

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

OA 2066/2018

Col Ravi Sharma
VERSUS
Union of India and Ors.

... Applicant

... Respondent

For Applicant:

Mr. Ajit Kakkar, Advocate

For Respondent:

Mr. Anil Kumar 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, 2007 by the applicant who is a serving Col in the Army and is aggrieved by his non-empanelment to the rank of Brig. He has made the following prayers:

- (a) Direct the respondents to bring the records of the applicant vis-à-vis of the officers considered for the promotion in No.2 Selection Board in 2016, 2017 and 2018.

- (b) Call for the policy of grading "Outstanding" in ICR and Delayed CR for the period from 2008-2010.
- (c) Call for policy to take into account the accomplishments of NIR period.
- (d) Call for policy to assess subjectivity in the reports graded as almost "Outstanding" vis-à-vis grading of "Above Average".
- (e) Set aside the impugned order dated 10.09.2018 and 12.03.2018.
- (f) Grant such other relief appropriate to the facts and circumstances of the case as deemed fit and proper.

Brief Facts of the Case

2. The applicant was commissioned into the Army on 14.12.1991 and due to his professional acumen was promoted from time to time and was promoted to the select rank of Col in Mar 2008. The applicant did a tenure as Instructor at the Infantry School and later served in the UN Mission in Lebanon as the Senior Operations Officer, where he was awarded the Force Commander's Commendation Card. The applicant commanded 3 ASSAM from Mar 2008 to Sep 2010. The applicant was considered by No 2 SB for promotion to the rank of Brig in Feb 2017 and was non-empanelled.

He then filed a non-statutory complaint dated 13.06.2017. Meanwhile, he was considered again by No 2 SB in Nov 2017 as his second chance and remained non-empanelled. His non-statutory complaint was then rejected vide order dated 31.01.2018. The applicant then filed a statutory complaint dated 16.4.2018 against his non-empanelment. Meanwhile the applicant was considered by 2 SB in June 2018 and continued to be non-empanelled. Subsequently his statutory complaint was also rejected vide order dated 07.08.2018.

3. It is the contention of the applicant that on return from the UN assignment, he was posted as 21/C of 6 ASSAM, and that the CO had sidelined him with malicious intent; denied him his due credit and assessed him as 'Above Average' in his CR 06/07-02/08. It is also the case of the applicant that during his command of 3 ASSAM, due to a series of incidents which were incorrectly reported, the applicant as the CO was held responsible despite his efforts of having acted in the best interest of his men and unit. It is the contention of the applicant that the IO thus gave him a 'Above Average' report in spite of his dedicated and excellent demonstrated performance. It is also the applicant's case that his

reluctance to spend regimental fund for a station project may have annoyed his superiors. Aggrieved by all this, the OA has been filed.

Arguments by the Counsel for the Applicant

4. The counsel reiterated the service profile of the applicant and elaborated on his performance on courses, appointments held and his overall professional contribution. The counsel then emphasised that in spite of his excellent performance, the applicant had not been empanelled in all his three considerations. The counsel then took us through the details of the non-statutory and statutory complaints and emphasised that in spite of the detailed reasons elaborated seeking redressal, both the complaints had been perfunctorily rejected (Annex A-1 Colly). The counsel emphasised that the applicant's assertions in the complaints had not been verified. Further referring to Para 6 of the statutory complaint, the counsel asserted that he as the CO cannot be held responsible for the rotation of the Bn due to which the necessity of an ICR arose. The counsel then elaborated on the various incidents explained at Paras 6, 7 and 8 of the statutory complaint and prayed that the CRs of the applicant earned during his command tenure be examined/ reviewed and necessary redressal be granted and the applicant be then considered afresh for No 2 SB.

Arguments by the Counsel for the Respondents

5. The counsel briefly explained the pyramidal organisational structure of the Army, time scale promotions, and promotion to select ranks commencing with the No 3 SB which considers eligible officers for promotion to the rank of Col. The counsel then took us through the details pertaining to the rendition of CRs as given in AO 45/2001/MS and the consideration by the Selection Boards, and in particular the No 3 and No 2 SB. The counsel then elaborated that each officer was given three considerations for promotion, and if not empanelled, remains permanently non-empanelled. The counsel then emphasised that the assessment of the SBs were recommendatory in nature and were not binding until it was approved by the competent authority.

6. The counsel then recapitulated the service profile of the applicant and elaborated that he had been considered thrice by the No 2 SB; as a fresh case in Feb 2017, as a first review case in Nov 2017 and as a final review case in Jul 2018. The counsel emphasised that the applicant had a

clear above average overall profile, and that he had not been empanelled due to his overall comparative merit amongst those considered.

7. The counsel then drew our attention to the two complaints filed by the applicant; non-statutory complaint dated 13.06.2017 against his non-empanelment on his fresh consideration and the statutory complaint dated 16.04.2018 against the non-empanelment in his first review consideration. He then emphasised that the competent authority after examining the complaints had rejected both of them being devoid of any merit. Further referring to the applicant's assertion at Para 4.2 of the OA regarding the alleged mala fide by his CO, the counsel asserted that despite the malicious allegations, the applicant chose not to array the CO as a party. The counsel then explained that in a similar manner, the allegations against the Cdrs at Para 4.11 and 4.12 were also not sustainable as these officers had not been arrayed by the applicant. The counsel then emphasised that in the absence of these officers not being arrayed, this issue was untenable due to non-joinder of parties. The counsel further added that in the CR 6/09-02/08, both the IO & RO had assessed the applicant as above average, with positive recommendations for promotion.

8. The counsel relied on the following judgments:

10. Having heard both the parties at length, the only issue for consideration, if any of the CRS in the reckonable profile for consideration by No 2 SB merits any interference, particularly the CRS earned as the CO. The Respondents have submitted the CR dossier of the applicant, the files pertaining to the examination of his complaints and the Board proceedings of the No 2 SB. We have examined these.

Consideration

9. The counsel concluded that the applicant had not been empanelled due to his overall comparative merit amongst those considered and that the OA be thus dismissed since it lacked merit.

2 SCC 649.

(f) **Major Surinder Shukla Vs Union of India and Others**, (2008)

(e) **Lt Col Amrik Singh Vs UOI**, (2001) 10 SCC 424.

(d) **Dalpat Abasahab Solunke Vs BS Mahajan**, (1990) 1 SCC 305.

(c) **AVM S L Chhabra, VSM Vs UOI**, 1993 Supp (4) SCC 441.

(b) **Maj Gen IPS Dewan Vs UOI and Others**, (1995) 3 SCC 383.

(a) **Union of India Vs Lt Gen RS Kadyan**, (2000) 6 SCC 698.

Complaints

11. The applicant had filed two complaints, a non-statutory complaint dated 13.06.2017 against his non-empanelment by No 2 SB held in Feb 2017 in which the applicant was considered as a fresh case; and a statutory complaint dated 06.04.2018 against his non-empanelment as a first review case in November, 2017.

12. In the non-statutory complaint he had impugned the following CRs; 1 CR-1 6/07-02/08 earned as 21/c of the Nn; CR-2 9/08-3/09; CR-3 03/9-06/9, CR-4 6/09-09/09, CR-5 9/09-8/10 CR-6 07/10-09/10. He has also impugned the period of NIR 03/8-8/08, when as per the applicant certain incidents had clouded the impression of the reporting officers about the Unit. The applicant also alleged that during his tenure as per LW(S) Air HQ from Sep 2010- June 2013, saw subjective assessment as an earlier IO was once again posted as his IO in the new appointment. The applicant had prayed that all his CRs from Apr 07 to Aug 2010 be examined for any aberration/ inconsistencies and these be removed, if any; the reasons cited for subjective assessment be examined; compensate for not having done a staff appointment prior to becoming a Col; additional weightage be added to his OAP due to the subjective assessment and that he be then

considered afresh by No 2 SB. The examination reviewed all CRs in the reckonable profile from 06/01 to 08/16. All the CRs were clear 'Above Average' / 'Outstanding' assessment with complimentary pen pictures and no 7 point assessment. The examination thus held that the reports were well corroborated, performance based, technically valid and without any bias/ inconsistency, and hence the competent authority concluded that none of the CRs merited any interference, and that the applicant had not been empanelled due to his overall comparative merit amongst those considered. Hence the complaint was rejected vide order dated 31.01.2018.

13. In the statutory complaint dated 16.04.2018, the applicant once again impugned the same six CRs, CR-1 to CR-6, the NIR period of 3/8-08/08, and the period from Sep 2010 to June 2013 whilst the applicant was posted at the Army HQ as Dir LW(S), where one of his earlier IOs was now posted as the DDG and was his IO. The examination held that the applicant had not brought as record any new facts and that since the last non-statutory complaint, the applicant had earned two more CRs 9/15-01/16, 01/16-08/16 which were part of his reckonable profile for his First Review consideration. In addition, post the first review consideration, the applicant

had earned one more CR 09/16-08/17. The earlier CRs had already been examined in detail. The examination held that these three CRs too were all Above Average/ Outstanding reports which were well corroborated and did not merit any interference. Thus the statutory complaints was also rejected vide order dated 07.08.2018.

CRs

14. At the time of his fresh consideration in Feb 2017, there were 12 CRs in the reckonable profile. This included two CRs in the rank of Major, four CRs in the rank of Lt Col and six CRs in the rank of Col. The 12 CRs had seven criteria reports; one as Maj, three as Lt Col and three in the rank of Col. Overall in the reckonable profile the applicant has 14% box gradings as 'Outstanding' with the remaining 86% box gradings all being 'Above average'. Further in the criteria reports, 100% box gradings are 'Above average'. Thus, the overall profile is a clear 'Above Average' profile with no 7s in any of these CRs. The pen picture are complimentary with positive recommendations for promotion and career courses. At the time of the first review, the reckonable profile included CRs from 06/01-08/16. This included two reports earned as Dy Cdr of RR Sect HQ, after his study leave from Jul 2013-June 2015. Here again, in the overall reckonable profile the

applicant had 18% box gradings as 'Outstanding' with balance 82% being 'Above Average' and 100% of criteria reports being 'Above average'. Thus, overall, the applicant has an above average profile; all CRs are well corroborated and do not indicate any bias or subjectivity. Therefore, none of the CRs merit any interference.

No 2 SB

15. The applicant was given all his three considerations. However, he was not empanelled due to his overall comparative merit amongst those considered. The details of the No 2 SB consideration are tabulated below:

Ser	Year	Consideration	BYOS	Remarks
(a)	Feb 2017 Inf 1991 Batch	Fresh	1991	NE OOM-89.179 Last offr-91.048
(b)	Nov 2017 Inf 1992 Batch	First Review	1992	NE OOM-89.279 Last offr-90.707
(c)	Jul 2018 Inf 1993 Batch	Final Review	1993	NE OOM-90.329 Last offr-91.612

Conclusion

16. In view of the above consideration, we conclude that none of the CRs merit any interference. The applicant has not been empanelled due to his overall merit amongst those considered.

17. In view of the above consideration and conclusion, the OA is accordingly dismissed.

18. No order as to costs.

Pronounced in open Court on this day of September, 2024.


(JUSTICE RAJENDRA MENON)
CHAIRPERSON


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

/ashok/