

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

O.A. No. 1577 of 2016

In the matter of :

Commander Rajesh Vaid

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Shri Ankur Chhibber, Advocate

For Respondents : Shri Harish V. Shankar, Advocate for
Respondents Nos. 1 to 3

None for Respondent No. 4

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

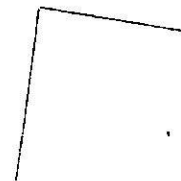
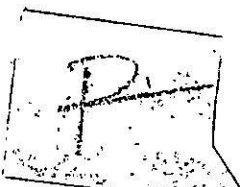
Invoking the jurisdiction of the Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as 'AFT Act'), the applicant has filed this OA and the reliefs claimed in Para 8 read as under :

- (i) To quash the letter dated 30.06.2014 whereby his representation was rejected, the order dated 25.05.2015 whereby his Statutory Complaint was rejected by the PDOP and the order dated 15.07.2016***

whereby his Statutory Complaint was rejected by the Ministry of Defence.; and

- (ii) To quash the results of the Promotion Boards PB2B/13, to the extent that officers lower in merit position to the Applicant have been selected as being illegal, arbitrary and contrary to the rules in force; and**
- (iii) To direct the respondents to re-examine the case of the Applicant for promotion to the rank of Captain w.r.t. PB2B/13, PB 2A/14 and PB 2B/14, and if found fit, to be promoted to the rank of Captain with all consequential benefits viz seniority, pay and allowances etc; and**
- (iv) To pass such other and further orders which their lordships of this Hon'ble Tribunal deem fit and proper in the facts and circumstances of the case.**

2. The facts in brief are that the applicant was commissioned in the Indian Navy as a Sub Lieutenant on 27.11.1993 and thereafter promoted to the rank of



Commander on 27.11.2007. During his service career, the applicant has served in various places and held prestigious staff and instructional appointments. The applicant was awarded various commendations, such as, CNS commendation in 1998, C-in-C commendations in 2000, 2003, 2007 and 2008.

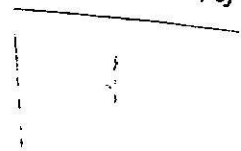
3. The applicant submits that he was selected for a Radar training course in February, 2007 at Russia for seven months. It is the case of the applicant that he was selected for staff course at DSCC Wellington, which is based on CR merit at that time; that in November, 2008, the applicant was selected as Senior Naval Overseer (SNWO) at WOT (S) in Russia for 27 months. The applicant was selected by the Technical Sea Board as Electrical Officer of frontline warship INS Mysore.

4. The applicant thus contended that he was consistently maintaining higher positions in comparative CR merit; had undergone various selection processes between 2007 - 2012 and was selected for courses in both India and abroad, a foreign deputation and for sea tenure in ranks of Cdr on-board a frontline Fleet ship and he was considerably high in

the merit list within peer group and that he is one of the few technical officers of his batch who has served onboard ships for a total duration of more than 7 years out of 19 years of service.

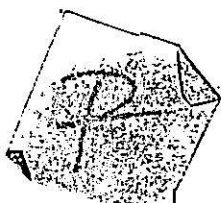
5. It is also the case of the applicant that in the year 2013, it was proposed for the first time, as communicated vide letter of IHQ, MoD dated 05.06.2013 (Annexure A-3) that for promotion to the rank of Captain, similar weightage procedure prescribed for promotion of officers to Flag Rank would be followed. As per the said procedure, as notified vide IHQ, MoD letter dated 14.05.2009 (Annexure A-4), there was to be a Quantified System of selection with two components namely (a) 95% weightage assigned to ACRs and (b) 5% marks for value judgment to be awarded by the Promotion Board.

6. The learned counsel then submitted that the respondents have failed to appreciate that that assigning arbitrary marks for VJ and deliberately keeping it subjective is against the very system/rules of ACR which evaluates the officer/ grades for performance over a period of 20 years or so and applying reasoning such as specialisation/



appointment/ type of ship/ future requirements etc. for VJ is against the principle of CR rules as appointments are not being made by the individual but the respondents: but to use them i.e. varied appointments to disqualify/ discredit for the sake of promotion is against the natural justice and merits consideration.

7. The applicant was considered by the PB 2B/13 along with his batch-mates for promotion to the rank of Captain as per the new policy as brought out in Para 5 hereinabove. According to the applicant, despite his consistent performance of higher *inter se* merit position and selection for various trainings in India and abroad and highly challenging appointment as Electrical Officer of a major frontline warship as Commander in 2011-12, his name did not find place in the promotion list of PB 2B/13 of total nine persons which, according to the applicant, is questionable. The applicant also submits that there were certain officers who had a lower CR marks than the applicant, however, those officers were selected and he was not selected, thereby ignoring his merit in accordance with his CR marks being higher than some of the selected officers.



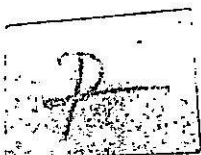
8. Aggrieved by the non-selection by the PB, the applicant submitted a Redressal of Grievance (ROG) application dated 24.10.2013, however, no reply was received from the respondents. It is submitted by the applicant that in accordance with the extant procedure followed by the respondents, if an individual's ROG is accepted for reconsideration and if a relief is being provided, then no response is being forwarded to the aggrieved officer and as no response was received qua his ROG, the applicant was under the impression that his case had been accepted for reconsideration and subsequent ratification by the forthcoming Promotion Board and that the respondents would look into the same and even in July, 2014, the applicant through proper channel made attempt to ascertain the status of his ROG and was intimated that it is under consideration and was advised to wait for Promotion Board.

9. Subsequently in July, 2014, two more Promotion Boards, being PB2A/14 and PB 2B/14 were also constituted but the applicant did not find place in the Select List nor did he receive any response to the ROG submitted by him. The applicant submitted two reminders on 24.10.2014 and

29.10.2014 to ascertain the status of the ROG, but no response was intimated to him by the respondents, however, the applicant received a letter dated 15.12.2014 making reference to an earlier letter dated 30.06.2014 (impugned herein) vide which his ROG had been rejected and thus the applicant got to know that the respondents did not forward his ROG to an autonomous body Redressal and Complaint Advisory Board (RACAB) for an independent opinion which defeated the purpose of applicant's representation, which, according to the applicant, is violative of the procedure laid down in Clause 5(c) and 6 of Navy Order No. 24/2007.

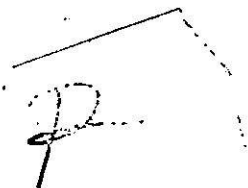
10. Against the rejection of the ROG by the respondents and non-selection for promotion to the rank of Captain, the applicant submitted a Statutory Complaint dated 09.02.2015 for forwarding it to the MoD and thereafter the applicant has filed the present OA.

11. The learned counsel, relying on the judgment of the Hon'ble High Court of Delhi in the case of **Sarish Masan Vs. Union of India & Ors.** [ILR 2004 Delhi 484 ABM], in which case, the petitioner had secured higher marks on the basis of AR grading and was at Sl. No. 1 but was 52.5%



marks in the discretionary component of 20% marks and was brought down to Sl. No. 7 and the same struck down by the Court. The learned counsel also relied upon the Hon'ble Apex Court judgment in **Brigadier Nalin Kumar Bhatia Vs. Union of India and others [(2020) 4 SCC 78]** in which case the appellant was granted relief and civil appeal was allowed.

12. The respondents have filed their counter affidavit and denied the allegations made by the applicant regarding any bias and submit that all appointments are considered equally important to Indian Navy, selection to a particular course or appointment to a particular station does not ensure promotion of an officer which is based on pure merit derived from demonstrated past performances on the basis of CRs and suitably modified by the Performance Appraisal Review Board (PARB). The learned counsel further submitted that the criteria and procedure for selection for various courses is different from the one adopted for promotion by the PB and it is also based on merit but simultaneously the availability of officer and also whether they can be spared for the course/deputation is taken into account and thus the contention of the applicant regarding



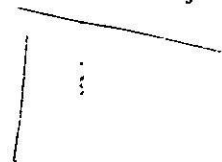
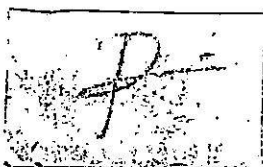
his selection for courses leading to higher merit is not correct.

13. The learned counsel further submitted that the ROG has been deliberated at the level of Chief of Personnel and since no relief could be granted to the applicant, his ROG was forwarded to an independent body RACAB for a *de-novo* examination, and, after detailed examination, RACAB concluded that the ROG of the applicant lacked merit and thus was rejected, which was intimated to the applicant vide letters dated 15.12.2014 and 25.05.2015. It is further submitted that at the applicant's request, the ROG was forwarded to the Ministry of Defence for disposal and the same was rejected by the MoD.

14. The learned counsel for the respondents submitted that the applicant has misled the Tribunal regarding award of 5% Value Judgment marks awarded by the PB as there are various parameters which are to be taken into account such as Performance and Personality, Recommendations recorded in ACRs, Potential and Employability, Career Profile and Awards and Achievements like Gallantry Awards,

participation in adventure activities, exceptional achievements etc. while awarding VJ in the promotion board.

15. The learned counsel further submitted that the applicant missed the selection to the rank of Capt by a fair margin in overall merit which is derived by allocating 95% of marks to each officer based on this CR merit and 5% marks as Value Judgment awarded by Board members; and that the policy is uniform and no undue favour was extended to any officer. It is further submitted that the applicant cannot challenge a policy merely because it is likely or it has caused any personal hardship to him; the policy of promotion to the rank of Capt has included the allocation of 5% marks to enable the promotion board to assess the merit and suitability of an officer and the policy is uniformly applicable to all the officers and thus no prejudice has been caused to the applicant. It was added by the learned counsel that the rank of Capt in Navy is a select rank and any process of selection by the nature of its necessary implication has to take into account the overall comparative merit of an officer, all officers who are considered by PB have basic eligibility, most of them also have merit but only some officers can be



selected based on their comparative suitability as adjudged by PB and thus the contentions of the applicant in this regard are baseless and devoid of merit.

16. The learned counsel relied upon the order of the Tribunal (PB) in OA 407/2014 decided on 03.12.2015 titled **Commodore Atul Kumar Sinha Vs. Union of India & Ors.**, wherein issue of Value Judgement was considered and was dismissed and the said order was then challenged by the petitioner before the Hon'ble Supreme Court in Civil Appeal Diary No. 861/2016, which was also dismissed vide order dated 29.01.2016 stating that no substantial question of law of general /public importance was involved.

17. The learned counsel contended that the applicant was not selected by the PB due to his lower *inter se* merit in his batch and as far as the issue of the selected officers who had low CR average than the applicant is concerned, the same was due to award of higher marks in Value Judgment by the PB. The learned counsel further submitted that the members of the PB are senior officers from the respective branches (Executive, Engineering and Electrical including Aviation and Submarine) who are aware of the performance,

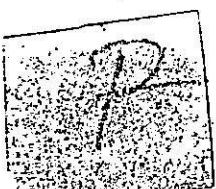
particularly the exceptional feats of the candidates through routine/formal discussion with their IOs/ROs and at times, these senior officers are also SROs of the candidates; also the entire service record and the performance of the applicant during various courses/appointment is available for taking considered decision by the PB. Accordingly, the learned counsel for the respondents submitted that the applicant has misleading explanations while presenting his case and failed to bring out any ground in his favour and prayed that the OA of the applicant may be dismissed being a misuse of process of law and devoid of merit.

18. The applicant has also filed rejoinder to the counter affidavit filed by the respondents mainly denying all the averments and clarifications made by the respondents.

ANALYSIS

19. We have perused the various documents, promotion board proceedings, various policies and judgments cited by both the parties and CR dossiers of the applicant.

20. The officer's ROG dated 24.10.2013 regarding his non-selection of the rank of Captain by PB 2B/13 was processed by NHQ and the ROG was disposed of by NHQ vide its letter



Ps/7948/ROG/OADR 11/13 dated 13.01.2014. Since the applicant was not in receipt of ibid letter, NHQ forwarded a copy of the same vide its letter of even number dated 15.12.2014.

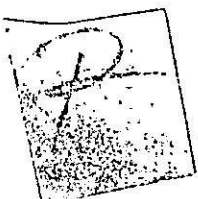
21. The applicant's statutory complaint/ROG dated 09.02.2015 was considered by RACAB and, having considered all the facts of the case, rejected the case of the applicant on 20.05.2015.

22. The applicant's statutory complaint dated 09.02.2015 was thereafter forwarded to the Central Govt. which was disposed of by the MoD vide its speaking order dated 15.07.2016.

23. The applicant has been considered by the three Promotion Boards and results of the three boards are as follows :

PB-2 Year	Applicant's position		Threshold for selection	
	Marks	Order of merit	Marks	Order of merit
2B/13	85.46	16	85.72	9
2A/14	85.94	14	86.35	6
2B/14	85.86	26	86.66	8

24. From the above, it is very clear that the applicant was lower in the *inter se* merit and was below the threshold of



last selected officer in the 3 Promotion Boards and was, therefore, not selected in all the three Promotion Boards.

25. In so far as the issue raised by the applicant about Value Judgment (VJ) marks is concerned, it is a policy matter and the respondents have the right to issue policies as required by them to conduct their promotion boards and we do not find it appropriate to interfere in their policies unless the policies are totally perverse and discriminatory in nature. The issue of Value Judgment marks has been thoroughly examined by the Principal Bench of the AFT, New Delhi in O.A. No. 407/2014 titled **Commodore Atul Kumar Sinha Vs. Union of India and Ors.** wherein Para 13 of the order dated 03.12.2015 passed in the said order reads as under :

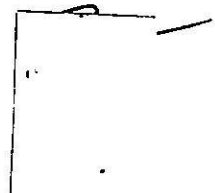
"13. In respect of the applicant during the relevant period for consideration, he had received only three times the grading of 'A' as compared to 7 times 'A' grading by R-3 and 6 times 'A' grading by R-4 and R-5. Thus, it is evident that assessment with reference to the requirement at times of war and the state of health of the applicant have played a part in the award of value judgment marks by the Promotion Board. Since the Armed Forces are meant to defend the Nation against any threat, assessment of desirability of an officer to be serving at the time of war is a vital parameter for the Indian Navy

which ought to be given due credit in consonance with the objectives of the promotion policy to select the most suitable military leaders for the Nation. We also agree with the learned counsel for the respondents that the degree of physical fitness is a vital input while assessing a leader's expected performance in stressful situations during the War. In view of the above, we do not find any reason to interfere with the value judgment marks given by the Promotion Board based on the service record and performance of eligible officers since they do meet the legal requirements of rationality, reasonableness and fair play."

26. The aforesaid order dated 03.12.2015 was challenged by the applicant by way of an application for leave to appeal before the Hon'ble Supreme Court being I.A. No. 1/2016 in Civil Appeal Diary No. 861 of 2016. The Hon'ble Apex Court dismissed the application vide order dated 29.01.2016 on the ground that no substantial question of law of general/public importance was involved for leave to appeal.

27. The Indian Navy's Policy dated 14.05.2009 deals with award of Value Judgment marks and gives the following parameters to be considered for awarding them :

- (a) Performance and Personality : Exceptional feats of professional performance, peer comparison, performance under stress.



- (b) Recommendations : Recommendations recorded in the ACRs;
- (c) Potential and Employability : Vision, credibility and suitability for higher responsibilities.
- (d) Career profile : Consistent performance in the operational and staff appointments.
- (e) Awards and Achievements : Gallantry awards, exceptional achievements, participation in adventure activities etc.

28. It is, therefore, very clear that the respondents whilst conducting promotion boards in addition to the ACR marks will also award Value Judgment marks as per the parameters as brought out in Para 27 hereinabove. It is quite possible that in some cases the order of merit as calculated solely on the ACRs marks may become altered by award of the Value Judgment marks. It is however in such cases, a detailed justification is to be recorded by the promotion board while awarding a lower Value Judgment mark to an officer whose ACR marks were higher than the other candidates. In the instant case, in PB-2(2B/13), there were two officers who were lower in order of merit than the

applicant when ACR marks were taken standalone. However, on award of Value Judgment marks, both the officers became higher in overall order of merit (OOM) as compared to the applicant. The respondents have given a detailed justification for awarding higher Value Judgment marks to the two officers as compared to the applicant and the same have been accepted by the MoD as justified whilst processing the ROG/Statutory Complaint of the applicant.

29. Keeping the above in view, we consider that the case of the applicant is devoid of merit and thus the OA 1577 of 2016 is dismissed being devoid of merit.

30. There is no order as to costs.

Pronounced in open Court on this 12th day of November, 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

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