

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

OA 1324/2023

Col Subodh Kumar ... Applicant
Versus ...
Union of India & Ors. ... Respondents

For Applicant : Mr. Indra Sen Singh, Advocate
For Respondents : Mr. Neeraj, Sr CGSC for R-1 to R-3

CORAM :

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

O R D E R

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 entire proceedings of No.2 Selection Board (No.2 SB) held in Jun 2019 & Jun 2021 wherein the Applicant's was considered as First Review and Special Review First CSE (1992-AOC) respectively and after perusal thereof set aside the finding/result of the said Selection Board qua the Applicant as communicated/published vide Army HQ MS Branch letter dated 03.03.2023 (Annexure A-1, Pg 61)*

(b) *Call for the entire record of proceedings of No.2 Selection Board (No.2 SB) held in Apr 2018 & Jun 2021 wherein Applicant's was considered as Fresh and Special Review Fresh case (1991-AOC) respectively and after perusal thereof, set aside the finding/result of the said Selection Board.*

(c) *Direct the Respondents to rework the value-judgement/BMA marks awarded to the Applicant and the officer placed last in order of merit in the empanelled list in the corresponding original consideration held in Apr 2018 (Fresh 1991 batch), June 2019 (Fresh 1992 batch), Jun 2021 (Fresh 1994 batch) and Dec 2022 (Fresh 1995 batch) including Respondent No. 4 (Fresh 1992 batch) in accordance with the respective record of service and respective quantified merit on the basis of criteria/ parameters laid down in Para 12&13 of the Army HQ Policy letter dated 23.12.2007 and thereafter award fresh value-judgement/BMA marks to the Applicant and thereafter amend the result of No.2 SB held in Apr*

2018 and the result of No.2 SB held in Jun 2019, in r/o Applicant and include the name of Applicant in the list of empanelled officers if Applicant's quantified merit is equal to or greater than that of officer placed last in the order of merit in the empanelled list in the corresponding original consideration held in Apr 2018 and June 2019.;

OR IN THE ALTERNATIVE

Direct the Respondents to hold fresh No. 2 Selection Board to consider the Applicant as Special Review Fresh case as well as Special Review First case in accordance with the criteria/guidelines laid down in the policy letter dated 23.12.2017 and MoD Note bearing ID No. 8(52)/2006-D (MS) dated 23.2.2010, as well as the law laid down by the Hon'ble Supreme Court in the case of Brig Nalin Kumar Bhatia Vs. Union of India & Ors vide judgement dated 11.02.2020 (Civil Appeal No. 5751 of 2017) as well as Union of India & Ors Vs. Major General Manomoy Ganguly, VSM, (2018) 1 SCC 552. and to grant him promotion to the rank of 'Brig' if he is found empaneled in said board;

d) Direct the Respondents to promote the Applicant to the rank of Brigadier if Applicant's updated quantified merit/record of service is found to be higher than that of the officer placed last in the order of merit in the empanelled list in the corresponding original consideration held in Apr 2018 and June 2019;

e) Set-aside the Applicant's Confidential Reports (CRs) covering the period 16 Nov 2004 to 24 Feb 2005 and period 01 Aug 2009 to 06 Mar 2010 on technical grounds, the same having been written in violation of Para 89 and Paras 24 & 25 of AO 45/2001/MS, respectively, besides the same being inconsistent/downgraded/subjective/ underrated/ non-performance based & technically invalid CR; and after setting aside said CRs direct the Respondents to take necessary consequential action as per the law and the procedure in force: and

f) Issue any other order(s) and direction(s) as deemed appropriate by this Hon'ble Tribunal under the facts and circumstances of this case

Facts of the Case

2. The applicant was commissioned in the Army Ordnance Corps (AOC) in 1991. The applicant was considered for

promotion to the rank of Brigadier by No 2 Selection Board (SB)
as under:

Consideration by No 2 SB		
Fresh Case	Feb 2018	Not Empanelled
First Review Case	Jun 2019	Not Empanelled
Final Review Case	Jul 2020	Not Empanelled
Special Review (Fresh)	Jun 2021	Not Empanelled
Special Review (First)	Dec 2022	Not Empanelled

3. The applicant submitted a Statutory Complaint dated 27.02.2019 and addendum dated 06.05.2019 against non-empanelment to the rank of Brigadier and impugned CRs 11/04-02/05, 05/05-08/05, 08/09-13/10, 09/10-06/11, 09/11-08/12, 10/12-02/13, 02/13-08/13, 09/13-08/14 and 09/14-07/15, in consideration of which, except granting redressal with respect to the assessment of RO in CR 11/04-02/05, rest of the other assessments were held to be technically valid. However, after being granted partial redress, the applicant was again held to be not empanelled, aggrieved by which, the applicant has filed present OA.

Submissions on behalf of the Applicant

4. It is the case of the applicant that he was commissioned in the Army Ordnance Corps (AOC) as a PC Officer and then, posted with an Infantry Battalion (5 MADRAS) for a year. After successful completion of his Infantry attachment, he was selected for United Mission assignment (UNISOM-II) in the year 1993. However, due to termination of the said mission just before the date of deployment, posting of all selected officers to the same was diverted. Thereafter, the Applicant was posted to various Units/establishments and during this period, he completed all the mandatory military courses including Basic Ordnance Management (BOM) Course (stood Third in the Course), Advance Materials Management (AMM) Course (Awarded Bronze medal for standing Second in the Course), Automatic Data Processing (SAP) Course, Junior Command Course, Senior Command Course and has excelled in most of said courses.

5. Narrating the factual background, it is submitted by the applicant that the Applicant has been carrying-out his duties with absolute dedication and complete sincerity, even going beyond the call of his normal duties if so required in the interest of organization, for which he has been receiving the

appreciation from his superior military commanders. From Aug 2002 to Nov 2004, the Applicant was posted in the most coveted appointment as Second-in-command of Demonstration Company of High-Altitude Warfare School (HAWS) located in High Altitude Area & Counter Insurgency Area where no AOC officer has ever been posted and for his endeavour to provide best training demonstration to the students, he was awarded GOC-in-C's Commendation Card, ARTRAC dated 26.01.2005. Further, from Sept 2007 to June 2010, the Applicant was posted in the most coveted instructional appointment for an Ordnance officer as an Instructor Class 'A' in AOC's alma-mater i.e College of Material Management (CMM), Jabalpur. Applicant's efforts for improving the course content and introduction of innovative training methodology remained a matter of admiration for years at the CMM.

6. Submitting on the factual background, it is submitted by the applicant that on the basis of his excellent and outstanding record of service, Applicant was empanelled by No.3 SB held in Apr 2009 for promotion to the rank of Colonel. Consequent thereto, Applicant was bestowed with the unique opportunity to command the much privileged 57 Mountain DOU in 'Operation Rhino' (Field/Counter

Insurgency Operations) w.e.f June 2010 to Feb 2013, and the applicant's performance can be well ascertained from the fact that he was awarded the GOC-in-C, Eastern Command Commendation Card in 2013 during the ibid command appointment itself.

7. Narrating further, it is submitted by the applicant that after successful completion of his command at 57 Mountain DOU, he was selected for the coveted appointment of Deputy Director Contracts and Material Management at Research Centre Imarat, a prestigious DRDO organization at Hyderabad on deputation and during the tenure, he along with his team was able to carry out materials management of critical projects in the most professional and satisfactory manner and the same was highly appreciated.

8. With respect to the consideration for the rank of Brigadier, it is submitted by the applicant that in Feb 2018, Applicant was considered as a Fresh case of 1991 batch but was found non-empanelled despite his outstanding/nearly outstanding record of service. After his non-empanelment as a fresh case, Applicant preferred a Statutory complaint dated 27.02.2019, followed by an addendum dated 06.05.2019, against his non-empanelment for promotion.

9. It is elaborated by the applicant that after his non-empanelment in No. 2 SB in Apr 2018, Applicant applied against an advertisement for the post of Registrar of IIT Bhubaneswar on deputation basis where he worked w.e.f May 2019 to May-2021. It is further submitted that in June 2019 Applicant was considered as a First Review case of 1991 batch along with officers of Fresh batch of 1992, but was found non-empanelled even in the First Review consideration. It is significant to note that as a First Review Case the Applicant's profile was compared with that of the officers of the Fresh batch of 1992, and thereafter, in June 2020, Applicant was considered as a Final Review case of 1991 batch along with officers of Fresh batch of 1993, but was again found non-empanelled even in the Final Review.

10. Dissecting the factual matrix, it is submitted by the applicant that vide order dated 31.08.2020 passed by Govt. of India (Respondent No.1) on the Applicant's said Statutory complaint, partial redressal was given thereby setting aside RO's assessments made at Para 24 (b), 24 (c) of Applicant's CR for the period Nov 2004 to Feb 2005 which had formed part of his overall record of service during the first three normal considerations (i.e. Fresh, First Review & Final review

consideration) held in Feb 2018, June 2019 and June 2020, respectively.

11. Elaborating on his Special Review considerations, it is submitted by the applicant that in June 2021, Applicant was granted Special Review (Fresh) case of 1991 batch, understandably with his updated record of service/quantified merit but was again non-empanelled despite his quantified merit having improved following the redressal given to him, and the Applicant has reasons to believe that his updated 'quantified merit' in the 'Special Review Fresh consideration' held in June 2021 was higher than that of the officer placed last in the order of merit in the empanelled list in the corresponding original (fresh) consideration held in Feb 2018, yet he was not empanelled only because of a depleted/lowered value judgement marks given by the Selection Board as compared to the officer placed last in the order of merit in the empanelled list in the corresponding original (fresh) consideration held in Feb 2018.

12. Elaborating further, it is submitted by the applicant that in Dec 2022, Applicant was considered by No.2 SB as a Special Review (First) case of 1991-batch and was yet again not-empanelled as communicated vide Army HQ MS Branch letter dated 03.03.2023 and the Applicant has reasons to

believe that, like in the Special Review Fresh consideration so also in the Special Review First consideration', his updated 'quantified merit' was higher than that of the officer placed last in the order of merit in the empanelled list in the corresponding original First Review consideration held in June 2019, yet he was again not empanelled only because of the depleted/lowered value judgement marks given by the Selection Board as compared to the officer placed last in the order of merit in the empanelment list in corresponding original (First Review) consideration held in Jun 2019.

13. Referring to Respondent No. 4, it is submitted by the applicant that Respondent No.4, an officer belonging to 1992 batch, was considered along with the Applicant in First Review consideration by No. 2 held in June 2019 and he was empanelled and accordingly promoted to the rank of Brigadier, but the fact that is significant to note here is that Respondent No.4 has been empanelled and promoted to the rank of Brigadier only because of higher value judgement marks, despite being lower in the quantified merit, which has been established vide order dated 22.07.2020 passed by this Hon'ble Tribunal in case of Col Rajbir Singh Vs. UOI (OA 588/2020).

14. Addressing the issue further, it is submitted by the applicant that he has a unique distinction of holding PhD in Management and M. Phil in Management, and a dispassionate comparison of the reckonable career profile of the applicant with that of Respondent No.4, leaves no manner of doubt that the Applicant's career profile is far superior to that of Respondent No.4. On the same analogy, the Applicant verily believes that his updated quantified merit after grant of redressal on his Statutory Complaint is higher than that of Respondent No.4 who was probably last man in the order of merit in the empanelled list of No.2 SB held June 2019.

15. That besides the above, the Applicant is also challenging his confidential report pertaining to period 01.08.2009 to 06.03.2010 on technical grounds as well as inconsistency, subjectivity and also for period 16.11.2004 to 24.02.2005 on technical grounds, written in violation of Para 89 of the AO 45/2001/MS. The Applicant was promoted to the rank of Lt Col w.e.f 16.12.2004 i.e during the aforesaid period covered by the impugned CR which became due on 24.02.2005. Thus, the Applicant held the rank of Lt Col during the aforesaid period covered by the CR just for 71 days (i.e w.e.f. 16.12.2004 to 24.02.2005) which is less than 90 days. Para 89 of the AO 45/2001/MS

stipulates that *'when an officer is promoted to the next higher rank including local rank during the period covered by the report, an ACR or ICR when due, will be initiated in the higher rank provided the officer has held the higher rank for 90 days (not physical service) upto the due date of initiation of the report'*. When the officer has not held the new rank for 90 days, QsAP, and recommendations for promotion, employment and courses in the CR will correspond to the previous rank i.e. Major in case of the Applicant which is not supposed to be considered in No 2 SB but to be set aside.

Submissions on behalf of Respondents

16. Per contra, with respect to the impugned CRs for period 11/2004 to 02/2005, it is submitted by the Respondents that the same were examined during internal assessment and were found to be technically valid and that the CR was initiated post obtaining SRO sanction under Para 20 (c) of AO 45/2001, since the Applicant had submitted the ICR for initiation by RO and before initiation, sanction of SRO was accorded in conjunction with para 20 (c) of AO 45/2001/MS as IO was not posted.

17. With respect to the CR for the period 01.08.2009 to 06.03.2010, it is submitted by the Respondents that the applicant lacked 90 days physical service under then IO wef

01 Aug 2009 to 06 Mar 2010 date on which IO side stepped as RO and present RO was posted out. Applicant was entitled for Early CR from IO being side stepped on 06 Mar 2010. Therefore, under the provision of Para 24 (a), Para 48 and 73 of AO 45/2001/MS sanction of NSRO, was accorded to initiate Early CR by previous RO. That as per records available, there was no intentional delay and that the Early CR was initiated as the Applicant had completed the mandatory period under the RO who got sidestepped as SRO and since the IO was not entitled to initiate CR and SRO was not posted hence, in terms of provision of Para 24 (a), Para 48 and 73 of AO 45/2001/MS sanction of NSRO was taken for initiation of Early CR by the Previous RO.

18. Elaborating further, it is submitted by the Respondents that the completion of 90 days in higher rank vide Para 89 of AO 45/2001/MS will merely result in capture of a higher rank in the CR and does not affect the technical validity of the ibid CR as CR has been earned on valid trigger post completion of mandatory service under the entitled reporting officer and other relevant provisions of AO 45/2001/MS and same has been amplified further in the ibid Para wherein QsAP, Recommendation for Promotion, Employment and courses in the CR will correspond to previous rank if Ratee is

not completing 90 days in higher rank. Therefore, ibid CR is a technically valid input despite the change in Ratee's rank.

19. With respect to award of VJ/BMA marks, it is submitted by the Respondents that the Selection Board awards Board Member Assessment as per para 12 of QSS policy which is same for all the agendas being considered by the Selection Board and MoD Note bearing ID No 8(52)/2006-D(MS) dated 23 Dec 2010 is in reference to QSS 2011 which was later superseded by QSS 2017. Thus, the provisions of QSS 2011 stated by the Applicant are not applicable in the case as the Applicant was considered by No 2 SB under QSS 2017, and presently all Selection Boards are conducted as per QSS Policy dated 23 December 2017 of which Para 6(a) of QSS Policy dated 23 December 2017 provides that the primacy of CR vis-a-vis other parameters including course gradings, honours and awards etc are maintained.

Consideration

20. We have heard the Ld Counsels for the parties and perused records placed before us by the respondents i.e. CR dossiers of the applicant, files pertaining to processing his statutory complaint dated 22.02.2019 and addendum dated 06.05.2019 against his non-empanelment for

promotion to the rank of Brigadier and the results of No 2 Selection Board wherein the applicant has been considered.

21. We find it essential to adjudicate the prayer with respect to legitimacy of the impugned CRs as per the prayer 8 (e) of the applicant as the adjudication herein will articulate the question of law involved in all other prayers subsequently. Accordingly, we proceed to consider the impugned CRs to examine if they are liable to be set aside as prayed for by the applicant or not.

22. It is undisputed that the applicant has filed a statutory complaint dated 22.02.2019 with an addendum dated 06.05.2019 against his non-empanelment for promotion to the rank of Brigadier by No 2 SB held in February 2018 when he was considered as a fresh case of 1991 Batch of Army Ordnance Corps. The applicant had prayed for setting aside the CRs 11/2004 to 02/2005, CR 05/2005 to 08/2005 and CR for period 08/2009 to 03/2010. In addition, he has prayed for review of three CRs as Commanding Officer and another three CRs that he had earned during the period of his deputation in DRDO. He has also requested for scrutiny of his entire reckonable profile for aberrations if any and setting aside the same and place on

record his qualification of PhD for his consideration by No 2 SB.

23. On a bare perusal of his service records dossier, we find that all the CRs earned by the applicant from August 2009 to July 2015 have been requested for scrutiny in addition to two earlier CRs earned by him as Provision Officer in COD Delhi from 11/2004-08/2005; making it a total of nine CRs to be considered by the this Tribunal.

24. We have noted that the CRs earned by the applicant are Above Average/Outstanding during the entire reckonable profile comprising 18 CRs. There are no adverse/weak remarks noted anywhere except three relatively low gradings in QsAP by IO in CR 11/2004 to 02/2005 which have been duly expunged by the Complaint Advisory Board based on the analysis of CR profile of the applicant.

25. Proceeding to examine, we find that as far as CR 11/2004 to 02/2005 is concerned, the applicant was promoted to Lt Col on implementation of AVSC Report, while the CR was due on 01.06.2005. It is argued by the applicant that since ratee and Initiating Officer (IO) were of same rank, CR should have been initiated by RO as per provision of AO 45/2001/MS, thereby challenging the technical validity of this CR as against the provisions of Para 24(a), 26 & 84 of

AO 45/2001/MS as the CR was initiated on posting out of the RO.

26. We find it pertinent to refer to the relevant paras of aforesaid AO 45/2001/MS which are relied upon by the applicant are therefore quoted herein under :

“17. Period covered by the Report. The ‘Period Covered by the Report’ is the period within the reporting year, which the ratee has actually served under the IO (or RO when initiating CR under provision of the AO). Any period of the reporting year which is 90 days or more in duration and for which no CR or NIR has been initiated, constitutes a gap in reporting. The examples of period covered by CR and occurrence of gaps are at Appendix ‘C’.

Appendix ‘C’

PERIOD COVERED BY CR AND OCCURRENCE OF GAPS

1. Normal Period of CR. Period actually served under IO as follows:-
 - (a) Officers above two years upto eight years of service -01 Jan-31 Dec
 - (b) Officers above eight years upto rank of Maj - 01 Jun-31 May next year
 - (c) Lt Cols and Cols - 01 Sep - 31 Aug next year
 - (d) Brigs and above - 01 Jul - 30 Jun next year

2. Period Covered by CR in case of ICR/Early/Delayed CR. Examples incase of Maj only. Cases for officers in other ranks will be similar.
 - (a) ICR
 - (i) Date of SOS of IO/Ratee -10 Jan 2002.
 - (ii) Period covered by ICR - 01 Jun 2001 – 10 Jan 2002.
 - (iii) New IO/Ratee commence physical service – 02 Mar 2002.
 - (iv) Period covered by next CR – 02 Mar – 31 May 2992 (or date upto completion of 90 days physical service of exceeding beyond 30 Jul 2002 for Delayed CR).

 - (b) Early CR
 - (i) Date of SOS of IO/Ratee – 04 Mar 2002.
 - (ii) Period Covered by Early CR – 01 Jun 2001-04 Mar 2002.
 - (iii) No CR required for remaining period i.e 05 Mar to 31 May 2002.

 - (c) Delayed CR

	<u>Example on Ratee</u>	<u>Example on IO</u>
(i) Ratee-IO join appointment	01 Mar 2002	01 May 2002.
(ii) 90 days physical service Between Ratee/IO completed	15 Jun 2002	29 Jul 2002
 (iii) Period covered by Delayed	 01 Mar-15 Jun 2002	 01 May-29 Jul 2002
(iv) Period to be covered in Next CR	16 Jun 2002 31 May 2003	30 Jul 2002 31 May 2003
	or earlier for ICR/Early CR.	

3. Examples of Gaps

Example 1

- (a) Period of CR (Ratee posted out) - 01 Jun 99 – 03 Mar 2000.
(b) Officer reports to new appt - 17 Mar 2000.
(c) IO proceeds on posting - 26 Jul 2000.
(d) Period of next CR (physical Service under IO) - 27 Jul 2000-
31 May 2001
- (e) Gap between CRs- 04 Mar -26 Jul - 144 days.
(f) Period of gap is 144 days. However, there is no gap s period straddles two reporting years and gap is less than 90 days in each reporting year. No NIR to be initiated.

Example 2

- (a) Period of CR (IO posted out - 01 Jun 99 -25 Feb 2000
Ratee earns ICR)
- (b) 26 Feb-15 May - No IO posted.
(c) 16 May 2000 - New IO assumed appointment.
(Delayed CR not applicable in terms
of Paragraph 77 of AO)
- (d) Period of next CR - 01 Jun 2000 – 31 May 2001
(e) Gap - 26 Feb 2000 – 31 May 2000
(f) The period is of gap of 96 days. Officer not eligible to CR either by new IO or RO (Under Paragraphs 82 to AO). Gap to be covered by NIR.

Example 3

- (a) Previous CR - 01 Jun 99 – 31 May 2000
(b) IO posted out on - 31 Aug 2000
Ratee and IO do not complete
90 days physical service)
- (c) Period of next CR - 01 Sep -31 May 2001
(d) Period of gap - 01 Jun 2000 – 31 Aug 2000
(e) Period of gap is 92 days. NIR required to cover gap.

Note : However, incase the Ratee is above 8 years service, and complete 90 days physical service under his IO, he should have earned a CR from his IO.

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24. Initiation of CRs by RO. RO may initiate a CR as due and applicable, provided a ratee cannot earn a CR/ICR from his IO under the following circumstances:-

- (a) IO Posted But Not Entitled. RO may initiate a CR (Annual / Early / Interim), excluding Delayed CR whenever it becomes due; in all cases where IO is posted but not entitled to initiate due to limitations of various provisions of this AO. Sanction of SRO will be obtained before initiation of CRs. However, no Early CR / ICR can

be initiated by the RO on posting out of the IO, except in cases, as covered under Paragraph 73 of this AO.

25. Reports by RO in Respect of Officiating Incumbent (other than Para 27 below). In cases, where IO is absent/not posted for more than 180 days on last day of reporting year, the CR in respect of officiating incumbents can be initiated by RO, with prior sanction of the SRO.

26. While initiating reports under Paragraphs 24 and 25 above, the following will be ensured: -

(a) Only Present RO can initiate CRs under provisions of Paragraphs 24 and 25 above. Previous RO is not entitled to initiate CRs.

(b) Ratee completes 90 days physical service with RO during the period covered by the report.

(c) Sanction of SRO is obtained before initiation of CR. Ex Post-Facto sanctions/sanctions obtained after date of initiation of CRs are legally not tenable. In case of temporary absence of SRO, sanction may be accorded by officiating SRO. However, officiating SRO is not entitled to endorse a CR.

(d) An endorsement to the effect that the report has been initiated by the RO, along with relevant paragraphs of the AO, will be made under the authentication data by the reporting officer.

(e) RO uses columns and spaces provided for the RO. Columns and spaces provided for the IO will be scored with a line and authenticated by RO.

(f) Assessment of RO as specified at Paragraph 125 below will be shown to the ratee.

27. CRs in respect of Officiating Incumbents (Appointment of IO Suppressed / Offset and Officer of Lower Rank Appointed by MS Branch to Officiate).

(a) RO entitled to initiate all reports as applicable.

(b) Copy of suppression letter and authority of MS Branch to appoint the officer in his officiating capacity to be attached with the CR and CR enaced accordingly.

(c) Channels of reporting followed will be for suppressed appointment ie. RO will use columns and spaces of IO, and higher reporting officers will endorse CR accordingly.

(d) However, no ICR will be initiated on relinquishing officiating appointment, due to posting in of permanent

Therefore in our considered opinion, there is no illegality in initiation of the CR in question.

28. Moving further, we find that the applicant has further challenged the next CR i.e. 05/2005 to 08/2005 on the grounds that the reporting period of Lt Col commences from 01 June onwards. Therefore, it is the contention of the applicant that the CR straddles two reporting years which is in contravention of Para 17 of aforesaid AO 45/2001/MS, and thus, technically invalid.

29. Examining the technical validity of the CR 05/2005 to 08/2005, we note that vide MS Branch, IHQ of MoD letter No A/17151/MS4 Coord dated 10.08.2001, the due date of CRs of Lt Col was revised to 01 Sep and further revised to 01 Jun vide their letter dated 17 Nov 2005, wherein it is provided that all Lt Cols would earned CRs on 31 Aug 2005 and next CRs of such officers will be for period 01 Sep 2005 to 31 May 2006. Therefore, it is our observation that the CR has been correctly initiated as due on 31.08.2005 and the next CR is for period 01 Sep 2005 to 31 Aug 2006.

30. Third CR under challenge by the applicant is the report earned by him as Instructor Cl A, CMM Jabalpur for

lacked 90 days of mandatory physical service under the IO, namely Brig AK Seth from 01.08.2009 to 06.03.2010 when Brig AK Seth was side stepped on posting out of RO - Maj Gen Narendra Dogra. Therefore, the applicant was eligible for an Early CR on side stepping of IO on 06.03.2010. Resultantly, Maj Gen Narendra Dogra was entitled as present RO on the date of Early CR being due. Since no SRO was posted, accordingly sanction of NSRO was obtained for initiation of Early CR by RO.

33. We have examined the feasibility of Brig AK Seth (Later Maj Gen) initiating a CR on the applicant but based on the calculation of physical service of the applicant under Maj Gen AK Seth, it would not have been feasible for the applicant to earn a legitimate CR from Maj Gen Seth as he was not meeting the CR criteria. Brig NK Dogra was IO from 01.06.2009 to 31.07.2009 and RO from 01.08.2009 to 05.03.2010. He was succeeded by Brig AK Seth as Head of FOHOM from 29.08.2009 to 05.03.2010 and as Maj Gen DCCI from 06.03.2010 to 30.09.2011. Therefore, the decision of the respondents to raise a CR of the applicant instead of allowing the entire period to be unreported is logical and we do not find any bias or arbitrariness in the same.

34. In this context, we find it relevant to note contents of Para 72 and 73 of the aforesaid Army Order which specifies to the effect :-

Early Initiation of ACRs

72. *An Early CR will be initiated up to 90 days earlier than the due date of initiation of ACR. under the following circumstances:-*

(a) IO vacates his appointment.

(b) Officer reported upon is posted out or proceeds on a course of instruction for duration exceeding 90 days.

(c) A unit or formation moves to another formation (ACR in respect of OC unit or formation commander only will be initiated early under this clause).

73. Initiation of Early CR by RO - *Early CRs may be initiated by the RO as under-*

(a) IO vacates the appointment If IO vacates the appointment and it is not possible for the ratee to earn an Early CR from him, Early CR may be initiated by the RO after taking sanction of the SRO, subject to the following conditions being met :-

(i) IO is not in a position to initiate due to entitlement constraints

(ii) It is not possible for the ratee to earn a Delayed CR from the new IO.

35. We observe from the records that Para 73 (a) (ii) finds resonance as a reason for initiating the subject CR as the ratee was not able to earn any CR with Brig (later Maj Gen) AK Seth and as a result the entire period of one year would have remained unreported as even a Delayed CR from Maj Gen AK Seth was not feasible under the circumstances and therefore, the sanction of competent authority to allow RO Maj Gen Narendra Dogra is accordingly upheld.

36. We find that the CR was submitted by the applicant on 30.11.2010 and then the RO, Maj Gen Narendra Dogra forwarded the extracts on 06.02.2011, which lead us to a conclusion of that there is absence of any intentional delay on part of the reporting channel to hold the CR technically invalid. Analysing the aspect of One-Man Report being contrary to Para 41(b) of AO 45/2001/MS, we find it pertinent to refer to the same, which is reproduced as under:

“Endorsement of CRs by the Superior Reviewing Officer (SRO)”

41. The purpose of endorsement by SRO is to ensure objectivity of reporting and to avoid ‘one man report’. Towards this, it should be ensured by the SRO that lower reporting officers endorse CRs as applicable, and render objective assessment on the ratee. Endorsements on CRs by the SRO would be guided by the following parameters.

(a) Mandatory Endorsements.

(i) to (v) xxx xxx xxx

(b) Preferable to Avoid ‘One Man Report’. When between IO and RO only one person has initiated/endorsed the report (including endorsement of ‘Insufficient Knowledge’), SRO should preferably endorse the report to avoid ‘one man report’.”

37. We find that the aforesaid para enunciates that when between IO & RO, only one man has initiated/endorsed the report, “SRO should preferably endorse the report” to avoid One Man Report. Noting the provisions stated above & that no SRO was posted, the endorsement was not feasible, and therefore, we do not find any merit in the submissions of the applicant that this report too was technically invalid. We

have further noted the calculation of the physical service of applicant under Maj Gen Narendra Dogra and Maj Gen AK Seth from the CR dossier and are satisfied with calculation of physical service.

38. Having re-examined all the reports which have been analysed by the CAB and in light of the various paras of AO 45/2001/MS by the applicant, we are of the considered opinion that the impugned CRs of the applicant challenging the technical validity have been appropriately addressed and we do not find any substance in the submissions on behalf of the applicant that any of the reports initiated by IO or the RO were technically invalid.

39. We further observe that the reports on the entire profile are all well balanced and no CR stands out as being materially damaging on the career prospects of the applicant. Accordingly, we do not find any reason to interfere with any of the CRs thus challenged and accordingly uphold the CRs. We further note that the applicant has been appropriately granted redress by the competent authority against the low rating in CR 11/04 to 02/05. Other than the aforesaid CRs dealt in separately, we find that there is no inconsistency for subjectivity/under rated CR that has been observed in the entire CR profile of the applicant.

40. That apart, with respect to the submissions of the applicant that the responsibility of calculation of physical length of service under a particular Reporting officer, and initiation of Early CR lies upon the Reporting officers in the channel, we find it pertinent to refer to Para 93 and 94 of the aforesaid Army Order under consideration, which is reproduced as under:

93. The officer reported upon will be personally responsible for correct completion of the portion pertaining to the personal data, in accordance with the records maintained in the unit, in Part I of the CR form. He will hand over the completed form to the IO as under:-

- (a) Before the due date of initiation of ACR; or*
- (b) Before he vacates the appointment, for initiation of an ICR under Paragraph 84, or an Early ACR under Para 72 above, as the case may be; or*
- (c) When called upon to do so.*

94. The officer reported upon will authenticate the details given in Part I of the CR form at the space provided for this purpose. The details contained in Part I will need communication to the ratee when these have either been compiled by the IO or have been amended by the IO, after the ratee has submitted the CR form. The details with reference to physical service under IO/FTO (or RO when he is initiating report under provisions of the AO) authenticated by the ratee and concerned reporting officer are irrevocable, and no complaint/representation vide Chapter VII of this AO, will be permissible for this aspect.”

41. On a bare perusal of the aforesaid paragraphs, we observe that starting from the initiation the CR, it is responsibility of the officer reported upon concerned for the completion of the data, which he is aware of, whether it is the physical length of service under an IO or an RO, which needs to be authenticated by the ratee himself and only after

completion of such data in the CR form, he hands over the form to IO for assessment, which is verified by the concerned reporting officers in the channel. It can be clearly assumed that the ratee is aware of the physical service rendered under a particular reporting officer as well as the nature of CR scheduled to be initiated while submitting the CR, and challenging this at this belated stage, does not absolve him of his awareness and responsibility, by stating that it is the responsibility of the reporting officers or the authorities in the channel.

42. It is important to observe that the first two CRs - CR 11/2004 to 02/2005 and CR 05/2005 to 08/2005 which have been challenged by the applicant on the ground of technical invalidity were part of his reckonable profile when the applicant was considered and promoted to the rank of Colonel. Now, at this belated stage, the applicant is challenging the same CRs which were considered and he was promoted to the rank of Colonel. If we were to hold aforesaid CRs as technically invalid, the promotion of the applicant to the rank of Colonel would have had to be reviewed in the light of aforesaid invalidation, which we are of the opinion that the applicant should exercise caution while undertaking this exercise of challenging the CRs on technical grounds.

43. Moving further, we now find it essential to take note of the considerations of the applicant by No 2 SB on various dates, wherein we find that:

(a) The applicant was considered as a Fresh Case by No 2 SB in February 2018 for 08 vacancies. His merit position before award of Value Judgment (VJ) Marks was 12 and after award of VJ Marks was 10. Therefore, he was not empanelled for promotion.

(b) The applicant was a first review case for consideration by No 2 SB held in June 2019 wherein his Order of Merit was 21 against 08 vacancies for promotion.

(c) During the consideration as Final Review Case by No 2 SB in July 2020, the applicant was at Order of Merit 27 against 08 officers empanelled for promotion.

(d) Consequent to grant of redressal based on his complaint, the applicant was considered as a Special Review (Fresh) case by No 2 SB held in November 2021 wherein he was at 17 in the Order of Merit as against 08 vacancies for promotion.

(e) He was considered for the fifth and sixth time as Special Review (First) and Special Review (Final) cases

respectively by No 2 SB held in December 2022 and December 2023 wherein his Order of Merit were 17 against 05 vacancies and 11 against 06 vacancies.

44. Noting the submissions of the Ld Counsel for applicant made at bar during the final hearing that he does wish to press the prayer, with respect to value Judgment Marks, we have not expressed any views on the applicant's representation against low VJ marks as on analysis of the VJ marks to the applicant in successive No 2 SBs, we observe that it does not significantly alter the merit of the applicant to bring him down from promotable to non-promotable category and therefore, does not help the applicant in any way. Therefore, the case of Col Rajbir Singh Vs UoI (OA 588/2020) relied upon by the applicant does not apply to this case under consideration.

45. We have taken note of the fact that the applicant was at 12 in Order of Merit in No 2 SB of 2018, which is 4 positions below the vacancies, and has been finally placed at Merit 10. Therefore, the apprehension of the applicant that he has been rated low by the members of the promotion board are unfounded as he has in fact gained in the merit consequent to grant of VJ marks. Taking note of the submissions of the applicant with respect to R-4 namely Col

MK Sharma, it is seen from the records that R-4 had a better quantified total of 88.497 compared to 87.794 scored by the applicant. Therefore R-4 was within the merit list for promotion and the applicant was non-empanelled due to lower order of merit. The VJ Marks awarded by the board to both candidates have been found to be corresponding to their order of merit and therefore there is no case made out against promotion of R-4 which has been found to be within rule and legally tenable. The apprehensions of the applicant that his quantified marks out of 95 were more than the quantified marks of the last officer empanelled is unfounded as the records placed in front of us show that the quantified marks of the applicant in all the considerations were lesser than quantified marks of the cut off merit even if he had been granted redressal.

46. Lastly, we find that the respondents have placed before us the latest medical documents of the applicant dated 01.03.2024 for our perusal to submit to the effect that the applicant has been placed in Low Medical category S1H1A1P2(P)E1 wef 01.03.2024 for multiple disabilities of Multi Centric Castle Man's Disease (IMCD), Diabetes Mellitus Type II and GOUT unspecified and SHAPE-1 for Nephrotic Syndrome. Observing that no submissions were addressed by

the applicant with respect to the same, and the same was not an issue of adjudication before us, at the moment we do not wish to express our views on the promotability of applicant with respect to above disabilities.

47. Concluding, with aforesaid observations, we are of the considered opinion that the aforesaid OA 1324/2023 is devoid of merit and deserves to be dismissed.

48. Consequently, the OA 1324/2023 is dismissed.

49. No order as to costs.

50. Pending miscellaneous application, if any, stand closed.

Pronounced in the open Court on 19 day of December, 2024.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

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

/Akc/