

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

OA 1939/2017

Comde Praveen Kumar Singh

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Mr. Ajit Kakkar, Advocate
For Respondents : Gp Capt Karan Singh Bhati, Sr. CGSC

CORAM :

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

ORDER

Invoking the jurisdiction of this Tribunal under Section 14 of Armed Forces Tribunal 2007, the applicant who is a Commodore of Indian Navy has filed this OA challenging his non-empanelment to the rank of Rear Admiral and praying for following reliefs :

- (a) *To direct the Respondents to submit before the Court all the relevant documents with regard to all the candidates who were promoted in the Promotion Board (PB) 1A (Tec)/2016 and compare the same with the documents of the Applicant.*
- (b) *To direct the Respondents to list all the factors/grounds that were considered in the promotion of an Officer to the rank of Rear Admiral in the said Promotion Board.*
- (c) *To direct the Respondents to produce all records of assessing the applicant annually along with the dates when reports have been finalised by IO/RO/SRO, and bring forward the acknowledgement of all CR which were not handed over to the Applicant in accordance with laid down policy.*

- (d) *To direct the Respondents to bring forward the documents which reveal when the merit for each year is frozen for Officers like the Applicant.*
- (e) *To quash the policy Navy Order Special (Spl 02/2015) issued by the CNS, being violative and adopted digress procedures.*
- (f) *To quash the Promotion Board (PB)-1A (Tech)/2016 conducted for promotion from Commodore rank to Rear Admiral rank for violating the procedure specified in Navy Order (Spl 02/2015).*
- (g) *To direct the Respondents to carry out a fresh Promotion Board in this regard for the rank of Rear Admiral.*
- (h) *To set aside the impugned orders dated 20.09.2017 and 26.09.2017.*
- (i) *Issue such 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 Indian Navy on 31.03.1986 in the Technical Cadre (Electrical Branch) and promoted to the rank of Captain on 01.01.2008. Thereafter, he was promoted as Commodore with effect from 01.07.2012. The Applicant was also considered for promotion to the rank of Rear Admiral as First Look Case along with other officers of SLY 2007A (Select List Year-2007A) in August 2015 by Promotion Board PB1A (Tech)/2015 but could not be empanelled. He was considered second time in March 2016 by PB1A(Tech)/2016 and third time in August 2017 by PB1A (Tech/2017 for

promotion and not recommended for promotion by all boards.

Submissions on behalf of Applicant

3. It is the case of the applicant that he is an Officer in the Indian Navy presently serving as Project Director, Underwater Ranges, Goa before serving in INS Tunir as Commanding Officer in the rank of Commodore. The Applicant has served in the Navy for the past 30 years and has had an excellent service career. The Applicant has served as Fleet Electrical Officer Western Fleet. Director NEC, Director of Ship Production. Additional General Manager Planning ND (MB) and Officer in Charge WRSTG in his last tenure at INS Tunir, the Applicant has displayed great leadership qualities and thorough professionalism which is evidenced by his accomplishments at the posting as well in his last appointment before his consideration to the rank of Rear Admiral. The Applicant as Commanding Officer INS Tunir and senior officers (Karanja) station worked towards the administrative and technical growth of Karanja station, owing to which it has been marked "Excellent" in the Annual Technical Inspection by IHQ of MoD (Navy) and HQ Western Naval Command (HQ WNC) and also brought several laurels to the station in terms of citation awards and other

recognitions. He has also brought laurels to the station in the form of Unit citations and the award of Prime Minister's Innovation Trophy, 2015. During his tenure the Unit was also awarded a record number of trophies and CNS/CINC/SFC commendations to a large number of officers, sailors and civilians under his command. The station under the command of the Applicant took major initiatives in matters of betterment of basic facilities to the residents of the station and the Applicant also contributed to certain strategic and operational issues, in the interest of the Nation.

4. It was submitted by the Ld. Counsel for the applicant that even after such an impeccable career despite being decorated with one Commendation by Chief of the Naval Staff and two by the C-in-C, the Applicant was not promoted to the rank of Rear Admiral from the rank of Commodore in the year 2016 when the Promotion Board for Technical branch was conducted. The Applicant was seen as a fresh look case, but the Board was of the opinion that the Applicant could not be promoted. The said Board however, promoted four other Officers from the rank of Commodore to the rank of Rear Admiral. The applicant was informed by the IHQ of MoD (Navy) Directorates of Personnel on 04.01.2017 that he had not been selected to the rank of Rear Admiral due to less

interse seniority and lack of promotion billets. However the Promotion Board promoted four other officers. Consequently, the applicant being thus aggrieved filed OA No 1538/2017 in AFT (PB), New Delhi on 01.09.2017 seeking judicial scrutiny of the case which was disposed of vide order dated 11.09.2017 with directions to the respondents to dispose of the grievance of the applicant with regard to his non- empanelment at earliest and communicate the same to him.

5. It is further submitted that the Applicant was aggrieved and unsettled by the result of the Promotion Board. Owing to the same, the Applicant wrote a Redressal of Grievance (ROG) letter on 23.05.2016 to the Respondents, explaining the details of the case to them and also enquiring about the promotion policy and procedure of the Indian Navy. The respondents' reply to the said ROG was received by the Applicant on 19.08.2016. However the Applicant was not satisfied with this reply and on 16.09.2016 requested that his plea be forwarded to the next higher authority in the Government of India, through proper channel. At the request of the Applicant, his grievance was forwarded by HQ WNC to Naval Headquarters for onward transmission to MoD which has been disposed off on 26.09.2017.

6. It is argued by the learned counsel for the applicant that as per the policy of the respondents it is the responsibility of Initiating Officer (IO)/Reviewing Officer (RO)/Senior Reviewing Officer (SRO)/Next Senior Reviewing Officer (NSRO) to provide acknowledgement of receipt of CRs. The strength of the appraisal system lies in the IO/RO/SRO reporting objectively. Officers authorized to initiate or review reports have the responsibility to ensure that their appraisal is timely, well considered honest and as objective as possible. It must be borne in mind that while strict assessment can be harmful to the officer reported upon, liberal assessment can do injustice to the officer's colleagues, and also lower the Service standards in the long run.

7. Our attention has been drawn by the Applicant to paragraph 0307 of Policy which deals with acknowledgement on Receipt of CRs by IO/RO/SRO/NSRO, wherein as per applicant the said paragraph elaborates that the system of Self-addressed Tear-off slips which is designed to keep the appraisee informed about the movement of his CR. All appraisees are to fill in their personal details in the tear off slips whilst submitting the CRs. Upon receipt of the CR, the IO is to sign the first tear-off acknowledgement slip and hand it over directly to the appraisee. Similarly, the

second and third acknowledgement slips are to be forwarded directly to the appraisee, by the RO and SRO respectively, on receipt of the CR. In case, the appraisee has been transferred from the unit from which his CR has been initiated, the tear-off slips are to be sent to his new unit. The appraisee can monitor the receipt of the CR at IHQ MoD (Navy) by logging on to the DOP website."

8. Elaborating further, learned counsel submits that as per the Navy Order, the Annual Reports of Captains/Commodores terminate at the level of CNS. It is seen that in cases where CNS is RO/NSRO, the reports before being forwarded to CNS are forwarded to Naval Headquarters. It is subsequently not known that when exactly does the Naval Headquarters forward the report of a particular year to CNS and when does the CNS finalize the report of an officer as RO/NSRO, since the tear off slips by CNS are never handed over to appraisee. Hence, the principle of Annual Confidential Report is seriously compromised as it no longer remains Annual and violates the Navy Order which seeks that the report should be objective and timely.

9. Learned counsel for the applicant asserts that this could result in award of final CR marks for various reports much nearer to the date of the promotion board and for that matter

just after the promotion board itself, much after the year, for which the officer should have been assessed/reported upon and his merit accordingly finalized. The non-finalization of the report of an officer by SRO/NSRO in a time bound manner (annually) in this case leaves the system open to the manipulations and scope of ACRs getting adjusted accordingly towards the date of promotion board. Since all promotions in armed forces are supposed to be based on merit (a fact also reiterated in reply to ROG. of the officer), it may be noted that the calculation of merit itself is open to manipulation and bias and capable of defeating the system of natural justice. It is only obvious that IHQ and MOD have not been able to reply to the specific query of the applicant (Para 5 c of ROG) where he has sought a specific answer to his query, "If the selection is purely based on merit, when is the merit for each year frozen?"

10. It is the case of the Applicant that promotion to the next rank in the Armed Forces is decided upon the worth & length of the service of an Officer and therefore, is a topic of grave importance to all Officers in the Forces. In the background of this submission, it was mentioned that granting of promotion is a policy matter and this policy of the executive is often not

clear. Further, it is submitted that policy that has been prescribed in Navy Order for writing ACRs has been violated.

11. It is argued by the learned counsel for the applicant that as per the Navy Order, every appraisal is supposed to get acknowledgement after every ACR by the IO, RO and SRO, however, the respondents do not follow their own policy and keep the ARs pending till the appraisal reaches the Promotion Board, so that the ARs can be manipulated at the time of Promotion Board, and therefore, the Applicant seeks liberty to question the promotion policy of the Indian Navy, especially when each year CRs are frozen and a system of self-addressed tear-off slip is maintained to send to appraisee by IO, RO, SRO which is considered as acknowledgement of receipt of CR, to facilitate the monitoring. However, the applicant has not received all the slips which give enough room to the appraisee to doubt the system.

12. The learned counsel submits that the Applicant is denied promotion on the grounds of 'low inter se seniority' and "lack of billets in promotion which are ambiguous grounds. The Respondents have not informed the Applicant on what basis his inter se seniority was considered to be lower than the others, and the factors that were considered in deciding such seniority. Further, the plea of the Respondents

that there was lack of billets in promotion cannot be sustained as irrespective of the number of billets, four officers were selected by the Promotion Board and in these selections, the Applicant's name did not feature. If the criteria for selection was the number of vacancies, then the case could also have been one where the Applicant would be selected and others would not. Therefore, the criterion for this decision is based on other undisclosed factors and the respondents are wrong in submitting that the promotion was not granted in view of less vacancies.

13. Stressing on the issue of violation of policy, learned counsel submits that the policies such as the one related to promotions that have a long lasting and all pervasive effect, must at the least be transparent and objective. However in the present case, the Applicant had no idea about the parameters that would weigh in favour of his promotion and the parameters that have gone against him. The Applicant has maintained an exemplary service record to be considered for promotion, but the acts of the Respondents depict that there are other things, apart from service records that are considered, when promotion is awarded. The Applicant seeks to challenge these factors.

14. It is contended by the applicant that the Respondents have not followed proper procedure and have scope to play the CRs which is an annual affair and must be assessed annually. The respondents have intentionally not provided the acknowledgement in time because that gives them room to play with CR marks and manipulate the promotion board in respect of consideration for promotion.

15. In his concluding remarks, the learned counsel for the Applicant submitted that the decision taken by the respondents has adversely affected the service and career of the Applicant. The repercussions of promotion policies deeply affect the lives of all Officers in terms of their rise and growth in the services and their achievements in their career. The decision of the Respondents has quashed the morale of the Applicant but has also urged him to question these policies whereby his achievements have not been thoroughly considered.

Submissions on behalf of the Respondents

16. Per contra, the learned counsel for the Respondents submits that the Applicant submitted Representation (ROG i.e. Redressal of Grievance) dated 23.05.2016 addressed to Flag

Officer Commanding-in-Chief, Western Naval Command regarding his non-selection to Rear Admiral rank by PB1A (Tech)/2016. In that the Applicant had requested FOC-in-C, Western Naval Command to forward his case to IHQ MoD (Navy) for reconsideration for promotion to Rear Admiral rank and for following clarifications:-

- (a) *How is selection from Commodore to Rear Admiral in the Electrical Branch done? Is selection purely based on merit or final merit can be adjusted after deciding to select a particular officer?*
- (b) *Do Cadre management or any other factors override the factor of merit in the process of selection?*
- (c) *If the selection is purely based on merit, when is the merit for each year frozen? Or is it a case of cumulative merit which is decided at the time of final selection by adjusting merit of previous reports?*
- (d) *What could be the reasons which could have been responsible for not getting promoted despite being extremely dedicated to the service and achieving all tasks and challenges in an exemplary manner?*

17. Learned counsel for the respondents submits that the case was examined and the reply of Integrated Headquarter of Ministry of Defence (Navy) (IHQ MoD (Navy)) was issued vide letter dated 09.08.2016, to clarify Applicant's observation as follows:-

- (a) *Selection from Cmde to RAdm in any Branch is based purely on the consolidated merit of the officers being considered;*
- (b) *Factors relating to Cadre management do not override merit in the process of selection;*

- (c) *A consolidated merit is drawn at the time of conduct of the Flag Board:*
- (d) *Selection is done purely on the basis of consolidated merit of the officers considered, and is subject to availability of vacancies:*
- (e) *Non-selection to the Flag rank is in no way a reflection of an officer's intrinsic capabilities and performance potential. It is only an inescapable consequence of less number of vacancies/ billets in the RAdm rank for a large number of contending officers.*

18. Learned counsel further submits that the applicant was considered as a First Look Case by PB1A(Tech)/2016 held on 23.03.2016 against 04 vacancies available for promotion. The applicant was much below the threshold of overall order of merit and thus not selected by the board of promotion. While the representation dated 23.05.2016 of the Applicant was under examination of Ministry of Defence for disposal, next Promotion Board PB1A (Tech)/2017 was held on 31.08.2017 for selecting officers for the Rear Admiral against four (04) available vacancies for the promotion year 2017-2018. In that, total 19 officers (10 officers as Fresh Look case from SLY 2007B and 09 officers of previous Select List Years as R1 & R2 cases) were considered by the Promotion Board and finally four (04) Commodores select-listed for promotion.

19. Explaining, learned counsel submits that the Competent Authority in the MoD had approved the Recommendations of PB1A (Tech)/2017 held on 31 August 2017 on 01 December 2017. Applicant was re-considered in that Promotion Board as first review case (R-1) against four available vacancies for the promotion year 2017-2018 (i.e. 01 September 2017 to 31 August 2018) and being below the threshold, in order of merit vis-à-vis other considered officers he has not been empanelled for promotion to the rank of Rear Admiral in his First Review Case as well.

20. The learned counsel for the Respondents contends that the contention of the Applicant that the Respondents have not followed their own policy of finalizing the Confidential Reports on an annual basis is baseless, misconceived and denied. Every Confidential Report of Capt/Commodore rank officer terminates at the level of the CNS. The officers CRs have been duly initiated by IO and reviewed by RO/SRO in time and proper acknowledgements would have been issued by them as per laid down procedure. All such CRs finally reach the Directorate of Personnel, Naval Headquarters for further submission to CNS for

review/moderation of gradings in terms of extant norms. CNS has to undertake review of various CRs in his capacity as SRO/NSRO in terms of NI 01/2000, which is being reproduced as under:-

- (a) *All reports of Naval Officers of the rank of Lt Cdr and Cdr will undergo a 'Performance Appraisal Review' at Naval Headquarters by a Performance Appraisal Review Board (PARB) with a view to analyse instances of wide deviations from their previous overall career profile. The reporting/reviewing officers will be required to support very high / low markings in the remarks column. While reviewing the reports at Naval Headquarters, numerical grades may be suitably moderated on the recommendations of the PARB with the approval of the Chief of the Naval Staff so as to bring them in tune with officers' demonstrated past performance. CNS will lay down detailed guidelines to be followed for this purpose.*
- (b) *A similar review of the reports of all naval officers of the rank of Capt and above will be undertaken and gradings suitably moderated by the Chief of the Naval Staff as Senior Reviewing Officer/ Next Senior Reviewing Officer.*
- (c) *All ACRs are being Initiated/Reviewed on an annual basis by the IO/RO/SRO and the CNS in capacity as SRO/NSRO as per laid down norms. Thus, the Applicant's contention is denied being baseless.*

21. All his CRs have been duly initiated by his IO, reviewed by the RO/SRO in a timely manner and acknowledgement slips would have been issued by them as per extant orders. Duly completed CRs from the Reporting Officer be it the IO/RO/SRO (whoever is

required) had forwarded the CRs to Naval HQs (Directorate of Personnel) for further submission to the CNS for review in capacity as the SRO/NSRO in terms of NO (Spl) 05/2005 (as amended by NO (Spl) 02/2015} and NI 01/2000. While reviewing CRs the CNS may peruse past 3-5 ACRs (three years ACRs in case of officers posted within the Navy and five years in case of an officer if posted outside the Navy or is on deputation/foreign assignments etc while undertaking review/moderation of current year CR as or wherever required. This is done as per the laid down norms and standing guidelines on PARB (Performance Appraisal Review Board). Further, uniform procedure is being followed for review/moderation of CRs of the officers of the rank of Capt/Cmde by Staff.

22. It is submitted by the learned counsel for the Respondent that since all reports terminate at the level of CNS, these CRs are reviewed by the CNS. This is the final review of any CR and in that way is different when compared to the review by an RO/SRO who is in the Channel of Reporting (CoR) of the officer. In that, it is desirable to review the CR with reference to the demonstrated past performance of the officer as discernible

from his previous reports. The CNS has to see the previous reports to accept or reject deviation if the spike in numerical gradings given by IO/RO/SRO is adequately supported by the Pen Picture by these Reporting Officers and then undertake moderation of gradings to smoothen out the spike by taking into account the officers overall performance. For the purpose of moderation, norms are based on mathematical computer algorithms that have been established since a long time as referred to in PARB norms. (Appendix 'D' to PARB Guidelines dated 01.05.2007).

23. Our attention is drawn to the process after receipt of a CR at the Directorate of Personnel (DOP) till submission to the CNS for review, for which learned counsel submits that it is a very detailed and carefully conducted procedure and thus may take some time. Further, based on the available schedule of the CNS the CRs are put up for review. The allegations by the applicant are a figment of imagination and misplaced perception which is completely denied and there is no manipulation in the review or any other violation of laid down policy on CRs initiation and records. All reports are finalised as expeditiously as possible and procedures do not

have any scope of manipulation of merit by any authority in the chain of Command. Each ACR is considered completed only after being duly reviewed by the CNS in his capacity as SRO/NSRO. Merit for each year is calculated after review of all concerned ACR of the CR cycle year is completed by the CNS. Promotion Board would invariably see all reports of the officer in Capt/Cmde rank whilst conducting the Board and drawing up the Merit for the Board. Merit is drawn based on 95% weighted CRs average calculated mathematically by a laid down formula and there is no chance of any manipulation. 5% marks are decided by arriving at the average of the Value Judgment Marks awarded by each Board member of the Promotion Board. The final Overall Order of Merit is calculated by adding the 95% weighted ACR average plus 05% Value Judgment marks to draw a merit list out of 100 marks.

24. It is the Respondents' case that the process is methodical, very transparent and recommendations of the Promotion Boards are further examined by the Ministry of Defence prior final approval by the Competent Authority, the Hon'ble RM. Results on selection of officers for promotion to next higher rank of Rear Admiral are promulgated only after the approval of the Competent Authority at the MoD.

Analysis

25. We have heard learned counsel for both the parties and perused all records placed before us by the respondents as per the prayer of the applicant. At the outset, on reading of the prayers of the applicant at Para 8(e) and (f) of the instant OA it is our observation that while the applicant has prayed for quashing the Navy Order Special (Spl 02/2015) being violative and adopted digress procures (sic), surprisingly in the next very prayer he prays for quashing Promotion Board (PB)-1A (Tech)/2016 for violating the procedure specified in the Navy Order (Spl 02/2015), the same one that is impugned by him.

26. On the issue of judicial intervention into the policies formulated by the Courts, a recent judgment of Hon'ble Supreme Court in the case of Union of India and Ors. Vs. Air Commodore N.K. Sharma in Civil Appeal No. 14524/2015 decided by Hon'ble Supreme Court on 14th December, 2023 has much relevance and therefore the same is extracted as under:-

49. Making policy, as is well recognized, is not in the domain of the judiciary. The Tribunal is also a quasi-judicial body, functioning within the parameters set out in the governing legislation. Although, it cannot be questioned that disputes in respect of promotions and/or filing up of vacancies is within the jurisdiction of the Tribunal, it cannot direct those

responsible for making policy, to make a policy in a particular manner.

50. It has been observed time and again that a court cannot direct for a legislation or a policy to be made. Reference may be made to a recent judgment of this Court in *Union of India v. K. Pushpavanam* where while adjudicating a challenge to an order passed by a High Court directing the State to decided the status of the Law Commission as a Statutory or Constitutional body and also to consider the introduction of a bill in respect of torts and State liability, observed as under:-

“..As far as the law of torts and liability thereunder of the State is concerned, the law regarding the liability of the State and individuals has been gradually evolved by Courts. Some aspects of it find place in statutes already in force. It is a debatable issue whether the law of torts and espically liabiites under the law of torts should be codified by a legislation. A writ court cannot direct the Government to consider introducing a particular bill before the House of Legislature within a time frame. Therefore, the first direction issued under the impugned judgment was unwarranted.”

(Emphasis Supplied)

51. We may further refer to *Union of India v. Ilmo Devi* wherein the Court, while considering with the case concerning regularization/absorption of part-time sweepers at a post office in Chandigarh observed:-

“The High Court cannot, in exercise of the power under Article 226, issue a Mandamus to direct the Department to sanction and 17 create the posts. The High Court, in exercise of the powers under Article 226 of the Constitution, also cannot direct the Government and/or the Department to formulate a particular regularization policy. Framing of any scheme is no function of the Court and is the sole prerogative of the Government. Even the creation and/or sanction of the posts is also the sole prerogative of the Government and the High Court, in exercise of the power under Article 226 of the Constitution, cannot issue Mandamus and/or direct to create and sanction the posts.

(Emphasis Supplied)

52. The above being the settled position of law, it only stands to reason that a Tribunal functioning within the strict boundaries of the governing legislation, would not have the power to direct the formation of a policy. After all, a court in Writ jurisdiction is often faced with situations that allegedly fly in the face of fundamental rights, and yet, has not been entrusted with the power to direct such formation of policy.

Therefore, in the light of the above, we are not inclined to further dwelve into the domain of policy formulation and hold the impugned Navy Order (Spl 02/2015) a valid policy document for rendering confidential reports of officers of Indian Navy.

27. The second question that the applicant has placed before us is with respect to endorsement of his CRs by higher reporting officers including the Chief of Naval Staff (CNS) in his capacity as SRO. On that account it is pertinent to refer to certain relevant extracts of Navy Order (Spl) 02/2015 which lay down the guidelines of annualizing all the ACRs of a particular year responsibility for rendering report, forwarding instructions and acknowledgment on receipt of CRs by 10/RO/SRO/NSRO which reads to the effect.

0107. Principles of Reporting. The appraisal system is based on the principle of obtaining one Annual Confidential Report (ACR) on an officer in his/ her appointment. Additional reports are, however, required to be submitted under special circumstances as clarified in this Order. The assessment in these CRs should be based on actual performance during the

period of report and should not be influenced by previous knowledge of the officer reported upon. For the purpose of bench marking an officer's performance in a year, all the reports rendered in an ACR cycle would be annualized at IHQ MoD(N) DOP y assigning proportionate weight age for the period of report. The annualized figure would be recorded as the ACR figure for that particular year. This would ensure that an officer obtaining more than One report in a particular cycle is not put to advantage or disadvantage due to disproportionate number of reports.

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0301. Responsibility for Rendering Report. Officers are to complete Section I and handover the CR form to the IO at least 10 days before the due date stipulated in Section 2 of these Orders. The officer reported upon is responsible for ensuring the correctness of his/her personal particulars in this section. The IO is responsible for rendering the report on due date. If, for any reason, an officer fails to furnish the form duly completed by the due date, the IO shall initiate the report without the signature of the officer reported upon, and make a suitable notation thereon. The RO/SRO is responsible for ensuring the correctness of the channel of reporting. IO/RO is to ensure that completed reports are forwarded to the next higher authority at the earliest. The final reviewing authority is to ensure that the reports finally reach IQ MoD(N) within 45 days of their respective due dates. Timely rendition of CRs is to be checked during Annual Inspection of Units.

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0303. Forwarding Instructions. CRs are to be personally handled by the Reporting Officers in the chain. When transmitted by post, the reports are to be enclosed in double envelopes. The reports along with the covering letter are to be sealed in the inner envelope. The covering letter and the inner envelope are to be marked 'PERSONAL AND CONFIDENTIAL' and addressed by name and designation of the addressee. The CRs of officers of different ranks are to be enclosed in separate envelopes and the rank of the officers, whose reports are enclosed, is to be denoted below the 'PERSONAL AND CONFIDENTIAL' mark of the inner envelope. The reports are to be finally forwarded to HQ MoD (N), addressed by name and designations as under:-

Ser	Rank of Appraisee	Report to be Addressed to
(a)	Flag Officers (Acting & Substantive)	CNS
(b)	Commodores & Captains	ACOP (HRD)
(c)	Capt (TS), Commanders and below	PDOP

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0307. Acknowledgement on Receipt of CRs by IO/RO/SO/NSRO. The system of 'Self addressed Tear-off' slips is designed to keep the appraisee informed about the movement of his CR. All appraisees are to fill in their personal details in the tear off slips whilst submitting the CRs. Upon receipt of the CR, the IO is to sign the first tear-off acknowledgement slip and hand it over directly to the appraisee. Similarly, the second and third acknowledgement slip is to be forwarded directly to the appraisee, by the RO and SRO respectively, on receipt of the CR. In case the appraisee has been transferred from the unit from which his CR has been initiated, the 'tear-off slips are to be sent to his new unit. The appraisee can monitor the receipt of the CR at IHQ MoD(N) by logging on to the DOP website.

28. We have perused the entire CR dossier of the applicant wherein we have observed in the case of the applicant that various CRs have been endorsed by the CNS as Senior Reporting Officer on dates as mentioned against each CR :-

CR Period	Date of Endorsement by CNS
01/03/2013 - 30/9/2013	18/07/14
01/10/13 - 31/1/2014	18/07/14
01/02/14 - 27/11/14	09/07/15
28/11/14 - 28/02/15	09/07/15
01/04/15 - 31/12/15	05/03/16
01/03/16 - 31/05/16	19/04/17
27/06/16 - 28/02/17	21/08/17
01/03/17 - 30/06/17	21/08/17
01/07/17 - 28.02.2018	05/05/18

29. There is no evidence on record produced before us either by the applicant or respondents to conclusively establish whether the dispatch and receipt of the

acknowledgment slips were timely or delayed. However, while we have noted certain delays in endorsement of the CRs in respect of the applicant by the SRO wherein on three occasions two CRs each have been endorsed on the same date by the CNS. During the scrutiny of the CR dossiers it has been brought to our notice on a specific query by the concerned CR holding branch of the Naval HQ that the purpose of this practice is for case of annualisation of the CRs in respect of all candidates without any particular bias or malafide intended singularly against the applicant. The same is evident on perusal of other CRs of the batch of the Officer which were brought before us by the respondents as per averments made by the applicant. However, since we haven't been presented with any formal instructions on this procedure being followed, we wish to place on record our concerned observation that the respondents must adopt measures for timely endorsement of the CRs by the reporting officers and fool proof method of despatch of the acknowledgment slips as per NO (Special)-2/15.

30. We have perused the details of consideration of applicant by PB1A (Tech) from the Board proceedings of the Promotion Board placed before us by the respondents. We are satisfied with our observations that the merit list prepared out

of 95 mark is based on a scientific Quantified Model which has been approved by the Competent authority and as per provision of Navy Order NO(Spl) 1/2012 wherein Para 11-15 read to the effect :

“Selection Procedure for Promotion to Flag Ranks

11. Number of Vacancies. All substantive vacancies available during a period of one year following the Promotion Board will be taken into consideration for the purpose of promotion to the ranks of RAdm and VAdm.

12. Number of Officers to be considered. Number of officers to be considered for promotion to the ranks of RAdm and VAdm will be decided by Chief of the Naval Staff based on seniority- wise distribution of officers and the number of vacancies available in the higher rank. All officers belonging to a particular batch Select List Year (SLY) will be considered together for promotion irrespective of their date of confirmation in the present rank.

(Spl) 01

NOTE: If officers belonging to a Select List Year are further distributed into sub-groups A, B and so on, each such group of officers will be considered as a separate batch.

13. Reports to be considered. All reports of an officer in his present rank, including acting rank, available up to the date of the Promotion Board will be considered.

14. Number of Considerations. The officers not placed in Select List for promotion to higher rank will be considered for promotion up to three times in each rank.

15. Procedure to be Followed by Promotion Board I and 1A. Owing to limited number of vacancies available for promotion in Flag ranks, the Promotion Boards will select officers on the basis of comparative merit. For preparing the final merit list and for recommending officers for promotion to higher rank, the Quantified System of selection will be followed by the Promotion Board. The System will have following two components:-

(a) 95% weightage will be assigned to ACRs available in present rank.

(b) 5% marks will be awarded by the Promotion Board for value judgment.

NOTE : Parameters for value judgment by Board Members will be as follows:-

(a) Performance and Personality

(b) Recommendation recorded in the ACR

(c) Potential and Employability

(d) Career Profile

(e) Awards and Achievements”

31. It is observed that the applicant was considered by PB1A (Tech) held on 24.08.2015 wherein 28 commodores were considered by the Promotion Board for filling up 03 vacancies. The applicant was at Order of Merit 07 and thus not recommended for promotion. He was considered for the second time by PB1A (Tech)/16 held on 23.03.2016 along with 23 other candidates vying for 04 vacancies but not recommended for promotion due to his merit position at 07. The promotion PB1A(Tech)/17 held on 31.08.2017 considered the applicant for the third time wherein 19 Commodores were considered by the Promotion Board for 04 vacancies and the applicant's rank in the merit list was at 09. Surprisingly, we have noticed that neither the applicant nor the respondents have correctly placed the facts related to consideration of the applicant in the OA or the CA; particularly with respect to his consideration by Promotion

Board held in 2015. We have given our deliberate consideration to the approach papers based on which the three Promotion Boards were conducted as well as the Board proceedings in which the quantified marks have been awarded out of 95 and Value Judgment Marks by the members of the Board out of 05 to prepare the final merit list of all candidates judged on marks out of 100. Detailed Speaking Order in respect of all candidates considered by the Board has also been recorded in the Board proceedings which we are satisfied with and do not find necessary to place on record here. It is our considered view that the Promotion Boards have been conducted in consonance with policy provision contained in Navy Order (Special)01/2012; Selection and Promotion of officers to the rank of Captain and above and we have not found anything perverse which merit our interference. Accordingly, we hold the Promotion Boards valid and having been conducted as per law.

32. On perusal of documents related to ROG of the applicant and processing of the same by the respondents, we have considered the ROG dated 23.05.2016 which has been analyzed by the RACAB and disposed of by MoD letter dated 20.09.2017. The question placed before the RACAB by the applicant has been appropriately analyzed and his reports

have been found to be commensurate with the pen picture and PARB/Review has been as per norms. Similarly, representation of the applicant dated 27.09.2017 has also been examined and held that the applicant was not selected to the Flag rank by PB1A (Tech)/16 purely on account of being low in inter-se merit and limited member of billets for promotion while observing that the applicant has had a steady ACR profile which has all reports well corroborated and in tune with profile and performance of the officers during relevant period. Accordingly, the representation was disposed of as no ground was made for any redressal to be granted. Once again we do not find any reasons for any intervention by us in the ROGs of the applicant.

33. While parting, we are inclined to observe that the applicant who is a senior officer of the Indian Navy is expected to be more conversant with the rules of conduct of Promotion Board as per NO (spl) 1/2012. We are surprised that his questions are primarily on the matters already elaborated upon in the Navy Order i.e conduct of Promotion Boards as per availability of vacancies and the system of Quantification which he is expected to be well aware of; given his service and seniority.

34. In view of the aforesaid analysis, we are of the opinion that this OA is devoid of merit and deserves to be dismissed.

35. Accordingly, OA 1939/2017 is dismissed.

36. No order as to cost.

37. Pending miscellaneous application(s), if any, stand closed.

Pronounced on open court on this 3rd day of July 2024.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

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

Akc/ps