaint vide their order dated 02.03.2021.

CRs

17. The applicant is of Dec 1988 seniority and has qualified on the DSSC Course, Senior Command Course, Higher Command Course and has also done his M Tech. He has held a variety of appointments and was conferred the Vishisht Seva Medal in 2020 and the COAS Commendation Card in 2014. Of the 19 CRs in the

reckonable profile, 11 CRs are in the rank of Col and eight CRs in the rank of Brig. In the rank of Col, 62% of the box gradings are 'Outstanding' with the balance of 38% are 'Above Average'. In the eight CRs earned in the rank of Brig 93% box gradings are 'Outstanding' while the balance 7% are 'Above Average'. Thus, all the CRs are consistent and well corroborated with no figurative of 7s or any weak remarks, and are technically valid. We, therefore, find no reason to interfere in any of the CRs.

18. The revised policy on QSS was issued vide letter dated 23.12.2017 (Annexure A-14). Relevant extracts pertaining to the marks and weightage of CRs is reproduced below:

*Integrated HQ of MoD (Army)
Military Secretary Branch
DHQ PO, New Delhi-110011*

04502/MS Policy

23 Dec 17

QUANTIFICATION SYSTEM OF SELECTION

References

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Introduction

2. *Quantified System for conduct of Selection Boards was introduced on 31 Dec 2008. The original policy was refined two years after its promulgation and the revised model was implemented with effect from 04 Jan 11. The same was to be reviewed after a period of five years.*

3. *Based on the review carried out, the following guidelines on the subject are issued.*

Broad Allocation of Marks

4. *Distribution of marks in the Overall Quantified Merit will be as under:-*

(a) **Quantified Weightage.** *95 marks will be allocated for quantified parameters to include Confidential Reports (CRs), Courses and Gallantry Awards.*

(b) **Board Members Assessment (BMA).** Board members will assess each officer under consideration out of five marks. The assessment will be based on the officer's overall profile including those aspects which have not been quantified.

5. The broad allocation of marks in the overall Quantified Merit for various parameters is given in the table below:-

Parameters	Level of SB			
	No 3 SB	No 2 SB	No 1 SB	SSB
CRs in Reckonable Profile (as applicable)	89	91	93.5	93.5
Courses	04	02	0.5	0.5
Gallantry Awards	02	02	01	01
Quantified Total	95	95	95	95
Board Members Assessment	05	05	05	05
Quantified Merit	100	100	100	100

Confidential Reports

6. The allocation of marks for CRs is based on the following considerations:-

(a) **Primacy of CR.** Primacy of the CR vis-à-vis other parameters like performance on Courses and Gallantry Awards has been maintained.

(b) **Criteria CRs vis-à-vis other CRs.** Greater weightage has been given for performance on Criteria appointments as compared to Non Criteria appointments, ie, Staff/Instructional/Extra Regimental Employment appointments. The term Criteria reports will be inclusive of Part Criteria reports for the purpose of this policy.

(c) **War/Operational Reports Earned Outside Reckonable Profile.** These CRS will be reflected in MDS for the purpose of Board Members Assessment.

(d) **Extrapolation of Reports.**

(i) In case an officer does not get any exposure in a Non Criteria appointment in a particular rank, then extrapolation of Quantified Marks to derive marks for Non Criteria reports will be done as under:-

(aa) **No 3 Selection Board.** Extrapolation from Criteria reports of the same level, ie, Maj/Lt Col.

(ab) **No 2 and Higher Selection Boards.** Extrapolation from Non Criteria reports of the previous rank.

(ii) Extrapolation of marks from Non Criteria reports to Criteria reports will not be carried out. Exception to this rule will be admissible only to BC(WW) offrs for whom 100% AE waiver is permitted under specific provisions.

7. **Distribution of CR Marks.** Allocation of marks for CRs will be as under:-

Rank	Type of CR	No 3 SB	No 2 SB	No 1 SB	SSB
Maj/Lt Col	<i>Criteria</i>	54	16.5	-	-
	<i>Non Criteria</i>	35	11	-	-
Col	<i>Criteria</i>	-	41.5	18.5	04
	<i>Non Criteria</i>	-	22	09	02
Brig	<i>Criteria</i>	-	-	47	18
	<i>Non Criteria</i>	-	-	19	07
Maj Gen	<i>Criteria</i>	-	-	-	47.5
	<i>Non Criteria</i>	-	-	-	15
CR Total		89	91	93.5	93.5

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sd/-
(Amarjeet Singh)
Lt Gen
Military Secretary

19. As seen from the details above criteria reports have more weightage than the non criteria reports. It was argued by the applicant that the last two reports though initiated as non-criteria reports had been recorded as criteria reports and this had resulted in the non criteria reports in the rank of Col being extrapolated. The only reason that the applicant has canvassed that the reports of CR-6 and 7 should be taken as non criteria reports is because of his belief that these reports as Brig PMO SURAJ were better than the non-criteria appointments he earned as a Col in the appointment of Dy Cdr HQ 115 Inf Bde and Dir Tac C3I, DGIS, IHQ of MoD.

No 1 SB

20. We have examined the Board Proceedings of the No 1 SB, the applicant has not been empanelled due to his overall comparative

merit. In the fresh consideration in Jul 2019, a total of 26 officers were considered for four vacancies. The 26 officers included 12 officers of 1988 batch along with the applicant who were considered as fresh cases. In the No 1 SB of Aug 2020, the Board considered a total of 28 officers for six vacancies. The 28 officers included, 12 officers of 1989 batch being considered afresh. In the No 1 SB held in Oct 2021 in which the applicant was considered as a Final Review case, a total of 23 officers were considered for one single vacancy.

The details are tabulated below:

Ser	No 1 SB	Consideration	BYOS	Remarks
(a)	Jul 2019 Signals 1988 Batch	Fresh	1988	NE OOM-94.304 Last offr-95.294
(b)	Aug 2020 Signals 1989 Batch	First Review	1989	NE OOM-94.833 Last offr-95.683
(c)	Oct 2021 Signals 1990 Batch	Final Review	1990	NE OOM-95.173 Last offr-95.217

Conclusion

21. In view of the above consideration, we conclude that the respondents were justified in rejecting the statutory complaint dated 04.05.2020, as the CR are all well corroborated and do not merit any interference, and the respondents are also justified in recording the two CRs earned as Brig PMO SURAJ as criteria appointment, since this policy has been uniformly applied to all

similarly placed officers across all Arms and Service. We also conclude that the applicant has been fairly considered by No 1 SB in all his entitled considerations and that he has not been empanelled due to his overall comparative merit amongst those considered.

22. The OA is accordingly dismissed.

23. No order as to costs.

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

Pronounced in open Court on this 27th day of September, 2024.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

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

Neha