

**COURT NO. 2, ARMED FORCES TRIBUNAL**  
**PRINCIPAL BENCH, NEW DELHI**

**O.A No. 2028 of 2017**

**In the matter of :**

**Lt Col Sanjeet S. Sahai**

**... Applicant**

**Versus**

**Union of India and others**

**... Respondents**

**For Applicant** : Shri Lalit Kumar, Advocate

**For Respondents** : Shri Rajeev Kumar, Advocate with  
Maj Tarun V. Pillai, AMS Legal

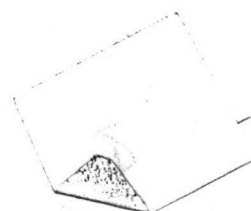
**CORAM :**

**HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)**  
**HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)**

**ORDER**

This application under Section 14 of the Armed Forces Tribunal Act, 2007 has been filed by a serving Lt Col of the Indian Army, who is aggrieved by his non-empanelment for promotion to the rank of Colonel and being declared 'unfit' in the Special Review Board. He has made the following prayers:

- (i) to quash and set aside the Impugned Order No. 1 dated 2-5- December 2014, in so far as it relates to the applicant at Serial No. 845 on Page 36 of No. 3 SB proceedings**



*and also the Impugned Order No. 2 dated 02 August 2017;*

- (ii) to direct the respondents to constitute a Special Review Board within a peremptory time period to be fixed by the Hon'ble Tribunal in its own wisdom to consider the case of the applicant for his promotion to the rank of Colonel, in accordance with law;*
- (iii) to direct the respondents to produce the record of the proceedings of the Special Review Board so held for its judicial scrutiny by the Hon'ble Tribunal, in case the applicant is again declared 'unfit' for promotion; and*
- (iv) to grant any other relief/reliefs or pass any other order or orders which the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case and in the interest of justice.*

## CONTENTIONS OF THE APPLICANT

2. The applicant was granted permanent commission on 11.12.1993 in the Punjab Regiment (Infantry) of the Indian Army. The applicant submitted that whilst serving from 1994 to 2006 in the Field and High Altitude Areas, he always got above average grading in his ACRs for his exemplary services and also whilst serving with 7 RR Battalion in the Kashmir Valley during the period 2003-04 for killing hard-core terrorists. It is the case of the applicant that he always got a 'box grading' of 8 points in his ACRs from his IOs with '8' and '9' points being awarded in other qualities.

3. It is submitted on behalf of the applicant that whilst serving with his unit '9 Punjab' under 109 Infantry Brigade in the Kashmir Valley, on 04.09.2007 the applicant was issued unjustified 'written counselling' by the RO with its copy being endorsed to the IO and the SRO, which contained remarks against the applicant of his having

- behaved in a manner which was 'unbecoming of an officer';
- that his performance as OC Advance Party being 'unsatisfactory';

- that the applicant had displayed disinclination to perform in earnest as a 2IC/OC Advance Party/Officiating CO and had a tendency of subverting the established chain of command;
- that the applicant had displayed a lackadaisical attitude towards performance of the duty of his appointment; and
- that he lacked sense of responsibility and professional competence while serving in the CI environment.

4. It is the case of the applicant that the aforesaid adverse remarks were not communicated in writing as per Para 121(c) and Para 127(b) of AO 45/2001/MS-CONFIDENTIAL REPORTING ON OFFICERS with regard to their endorsement on the aforesaid 'written counselling' dated 04.09.2007 in the ICR for the period from 01.06.2007 to 27.10.2007 which was a crucial criteria report, and thus the applicant did not make any complaint to the Central Government under Section 27 of the Army Act, 1950 thinking that the same would not impact adversely on further promotions of the applicant. In the meantime, a new promotion policy 'Quantification System'

came into being with effect from 01.01.2009 which gave primacy to the CRs (for promotion of officers by selection).

5. The applicant submits that having been graded constantly as 'Above Average' ACRs of '8 point box grading' with 8 or 9 points in other qualities from his ROs for the relevant period, he was sure of his empanelment for promotion to the rank of Col in No. 3 Selection Board (SB). However, to his dismay, he learned that he was declared 'unfit' for the promotion to the rank of Col by No. 3 SB held in May, 2009, December, 2009 and December, 2010 and that many of his batch-mates were declared 'fit' for the said promotion. It is the case of the applicant that as per the new promotion policy giving primacy to the CRs and his CRs being above average, the adverse remarks made in 'written counselling' dated 04.09.2007, due to which the applicant became ineligible for promotion by selection as per Para 17 of the Army HQ Policy letter dated 04.01.2011 qua Disciplinary/Administrative Awards same could have been made the reason for rejecting his case declaring him 'unfit' for promotion. Aggrieved by this, the applicant filed an O.A. No. 1143 of 2011 before the AFT, RB at Chandigarh. In response to the said OA, the

respondents, through their reply statement, informed that the applicant's RO has indicated about the written counselling dated 04.09.2007 in the ICR for the relevant period from 01.06.2007 to 27.10.2007. It is the applicant's case that the promotion policy introduced in the Army with effect from 01.01.2009 was modified by the Army HQ vide their letter dated 04.01.2011 (Annexure -A/2) in the matter of CR profile and distribution of marks and the implication of the revision in the promotion policy was that the 'Quantified Marks' of an officer earned in the CRs while holding Criteria Appointment, were bound to be much higher than the similar or even better report of another officer earned for the same period in a Non Criteria Appointment as while the weightage for the Criteria Report was 50, the weightage for Non Criteria Report was merely 39 as made out in the Table given in the policy letter No. 04502/MS Policy dated 04.01.2011. The applicant submits that the aforesaid 'Policy on Promotion by Quantification System' was further modified vide MoD letter dated 01.04.2011 and it was made mandatory for the SB to record the reasons for awarding high/low 'Value Judgment'

marks, due to which comparative merit of an officer was so altered as to have changed his promotion prospects.

6. The OA filed by the applicant before the AFT, RB, Chandigarh stood transferred to the AFT, RB at Chennai and registered as TA 02/2013. Vide order dated 02.01.2014, the said TA was partly allowed and the impugned ICR for the period from 01.06.2007 to 27.10.2007 was quashed and set aside directing the respondent authorities to constitute a Special Review Board within a period of three months to consider the case of the applicant afresh on the basis of his available revised profile *viz. a viz.* the profile of his batch-mates and to pass necessary orders for his promotion. However, vide letter dated 28.03.2014 of Army HQ, the applicant was informed that in compliance of the order dated 02.01.2014 passed in TA 02 of 2013 of AFT, RB at Chennai, the case of the applicant was considered again as a Special Review (Fresh) by No. 3 SB but he was again found 'unfit' for promotion. It is put forth in this OA by the applicant that he was informed by the MS Branch that since as the AFT, RB, Chennai had set aside the CR for the period from June, 2007 to October, 2007, the same constituted a change in his profile

and consequently he became entitled to three Special Reviews in terms of the MS branch policy letter dated 17.09.2010. Therefore, the applicant was given Special Review (First) from 2-5 December, 2014 along with 1999 batch officers (fresh), but the applicant again was declared 'unfit' for promotion vide No. 3 SB proceedings.

7. It is the case of the applicant that the AFT, Kolkata Bench passed a judgment dated 01.04.2014 in O.A. No. 121 of 2012 titled as **Rajendra Kumar Tripathi Vs. UOI & Ors.**, to the effect that while the law required that the revised profile of the officer being given Special Review, should be worked out for the 'original reckonable period' and then the same should be compared with the profile of his 'original batch mates', what was being done by the Army HQ was to work out the revised profile of such officer on the basis of the ACRs for the same period as was being done for the fresh cases which implied that while the officers being considered as fresh cases had the advantage of ACRs earned, in Criteria appointments carrying greater weightage, the officer under Special Review, was put to serious disadvantage as he would seldom have any ACR on Criteria Appointment during the same period, for the simple

reason that after final supersession, an officer is always posted to Non-Criteria Appointments as a matter of departmental policy and such practice of clubbing of Special Review cases with fresh cases or first and second review cases of some other batch was held to be illegal in the said case.

8. The applicant put forth his case as that the respondents erred in clubbing the fresh cases of 1999 batch officers and first/second review cases of officers of other batches which is illegal and unjustified in terms of the judgment and order passed by the AFT, Kolkata Bench in O.A. No. 121 of 2012. Aggrieved by this, the applicant submitted a statutory complaint dated 06.12.2016 and placing reliance on the aforesaid judgment and order of AFT, Kolkata Bench questioning the legality of clubbing of the 1999 batch officers cases as a fresh case with first and second review cases of other batches, which the applicant submits was rejected by the respondents mechanically without considering the issue in law. With the grievance as aforesaid, the applicant has filed the present OA.

9. The learned counsel for the applicant, reiterating all the facts of the case, submitted that the respondents committed

grave error and illegality in not fully complying with the directions contained in the order dated 02.01.2014 of the AFT, Chennai Bench in TA 02 of 2013 as the respondents were directed to work out the applicant's 'revised profile' and to compare it with the profile of 1993 batch officers as per law and to promote the applicant to the rank of Col. The learned counsel for the applicant further submitted that in terms of the observations made in the order passed by AFT, Kolkata Bench in the case of **Col Rajendra Kumar Tripathi (supra)** that the cases of officers under 'Special Review' cannot be clubbed either with the fresh cases or the first and second review cases of officers of other batches and that the revised profile of the officer being given special review should be worked out for the original reckonable period and then the same should be compared with the profile of his original batch mates.

10. The learned counsel for the applicant further submitted that the respondents, in the matter of comparison of 'service profile' of an officer under Special Review with the service profile of his original batch-mates, should take into consideration that :-

- ◆ the 'reckonable period' is same in both the cases;
- ◆ the number of CRs is same, both in 'Criteria' and 'Non-Criteria' appointments; and
- ◆ that if the officer under 'Special Review' is found to be deficient in 'Criteria report' for any reason, then the 'Non Criteria Report' earned by him immediately after the 'last criteria report' should be made as 'criteria report' and
- ◆ then the quantified marks worked out for the purpose of comparison which was necessary because the officer under 'Special Review' after his final supersession, can seldom be posted to a 'criteria appointment to earn a 'criteria report'.

11. The learned counsel further added that the respondents ought to have considered the revised service profile of the applicant at the time of 'Special Review-First' held from 2-5 December, 2014 as mentioned in the afore-stated manner and then should have compared with the service profile of his original 1993 batch officers whose cases were considered by No. 3 SB as deferred cases, in December, 2009 and thus the respondents committed grave illegality in

determining the applicant's service profile wrongly and comparing the same with the profile of fresh cases of 1999 batch officers. Thus, it was prayed on behalf of the applicant that in view of the facts and circumstances as submitted on behalf of the applicant, the OA may be allowed.

### **CONTENTIONS OF THE RESPONDENTS**

12. *Per contra*, the learned counsel for the respondents primarily submitted that the applicant has been on forum-hunting as he had filed various OAs in different Regional Benches of the AFT for seeking reliefs including the relief as prayed for in the present OA. The learned counsel reiterated the fact of transfer of the OA initially filed before the AFT, RB, Chandigarh being O.A. No. 1143 of 2011, to the AFT, RB, Chennai and renumbered as T.A. No. 02 of 2013, and also grant of relief of Special Review to the applicant after setting aside the impugned ACR for the period from June, 2007 to October, 2007 and for consideration of the case of the applicant for promotion by constituting the Special Review Selection Board.

13. The learned counsel for the respondents submitted that the applicant has suppressed the fact of filing another OA

before the AFT, RB, Chennai being O.A. No. 122 of 2014 seeking restoration of the complete assessment by the IO in the ACR for the period from 24.10.2012 to 31.05.2013 and placed the said OA on record as Annexure R/4 to the counter affidavit. The respondents placed on record copy of the order dated 08.06.2015 vide which the said O.A. No. 122 of 2014 was dismissed by the AFT, RB Chennai as Annexure R/6 to the counter affidavit. The respondents further submitted that the same applicant had also filed another OA being O.A. No. 123 of 2014 before the AFT, RB Chennai challenging his non-empanelment by No. 3 Selection Board held on 28.03.2014 as Special Review (Fresh) in May, 2009 which was in compliance of the order passed on 02.01.2014 in T.A. No. 02 of 2013 on account of misconceived apprehensions and presumptions that the negative input of CR for the period from June, 2007 to October, 2007 were not removed from his profile before placing his consideration before the No. 3 Selection Board as Special Review (Fresh) case. The respondents submit that M.A. No. 172 of 2015 filed by the applicant seeking leave to appeal against that order, which was dismissed by the AFT, RB Chennai vide order dated 08.06.2015, copy of which was

submitted as Annexure R/9 to the counter affidavit of the respondents. The learned counsel for the respondents submitted that again a review application being R.A. No. 1/2017, along with M.A. No. 35/2017 seeking condonation of delay in filing the RA, was filed in the same OA which were also dismissed vide order dated 31.03.2017 and none of the aforesaid orders arising out of O.A. No. 123/2014, M.A. No. 172/2015, R.A. No. 1/2017 and M.A. No. 35/2017 were challenged in the Supreme Court by the applicant and thus the same attained finality. The respondents further stated that another OA being O.A. No. 14/2016 was filed by the applicant before the AFT, RB Mumbai for seeking many reliefs including the relief as prayed for in the present OA, however, the said OA was dismissed by the Tribunal holding that the applicant was seeking to reopen the issues raised in the earlier OAs which cannot be allowed as the issue was already decided by the AFT, RB Chennai in O.A. No. 122/2014, O.A. No. 123/2014, O.A. No. 1143/2011 (re-numbered as T.A. No.2/2013). The learned counsel for the respondents submitted that when the review application i.e. R.A. No. 3/2016 was dismissed, the applicant preferred a Transfer

Application before the AFT, PB being AT 19 of 2016 in OA 122/2014, OA 123/2014 and TA 2/2013 for their transfer from Chennai Bench to Mumbai Bench of the AFT; the said AT was dismissed by the AFT, PB vide order dated 19.08.2016 observing that admittedly no review petition had been filed by the applicant (in terms of the order dated 04.02.2016 in OA 14/2016). The learned counsel for the respondents further submitted that suppressing all the facts, the applicant has filed the present OA and hence, the case of the applicant should have come to the Tribunal with clean hands and in these circumstances his case is barred by the principle of *res judicata* and is an abuse of the process of law.

14. In support of their contentions regarding suppression of facts and abuse of process of law, the respondents relied on various judgments of the Hon'ble Supreme Court including ***Trilokchand Motichand Vs. H.B. Munshi* [(1969) 1 SCC 110]**, ***A. Shanmugam V Vs. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana* [(2012) 6 SCC 430]**; ***Chandra Shashi Vs. Anil Kumar Verma* [(1995) 1 SCC 241]**, ***State of MP Vs. Narmada Bachao Andolan* [(2011) 7 SCC 639]**; ***Kalyaneshwari Vs. Union of India* [(2011) 3 SCC**

**287]; Advocate General, State of Bihar Vs. M.P. Khair Industries [(1980) 3 SCC 311] etc.**

15. The learned counsel for the respondents further submitted that the applicant was considered in Special Review First but was non-empanelled as there were better candidates available in the Army for being promoted in the batch of the applicant; the No. 3 Selection Board was constituted to consider the empanelment of the applicant had considered the merit of the 1993 batch officers for the Special Review; that the applicant's revised service profile at the time of the 'Special Review First' held from 2-5 December, 2014 was taken into account and compared with his original mates of 1993; that the applicant had raised similar issues before various Regional Benches of the AFT which have been dismissed. The learned counsel submitted that the respondents have not committed any error and the applicant was only resorting to multiple litigations and forum-hunting which is a misuse of the process of law and had concealed the facts and made wrong declarations before the Tribunal and, therefore, the OA deserves to be dismissed with exemplary costs.

## ANALYSIS

16. Having heard both the sides, the only issue for our consideration is whether the applicant had been afforded the entitled consideration by No. 3 SB and whether there was any mala fide in these considerations. We have examined the Board Proceedings of the various No. 3 SB in which the applicant was considered. The details are summarised as below :

Ser No.	No 3 SB	Considerations	Batch year of seniority	Result
A	May 2009	Fresh	1993 (Original Batch)	NE Merit 82.145 Last Offr 88.577%
B	Dec 2009	First Review	1994 Batch	NE Merit 83.211 Last Offr 87.542%
C	Dec 2010	Final Review	1995 Batch	NE Merit 84.376 Last offr 88.466%
AFT, Regional Bench, Chennai order dated 02.01.2014 in TA 02/2013 (earlier OA 1143/2011 of AFT, Regional Bench, Chandigarh) granted relief by way of expunction of CR 06/07-10/07 and consequently three Special Review chances were given to the applicant.				
D	Mar 2014	Spl Review (Fresh)	1993 Batch	NE Merit 83.801 Last offr 88.577%
The applicant was compared with last selected officer of SB (Fresh) held in May 2009 with 1993 Batch				
E	Dec 2014	Spl Review (First)	1994 Batch	NE Merit 84.537 Last offr 87.542

	<b>The applicant was compared with the last selected officer of SB (First Review) held in Dec 2009 with <u>1994 Batch</u></b>			
<b>F</b>	<b>Apr 2016</b>	<b>Special Review (Final)</b>	<b>1995 Batch</b>	<b>NE Merit 85.352 Last offr 88.466</b>
	<b>The applicant was compared with last selected officer of SB (Final) held in Dec 2010 with <u>1995 Batch</u></b>			

17. With the considerations as listed above, we are of the view that the applicant has been granted all his considerations due to him in the normal course including Special Review based on the relief granted in TA 02/2013 by the AFT, Regional Bench, Chennai (earlier 1143/2011 of RB, Chandigarh). The applicant has been correctly compared with the batches as brought out above given table at Para 16 and has been rejected by all the SBs due to him being lower in merit than the last officer selected in the respective batches. We have also perused the CR dossiers of the applicant and the relevant records about expunction of the CR of the applicant for the period from 01.06.2007 to 27.10.2007 and found that the said CR has been expunged from the record of the applicant and has not been taken into account whilst considering the applicant during the three Special Review Boards held in March, 2014, December, 2014 and April, 2016.

With regard to the change in the Policy for selection of officers for promotion first in January, 2009 which was subsequently modified in January, 2011, it is held that the officers are to be considered as per the extant policy in vogue at the time of the Selection Board being held and is uniformly applicable to the entire batch under consideration for the promotion board and no relief can be provided to the applicant on this count.

### CONCLUSION

18. In view of the above consideration, the OA stands dismissed being bereft of any merit.

19. There is no order as to costs.

Pronounced in open Court on this 19<sup>th</sup> day of April, 2024.

[REAR ADMIRAL DHIREN VIG]  
MEMBER (A)

[JUSTICE ANU MALHOTRA]  
MEMBER (J)

/ng/