

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

A.

OA 1631/2020

Col Tega Singh Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. Indra Sen Singh, Advocate
For Respondents : Mr. Anil Kumar Gautam Sr CGSC for R1-3,
None for R 4-5

CORAM

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

ORDER
26.04.2024

Vide our orders of even date, we have dismissed the OA. Faced with the situation, learned counsel for the applicant makes an oral prayer for grant of leave to appeal under Section 31 of the Armed Forces Tribunal Act, 2007, to the Hon'ble Supreme Court. We find no question of law much less any question of law of general public importance involved in the matter to grant leave to appeal. Hence, the prayer for grant of leave to appeal is declined.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

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PRINCIPAL BENCH: NEW DELHI**

OA 1631/2020

Col Tega Singh

... Applicant

VERSUS

Union of India and Ors.

... Respondent

For Applicant:

Shri Indra Sen Singh with Shri Aditya Bari,
Advocates

For Respondents:

Shri Anil Kumar Gautam, Sr. CGSC for
Respondents Nos 1 to 3
None for Respondents Nos. 4 and 5

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON

HON'BLE LT. GEN P M HARIZ, MEMBER (A)

ORDER

1. This application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant, who is a serving Col from the Corps of Signals and is aggrieved on not being nominated for the Higher Command (HC) Course, and by the rejection of his statutory complaint for the same.

He has made the following prayers:

(a) Call for the complete records of the case leading to the impugned order dated 15.06.2020 and set aside the said order, the same being a non-speaking order having been passed without due application of mind and without recording any objective finding raised by the applicant in his statutory complaint;

(b) Call for the complete CR dossier of the applicant and, after perusal thereof, set aside the applicant's impugned CRs for the period (i) 01.01.2008 to 31.12.2008, (ii) 01.01.2009 to 22.10.2009, and grant all the consequential reliefs flowing from setting aside the said CR including reconsideration for Higher Command Course/ Higher Defence Management Course;

(c) Call for the complete record of the case leading to the Applicant's rejection/ non-selection for nomination to the Higher Command/ Higher Defence Management Course in the consideration held in Feb 2019 and Feb 2020, and after perusal thereof, set-aside the said considerations for the same having been vitiated for extrapolating the applicant's two impugned CRs covering the period (i) 01.01.2009 to 31.12.2009, (ii) 01.01.2009 to 23.10.2009 as 'Non-Criteria' CRs for

the rank of Col by illegally giving retrospective effect to the MS Policy dated 23.12.2017, and

(d) Pass such other order(s) or direction(s) as the Hon'ble Tribunal deems appropriate in the facts and circumstances of the case.

Brief facts of the case:

2. The applicant was commissioned into the Army (Corps of Signals) on 13.06.1998. The applicant served in various sectors and did well on courses of instructions. It is the applicant's case that in Dec 2007, he was posted to a Mtn Div Signal Regt (MDSR) at Bareilly as part of a 'Spouse-coordinated-posting'. However, since this did not meet the requirement of a spouse-coordinated posting, the applicant was side stepped to the UB Area Signal Regiment (UBASR) on the very next day after reporting to MDSR. It is the applicant's case that he held the appointment of 'OC HQ Coy and OC 1 Coy' at UBASR from 30.12.2007 to 16.03.2008 when he proceeded to attend the JC Course. On return from the course the applicant held the appointment of OC 1 Coy from 9.6.2008 to 16.11.2008 but he was shown as the Adjutant in the officers' strength return (IAFF 3008), even though the permanent adjutant was already in chair. It is the applicant's case that he requested CO to reflect his correct appointment in

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the Officers' Strength Return IAFF 3008, but did not do so. The applicant later attended the DSSC Preparatory Course from 12.01.2009 to 07.03.2009. It is also the applicant's case that though he had handed over his CR covering the period 01.01.2008 to 31.12.2008, to his CO on 04.01.2009, the CO initiated the CR on 09.02.2009 in the applicant's absence and the extracts and communicated to him without any justification at Para 13 of the CR.

3. In Oct 2009, consequent to the CO being posted out, an early CR was initiated covering the period 01.01.2009 to 22.10.2009. It is again the applicant's case that though he had handed over the CR well prior to the departure of the CO, the CR was initiated only on 11.11.2009 and that extracts were forwarded without endorsing details at Para 13 of the CR form. It is also the applicant's case that though he was nominated for the DSSC course, it was never mentioned in the pen picture and that the overall figurative assessment as compared to the previous year had been reduced. The applicant was awarded the GOC-in-C Commendation Card in Jan 2010. Later on completion of the DSSC Course, the applicant did a tenure as a GSO-1 (Ops) of a Mtn Div and was later selected for a tenure

in UN Mission South Sudan, during which the applicant was awarded the Force Commanders' Commendation Card.

4. The applicant was considered by No 3 SB as a fresh case in Jun 2014 and was not empanelled. The applicant then filed a non-statutory complaint in Jul 2014 whilst deployed in UN Mission but did not get any redressal. The applicant was subsequently empanelled in Nov 2016. On being promoted to the rank of Col, he commanded a MDSR and was awarded the COAS Commendation Card in Aug 2018. The applicant was considered for nomination for HC Course in Feb 2019 and was not nominated. It is the applicant's case that this was because of the fact that the nomination had been based on the QSS policy letter dated 23.12.2017 instead of the old policy dated 14.05.2009. It is the applicant's case that his non-criteria report of Maj/Lt Col was extrapolated and based on the weightage given by the new policies; it had prejudiced his nomination. Despite his efforts to be posted to a staff appointment prior to the next consideration, it did not materialise and he was not nominated in his second consideration as well. The applicant submitted a statutory complaint dated 30.03.2019; however, this was rejected vide letter dated 15.06.2020. Hence this OA.

Arguments by the Counsel for the Applicant:

5. The counsel took us through the service profile of the applicant, his achievements and stated that the CRs earned in the rank of Maj in 2008/2009 were being challenged on the grounds of inconsistency, incorrect report and bias in reporting. CR-1 covered the period 01.01.2008 to 31.12.2008 and CR-2 covered the period 01.01.2009 to 22.10.2009. The counsel elaborated that in CR-1, though the applicant was holding the appointment of OC-1 Coy, his appointment was reflected as Adjutant in the CR. Further referring to the graph on year wise assessment (Annexure A-32), the counsel emphasised that considering the overall profile of the applicant, the only difference in the profile was in CR-1 and CR-2.

6. Referring to the details of assessment in these two CRs, the counsel emphasised that these CRs were not only inconsistent with the applicant's profile but the assessment within each CR was inconsistent, and also inconsistent with the other CR. That the CRs were entirely subjective. The counsel further elaborated that CR-2 had been initiated in the appointment of Adjutant, whereas the applicant was actually holding the appointment of OC 1 Coy. He further added that these CRs suffered from bias on the part of the IO/RO and that the RO/HTO was likely to have mirrored the report

of the IO/FTO. The counsel then elaborated the details of the applicant's initial posting to MDSR and the fact that on joining was side stepped to UBASR, and that this had caused bias in his IO, the CO of UBASR. That the IO was also unhappy with the limited participation of the applicant's wife in the unit activities, as she was posted to the ASC Bn in station. The counsel then drew our attention to the affidavit of Respondent No 4 (then CO of the applicant) and took us through the details in the affidavit and emphasised that the explanation clearly established the bias of the IO. Further referring to the statement given by then Adjutant (Annexure A-23) the counsel emphasised that it clearly established that during the relevant time the applicant held the appointment of OC 1 Coy. He also drew our attention to the Annexure 34 and 35 and emphasised that the documents substantiated the fact that the applicant was holding the appointment of OC 1 Coy.

7. The counsel then drew our attention to Para 4 of the "Guidelines for Rendering Objective Confidential Reports" (Annexure A-29) and emphasised on the importance of objective assessment. The counsel then drew our attention to the Unit Part-I Order dated 09.06.2008 which at Para 0916 (a) stated that the applicant was to take over the duties of OC 1 Coy

and Accts officer. He then referred to Unit Part-I Order dated 12.11.2008 which at Para 1816 (b) stated that another officer would relieve the applicant as OC 1 Coy w.e.f. 17.11.2008. Further referring to Unit Part-I Order dated 02.02.2008, the counsel stated that at Para 0183(a) it was stated that applicant will take over duties of OC 1 Coy w.e.f. 04.02.2008 and Para 0187 stated that he will take over various accounts.

8. Further referring to Annexure A-21, the counsel demonstrated that applicant had held the appointment of OC 1 Coy with reference to the IAFF 3008 from Jan 09 to Oct 09 [Annexure A-25 (Colly)]. The counsel then drew our attention to Annexure A-26 and explained that the applicant held the appointment of OC 1 Coy from 12.3.2009 to 14.01.2010 and that of 2 I/C from 08.03.2009 to 18.02.2010.

9. The counsel then drew our attention to the CR form and elaborated on Para 4(a) and 5 regarding physical service, and on Para 13, where, if the extracts were sent by post, reasons have to be ascribed. Referring to the affidavit by another officer (Annexure A-24), the counsel elaborated on Para 3(a) and (b) of the affidavit to explain that there had been an issue between the applicant and the IO. The counsel then drew our attention to the affidavit filed by Respondent No 5 (then RO of the applicant). In

particular he drew our attention to Para 5, 6, 7 and 8 and elaborated that the RO had mentioned that his assessment was generally aligned with the assessment of the IO/FTO, and that the applicant was the OC 1 Coy and had worked diligently and that the next CO had brought to his notice, the achievements, contributions of the applicant.

10. The counsel then drew our attention to Para 6(d) of the QSS Policy letter dated 23.12.2017 and elaborated the process of extrapolation of staff/ non-criteria appointments for SBs. The counsel then drew our attention to the applicant's application dated 15.03.2019 (Annexure A-15) where the applicant had highlighted the prejudice caused by extrapolation of his non-criteria reports in the rank of Maj/Lt Col and the reasons for his not being nominated for the HC course in 2019. The applicant had sought that he be posted to a non-criteria appointment in time to earn a staff report before the cut off prior to the consideration for HC 2020. The applicant had also submitted an application to the SO-in-C seeking posting to a non-criteria appointment in time to earn a report before reconsideration for HC course. The counsel then drew our attention to Annexure A-17 regarding the reply by MS Branch. The applicant also submitted an application dated 24.04.2019 (Annexure A-18) to Addl MS(A)

as well. This was replied to by MS Branch vide DO letter dated 24.05.2019 (Annexure A-19).

Arguments by the Counsel for the Respondents

11. The counsel reiterated the service profile of the applicant and stated that while the impugned CRs were of 2008/2009, the OA had been filed in 2020. Referring to the CR form, the counsel emphasised that the details of physical service and appointment held are filled by the ratee and authenticated by both the ratee and the IO; and was thus irrevocable.

12. The counsel then emphasised that despite the CRs of 2006, 2007, 2008 and 2009, the applicant had been empanelled by No 3 SB in 2016. Thus, there was no ground to challenge it at this stage and if indeed the allegations that the CR-1/CR-2 was a false report, then it was a fraud, in which case both the applicant and Respondent 4 were responsible. The counsel further added that as per the affidavit of Respondent 4, since the unit had less officers than its authorisation, multi-tasking was the norm and there was no challenge to that.

13. Further referring to the affidavits given by three officers (Annexures A-23, A-24 & A-27), the counsel vehemently asserted that these officers ought to have been impleaded as parties to the OA and that they cannot

merely submit affidavits to the applicant. The only option available to the applicant was to make them party to the OA or make a report to the Court, which would have then decided whether to implead them and then direct that notice to be issued to them. Further referring to the affidavit by Respondent No 4, the counsel emphasised that it was one person's word against another. He emphasised that the details needed to be ascertained from the CR as authenticated by the applicant and that was what would hold good. Further as per the details furnished by Respondent No 4, the applicant has taken benefit of the selection.

14. The counsel then explained that the applicant had been considered by No 3 SB as a fresh case in 2014 and was not empanelled. He further added that based on a Supreme Court judgment, 141 additional vacancies of Cols were given to the combat support arms, including the Corp of Signals. These vacancies were given for the 1992-97 batches and the applicant being from 1998 batch also benefitted from it and was thus empanelled as a review case in 2016.

15. The counsel then elaborated on the complaints filed by the applicant and their rejection by the competent authority. The counsel then elaborated on the policy on nomination for HC and equivalent courses and

added that since the Corps of Signals had only limited specified vacancies each year, the applicant was not nominated due to the applicant's comparative merit amongst those considered.

Consideration of the case

16. Having heard both the sides, the issues required to be considered are whether the two impugned CRs merit any interference, whether there is any malafide in the applicant's consideration for HC/equivalent courses in 2019 and 2020 and whether the respondents were justified in rejecting the statutory complaint dated 30.03.2019. The Respondents have submitted the CR dossier, file on examination of the complaint and the Board Proceedings of the HC consideration in 2019 and 2020. These have been examined by us.

Complaints

17. The applicant had filed one non-statutory complaint dated 02.07.2014 and two statutory complaints; first one dated 18.11.2014 and the second dated 30.03.2019. The non-statutory complaint was against non-empanelment by No 3 SB in his first consideration in Jun 2014. The statutory complaint dated 18.11.2014 was against two CRs; 04/2006 to 12/2006 and 01/2007 to 12/2007. Both these complaints were rejected.

The second statutory complaint dated 30.03.2019 impugned here is against his not being nominated for HC/equivalent courses and against two CRs; CR-1 01/2008-12/2008 and CR-2 01/2009-10/2009. The examination of the second statutory complaint is being reviewed here.

18. The examination of the complaint reviewed the overall profile and the CRs from 04/2006 to 02/2019. The CR profile is predominantly 'above average' to 'outstanding'. Both the CRs were earned by the applicant in the same rank of Maj, and as the Adjt of UBASR under the same set of reporting officers. The examination held that the assessment was objective, well corroborated, performance based and technically valid. Thus, the CRs did not merit any further interference. Thus, the complaint was rejected by the competent authority vide letter dated 15.06.2020.

CRs

19. The reckonable profile has 14 CRs from 04/2006 to 02/2019. Five CRs are in the rank of Maj which include three criteria reports. The applicant has earned five CRs in the rank of Lt Col which include two criteria reports. He has earned four CRs in the rank of Col, all of which are criteria reports. The overall CR profile is predominantly 'Above average' to

'Outstanding' with 42.6% box grading being 'Above Average' with the balance being outstanding.

20. Both CR-1 and CR-2 are in the rank of Maj and in the appointment of Adjt of UBASR. Both reports have been earned under the same reporting officers. Both CRs are boxed 8, 8, --, 8, 8 with a fair mix of 9s and 8s in the figurative assessment. Both have extremely positive pen pictures and positive recommendations. The assessment is corroborated by the reporting officers and is in sync with his overall profile at that juncture. Since the applicant was approved by No 3 SB in 2016 with these CRs, they are part of the settled profile of the applicant. Therefore, both CRs do not merit any further interference. As seen from the records, the applicant was not empanelled by No 3 SB in his first chance in 2014. There was no No-3 SB in 2015 and in 2016, a screening board was held to consider officers for promotion to rank of Col for the additional 141 vacancies given to the combat support arms. These vacancies were distributed to batches between 1992-1997. Thus, the applicant being from 1998 batch became an indirect beneficiary of these additional vacancies owing to vacancies released by review cases of 1997 and earlier batches.

21. As regards the issue of appointment held during the period of report, the details furnished by the applicant at Para 4 to 7 of both the CRs are extracted below:

CR - 01 Jan 08 to 31 Dec 08

4. (a) Appointments held during the period of report (as reflected in Para 2 (a) and as per IAFF-3008)

Appointment	Period		Service in months			Service in ops with details of type, loc, dates and period in months
	From	To	Peace	Field	HAA	
Adjnt	01.01.08	31.12.2008	12			

(b) AE Period for Majors only (Refers Para 10 of Important Instructions)

Criteria Appointment	From	To	Total Months (within period of CR)
N/A			

5. It is certified that the requisite physical conditions as per AO 45/2001/MS under the IO/RO (as applicable) and FTO/FSCRO (where applicable) for initiation/ endorsement of the Report are fulfilled (This certificate is irrevocable).

6. Details given in Para 1 to 5 are correct.

7. Signature and date Sd/-xxxxxx Sd/- xxxxx Sd/-
 Ratee IO/RO 04.02.09
 08 Jan 09 09 Dec 09 100/S..

CR - 01 Jan 09 to 31 Oct 09

4. (a) Appointments held during the period of report (as reflected in Para 2 (a) and as per IAFF-3008)

Appointment	Period		Service in months			Service in ops with details of type, loc, dates and period in months
	From	To	Peace	Field	HAA	
Adjnt	01.01.09	22.10.2009	10			

(b) AE Period for Majors only (Refers Para 10 of Important Instructions)

<i>Criteria Appointment</i>	<i>From</i>	<i>To</i>	<i>Total Months (within period of CR)</i>
<i>N/A</i>			

5. *It is certified that the requisite physical conditions as per AO 45/2001/MS under the IO/RO (as applicable) and FTO/FSCRO (where applicable) for initiation/ endorsement of the Report are fulfilled (This certificate is irrevocable).*

6. *Details given in Para 1 to 5 are correct.*

7. *Signature and date*

<i>Sd/-xxxxxx</i>	<i>Sd/- xxxxx</i>
<i>Ratee</i>	<i>IO/RO</i>
<i>20 Oct 09</i>	<i>11 Nov 09</i>

22. Army Order 45/2001/MS lays down the policy on rendition of CRs of officers. Para 93 states that it's the ratees responsibility to ensure correctness of details filled in Part-I of the CR form, and authenticate the details prior to handing over the CR form to the IO. Para 94 states that the officer reported upon will authenticate the details given in Part I of the CR form at the space provided for this purpose and that 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 will be permissible for this aspect. And it is seen in the CR form that Para 6 of Part-I states '*The details given in para 1 to 5 are correct*' , and at Para 7 this is

authenticated by the ratee, IO and the FTO/FSCRO with their signatures and date. Para 93 to 96 of Army Order AO 45/2001/MS are reproduced below.

Completion of the CR Form by the Officer Reported Upon

93. The Officer reported upon will be personally responsible for the correct completion of the portion pertaining to personal data, in accordance with 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 for initiation of an ACR; or

(b) Before he vacates the appointment, for initiation of an ICR under Paragraph 84, or an Early ACR under Paragraph 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.

95. In addition to the details in Part I, the ratee will also complete the Acknowledgement Cards, which will be returned to the ratee duly filled by the concerned reporting officers (or by Staff Officers authorised to handle the CRs as per Paragraph 13 above).

96. In case, a ratee fails to submit the CR form as provided in Paragraph 93 above, the report may be initiated by the IO (or RO when initiating CR under provisions of the AO) without authentication by the ratee in Part I. However, while invoking this provision, it must be ensured that sufficient evidence exists to prove mala fide intentions on part of the ratee, for delaying or avoiding the report. CRs initiated under this Paragraph will be en faced accordingly at Part I

23. It was contended by the applicant that both these CRs were initiated later and extracts were forwarded to the applicant and that at Para 13 of the CRs, the reasons for communicating by post was not indicated. Both

the CRs have been examined. Though the extracts of both CRs forwarded to the applicant do not have the endorsement, the original CRs have the requisite endorsement at Para 13.

CR 01/2008 – 12/2008

If communicated by post indicate reasons and registered letter No. 001/Sigs/01 and date 09 Feb 09	Offr proceeded to attend pre staff course at Hisar w.e.f. 09 Jan 2009 to 07 Mar 09 Sd/-xxx
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CR 01/2009 – 10/2009

If communicated by post indicate reasons and registered letter No. No.ACR/UBASR/AJ/03 and dated 12 Nov 09	Offr posted out from unit Sd/-xxx
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24. It is also seen from the CR Dossier that the applicant was placed on DV Ban w.e.f 20.07.2020. The applicant was awarded a Censure (Displeasure) of the GOC 33 Corps on 13.03.2021 for certain administrative lapses. Consequent to this, the DV Ban was lifted.

Consideration for HC

25. The policy on consideration for the HC equivalent Courses is laid down vide MS Branch letter dated 10.12.2018. The MS Branch letter dated 14.05.2009 states that the nomination of officers for NDC, HC and SC Courses are modelled on No 1, No 2 and No 3 SB respectively. The

applicant was granted his two considerations in 2019 and 2020. However, he was not nominated due to his comparative merit. The details are as under:

Ser	Details	1 st Consideration	2 nd Consideration
(a)	Year	2019	2020
(b)	Vacancies (Sigs)	12	14
(c)	OOM last offr nominated	13/95.586 (stepped up)	14/95.340
(d)	OOM Last offr earmarked res	14/95.373	16/95.272
(e)	OOM Applicant	51/94.459	43/94.456

26. It was also argued that the extrapolation of non-criteria report from the rank of Major had prejudiced the applicant's nomination for HC/ equivalent courses since the nomination for career courses is to be modelled on the corresponding Selection Boards as stipulated vide MS Branch Letter No 04485/MS Policy dated 14.05.2009. On perusal of the Board Proceedings of HC nomination for 2019 & 2020, it is seen that 97 marks are for CRs and 3 marks are for courses. Of the 97 marks assigned for the CRs, 46 marks are for Col's criteria appointment CRs, 25 marks are for other criteria CRs and balance 26 marks are for all other CRs. The three marks on courses is awarded for DSSC, Senior Comd, Junior Comd and

other courses. There is no value judgment marks. Thus, the apprehension of the applicant regarding extrapolation of CRs on staff is misplaced. There has been no mala fide in the consideration for HC nomination.

Conclusion

27. In view of the above consideration, we conclude that the impugned CRs do not merit any interference. The respondents were justified in rejecting the statutory complaint dated 30.03.2019. The applicant was not nominated for HC/ equivalent courses due to his overall comparative merit amongst those considered.

28. Thus, the OA is dismissed being bereft of any merit.

29. No order to costs.

Pronounced in the open Court on this day of ²⁶ April 2024.

**(JUSTICE RAJENDRA MENON)
CHAIRPERSON**

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

/ashok/