

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

O.A No. 1868 of 2018

AVM Shreesh Mohan

..... Applicants

Versus.

Union of India and Ors.

.....Respondents

For Applicant : Shri Ajit Kakkar, Advocate

For Respondents : Shri Gp Capt Karan Singh Bhati, Sr. CGSC

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 retired AVM of the Air Force and is aggrieved by his non-empanelment to the rank of Air Marshal, and rejection of his Redressal of Grievance (ROG) application vide order dated 01.10.2018. He has made the following prayers:

- (a) To set aside the impugned orders dated 01.10.2018 and 24.07.2018 passed by the Ministry of Defence (MoD) and Chief of Air Staff (CAS), respectively.

(b) To call for the ACRs of the applicant for the year 2016 and 2017 and quash the same, if found inconsistent with the ACRs/marks of the previous years.

(c) To quash the order of the Promotion Board Signal of AIR HQ PO214 dated 31.05.2018.

(d) To pass appropriate orders against the respondents, redressing the specific grievance of the applicant of having suffered humiliation at the hands of AOC-in-C, CAC, Allahabad.

(e) Issue such other order/ direction as may be deemed appropriate in the facts and circumstances of the case.

Brief Facts of the Case

2. The applicant was commissioned into the Flying Branch of the Indian Air Force on 29.12.1982 and subsequently superannuated on 31.10.2018. Throughout his distinguished service career, he rendered commendable service in diverse sectors, undertaking prestigious command and staff appointments. The applicant was conferred the Vayu Sena Medal in 2003. Furthermore, he was promoted to the rank of Air Vice Marshal (AVM) under PB-1/2012 and assumed the crucial role of Assistant Chief of Air Staff (ACAS) (Int).

3. The applicant was considered by SPB-2018 for promotion to the rank of Air Marshal as a first-timer; however, he was not empanelled.

Subsequently, the applicant filed a ROG dated 11.06.2018, contesting the non-empanelment. The grounds for the challenge included allegations of personal bias in the ACRs for the years 2016 and 2017, with a plea that such remarks be expunged. Upon thorough examination, the competent authority determined that the SPB-2018 of the Flying Branch for promotion to the rank of Air Marshal adhered strictly to the established promotion policy. The non-empanelment of the applicant was attributed to the evaluation of comparative merit among the candidates considered. Consequently, the competent authority, after due consideration, rejected the ROG dated 11.06.2018 through an order dated 24.07.2018.

4. Thereafter, the applicant preferred a statutory complaint dated 17.08.2018. However, pending disposal of the statutory complaint dated 17.08.2018, the applicant filed OA No. 1450 of 2018 at AFT, PB, New Delhi on the same issues. This Tribunal vide order dated 29.08.2018 disposed of the OA directing the respondents to dispose the statutory complaint filed by the applicant with a speaking order within 4 weeks and directed the same to be conveyed to the applicant within 7 days thereafter. The competent authority duly examined the case of the applicant and rejected the statutory complaint filed by the applicant vide order dated 01.10.2018. Thereafter, the applicant filed OA No. 1720 of

2018 in AFT, PB, however, it was dismissed on technical grounds. Hence, this OA.

Arguments by Counsel for the Applicant

5. The counsel for the applicant initially took us through the entire service profile of the applicant, highlighted his various achievements and emphasised that the applicant had always been an outstanding officer with impeccable credentials. The counsel contended that as per policy in vogue, the consideration panel of SPB-2018 should have been 1:2, whereas, in this case it was 1:3. Therefore, the proceedings of the Promotion Board for the year 2018 was held contrary to the existing policy and therefore was required to be set aside.

6. The counsel further submitted that the disposal of statutory complaint dated 17.08.2018 vide order dated 01.10.2018 was bad in law. The competent authority had not gone into the main issue i.e. bias on the part of RO. Further, the counsel elaborated a series of events wherein the RO had committed several acts to demean and berate the rank and position of the applicant. The counsel contended that the assessment by RO in ACRs of year 2016 and 2017 was subjective and therefore needs to be expunged. To substantiate his claim, the counsel relied on Hon'ble AFT, PB order dated 18.05.2015 in OA 363/2014, **AVM**

Sanjay Sharma Vs. **Union of India & Ors** wherein this Tribunal held

that "...Since as explained by us in the preceding paragraphs the reasonableness of the moderation which had directly affected scope for fair consideration for promotion in respect of the petitioner is in doubt and the process has been flouted in the absence of any justification...the benefit of doubt will go to the petitioner."

7. The counsel drew our attention to the DO letter dated 14.06.2018 by the RO on the ROG application submitted by the applicant. In that letter, the RO had pointed out several shortcomings in the applicant including his poor interpersonal skills and laid-back approach.

8. The counsel also relied on the following cases

(a) Judgement of Hon'ble Supreme Court in **State of Punjab Vs. Gurdial Singh** AIR 1980 319.

(b) Judgement of Hon'ble Delhi High Court in **Air Commodore V K Sharma Vs. Union of India**, 1998 (46) DRJ 37.

(c) Judgement of Hon'ble Delhi High Court in **Air Vice Marshal Harish Masand Vs. Union of India**, (2005) DLT 152.

Arguments by Counsel for the Respondents

9. Per contra, the counsel for the respondents submitted that SPB-2018 for Flying Branch for promotion to the rank of Air Mshl was held strictly in accordance with the promotion policy in vogue. The applicant was considered for promotion to Air Mshl by SPB-2018 but was not

empanelled due to his overall comparative merit. The ROG dated 11.06.2018 preferred against the non-empanelment was rejected vide order dated 24.07.2018. Thereafter, the applicant preferred a statutory complaint dated 17.08.2018. The competent authority duly examined the case of the applicant and rejected the statutory complaint vide order dated 01.10.2018 being bereft of any merit.

10. The counsel contended that the allegations made against Air Mshl SBP Sinha, applicant's RO for ACR 2016 and 2017 were misplaced. The RO had assessed the applicant as per his demonstrated performance. The counsel pointed out that the applicant had not represented against his IO or RO prior to the conduct of the SPB-2018. Moreover, the applicant had not chosen to implead the RO before the Tribunal. Therefore, such allegations were nothing more than an afterthought by the applicant.

11. The counsel then explained the zone of promotion and stated that as per the provisions contained in Para 11(a) of the Promotion Policy-Air Ranks, twelve officers were to be considered for six vacancies as per the laid down ratio in zone of consideration. However, as one of the officers under consideration was retiring before the occurrence of the first vacancy, the zone of consideration was extended by one to include the next officer in seniority as per the ibid promotion policy. However,

that officer was also due to retire before the occurrence of the first vacancy, therefore, the zone of consideration was further extended by one more officer to have an effective consideration ratio of 1:2. The zone of consideration thus, extended to fourteen officers.

12. However, as the fourteenth officer was from 132 PC, the entire course (132 PC) was included in the consideration panel in terms of Para 11(d) of the Promotion Policy. Hence, the consideration panel consisted of 18 officers in compliance with the 'Promotion Policy-Air Ranks'.

13. The Counsel concluded by stating that the action of the respondents on the issues being contested were as per the policy and asserted that there was no mala fide in the actions of the respondents and that the applicant had not been empanelled to the rank of Air MrsI on his basis of the overall comparative merit. The counsel relied on the following cases:

- (a) **Union of India** Vs. **Lt Gen RS Kadyan**, (2000) 6 SCC 698
- (b) **Maj Gen IPS Dewan** Vs. **Union of India**, (1995) 3 SCC 383
- (c) **AVM S L Chhabra, VSM** Vs. **Union of India**, 1993 Supp (4) SCC 441
- (d) **Dalpat Abasaheb Solunke** Vs. **BS Mahajan**, (1990) 1 SCC 305
- (e) **Lt Col Amrik Singh** Vs. **Union of India**, (2001)10 SCC 424

- (f) **Major Surinder Shukla** Vs. **Union of India**, (2008) 2 SCC 649.

Consideration of the Case

14. Having heard both sides, the issues that require to be adjudicated are:

- (a) Whether the respondents were justified in rejecting the statutory complaints.
- (b) Whether the SPB has been held as per the policy.
- (c) Whether any of the impugned CRs in the reckonable period merits any interference.

The Respondents have submitted the CR Dossier and files pertaining to the examination of the complaint and the Board proceedings of the SPB. These have been examined by us.

Complaints

15. The applicant initially submitted a ROG application dated 11.06.2018, which was processed and disposed of by the CAS in accordance with Para 622(j) of the Regulation for the Air Force. The applicant was notified via Air HQ letter dated 24.07.2018 (Annexure A-1), and an interview was also granted by the CAS on 14.09.2018. Dissatisfied with the disposal of the initial ROG by the CAS, the applicant

then filed a second ROG dated 17.08.2018, requesting that it be forwarded to the MoD for their consideration.

16. In the ROG dated 11.06.2018 he had stated his grievance against the AOC-in-C CAC, having deliberately demeaned him and having given adverse reports in AR for 2016-17 because of which the applicant was not empanelled for promotion to the rank of Air Marshal by SPB-2018. The applicant had prayed that the results of SPB-2018 promulgated on 31.05.2018 be held in abeyance; that he be granted interview with CAS; that his ARs of 2016 to 2017 be expunged and that he be then assessed afresh by the SPB. The examination of the ROG concluded that since the applicant had no complaint against the IO, the AR were deemed to be objectively assessed by the IO and reviewed by the RO as per the applicant's demonstrated performance. The examination also held that the RO's assessment was justified in the light of the counselling letter dated 31.08.2016 given to the applicant (in relation to a statutory complaint by a subordinate of the applicant). The AR had been reviewed by the CAS and the examination held that the allegations made and biased assessment were both unfounded. The examination amongst other issues also concluded that the SPB-2018 had been held as per the policy and that the applicant had not been empanelled due to his comparative merit. The examination concluded that the allegations were

unsubstantiated and no service wrong had been committed against the officer. Accordingly, the complaint ROG was dismissed vide order dated 24.07.2018.

17. Aggrieved by the rejection of his ROG dated 11.06.2018 by the CAS, the applicant filed a second ROG dated 17.08.2018 for consideration by the MoD. The applicant had contended the following:

- (a) That the applicant disagreed with the counselling given to him vide letter dated 31.08.2016.
- (b) The ARs of 2016 and 2017 reviewed by AOC-in-C CAC be expunged being biased and vindictive.
- (c) That unlike his peers/course mates the applicant was not given adequate opportunity to serve under different IO/RSs.
- (d) That the AOC-in-C in violation of AFO 6/2012 had denied the applicant the right to assess his subordinates directly serving under him.
- (e) That the panel of officers constituted by SPB 2018 was in the ratio of 1:3 whereas as per policy it ought to be only in the ratio of 1:2.
- (f) The SPB 2018 be set aside qua the applicant and that he be considered afresh after expunging his CRs for 2016 and 2017.

18. The Competent authority examined the ROG and concluded that the allegation of bias and vindictiveness levelled against the AOC-in-C were baseless and unsubstantiated and that no service wrong had been done to the applicant. Thus, the ROG was rejected vide order dated 01.10.2018. The letter also addressed the other issues raised by the applicant.

SPB-2018

19. SPB-2018 was held on 03.01.2018. The Board was held in accordance with the letter 'Promotion Policy-Air Ranks' dated 30.12.2015. The Board considered a total of eighteen officers against a total of six vacancies. All the eighteen officers were being considered for the first time and consisted of one officer of 1981 batch, nine officers of 1982 batch and eight officers of 1983 batch. The applicant was at Serial no. 17 in the order of merit with a total mark of 519.92. In comparison, the last empanelled officer had 540.03 marks.

20. It is the applicant's case that the zone of consideration should have had only twice the number of vacancies and that the Board instead of considering only twelve officers had considered eighteen officers. As per Para 11(d) of the policy letter dated 30.12.2015, if the zone of consideration extends into the next course, then all officers who have retained their seniority from that course are to be considered. Since

1981 and 1982 batch officers only constituted ten officers which was less than the minimum of twelve, 1983 batch has been included. Thus, as per the provisions of policy all officers of 1983 seniority have to be included, thus make a total of eighteen. We thus do not find any malafide in the total number of officers considered being in this case at 1:3.

21. It is also seen from the details held on record that if AR of 2016 was expunged, the applicant would be at Serial No. 16 in the Order of Merit (OOM) with 526.83 marks. And if both the ARs of 2016 and 2017 had been expunged, the applicant would be at Serial No. 08 in the OOM with 538.46 marks. Thus, the applicant has not been empanelled due to his overall comparative merit amongst those considered.

AR 2016-2017

22. The yearly average of ARs from 2011 to 2015 varied between 8.15 to 8.33 in 'Professional factors' and varied from 8.00 to 8.29 'Behavioural factors'. The AR of 2016 and 2017 were placed at 7.5/7.5 after review. The assessment by the IO and RO are suitably supported by appropriate pen pictures and we therefore see no reason for any interference in the ARs.

Conclusion

23. We therefore, conclude that the AR of 2016 and 2017 are both performances based and the assessment by the Reporting officers have been adequately supported by appropriate pen picture. The reports are technically valid and they do not merit any interference. The ROG have been correctly examined and we uphold the rejection of both the ROGs. The SPB-2018 has been held in accordance with the policy in vogue and we do not find any malafide in the proceedings. The applicant has not been empanelled due to his overall comparative merit amongst those considered.

24. Accordingly, the OA is dismissed being bereft of any merit.

25. No order as to costs.

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

(RAJENDRA MENON)
CHAIRPERSON

(P M HARIZ)
MEMBER(A)

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