

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

OA 1956/2020

Gp Capt S Dargar
VERSUS

... Applicant

Union of India and Ors.

... Respondent

For Applicant:

Shri A.K Aggarwal , Advocate

For Respondents:

Shri Anil Gautam, Sr. CGSC

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON

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

ORDER

This application has been filed under Section 14 of the Armed Forces Tribunal Act, 2008 by the applicant who is a serving Group Captain (Gp Capt) and is aggrieved by the award of a 'Reproof' because of which he alleged that he was denied a fair consideration for promotion to the rank of Air Commodore (Air Cmde). He has prayed for the following:

(a) Call for the proceedings of Promotion Boards (PBs)-1 of the years 2018, 2019 & 2020, and for the applicant's service records including his ARs of 2008 onwards.

(b) Direct the respondent authorities to remove from the applicant's service records, the alleged 'Reproof' or

mention thereof, doing so being prohibited under Para 712 of the Regulations for the Air Force, 1964.

(c) Direct the respondent authorities to remove from the applicant's Appraisal Report (AR) ending 24 Jun 2013, the ex post facto mention therein, of the alleged 'reproof dated 26.9.2013, doing so being expressly prohibited under Para 42 of Air Force Order 6/2012.

(d) Direct reassessment / review of applicant's relative merit for promotion in 2018, 2019 and 2020, after the rectification of his service records & ARs to restore the same to its original taintless state.

(e) Direct promotion of the applicant with effect of earliest date of success, after the said reassessment / review of his relative merit by an appropriate Review PB-1.

(f) Direct the respondent to produce & place on record the alleged 'reproof dated 26.9.2013' awarded to the applicant in 2013, on the pretext of which applicant has been condemned under AFO 3/2008, not to be promoted.

(g) Direct appropriate action against the individual/person/ persons, responsible for causing forgery/falsification etc. if any found by this Hon'ble Tribunal, and deemed fit.

(h) Award costs of the litigation to the applicant.

(i) Pass any other or such further order/(s) as may be deemed just and proper in the facts & circumstances of the instant matter.

Brief Facts of the Case

2. The applicant was commissioned in the IAF on 11.09.1989, in the Aeronautical Engineering (Electronics)[AE(L)] Branch. In 2010, he was promoted to the rank of Gp Capt subsequent to which in 2011 he was appointed as Station Commander (Stn Cdr) of Air Force Station High Grounds (AF SHG), Chandigarh. In the year 2013, while the applicant was posted as Stn Cdr, AF SHG Chandigarh, a subordinate officer filed a representation against an alleged incident. The alleged delay in dealing with the representation by the applicant who was the Stn Cdr, was inquired into by a CoI ordered by AOC-in-C, Western Air Command (WAC), IAF. Pursuant to this the applicant was awarded 'Reproof' on 26.09.2013 by AOC-in-C, WAC. The applicant was considered in PB-1 for promotion to the rank of Air Cmde in the year 2018, 2019 and 2020 but was not empanelled in all his considerations. The applicant apprehends that his AR of the year 2013 could have been assessed low due to an administrative issue while he was posted as Stn Cdr, AF SHG. The applicant preferred an application

dated 03.09.2019 against his non empanelment to the rank of Air Cmde by PB-1/2018 and PB-1/2019. The application was examined by the competent authority and rejected vide Air HQ letter dated 04.10.2019.

3. It is the applicant's case that he was actually not awarded a 'Reproof', and even if it had been awarded, it was prohibited from being endorsed and entered in his record of Service. It is the applicant's case that the Air HQ itself had informed him vide letter dated 09.10.2019 that his non-empanelment was due to the fact that the 'Reproof' had been entered into his service record. It was also intimated by the Air HQ that the reproof dated 26.09.2013 was also included in the AR for the period ending 24.06.2013 which was in violation of Para 42 of AFO 06/2012.

4. Thereafter, the applicant again preferred a representation dated 28.04.2020 to MoD through HQ TC regarding his non empanelment to the rank of Air Cmde in all his considerations. This application was subsequently resubmitted vide letter dated 18.05.2020 after rectifying the objections raised by the HQ TC.

5. Subsequently, the applicant preferred another application dated 20.05.2020 on the same issues to GoI and also stated his

apprehension that the 'Reproof' dated 26.09.2013 awarded to him by the AOC-in-C WAC was illegally entered into his service record which had caused an aberration in his ARs from the year 2013 onwards. Both the representations dated 28.04.2020 and 20.05.2020 were examined in detail at Air HQ and were rejected vide Air HQ letter dated 18.09.2020. Aggrieved by which the applicant filed the instant OA.

Arguments by the Counsel for the Applicant

6. The counsel reiterated the service profile of the applicant and highlighted his professional acumen and achievements. The counsel then explained the details of the incident of 2012/2013 at 1 TS when the applicant was the Stn Cdr at AF Stn SHG, Chandigarh. The counsel elaborated that following the incident and complaint by the women officer, the matter was investigated locally. However, based on the complaint to the AOC-in-C WAC, a CoI was ordered by HQ WAC to investigate the matter. On conclusion of the CoI, the applicant was awarded the censure of 'Reproof' by AOC-in-C, WAC for not dealing with the complaints of the woman officer expeditiously as per AFO 03/2008.

7. The counsel then drew our attention to AFO 3/2008 and in particular to Para 712 of the Regulation of Air Force 1964 which describes a 'Reproof' and how it is to be dealt with. The counsel vehemently asserted that 'Reproof' was not a censure as the Regulations mandated that it is not to be referred by any other name. He further emphasized that as per the Regulations, 'Reproof' was not a recognized punishment and is not to be entered in the officer's records. Further, referring to Para 14 of AFO 03/2008, the counsel vehemently stated that terming it as a form of censure as given in the AFO 03/2008, was contrary to the directions and spirit of the intention contained in Para 712 of the Regulations.

8. Further, referring to Para 26 of the AO AFO 03/2008, the counsel elaborated on the instructions as to how a censure is to be considered during a Promotion Board for promotion to Air Ranks which now mandated that only a censure awarded to an officer after the last promotion will be considered. He then emphasized that since 'Reproof' cannot be called by any other term and since it cannot be considered as a censure, a Reproof should not be brought into the consideration for a Promotion Board. The counsel then took us through the Promotion Policy of Air Ranks (2015) and

elaborated that the merit list was to be prepared on the basis of AR marks and the Board marks. The counsel then drew our attention to Para 42 of AFO 06/2012 'Appraisal Reports of IAF officers' and emphasized that the reporting officers were not to be influenced by incidents and happenings outside the period of the report, as well as by any previous knowledge of the ratee.

9. The counsel then vehemently asserted that contrary to all the policies and regulations, the award of 'Reproof' had been entered into the CR and the record, which amounted to tampering with the record. The counsel then drew our attention to the applicant's application dated 03.09.2009 (Annexure A-5) seeking that his CR for the year 2013 be not considered by the PB. The counsel then drew our attention to the Air HQ letter dated 08.10.2019 (Annexure A-6) wherein they have intimated that the Reproof was held on record and that since last 10 CRs are to be taken into consideration, the CR of 2013 will be included as part of the reckonable period for consideration by the PB.

10. The counsel then drew our attention to the application dated 28.04.2020 submitted by the applicant to GoI and the amended application dated 20.05.2020. (Annexure A-8 and A-9). The

counsel then drew our attention to Air HQ letter dated 12.09.2020 (Annexure A-11) whereby the statutory complaint dated 28.04.2020 and 20.05.2020 were rejected. The counsel emphasized that it has been categorically admitted by the Air HQ that the Reproof was held on record, that the reporting officers had taken cognizance of them in the CR of 2013 and that as part of the complete service record seen by a PB, all censures are taken into consideration by the PB.

11. The counsel concluded by stating that no copy of the 'Reproof' was ever given to the applicant and that he was only intimated of the award of 'Reproof'. Further referring to Sections 81, 82 and 86 of the AF Act, the counsel stated that a censure was not an authorized punishment in the AF Act. Thus, the action of the Respondents in reporting a 'Reproof' contrary to the direction in Regulation 712, holding it in the applicant's service record and being taken into consideration by the PB had caused grave prejudice to the applicant, resulting in his non-empanelment. The counsel stated that the 'Reproof' be therefore expunged from his record and the applicant be considered afresh for promotion.

Arguments by the Counsel for the Respondent

12. The counsel explained the salient issues of the case and added that the applicant was seeking removal of the censure of 'Reproof' awarded to him in 2013 by AOC-in-C WAC held on record and also entered in his CR of 2013 by the Reporting officer, and that he be then re-considered for promotion to the rank of Air Cmde by PB-1.

13. The counsel stated that the applicant was considered as per the promotion policy dated 30.12.2015 for promotion in the PB-1 of 2018, 2019 and 2020 but was not empanelled to the rank of Air Cmde solely based on comparative merit.

14. The counsel drew our attention to AFO 03/2008, the Promotion Policy to Air Ranks (2015) and then stated that according to Para 14 of the AFO 03/2008 'Reproof' falls under the definition of censure. He further stated that Para 26(b)(i) & (ii) of AFO 03/2008 mandates for the complete service record of an officer to be considered by the promotion board for promotion to the Air ranks which included censure awarded to the officer as well.

15. The counsel for the respondents stated that the applicant had preferred a statutory complaint dated 28.04.2020 to GoI through HQ TC under Sec 21(2) of AFT Act 2007, against his non-empanelment to the rank of Air Cmde in PB-2018,2019 & 2020 which was rejected and disposed of vide letter dated 09.05.2020. It was stated that the application was rejected because the applicant had not exhausted all the remedies available to him as per Para 622 of AF Regulations and Sec 27 of the AF Act 1950. He further added that this was conveyed to the applicant that if he was not satisfied with the redressal granted by the Air HQ , his application would be forwarded to the MoD for further disposal. He further added that the applicant had not preferred any application seeking that his application be forwarded to MoD for their consideration, and had sought disposal under the AFT Act 2007.

16. The counsel then stated that subsequent to this, the applicant had preferred another statutory complaint dated 20.05.2020 to GoI with a copy to Air HQ and HQ TC but it was rejected vide Air HQ letter dated 18.09.2020. It was further stated by the counsel that reply to this application was examined and disposed of within a stipulated time of from the date of

application, and that the contention of the applicant that no reply was given for six months was entirely misplaced.

17. The counsel stated that the applicant impugned the AR of 2013 after a lapse of six years in the year 2019, hence the applicant's apprehension that he was victimized at the AF^e SHG was untenable. He added that a similar reply was given by the Air HQ vide letter dated 09.10.2019 while disposing of the applicant's letter dated 03.09.2019.

Consideration of the Case

18. Having heard both parties, the only issues to be considered are whether the 'Reproof' awarded in 2013 has been held and dealt with as per the policy on the subject, whether the Respondents were justified in rejecting the statutory complaints and whether any CR merits any interference.

Award of Reproof

19. We have examined the file (WAC/C2806/1/29/Discp) submitted by the Respondents pertaining to the award of censure of reproof to the applicant by the AOC-in-C, WAC. The reproof has been awarded on account of not having taken action in time

as stipulated by the Air Force Order on a complaint filed by a woman officer in the station.

20. The incident which happened in 2012 pertains to a complaint by a woman officer posted at 1-TETTRA School (1-TS) to the applicant who was then the Stn Cdr regarding certain allegations by the woman officer against a civilian staff in the establishment. The woman officer had submitted two complaints dated 24.09.2012 and 9.11.2012, both of which were not acted upon by the applicant within the stipulated time limit. Subsequently the woman officer submitted an application dated 16.05.2013 on the issue addressed to the AOC-in-C and further submitted a copy of the same representation vide letter dated 22.05.2013. Though local inquiry had been carried out, subsequently on the directions of the AOC-in-C, WAC, a Court of Inquiry (CoI) was ordered which assembled at 1-TS on 18.06.2013 and subsequent days.

21. The CoI found the applicant blame-worthy on the following three counts:

- (a) For failing to action the representations dated 24.09.2012 and 09.11.2012 preferred by the woman officer in terms of AFO 05/08.

(b) For appointing the civilian (whom the woman officer had lodged the complaint against) as a lascar without waiting for finalization of the complaint.

(c) For influencing the investigation carried out at the Stn so as to ensure that the civilian involved was exonerated.

22. The CoI was, therefore, re-assembled in terms of Para 7(90)(h) of the Regulations of the Air Force to allow an opportunity to the applicant to put forth his stance on the issues for which he had been found blame worthy. Based on the deposition of the applicant at the CoI after it had re-assembled in terms of Para 7(90)(h) of the Regulations of Air Force, the competent authority decided to absolve the applicant of the issues related to the appointment of the lascar and his attempt to influence the investigation to ensure the innocence of the civilian.

23. The competent authority found the applicant blame-worthy of "*Failing to action the representations dated 24.09.2012 and 9.11.2012 preferred by Flt Lt xxxxxx in terms of AFO 5/2008*" and concluded that administrative action in terms of a censure of 'Reproof' of the AOC-in-C would meet the ends of justice. Accordingly, the applicant was awarded a censure of 'Reproof'

dated 26.09.2013 which was intimated to the applicant vide letter dated 01.10.2013. The award of 'Reproof' stands approved by the AOC-in-C on 26.09.2013 as endorsed at Note 5 of the HQ WAC file. The censure is reproduced below:

"Failed to follow the procedure mentioned in Para 622 of AF Regulations, wherein you did not give the written reply to the application of Flt Lt xxxx put up on 24 Sep 12 and 09 Nov 12 in a prescribed time limit."

24. It is also on record that the appointment of the civilian as a lascar was also investigated and it was brought on record that he had been appointed based on fraudulent documents and without the requisite police verification. Accordingly, the services of the civilian was subsequently terminated vide order dated 13.08.2017 based on the directions of HQ WAC which intimated the details vide their letter dated 08.08.2013. It is also a matter of record that the woman officer's ROG dated 22.05.2013 had then been subsequently disposed of by the AOC-in-C in a speaking order dated 01.10.2013.

25. It was stated by the applicant that no document of 'Reproof' awarded was provided to the applicant. It is observed that the applicant was awarded the censure of reproof dated 26.09.2013 which was intimated to the applicant vide letter dated

01.10.2013, and such communication was in accordance with Para 21 of AFO 03/2008, hence no copy of 'Reproof' was required to be given the applicant. The relevant para of AFO 03/2008 is reproduced below:

21. It is the responsibility of the specialist Directorate/Section at Air HQ/ Command HQ to process the file for obtaining the orders of CAS/AOC-in-C/AOA, as applicable, as to the Censure to be awarded to the officer. Once the CAS/AOA approves award of Censure, a letter conveying such award will be forwarded to the officer concerned by the Jt JAG (Air) (Discipline) at Air HQ through the normal channel. A copy of the letter will also be sent to PDPO for retention in the personal file of the officer. Award of Censure by the AOC-in-C will similarly be conveyed by the O IC Command P1 (Discipline) in the form of a letter, which will be forwarded to the officer. Two copies of the letter conveying such award will be sent to Air HQ by the Command/Group HQ [one copy each to PDPO/JAG (Air)].

Record of Reproof

26. The policy on award of various types of censures is governed by the letter dated 18.01.2008. Relevant para are reproduced below:

14. Censure is a matter of custom of Service, in accordance with which, it may take the form of 'Reproof'. 'Displeasure' or 'Severe Displeasure' and may be awarded for offences/lapses which are not of such a serious nature as to merit disciplinary action under the Air Force Act, 1950, or where disciplinary action is considered inexpedient or impracticable. Award of Censure may, at times, be construed to amount to condonation of the offence barring disciplinary action under the Act. Therefore, Censure is not to be awarded, when there is likelihood of any superior authority considering disciplinary action under the Air Force Act, 1950.

16. **Reproof.** The authorities who may award 'Reproof' to officers. The circumstances and the manner of its award and record have been specified in Para 712 of the Regulations for the Air Force (1964).

Extract of Para 712 of Regulations for Air Force (1964)

712. Reproof of Officers and Warrant Officers

(a) A commanding officer or any superior air force officer may reprove an officer or warrant officer under his command for an offence which, in his opinion, is not of such a serious nature as to merit disciplinary action under the Air Force Act, 1950. The reproof of an officer or warrant officer is not a recognised punishment under the Act, and will not be entered in the officer's or warrant officer's record though it may be referred to, if necessary, in a confidential report on the officer or warrant officer concerned. In order to avoid any confusion with a 'reprimand' under the Act, it is not to be referred to by any terms other than 'reprove' or 'reproof'.

(b) Great care will be taken that the procedure in sub para (a) is not adopted when superior authority is at all likely to consider that the offence calls for disciplinary action under the Air Force Act, 1950, as the reproof might, in certain circumstances, be held to amount to a condonation of the offence barring disciplinary action under the Act.

17. The AOC-in-C/AOA/CO may also reprove an officer who was serving under his command at the time of the commission/ omission of the impugned act of omission.

27. The instructions are explicit that while the award of censure of 'Reproof' is not to be held on record, the Reporting officer may take cognizance of it while initiating an AR. It is seen from the AR dossier that the Reproof is not held along with the service records/ARs. However, vide Para 26 of the policy letter dated 18.01.2008, all disciplinary issues of an officer under consideration for promotion are to be placed on record before the Board. Since this award of censure was in the rank of Gp Capt, under the provisions of Para 26(a), it is to be brought to the

notice of the Board for the next promotion to the rank of Air Cmde. Relevant extracts of the letter is reproduced below:

26. Effect of Censure

(a) For Promotion to the Rank of Gp Capt and Below

(i) *The award of 'Censure will be considered only once by the authority or Promotion Board before which the officer's case first comes up for consideration after the award of Censure. The award shall be considered irrespective of the currency of the Censure.*

(ii) *Censure awarded to an officer will be considered while deciding his suitability or otherwise for his promotion to the next higher rank only, e.g. if an officer incurs Censure in the rank of Sqn Ldr. Such award, shall be considered while deciding his suitability or otherwise for grant of the rank of Wg Cdr only. To determine suitability of the officer for promotion, the gravity of misconduct, the authority who Censured the officer and the period for which the Censure was awarded would be taken into account.*

(iii) *The award of 'Severe Displeasure' and 'Displeasure' shall carry negative marks while considering an officer for promotion to the acting rank of Gp Capt if the Censure has been awarded after promotion to the rank of Wg Cdr. The basis for awarding negative marks shall depend upon the status of the authority who Censured the officer and in case of Severe Displeasure, besides the authority, the period for which the Severe displeasure was awarded will also be taken into consideration. Despite taking into account negative marks for the award of Censure, if an officer is cleared for promotion, then, the currency of the 'Severe Displeasure' will not be the ground to defer his promotion.*

(iv) *If an officer, who is cleared for grant of acting rank is awarded Censure before he actually wears the higher acting rank, approving authority shall reconsider his case and decide afresh on promotability of the officer. If an officer incurs a Censure after grant of the acting rank of Gp Capt. but before the grant of substantive rank, such Censure is to be considered for deciding his suitability for the grant of such substantive rank.*

(v) *The 'Censure' shall also be taken into consideration for the competent authority for considering suitability of the officer for important assignments and courses, postings abroad, courses abroad, extension of service etc.*

(vi) *The award of 'Severe Displeasure' or 'Displeasure' is not to be reflected in the Appraisal Report, but the letter conveying the Censure will be kept in the personal file of the concerned officer, so that it would be available before the competent authority/ Promotion Board, for taking due note of the fact of the said Censure and reasons thereof. **The award of 'Reproof' is to be maintained in accordance with the provisions of Para 712 of the Regs for the AF, 1964.***

(b) For Promotion to Air Ranks

(i) *For promotion to the 'Air Ranks', the Special Promotion Board and No 1 Promotion Board shall specifically consider Censure(s) awarded to an officer after the last promotion while deciding the suitability of the officer for the next higher acting rank. To determine suitability for promotion, the gravity of the lapse/ misconduct for which the officer was Censured, the authority which Censured him and in case of 'Severe Displeasure', the period of 'Severe Displeasure' shall also be taken into account.*

(ii) *While considering the suitability of officers for promotion to 'Air Ranks', the complete service records, including all the Censures awarded, will be taken into consideration by the Promotion Board and other competent authority.*

(iii) *If an officer, who is cleared for grant of acting Air Rank is awarded Censure before he wears such higher acting rank, competent authority shall reconsider his case and decide afresh on promotability of the officer.*

(iv) *If an officer incurs a Censure after grant of the acting Air Rank but before the grant of substantive rank, such Censure may be considered for deciding his suitability for the rank of such substantive rank. The grant of substantive rank during the currency of 'Severe Displeasure' shall be governed by the 'Promotion Policy – Air Ranks' issued vide AIR HQ/C 22030/48/PO-2(D) Dated 30 Dec 05 and subsequent policies, which may be issued hereafter.*

(v) *The 'Censure' shall also be taken into consideration by the competent authority for considering suitability of the Air officer for important assignments and courses, postings abroad, courses abroad and extension of service etc.*

28. We therefore do not find any reason to interfere with the AR 2013 and we find that the record has been correctly placed before the PB as per the existing policy on the subject. On

perusal of the PB proceedings, it is seen that the same policy had been followed for all officers under consideration, who have had a disciplinary entry.

Complaints

29. The applicant had preferred a total of four complaints. The first complaint dated 30.09.2019 was submitted on being non-empanelled in his second look. It was the applicant's case that his AR 2013 may have been assessed low due to the administrative issue in his Stn. The applicant thus prayed that the AR 2013 be not included in his final consideration by PB-1/2020. The examination concluded that as per the Policy dated 30.12.2015, all available CRs of the last 10 years are to be considered for promotion to the rank of Air Cmde. Thus, there were no provisions to exclude AR 2013 merely on the apprehension of the rate that it may have been assessed low. Thus, the application was rejected vide Air HQ letter dated 08.10.2019.

30. The second representation dated 28.04.2020 was also against his non-empanelment. The applicant then was posted to HQ TC. The applicant then filed another representation dated 20.05.2020 duly amending the representation dated 28.04.2020. This was treated as a statutory complaint and examined. He had

stated that he apprehended that the 'Reproof' awarded to him by AOC-in-C WAC dated 26.09.2013 had been illegally entered into his service record which had caused aberrations in his AR 2013 onwards. That the 'Reproof' in his service record was fabricated and fake as no 'Reproof' signed by any competent authority had been given to him and that he was only intimated by the Command Discipline Officer (CDO) that the AOC-in-C had reproofed him on 26.09.2013. Further the applicant had contended that Para 26(b) of AFO 03/2018 did not refer to Reproof and that it only referred to 'Displeasure' and 'Severe Displeasure' and thus the illegal entry of the 'Reproof' in his service record had affected his successive consideration by PB-1. He had thus prayed that the 'Reproof' be removed from the service record and that any aberration in his AR 2013 or any other subsequent AR related to 'Reproof' be expunged and that he be reconsidered by PB-1 as a fresh case. The examination of the complaint held that under the provisions of Para 26(b)(i) & (ii) the 'Reproof' had been considered by PB-1. Also, that the assessment in AR 2013 by the Reporting officer were duly supported by the pen picture. Based on this examination, under the provisions of Sec 27 of the AFT Act and Para 622(j) of the

Regulations of AF, it was disposed of by the CAS. The complaint was rejected vide Air HQ letter dated 18.09.2020.

31. The applicant then submitted another representation vide his application dated 14.10.2020. Not satisfied with the disposal of his statutory complaint dated 20.05.2020 by the CAS he had sought clarification whether the disposal was in terms of Section 21(2) of the AFT Act, 2007. The case was examined and it concluded that the CAS was empowered to dispose of a statutory complaint and that the applicant has been intimated vide Air HQ letter dated 18.09.2020 that if he was not satisfied with the redressal granted by CAS at the first instance, his application would be forwarded to Central Govt. There is nothing on record to indicate that the applicant had subsequently sought that his statutory complaint be forwarded to the Government. This complaint was thus disposed of vide Air HQ letter dated 09.11.2020. We thus conclude that the complaints have all been examined diligently and disposed of on merit and the policy on various issues raised.

CRs

32. We have examined the CRs of the applicant. Under the provisions of Para 16 of the policy letter dated 30.12.2015, for

promotion to the rank of Air Cmde, the last 10 ARs have to be considered. Accordingly, during his first consideration by PB-1, the reckonable period had 10 ARs from 2008 to 2017. This included the two ARs earned in 2012 and 2013 whilst being posted at 1TS. The final assessment is endorsed after review at the Air HQ under the provisions of Paras 48, 49 of AFO 06 of 2012. It is seen that the assessment of 'Professional factors' vary from 7.33 to 7.89 in the 10 ARs considered and the 'Behavioral factors' assessment varies between 7.20 and 7.89. The overall yearly average varies between 7.33 to 7.89.

33. In view of the applicant's prayer, we have examined the AR 2013 in detail. This AR is boxed 7.33/7.33 by IO and RO for 'Professional Factors' and is boxed 6.83/6.83 by IO/RO for 'Behavioural Factors'. The final review of this AR at Air HQ has boxed it at 7.45 and 7.20. It is also seen that there is no specific mention of the award of censure of 'Reproof' in the AR. The pen pictures of both the IO and AO are reproduced below:

Pen Picture (Professional Factors)

9(a) Remarks of IO on Para 8(a) to (f)

(i) Appointment held and Nature of Primary and Additional Duties:

Station Commander 1TS

(ii) Remarks (include Advisory Remarks, if any)

"Officer has performed the duty as Stn Cdr 1TS to the satisfaction. However, his attention has remained diverted from the training and more emphasis was on other activities of the Stn. He is professionally competent and takes interest in setting up certain training like X-ray model."

(iii) Performance in DASI/DAI/DMI - N.A.

(iv) Performance in Service Courses undergone during the Appraisal period - N.A.

(v) Safety Orientation (Comment on Contribution/ attitude to Flight/MT/Air Safety etc) - *"Positive"*

(vi) IT skills (Ability to leverage IT for improving work efficiency)- *"Adequate to function as Stn Cdr"*

10. Remarks of the RO

(a) Remarks (Include Advisory Remarks, if any)

"Tends at times to ill treat lady officers"

(b) Justify variation from IO's grading (if Any) –

Pen picture (Behavioural Factor)

13. (a) Remarks of IO on Para 12 (a) to (f)

(i) Remarks (Include Advisory Remarks, if any)

"Officer as Stn Cdr is known to have given over-emphasis on bringing up the station which at times lead to focus being lost from training. There have been few anonymous letters from Station expressing the same. The officer is advised during undersigned's visit to give more attention to training and curb too many AFWWA ventures/ activities as the station strength is low and will may cause unnecessary added burden on the station."

(ii) Special skills/Specialities that could be utilized by the organization- *"Officer has skills in event management."*

(iii) Comment on level of Physical Fitness – *"He is fit and energetic."*

14. Remarks of the RO

- (a) Remarks (Including Advisory Remarks, if any) –
- (b) Justify variations from IO's grading (if Any) –
- (c) I agree/disagree with the recommendations of IO in para above (List disagreements, if any) –
- (d) Certified that the Adverse Grading/remarks and grading <6.0 in Mandatory Qualities have been communicated to the appraiser (To be deleted when not applicable) –
- (e) The report by the IO is considered – "Justified"

PB-1

34. We have given him three considerations for promotion to the rank of Air Cmde as per provisions of Para 16 and 17 by PB-1/2018, PB-1/2019 and PB-1/2020. The PB were conducted in accordance with 'Promotion Policy – Air Ranks' dated 30.12.2015. The applicant was not empanelled due to his overall comparative merit amongst those considered. The details of the consideration and the merit of the applicant in comparison to the last empanelled officer is summarized below: -

Ser	PB	Vacancy	Total considered	Look	Remark
(a)	PB1/2018 22.02.2018	21	42	First	NE 918.07 Last officer 939.43 OOM 36/42
(b)	PB1/2019 5, 6 Feb 2019 11 Apr 2019	16	32	Second	NE 1087.31 Last officer 1105.68 OOM 27/32
(c)	PB1/2020 3, 4 Feb 2020	16	37	Third	NE 1095.95 Last officer 1124.30

Conclusion

35. With the above consideration, we conclude that all the complaints have been examined in detail with due diligence and disposed of on the merits of the complaint as per policy on issues raised. We, therefore, uphold order dated 18.09.2020 and 09.11.2020. The 'Reproof' awarded in 2013 has been held and dealt with as per the policy on the subject. None of the CRs merit any further interference. The applicant has not been empanelled due to his overall comparative merit.

36. The OA is, therefore, dismissed, being bereft of any merit.

37. No order as to costs.

38. Pending miscellaneous application(s), if any, stands closed.

Pronounced in open Court on this 28th day of May, 2024.

**(JUSTICE RAJENDRA MENON)
CHAIRPERSON**

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

/Ashok/