

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

**OA 1413/2022**

Lt. Col Sandeep Kumar ... Applicant  
Versus  
Union of India & Ors. ... Respondents

For Applicant : Mr. Rajiv Manglik, Advocate  
For Respondents : Mr. S.R. Swain, Advocate

**CORAM :**

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

**ORDER**

The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicant has sought following reliefs:-

- (i) *To call for the records of all the No 3 selection board held for consideration of the applicant for the rank of Col and the complete ACRs of the applicant and declare the action of the respondents as unjust, arbitrary and illegal; and*
- (ii) *To quash and set aside order dated 16 Feb 2022; and*
- (iii) *To quash and set aside the impugned ACR for the period 5/12-11/12; and*
- (iv) *To hold that the applicant's BMA is not correct and should have been awarded marks at least equal to the officer who is just below the applicant in the quantified merit and declare the applicant empanelled for promotion to the rank of Col; and*

(v) *Alternatively; to quash and set aside the BMA marks of the applicant and direct the respondents to reconsider the applicant for promotion by No 3 Selection Board as a fresh case and award fresh BMA marks; and*

(vi) *To award exemplary costs in favour of the applicant.*

(vii) *To pass such other and further orders which their lordships may deem fit and proper in the existing facts and circumstances of the case.*

2. The applicant, a Short Service Commissioned Officer, was commissioned in the Army Ordnance Corps on 08.03.2003 after successfully completing training and later received a Permanent Commission, with seniority revised on 08.11.2003. During the course of service, the applicant has achieved promotions and currently holds the rank of Lt. Col., serving as GSO 1 at the Ordnance Computer Centre (OSCC), Army HQ.

3. The applicant was not empanelled during the No 3 selection board held in September 2020, the results of which were announced in the month of October 2020. The applicant thereafter, submitted a statutory complaint on 05.12.2020 regarding issues related to the ACR and 'Value Judgement' marks, which was subsequently rejected on 16.02.2022.

4. Learned counsel for the applicant contended that the applicant was granted a Permanent Commission with seniority

revised from 08.11.2003. The applicant has consistently demonstrated exceptional service, including in High Altitude Areas, field, and Counter-Insurgency operations, earning 'Outstanding' reports throughout his tenure.

5. The counsel further asserted that the applicant, currently serving as a Lieutenant Colonel, has completed various prestigious courses and has served in both peace and operational environments. The counsel vehemently argued that during the applicant's tenure at the Central Aviation Supply Depot (CASD) from Oct 2010 to Nov 2012, the new IO, who took over command in May 2012, had graded the applicant as 'Above Average'. The counsel contended that the IO's reluctance to award an 'Outstanding' grade despite recognizing the applicant's exceptional work was detrimental to the applicant's career. The counsel contended that IO's fear of his reputation before the RO led to the applicant receiving a lower ACR rating of '8', which unfairly impacted his promotion prospects. The counsel also argued that the respondents introduced a policy on 31.12.2008, shifting the promotion selection process to Quantified Merit with 95% weightage on merit and 5% on

'Value Judgement' now termed 'Board Members Assessment' (BMA), under the policy letter dated 23.12.2017. The subsequent policy letter of 04.01.2011 mandated that any alteration of overall merit by Value Judgement marks required the Selection Board to record reasons. The counsel argued that applicant, having served most of his career in field and Counter-Insurgency operations, was entitled to a higher Value Judgement score than those promoted, but this was not reflected in the final outcome.

6. The counsel contended that the applicant's apprehension regarding the reduction of his BMA marks was well-founded, and the respondents failed to justify the disparity in marks. The promotion policy outlined in the letter dated 23.12.2017 required adherence to specific parameters when awarding BMA marks, but the respondents arbitrarily awarded lower marks to the applicant, impacting his promotion prospects. It was further argued that the MoD note dated 23.12.2010, which emphasizes avoiding favoritism and arbitrariness in promotion processes, remains relevant and has not been superseded by the new quantification policy. The counsel stressed that despite being

ranked higher in quantified merit, the applicant's BMA marks were disproportionately low compared to officers who were ultimately promoted, without any reasons being provided by the Selection Board.

7. The counsel for the applicant strongly argued that the rejection of the statutory complaint was legally flawed. The respondents dismissed the complaint as technically correct and objective without properly applying their mind to the issues raised, particularly the negative impact of the applicant's ACR for the period from 05/12 to 11/12. It was submitted that the IO unjustifiably constrained himself from awarding an 'Outstanding' grade, thereby harming the applicant's career. The counsel asserted that an 'Above Average' ACR does not automatically reflect objective performance. When an ACR adversely affects promotion, it should be scrutinized for objectivity, and in this case, the benefit of doubt must be extended to the applicant, with the ACR being set aside as inconsistent with his overall profile.

8. Moreover, the counsel argued that the respondents' failure to record reasons for awarding low BMA marks, despite

the applicant being ranked much higher in quantified merit, violated their own promotion policy. The undue emphasis on BMA marks—constituting only 5% of the overall score—effectively nullified the objective 95% quantified merit system, leading to arbitrary outcomes. Citing a precedent set by the Hon'ble Supreme Court in Brig Nalin Kumar Bhatia Vs. UOI & Ors. decided on 11.02.2020, the counsel contended that the promotion policy was converted to a quantified system to ensure fairness and transparency.

9. Per contra the counsel for the respondents contended that the applicant's non-empanelment to the rank of Colonel by the No. 3 Selection Board held in Oct 2020 was justified. They contended that the applicant had submitted a statutory complaint dated 05.12.20, which was thoroughly examined by the competent authority. The review included an evaluation of the applicant's overall profile, relevant documents, and the recommendations from Army Headquarters. It was argued that after careful consideration of the applicant's grievance and the redress sought, it was found that the assessments made by all reporting officers, including those in the impugned Confidential

Report (CR) for the period 05.12 to 11.12, were fair, objective, and consistent. The counsel contended that the evaluations were performance-based, balanced, and technically sound, with no evidence of bias or subjectivity. As a result, the statutory complaint was rejected by the competent authority on 16.02.22.

10. The counsel further argued that the applicant had not availed the available departmental remedies against his non-empanelment in the No. 3 Selection Board held in Oct 2022 and on this basis alone, the OA was liable to be dismissed. To support this position, the counsel relied on the judgment of the Hon'ble Armed Forces Tribunal (Principal Bench), New Delhi in OA 1256 of 2018 in Maj Gen Basvaraj D Gilganchi Vs. Union of India and Ors. The counsel for the respondent contended that the Army operates within a pyramidal rank structure, meaning that vacancies in higher ranks are limited, and only those officers with superior service records within a particular batch are selected for promotion. The counsel asserted that all officers of a given batch are evaluated based on the same cut-off Annual Confidential Reports (ACRs) and individual profiles. Promotions are granted based on comparative merit within the

batch, and seniority alone is not a determining factor. In cases where an officer is granted relief through a complaint after a selection board has convened, the officer is given special consideration by the board, and if empanelled, retains their original seniority.

11. The counsel further argued that under the applicable policy, officers are granted three opportunities for consideration for promotion: Fresh Consideration, First Review, and Final Review. If an officer is not empanelled on the first attempt but later empanelled in a subsequent review, they lose seniority relative to their original batch. If an officer fails to be empanelled after three considerations, they are deemed to be superseded. It was contended that the ACR assessments were conducted in accordance with Army Order 45/2001/MS (later replaced by Army Order 02/2016/MS) and other relevant policies. The numerical grading system, ranging from 1 to 9, reflects the officer's performance and personal qualities, with assessments made by the Initiating Officer (IO), Reviewing Officer (RO), and Senior Reviewing Officer (SRO), each operating independently.

12. The counsel asserted that an "Outstanding" grading, denoted by a numerical value of 9, is reserved for exceptional achievements beyond what is expected of officers with Above Average performance. Officers have no inherent right to claim an "Outstanding" grade in their ACRs, as such assessments are at the discretion of the reporting officers and fall outside judicial review unless there is clear evidence of bias or procedural violations. The performance reflected in any ACR pertains solely to the period covered by the report. The counsel also emphasized that when considering officers for promotion to selection ranks, the Selection Board evaluates a broad range of factors, including war and operational reports, course evaluations, ACRs, command and staff appointments, honours, awards, and disciplinary background. The decision to empanel or not is based on the officer's overall profile and comparative merit within their batch, not merely one or a few ACRs.

13. It was contended that the Selection Board is responsible for assessing the applicant's suitability for promotion, and its recommendations are not final until approved by the competent

authority, either the Chief of Army Staff or the Central Government.

**Consideration**

14. Having heard Learned Counsel for parties, we have perused the records of the applicant which include the CR dossiers, internal files of analysis of his complaint and the No 3 Selection Board (SB) results. The questions placed before us for our examinations are :-

(a) Whether the impugned CR 5/2012 – 11/2012 merits to be interfered with?

(b) Whether applicant's considerations by No 3 SB were as per the policy?

**Issue 1 : CR 5/2012 – 11/2012**

15. We have perused the entire CR records of the applicant in his reckonable profile for consideration by No 3 SB which commence with CR 01/2009 -12/2009 in the rank of Major till CR 8/2018-05/2019 in the rank of Lt Col. The entire CR record is a healthy mix of 'Above Average' and 'Outstanding' box gradings. It is essential for us to take note of the fact that the only open portion of the CR which is seen by the ratee is that

initiated by the IO and the gradings recorded by RO and SRO are not visible to the ratee. On further scrutiny of the impugned CR in comparison to earlier CR initiated in respect of the applicant, we have undoubtedly noted that the applicant has been consistently awarded 'Outstanding' grading by his IOs since CR 01/2011 to 12/2011 until CR 08/2018-05/2019 with the exception of the impugned CR which has been initiated by the set of IO & RO who have observed and assessed the applicant for the first and the only time.

16. However, we note that in the two preceding CRs to the impugned CR, the RO and SRO have graded the applicant 'Above Average' in the same appointment and therefore, it is our observation that out of the three CRs earned by the applicant in the criteria assignment in the rank of Major as Commander Sub Depot, CASD, Delhi Cantonment, the applicant has been twice rated by IO as 'Outstanding', only once rated by RO as 'Outstanding' and rated as 'Above Average' by SRO on two occasions and the impugned CR has not been endorsed by the SRO wherein it is recorded "SRO does not wish to endorse". The three CRs in the said appointment have healthy and laudatory

pen pictures with no adverse or weak remarks recorded. We have also given careful consideration to the gradings awarded by the reporting officers in various qualities in PQ, DPV & QsAP and we find that the ratings awarded by the reporting officers in the impugned CR are more or less as per pattern and there is no merit in the case to set aside the CR under consideration.

17. We do not wish to express our views on 'above average' gradings awarded to the applicant in the CRs in light of the views expressed by this very Bench while passing orders in the case of *Brig Vishal Mohanlal Murada Vs. Union of India & Ors.* [OA 1256/2022] which reads to the effect:

*"16. .... It is our considered opinion that the courts are not in a position to assess the competence of the employee and override the assessment of the reporting officers to upgrade for Above Average (8) to Outstanding (9). We are neither privy to the performance of the employee nor the inter personal aspects of the organizational health. This aspect has been adequately answered by Hon'ble Supreme Court in the case of Union of India Vs Lieutenant General RS Kadyan (2000) 6 SCC 698 and Major General IPS Dewan Vs Union of India and Ors (1995) 3 SCC 383 (Supra). If the courts were to upgrade all above average (8) Confidential Reports to Outstanding (9), we will be swarmed by applicants seeking the intervention of courts for upgradation of their CR ratings which would cause gravious injury to the overall health of the Armed Forces and render the entire system of Confidential Report and Quantification System of Selection redundant. Thus we do not consider it prudent to upgrade the Confidential Report ratings through our judgment. For this, case of Brigadier Mandeep Singh Vs Union of India (OA No 905/2015) deserves mention wherein the Armed Forces Tribunal has noted :-*

*"Firstly, we would like to reiterate that the guidelines have no statutory effect. Thus it is clear that box gradings are assessments to be made by the Reporting officers who are in the best position to assess the officer in his individual qualities and also his performance when compared to his peers. They are legally entitled to do so and being responsible officers senior in the chain of Command to the applicant, are eminently competent to do so. Unless any clear infraction of rules, orders, regulations or instructions in the recording of the impugned CRS are brought to our notice, we would not be in a position to interfere in the matter in any way".*

17. In a similar case of *Union of India Vs SK Goel and Ors 2007; 14 SCC 641*, the Hon'ble Apex Court has observed :-

*"Evaluation made by an expert committee should not be easily interfered with by the Courts which do not have the necessary expertise to undertake the exercise that is necessary for such purpose".*

18. Dwelling further on the aspect of examination of the other Confidential Reports of the applicant in the rank of Brigadier, we have once again observed that there is no bias or arbitrariness in any of the four reports examined and thus there is no cause of action therein. Similar impressions have also resonated in the disposal of the second statutory complaint by the Respondents. The entire CR profile of applicant has mix of Above Average (8) and Outstanding (9) box gradings by reporting officers. Since the ratee officer is not privy to the entire contents of the Confidential Report except for the part which he/she signs as read, most rating being Outstanding as perceived by the applicant are not true. In conclusion, we do not find any cause for us to affect an upgradation in the subject Confidential Report."

18. Similar observations have made by this Tribunal in the case of Brig Mandeep Singh Vs. UOI & Ors. [OA 905/2015] while discussing the judicial review of CRs and the inter action between the reporting officers with the ratee, which reads to the effect :

12. As regards the issue of following the guidelines and the claim of the applicant that getting seven '9's in the individual qualities out of 11 would amount to predominance and the box grading should have been '9', we find no legal mandate to support the claim of the applicant. Firstly, we would like to reiterate that the guidelines have no statutory effect. Be that as it may, para 35(b)(1) of the box grading specifically states that box grading represents overall assessment of performance as well as potential for promotion. Para 35(b)(ii) states that the reporting officer must clearly differentiate between truly outstanding officers and others. Grading all officers outstanding would defeat the very purpose of appraisal system. Para 35(b)(ii) states that the box grading is not meant to be a mathematical average of the awards in individual qualities. The word 'predominance' heavily relied upon by the learned counsel for the applicant. It has no legal definition. The dictionary meaning of 'predominant' is 'present as the strongest or main element; having or exerting greater control or power'. On the other hand Oxford English Dictionary clarifies 'Outstanding' as 'exceptionally good' or 'clearly noticeable'. Box grading of seven '9' was predominant in the gradings made but only that each grading numbered more than the lesser gradings. Predominance demands eclipsing of the lesser gradings as insignificant, and it can be so only in a case where lesser grading is limited to one or two. Thus it is clear that box gradings are assessments to be made by the Reporting Officers who are in the best position to assess the officer in his individual qualities and also his performance when compared to his peers. They are legally entitled to do so and being responsible officers senior in the chain of Command to the applicant, are eminently competent to do so. Unless any clear infraction of rules, orders, regulations or instructions in the recording of the impugned CRs. are brought to our notice, we would not be in a position to interfere in the matter in any way. Neither has the applicant brought any such infraction to our notice nor has he made out a case of malice or bias against any of the respondents. On the power of the courts to interfere in such matters, the Hon'ble Supreme Court in the case of Air Vice Marshal S.L. Chhabra v. UOI (1993 Supp (4) SCC 441 has stipulated as follows:

"According to us, neither the High Court nor this Court can moderate the appraisal and the grading of the appellant for a

*particular year. While exercising the power of judicial review, a Court shall not venture to assess and appraise the merit or grading of an officer".*

19. In view of the above, we find no reason to interfere in the box grading of '8' given to the applicant in the impugned CRs."

**Issue 2 : Consideration by No 3 SB**

20. Having gone through the board proceedings of No 3 SB, we observe that the applicant was considered and non-empanelled for promotion thrice by the subject promotion boards as follows:-

(a) In October 2020 as a Fresh Case of AOC 2003 batch.

(b) In September 2021 as a First Review Case along with 2004 batch of AOC.

(c) In October 2022 as a Final Review Case along with 2005 Batch of AOC.

21. We observe that in the No 3 SB which considered the applicant in September 2020 for 15 vacancies, while the applicant was in the promotable zone prior to award of Value Judgment (VJ) marks, his merit dropped consequent to award of the same and resultantly, the applicant was held non-empanelled. Quite similarly, the applicant met the same fate in

the No 3 SB conducted in September 2021, wherein post award of Value Judgment or Board Member Assessment (BMA) marks, the merit of the applicant dropped to the zone of unpromotable category and resultantly, he was non-empanelled during his second consideration as well. For the third time, the applicant was below the cut off merit of last candidate promoted even before the award of VJ/BMA marks and therefore, he was held to non-empanelled for promotion.

22. It is now essential for us to take note of the reasons recorded by the board on both occasions for down gradation of the applicant from promotable zone to being non-promotable. The low value judgment marks were awarded by the No 3 SB conducted in September 2020 for the reasons that the officer had a 'C' grading in Junior Command (JC) Course and therefore, due to lack of qualification on any competitive course, his employability is restricted in an "all arms environment." The SB had also further observed that since the applicant has had no staff exposure and also that he had earned most of his reports from Liberal reporting officers, the board in consideration of overall profile, performance and employability of officer

awarded less BMA marks in comparison to his batchmate who had lesser quantified marks out of 95 marks and yet was awarded more marks by the No.3 SB.

23. We have also perused the remarks of the No.3 SB members in the same SB which have been recorded in favour of the selected candidate whose merit was lower than the applicant prior to award of VJ marks and yet due to higher VJ marks vis-à-vis the applicant, his final merit was higher and accordingly he was held 'empanelled'. In support of their value judgement, the No.3 SB has observed that the candidate had a better course profile including a BI grading in JC Course and Advance Material Management Course and therefore, he had better employability in higher ranks. The board also observed that the competing candidate had operational experience in OP RHINO and had two GOC-in-C Commendation Cards to his credit for distinguished service. Thus, in conclusion, the board found that the competing next candidate had better potential for promotion to next higher rank and accordingly, he was stepped up into promotion zone at order of merit 14. This promotion being a closed board as per MS Branch policy the identity of the

candidates are not known to the Board Members and therefore we have no reason to suspect any bias or prejudice against the applicant, accordingly, we are satisfied with the reasons stated for award of less VJ marks to the applicant.

24. While being considered for second time in September 2021 by the No.3 SB for 17 vacancies, we have observed that the applicant was at Merit List No 15 prior to award of VJ marks which dropped to Order of Merit 17 consequently. The reasons for drop in merit of the applicant in this consideration is almost similar to the earlier promotion board wherein the No.3 SB members found that the applicant was rated by Liberal set of officers and had secured a grading of 'C' in Junior Command Course whereas his gradings in Young Officer's Course is 'AI', 'B' in ATS and SOM. In addition, the No.3 SB also recorded that the applicant does not have any Honours and Awards on his profile. The two candidates below the applicant at Merit List 16 & 17 have been moved up to Merit List 14 & 15. The candidate at merit 17 was opined by the No.3 SB to be eligible for better VJ marks due to grading of 'B' in Junior Command Course and 'A' in ATS Course and he had

performed well in Command, Staff and Instructional appointments. The candidate at Quantified order of Merit 16 was elevated to order of Merit 15 due to better experience to operational areas although, he too had secured a 'C' grading in JC Course.

25. Having given our deliberate consideration to the reasons recorded by two successive boards, we are fairly satisfied with the reasons stated while conducting a paired comparison in the No.3 SB conducted in September 2020. However, in No. 3 SB in 2021, we have observed that the competing candidate who was at Merit 16 has been stepped upto Order of Merit 15 even when he too has a 'C' in JC for reasons of better experience in OP RAKSHAK, OP ORCHID. It is our considered opinion that choice of serving in an operational area or otherwise is not with the employee but with the employer unless the employee deliberately opts for softer options. There is nothing on record to establish anywhere that the applicant has exercised any such choice in his career. Therefore, we are not inclined to endorse the opinion of the No.3 SB on this account for awarding less VJ marks to the applicant on the ground that he has served in less



- ii. *transfers and postings including the change of place or unit on posting whether individually or as a part of unit, formation or ship in relation to the persons subject to the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957) and the Air Force Act, 1950 (45 of 1950).*

iii. to (iv)

xxx

xxx

xxx

xxx”

*The moot question, therefore, is that; can the employee should be held responsible for holding less challenging appointments unless he has for some reasons personally chosen to do so by making appropriate request to the competent authority who is turn have granted his request.*

*34. The applicant has averred in this OA that on his promotion as Colonel, he was appointed as Commanding Officer of 561 Sub Group till 02.07.2009 in which he was given the largest area of responsibility for any Signal Unit and due to his performance he was selected for HDMC Course. After the course when he requested for posting to Lucknow to look after his ailing mother he was not granted the request and instead he was posted as Col A HQ 3 Corps which is a challenging appointment. He has also submitted that he was posted to Delhi on the grounds of organization interest as Director I/O wherein his request for posting to Lucknow was only again rejected. Further, he has also averred that on promotion to rank of Brigadier, he was posted as Commander 5 Signal Group instead of being posted as CSO of a Corps in organizational interest; based on his previous experience of managing ASCON communication network wherein he was responsible for entire communication network of the country and, therefore, he has claimed to have held an appointment which is both challenging and prestigious. The above facts have neither been refuted by the respondents nor there is any evidence on record to suggest that he volunteered for any of the said appointments that he was ordered to hold from time to time. Therefore, in the light of the above findings, we are inclined to conclude that the assignments held by the applicant have been as per the orders received from the posting branch in the Army HQ in which he had no intervention or control whatsoever. We are, therefore, of the considered opinion that the speaking order does*

*not adequately substantiate the rationale for award of low VJ marks resulting into non-empanelment of the applicant.*

27. Therefore, in light of our aforesaid observations, we have no hesitation in setting aside the award of Value Judgement Marks awarded by the No.3 SB of September 2021. Noting that the applicant is entitled for promotion in the No. 3 SB held in September 2021, being in the promotable zone, prior to award of VJ marks and if he were to be awarded proportionate VJ Marks he would be empanelled for promotion. We are, therefore, of the opinion that the applicant is entitled for his promotion to the rank of Colonel, with 2004 AOC batch when he was considered as a 'First Review' case.

28. Consequently, as per principle laid down in the case of Ritesh Tiwari Vs Anr Vs State of Uttar Pradesh [(2010) 10 SCC 677], and Cdr S Luthra Vs UOI [OA 302/2019], we direct that the applicant shall be promoted to the rank of Colonel with 2004 AOC Batch as a First Review case as per his intra batch seniority and be granted all consequential benefits for promotion, pay and allowances and pension. This order shall be implemented by the Respondents within 30 days from the

date of pronouncement of this order. along with all consequential benefits.

29. No order as to costs.

30. Pending miscellaneous application, if any, stands disposed of.

Pronounced in the open Court on 11<sup>th</sup> day of November, 2024.

**[JUSTICE RAJENDRA MENON]  
CHAIRPERSON**

**[LT GEN C.P. MOHANTY]  
MEMBER (A)**

*Akc/Ps*