

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

OA 2260/2022

Wg Cdr N.K. Singh, Lgs **Applicant**
Versus
Union of India and Ors. **Respondents**

For Applicant : Mr. Ajai Bhalla, Advocate
For Respondents : Mr. Satya Ranjan Swain, Advocate

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 was a serving Branch Commissioned Wing Commander (Wg Cdr) in the IAF and has since retired and is aggrieved on not being granted promotion to the select rank of Group Captain (Gp Capt) in spite of having been empanelled by the PB-2 and when vacancies existed. He has made the following prayers:

- (a) Grant the rank of Gp Capt (substantive) to enable the applicant to have pensionary benefits after his four decades of sincere service to the organization without hampering prospects of others the career since he will be superannuating on 30 Nov 22. (Ann A-1).

(b) Produce the records relating to availability of vacancies in the substantive rank of Gp Capt of Logistics Branch as on date and by 30 Nov 2022.

(c) Grant any as other relief(s) as deemed appropriate in the facts and circumstances of the case.

Brief Facts of the Case

2. The applicant was enrolled in Indian Air Force as an airman on 24.12.1983. On 19.12.2003, he was commissioned as a Branch Commissioned Officer (BCO) into the Logistics Branch. Due to his diligence and hard work he was awarded the CAS Commendation Card in Jan 2007 and later was awarded AOC-in-C Commendation Card on 26.01.2011. Due to his professional excellence the applicant was categorized as a Cat 'A' officer by the Maintenance Categorisation Board in 2018. He was promoted from time to time and was promoted to the rank of Wg Cdr on 10.12.2015. In Mar 2022, he was considered by Promotion Board-2 (PB-2) for promotion to the rank of Gp Capt and was empanelled. The select list was promulgated vide Air HQ(VB) Signal PO/388 dated 07.03.2022. It the applicant's case that although there were adequate vacancies, of the seven officers empanelled in Lgs Branch in PB-2 of Mar 2022, only five were promoted and two

officers including the applicant were never promoted. Since the applicant was due to retire on 30.11.2022, and since he had not been promoted, though empanelled, he made a representation dated 28.07.2022. Having failed to elicit any positive response, the applicant sought an interview with AOP which did not materialise. Hence aggrieved, he filed this OA.

Arguments by the Counsel for the Applicant

3. The counsel reiterated the profile of the applicant and emphasised that though enrolled as an airman, by sheer hard work, the applicant was commissioned into the Logistics Branch as a BCO on 19.12.2003 and was promoted Wg Cdr on 10.12.2015. The counsel then elaborated how the applicant had been considered by PB-2 in Mar 2022 and had been empanelled to the rank of Gp Capt. The counsel then vehemently asserted that despite availability of vacancies, the applicant was not promoted to the rank of Gp Capt, though five other officers empanelled in the same PB were promoted to the rank of Gp Capt.

4. The counsel then referred to the argument advanced by the respondents in their counter affidavit that the applicant being a BCO was governed by AFI 2/91 and was thus eligible to be promoted only up to the rank of Wg Cdr, and that the applicant had been

erroneously considered by PB-2 and empanelled due to an administrative oversight. The counsel then asserted that the AFI does not mention that an officer cannot be promoted to the rank of Gp Capt. Further, since the applicant was already a Wg Cdr, the AFI itself was defeated. Referring to the argument by the respondents that the applicant had been empanelled by mistake, the counsel vehemently asserted that all the pre PB activities had been completed and that would imply that none were aware of the applicant's eligibility.

5. The counsel further added that even after implementation of AVSC Report and the applicant was promoted to the rank of Wg Cdr, he continued to do the same duties. He further asserted that the applicant was a Cat A officer and yet if he cannot be promoted, there was no incentive to work. The counsel then stated that in the applicant's case there were no statutory promotions. The counsel then relied on the Hon'ble Supreme Court judgment dated 04.10.2019 in the case of **Bobby Joseph Vs. Union of India & Ors.**, (AIRONLINE 2019 SC 2326) wherein the respondents had concluded that a letter had been issued by mistake, yet the Govt. granted relief to the petitioner. The counsel concluded that

since the applicant had been found fit by PB-2, the respondents were duty bound to promote him.

Arguments by the Counsel for the Respondents

6. The counsel took us through the details pertaining to BCO and highlighted that the terms and conditions for a BCO were distinctly different from that of a regular officer. He highlighted that the BCO scheme was meant to give opportunity to deserving and capable soldiers in service to be commissioned as officers. He then elaborated that therefore, the process of selection, training and terms of engagement were different to that of a regular commissioned officer. He further added that while a regular officer retired at the age of 54 if he was not promoted to subsequent select grade, a BCO retired at the age of 57 years. He further emphasised that as per AFI 02/91 governing the terms and conditions of a BCO, they were only eligible for time scale promotions.

7. The counsel then drew our attention to Para 10 of AFI 2/91 and elaborated that initially BCO were eligible for time scale promotion up to the rank of Sqn Ldr, since earlier even the rank of Wg Cdr was a selection grade rank. He then elaborated that after the implementation of AVSC Report, Wg Cdr also became a time scale rank and accordingly all BCOs including the applicant became

eligible for time scale promotion to the rank of Wg Cdr. Accordingly, the applicant had been promoted to the time scale rank of Wg Cdr on 10.12.2015. The counsel then vehemently asserted that the applicant had been erroneously considered by PB-2 due to an administrative oversight and that since BCO were eligible for only time scale promotion, grant of select rank of Gp Capt would be contrary to the Govt. instructions on the subject.

8. Relying on the Hon'ble Supreme Court judgment in the case of **Union of India & Anr. Vs. Narendra Singh** [(2018) 2 SCC 750], the counsel highlighted that in this case, where an officer of the Audit Department was promoted without passing the requisite departmental examination, the Court held that though the Department had promoted the officer by mistake, the fact that a mistake cannot be corrected cannot be countenanced, and that if a mistake had been made, that can always be corrected by following due process of law.

9. The counsel concluded that the applicant being a BCO was only eligible to be granted time scale promotion and is to retire at the age of 57 years, as this is a category of commissioned officers, distinctly different from the regular officers. That the applicant had been considered and empanelled by PB-2 was due to an

administrative oversight and mistake. The counsel asserted that this mistake however, did not make him eligible to a rank to which the applicant is statutorily not entitled to, and further added that the mistake had been corrected and necessary steps have been initiated to ensure that this mistake is not repeated. The counsel concluded by asserting that since the applicant is not eligible for select rank of Gp Capt, the OA be dismissed.

Consideration

10. Having heard both parties, the only issue to be considered is whether the respondents were justified in not promoting the applicant a BCO to the select rank of Gp Capt, though he was empanelled by mistake for promotion. The respondents have submitted the Departmental files pertaining to the applicant's case and policy files pertaining to the issue and these have been examined by us.

Policy – BCO

11. Branch commissioning of airmen in the non-technical Branches of the Air Force is governed by AFI 02/91 as amended from time to time. The relevant aspects, including the Corrigendum amending the age of retirement are extracted below:-

obtained by an individual in the written test, interview and in service records. They will, thereafter, be detailed for training, if found medically fit in the classification of A4G2.

7. Training: Selected candidates will be given 24 weeks of professional training at Air Force Administrative College, Coimbatore, During training, they will hold the rank of Flight Cadet.

8. Career Prospects. BC officers will be allowed to serve up to the age of 55 years and given career prospects up to the rank of Sqn Ldr only.

9. Airmen who successfully complete the training will be granted commission in the rank of flying Officer with 2 years ante-date for the purpose of pay only.

10. Promotion:

(a) Substantive promotion: Substantive promotion will be by time scale as follows, provided the officer is considered fit in all respects.

(i) To Flight Lieutenant: After completion of 6 years reckonable commissioned service.

(ii) To Squadron Leader: After completion of 12 years reckonable commissioned service.

Note: BC officers will be required to qualify in the promotion examination 'B' & 'C' for substantive promotion to the rank of Flt Lt and Sqn Ldr respectively.

(b) Acting promotion will be admissible to fill authorized vacancies. The minimum qualifying service limits for eligibility for acting promotion will be as following:

(i) To Flt Lt: 3 ½ years reckonable commissioned service.

(ii) To Sqn Ldr: 6 ½ years reckonable commissioned service.

xxx

xxx

xxx

18. This supersedes AFI 18/75 as amended vide AFIs 6/74, 19/76, 7/81, 5/82 and 10/88.

Sd/-
(Mrs Urmila Subbarao)
Deputy Secretary to the Govt of India

AIR FORCE INSTRUCTION CORRIGENDUM
NO.7

New Delhi, Wednesday, 1 December, 1999/ 10 Agrahayana, 1921 Saka

BRANCH COMMISSIONING OF AIRMEN IN THE NON-TECHNICAL
BRANCHES OF THE AIR FORCE

In Para 8 of the AFI

For "55 years"

Read " 57 years"

Case No. Air HQ/23967/116/PP& R-1/1397/DS/D(Air-III)
Dt 16.9.99 Min of Def (fin) Dy No.2412/P&W/AF dt 27.9.1999

sd/xxx
(Shyam Kapoor)
Deputy Secretary to the Govt. of India

12. Although the AFI 02/91 was not amended consequent to implementation of AVSC Report Phase-1, to state that time scale promotion would now be up to the rank of Wg Cdr, Air HQ issued HRP 02/2005 dated 12.03.2005 pertaining to non-select ranks and grant of substantive promotion to the rank of Wg Cdr and Gp Capt (TS). This HRP is applicable to all PC, SSCOs, BCOs of all Branches other than Medical and Dental. The qualifying service for Wg Cdr was 13 years and for Gp Capt (TS) was 26 years. The HRP lays down the CR and Min Performance Criteria for each rank. Thus the BCOs became eligible for time scale promotion to the rank of Wg Cdr. The relevant issues are extracted below:

Air HQ/C 98824/1/PO5

Air HQ(VB)
New Delhi 110 011

12 Mar 05

AIR HEADQUARTERS HUMAN RESOURCE POLICY
PART-I/PO/PR/02/2005

GRANT OF SUBSTANTIVE PROMOTIONS UP TO THE RANK OF
WG.CDR AND GP CAPT(TS)

INTRODUCTION

1. The Govt has accorded approval for Implementation of Phase I of the recommendations of the AV Singh Committee Report pertaining to the Non-Select Ranks vide Govt of India letter No. 2(2)/US(L)/D(Air.III)/04 dated 12 Mar 2005, Substantive promotions up to the rank of Wg Cdr and Gp Capt(TS) are granted to officers on their meeting the specified criteria. The provisions contained in this policy are applicable to all

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will be granted to officers without any prejudice to pending proceedings/currency of censure. However, grant of substantive rank may be deferred / withheld by the approving authority, when an officer is under investigation / being proceeded against on charges of grave misconduct, moral turpitude, or lack of Integrity. If absolved of the charges, he will be granted substantive rank with retrospective effect.

Age of Superannuation

4. *The age of superannuation for Gp Capt(TS) would be same as it is for the rank of Wg Cdr in respective branches. Therefore, there is no change in the retirement age of a Wg Cdr on being promoted to the rank of Gp Capt(TS).*

APPROVING AUTHORITY

xxx

xxx

xxx

7. *This HRP will come into force with immediate effect. However, date of fixation of seniority for Implementation of Phase I of AVSC's recommendations as approved by the Govt would reckon from 16 Dec 2004.*

8. *This policy supersedes the provisions of grant of Substantive Promotions up to the rank of Wg Cdr issued vide Alr HQ/C 98824/1/PO5 dated 15 May 01.*

13. This was then followed by HRP 03/2013 dated 28.08.2013 and HRP 08/2021 dated 17.12.2021 regarding '*Grant of Substantive promotions upto the rank of Wg Cdr and Gp Capt (TS) excluding Medical and Dental Branch Officers*', the provisions of which are applicable to all PC/SSC/BS/SEC officers of all Branches, other than Medical and Dental Branches. Thus in the case of the applicant, he was promoted to the rank of Wg Cdr on 10.12.2015 based on HRP 03/2013 dated 28.08.2013, which has since been superseded by HRP 08/2021 dated 17.12.2021 and is operative now.

14. It is also pertinent to place on record that vide policy letter dated 12.01.2006 the BC entry was merged with the SNCO Commission entry into a common entry called 'Service Entry

Commission (SEC)'. Thus, currently there are only a few BCO in the IAF. The letter is reproduced below:

Vayu Bhawan
New Delhi-110011

Air HQ/C 40253/PA (CPC)

12 Jan 2006

HQ WAC, IAF
HQ EAC, IAF
HQ CAC, IAF
HQ SWAC, IAF
HQ SAC, IAF
HQ TC, IAF
HQ MC, IAF
HQ A N C (FOR COS)
HQ SFC (For CSO Ops & Plans)
HQ IDS (For Dir Adin & Coord)

} (For SOsA/SAASO)

**COMPREHENSIVE DIRECTIVE FOR SERVICE ENTRY
COMMISSION (SEC) IN TECH AND NON-TECH BRANCHES**

1. Consequent to discussion on the proposal for merging BC Entry with SNCO Commission Entry during the AF Commanders' Conference held in Apr 05, CAS has approved the merger of SNCO Commission and BC Entry. This mode of entry will be known as Service Entry Commission (SEC). The number of chances for an SNCO for appearing in AFSB testing for Service Entry Commission (SEC) will be restricted to three attempts.
2. The first Service Entry Commission Course will commence in July 2006. Maximum of 15% of the cadre vacancies for the Tech and Non-Tech branch are earmarked for the airmen selected for commissioning under SEC Entry scheme. The exact details of induction for various branches in each course, vacancies and venue for training will be decided jointly by DPO-3 and PD Trg (G).
3. All airmen of the rank of SNCO and above on selection and successful completion of training would be granted PC into Tech & Non-Tech branches.

4. **Eligibility Conditions**

(a) **Tech Branches**

- (i) **Educational Qualifications** : 10+2 or Equivalent (Higher /Tech qualifications will be preferred).
- (ii) **Age Limit** : 34 to 42 years as on 01 Jan/ 01 Jul of the month in which course commences.
- (iv) **Trade Eligibility For Branches.**
 - (aa) **AE(M)** : AF Fit, Eng Fit, Wpn Fit, Flt Engr, Flt Gnr, MT Fit, WS Fit(C) & (B), MF(M), PMF(M)

(ab) **AE(L)** : Inst Fil, Elect Fit, Rad Fil, Rdo Fit, Photo Fit, MF(E) & (L), PMF(E), Fit Sig

(v) **Medical Category** : A4G1.

(vi) **Discipline** : No red ink entry during the preceding five years at the time of submission of application and also prior to course commencement.

(b) **Non Tech Branches**

(i) **Educational Qualification** : 10+2 or Equivalent (Higher qualifications will be preferred).

(ii) **Trade Eligibility For Branches.** Candidates can apply for any of the non-technical branches. However, the specific branch in respect of the selected candidates will be finally allotted by Air HQ.

(iii) **Age limits, Rank, Med Category and Discipline standard** : Same as given in para 4 above.

5. **Selection Process:** Applications as per the given format at Appx 'A' to this letter are to be invited from prospective candidates and vetted at station level by a BOO, duly recommended by AOsC/Stn Cdrs and forwarded to Command HQ for their scrutiny and final selection. Applications from units directly under Air HQ located outside Delhi are to be processed through the IAF units/stations nearest in geographical location. Applications from Air HQ, IDS and SFC are to be processed through 412 AF Stns. Applications from AFRO, AFCAO, AFCME and CASB will be processed at AFRO.

6. **Medical Examination** Units are to conduct preliminary medical examination in respect of prospective airmen and certify that they are in Med Cat A4G1.

(a) **Flexibility to Opt for Branches.** Although final allotment of a Branch to the successful candidates will be decided by DPO at this HQ as per suitability candidates and availability of vacancies for particular course(s), eligible SNCOs can apply for any branch irrespective of their trades. Candidates in Edn Instr, Musn or any other Gp 'Y' trades can apply for Technical Branches provided they possess a technical degree or equivalent qualification irrespective of the percentage of marks scored by them in the qualifying examination. There will be no trade restriction for eligibility to apply for any of the non-tech branches, for the abovementioned candidates. In case a Gp 'X' airman in a Mechanical trade happens to possess Electronics stream related civil qualification, he could opt for the AE(L) branch. Conversely, the same would also be applicable to airmen in the Electronics stream.

(a) **Scheme of Examination** Dte of Edn will co-ordinate the conduct of CST at Sins through Command HQs at designated Examination centres in the months of Sep and Mar of each year. The CST will be common for all the candidates in Tech and Non Tech stream. It will comprise the following subjects and weightage of marks:

Remarks

(i)	English	-	50	} Candidates to score 50% marks in each subject for qualifying the exam.
(ii)	GSK and Current Affairs	-	50	
(i)	Professional Paper Tech [AE(L) & AE(M)] Non-Tech (Adm, Lgs, Accts, Edn & Met]	-	100	

8. Weightage will be given for Qualification as well as achievement in sports as follows:

(a) Qualification

(i)	PG Degree or above	-	12
(ii)	PG Diploma	-	10
(iii)	Graduation	-	09

(b) Sports

(i)	Represented Country	-	08
(ii)	Represented Services	-	07
(iii)	Represented Air Force	-	05

(a) In response to a 'K' Broadcast given by DPA, the application are to be for by units/stations and scrutinised for eligibility of age, qualification and basic suitability of the candidates at local level by Adjts. The applications are to be forwarded to specified Examination Centre located closes to the unit. These centres are to forward a list of candidates to Command HQs/412 AF Stn in case of personnel posted in or around Delhi under direct control of Air HQ. Command HQs and 412 AF Stn will conduct the examination under direct control of the Dte of Edn. Dte of Edn will compile the results of candidates from Technical Gp X trades and other trades, separately. The results of CST are to be forwarded by JD Edn (Exam) to AFRO alongwith applications.

(b) AFRO will scrutinise the applications and verify the correctness as well as specify the stipulated weightages for sports as well as Educational Qualifications, etc. The applications are to be accompanied with CTCs of the certificates of Qualification and Sports achievements as proof of their claims.

Weightage for qualification/ Sports claims etc may be verified from Command SCBs/AFSCB, if required. However, the weightage will be applied at the time of preparation of Final Merit List after AFSB results.

(c) AFRO will forward the list of all CST qualified SNCOs to JDPO-3(A) who will detail them for AFSB tests. They will be detailed to undergo a 3 days capsule course administrated by respective command HQ at its designated AF Stn to prepare them for AFSB selection tests. The AFSB selection and final medical examination of the successful candidates will be held in Apr-May/Oct-Nov and will be co-ordinated by JDPO-3(A&B)

(d) DPO-3 will forward the names of recommended candidates to DPA for preparation of the Final Merit List for obtaining approval of the AOP. The selected candidates will be detailed for training by JDPO-3(A/B) depending on vacancies.

10. The tentative half yearly calendar of various activities connected with receipt/scrutiny of applications, conduct of Common Screening Test and selection etc is placed at appendix 'B' to this letter. The schedule may be modified, if considered necessary for improving the screening process of the Service Entry Commission (SEC) candidates.

11. *The contents of this letter may be given wide publicity.*

*Sd/-
(DN Ganesh)
AVM
ACAS (PA&C)
For AOP*

Consideration by PB-2

15. The applicant was considered by PB-2 for promotion to the rank of Gp Capt and the results promulgated vide Air HQ signal PO/388 dated 07.03.2022, where in the applicant was at serial 7. The promotion orders for 08 out of the total 09 approved officers to the rank of Gp Capt (Local) were issued vide various signals from 26.04.2022 to 05.12.2022. The local unpaid ranks are granted under the provisions of Para 161(c) of the Regulations for the Airforce. Since the provisions of acting rank is no longer applicable since 2009 for all services, an officer holding the local unpaid rank can only wear the badges of rank of the new rank, however he will continue to draw the pay and allowances applicable to his substantive rank. In this case, the officers promoted to the local unpaid rank of Gp Capt will continue to draw the pay and allowances of a Wg Cdr, till they are appointed to a substantive Gp Capt's appointment. In this case, all the locally promoted officers were granted substantive rank of Gp Capt vide Air HQ Signal PO/645 dated 15.03.2024, where in all were appointed to

substantive rank only commencing 03.04.2023. The Air HQ signals dated 07.03.2022, 15.03.2024, 18.03.2024 and the summary of signals issued granting local rank of Gp Capt are given below:

Signal PO/388 dated 07.03.2022

Air HQ/C 99232/11/PO-4(E)

PRIORITY

AVM

FROM : AIR HQ(VB)

UNCLAS(.)

TO : ALL COMMANDS, STATIONS, WINGS AND UNITS OF IAF

PO/388

INFO : NIL

MAR/07

PROMOTION BOARD - 2/2022 (.) FOLLOWING OFFICERS OF LGS BRANCH ARE PLACED IN SELECT LIST FOR PROMOTION TO THE NEXT HIGHER RANK OF GP CAPT SUBJECT TO MAINTAINING CONTINUITY IN PERFORMANCE CMA NIL PENDING DISCIPLINE/ COURT OF INQUIRY CMA MEDICAL FITNESS AND AVAILABILITY OF VACANCY (.)

SELECT MAIN LIST (IN ORDER OF SENIORITY)

SLNO	RANK	NAME	SERNO
1	WG CDR	BHAGWAT DILIP B	25385
2	WG CDR	RICHARD DAVID MOSES	25420
3	WG CDR	(MRS) RICHA MARKANDEYA	25929
4	WG CDR	BR GURUPRASAD	26777
5	WG CDR	J BHIDE	26778
6	WG CDR	SAMRAT YADAV	27272
7	WG CDR	NK SINGH	27821

SELECT RESERVE LIST (IN ORDER OF MERIT)

SLNO	RANK	NAME	SERNO
1	WG CDR	V MANKOTIA	26773
2	WG CDR	PANKAJ UPADHYAY	27753

PARA TWO (.) CURRENT MEDICAL CATEGORY WITH DATE AND VALIDITY IN RESPECT OF ABOVE OFFICERS TO BE INTIMATED TO GP CAPT PO-1(LGS) OF THIS HQ IMMEDIATELY STOP

Signal PO/645 dated 15.03.2024

PRIORITY

MAR/15

FROM : AIR HQ(VB)

PO/645

TO : AIR HQ (VB) AOM SECTT BCO 2) AIR HQ (RKP) D ASI(RKP) BCO

UNCLASS

3) MC (U) ADJT 4) SWAC(U) ADJT 5) AFS NEW DELHI ADJT 6) 26
ED ADJT 7) AFA ADJT 8) AFCAO EDP AND OP WING

INFO :

SUBSTANTIVE PROMOTION GP CAPT RANK OF PB-2/2022: LGS BRANCH (.)
FOLLOWING OFFICERS ARE GRANTED SUBSTANTIVE RANK OF GP CAPT WEF THE DATE
SHOWN AGAINST THEIR NAMES SUBJECT TO OFFICERS BEING IN MEDICAL CATEGORY
A2G2 (P OR T) OR ABOVE (.) BA

SLNO	SER NO.	RANK	NAME	BR	UNT	WEF
1	25385	GP CAPT(L)	DILIP BHALCHANDRA BHAGWAT	LGS	AFA	03-04-2022
2	25929	GP CAPT(L)	RICHA MARKANDEYA	LGS	HQ MC	01-06-2023
3	26773	GP CAPT(L)	VIRENDER MANKOTIA	LGS	AIR HQ (VB)	05-06-2023
4	26777	GP CAPT(L)	BR GURUPRASAD	LGS	26 ED	10-07-2023
5	26778	GP CAPT(L)	JAYDEEP SHREEDHAR BHIDE	LGS	HQ SWAC	03-08-2023
6	27272	GP CAPT(L)	SAMRAT YADAV	LGS	HQ MC	01-10-2023
7	27753	GP CAPT(L)	PANKAJ UPADHYAY	LGS	AIR HQ(RKP)	04-12-2023

PARA TWO (.) OFFICERS TO ENSURE THAT POR ACTION IS TAKEN BY THEIR
RESPECTIVE UNIT (.) THE POR COPY AND INK SIGNED CHARGE ASSUMPTION
CERTIFICATE TO BE FORWARDED TO DTE OF PO-1(G) CMA ROOM NO. 331 CMA AIR HQ
(VB) WITHIN 02 (H) 04 WEEKS OF ISSUE OF SIGNAL (.) CHARGE ASSUMPTION
CERTIFICATE TO BE SIGNED BY AOC/CO/ADJT/HOD AS APPLICABLE (.) CHARGE
ASSUMPTION CERTIFICATE MUST BE AS PER FORMAT AVAILABLE ON AOP WEBPAGE
UNDER THE LINK DOWNLOADS --> FORMS FOR GENERAL USAGE (.) UNITS ARE TO
SEND THE PAY FIXATION OPTION FORM TO AFCAO AND NOT (R) NOT TO ORIG (.)

PARA THREE (.) UNITS ARE TO EFFECT THE DATE OF GRANT OF SUBSTANTIVE
PROMOTION AS PER DATE STATED IN IBID SIGNAL (.)

PARA FOUR (.) AFCAO TO VERIFY THAT THE DATE OF SUBSTANTIVE PROMOTION
PROMULGATED IN POR IS IN ACCORDANCE WITH THE DATE STATED IN IBID SIGNAL
BEFORE EFFECTING THE PAY IN THE HIGHER RANK (.)////////

Signal No PO/660 dated 18.03.2024

PRIORITY

MAR/18

FROM : AIR HQ(VB)

PO/660

TO : AFA ADJT

UNCLASS

INFO :

SUBSTANTIVE PROMOTION GP CAPT RANK OF PB-2022: LGS BRANCH (.)
CORRECTION OF DATE OF SUB RANK (.) PO/645 MAR/15 REFERS (.) AMEND TO READ
DATE OF PROMOTION TO SUBSTANTIVE RANK IN RESPECT OF GP CAPT (L) DILIP
BALACHANDRA BHAGWAT (25385) LGS AS 03 APR 2023 FOR 03 APR 2022 (.) (.) OTHER
DETAILS REMAIN UNCHANGED (.) REQUEST NOTE (.)////////

Summary of Signals Granting Local Rank

<i>Ser.</i>	<i>Sig No.</i>	<i>Date</i>	<i>No. of Officers granted local rank</i>
<i>(a)</i>	<i>PO/684</i>	<i>26.04.2022</i>	<i>02 (Ser 1, 2)</i>
<i>(b)</i>	<i>PO/680</i>	<i>24.05.2022</i>	<i>01 (Ser 3)</i>
<i>(c)</i>	<i>PO/689</i>	<i>10.08.2022</i>	<i>01 (Ser 4)</i>
<i>(d)</i>	<i>PO/690</i>	<i>10.08.2022</i>	<i>01 (Ser 5)</i>
<i>(e)</i>	<i>PO/678</i>	<i>05.12.2022</i>	<i>03 (Ser 6[@], SML 1, 2)</i>

Note: @ Ser 6 senior to applicant granted local rank only in Dec.

16. It is seen from the files, and as stated by the applicant that consequent to the promulgation of the PB-2 results in Mar 2022, since the applicant was not being promoted, he had submitted an application dated 28.07.2022 seeking promotion to the rank of Gp Capt. It is seen from the files that the issue was examined and the competent authority on 10.10.2022 approved that the applicant be called to Air HQ and be personally explained the rule position and the reason why he cannot be granted promotion to a select rank, being a BCO. Accordingly, the meeting with the applicant was scheduled in the office of PO-1 (Air Cmde) on 21.11.2022, which was communicated to the applicant vide signal dated 18.11.2022. However, the officer did not appear for the meeting. In the meanwhile the applicant submitted an application seeking an interview with AOP prior to his superannuation. The applicant was granted a meeting with PO-1 (Air Cmde) on 25.11.2022, during

which the applicant expressed his unwillingness to discuss any issue as the matter was *sub judice* in the AFT. Accordingly, the applicant's initial application was replied by Air HQ vide their letter dated 25.11.2022. The letter is reproduced below:

Dte of PO-4
Air Headquarters
Vayu Bhawan
New Delhi 106

Air HQ/C 99227/30/PO-4(E) BM-1

25 Nov 22

Gp Capt Prov CPD
Air HQ (VB)

REPLY TO THE APPLICATIONS SUBMITTED BY
WG CDR NK SINGH (27821) LGS

1. Refer Air HQ/67001/34/CPD (Coord)/ BM-I dated 28 Jul 22 and 13 Sep 22.
2. The officer vide his application dated 28 Jul 22 has sought grant of promotion to the rank of Gp Capt prior to his superannuation on 30 Nov 22. While this application was under process at this date, the officer preferred another application dated 13 Sep 22 seeking interview with AOP and moved Hon'ble AFT (PB). The relief sought vide *ibid* applications was deliberated at this Dte and the officer was interviewed by Air Cmde PO-1 on 25 Nov 22.
3. The officer's main contentions as discernible from the application are *inter-alia*, as follows:-
 - (a) That, he may be considered for grant of next acting rank of Gp Capt at an early date;
 - (b) That, subsequently, prior to his superannuation on 30 Nov 22, he may be granted substantive rank of Gp Capt which would enable him for the pensionary benefit of the rank of Gp Capt;
4. Having examined the officer's contentions, following has emerged-
 - (a) That, he was commissioned as Branch Commissioned officer in IAF on 20 Dec 03;
 - (b) That, he was considered as first timer in Promotion Board-2/2022;
 - (c) That, he was one among the seven officers placed in the Select Main List in logistics branch in PB-2;
 - (d) That, the terms and conditions of service for BC officers are specified in AFI 02/91. Para 10(a) of said AFI specifically stipulates that substantive promotion for BC officers will be by time scale. It is also provided at Para 8 of the AFI that BC Officers will be allowed to serve up to the age of 55 years and given career prospects up to the rank of Sqn Ldr, which was a time bound rank at the

time of issuance of AFI. Subsequently, Wg Cdr rank was also made a time bound rank on implementation of recommendation of AVSC-II. The age of retirement of BC Officers was later enhanced to 57 years in 1999. The officer has served accordingly in the IAF up to 57 years in the rank of Wg Cdr as a BC Officer and governed by AFI 02/91;

(e) That, the terms and conditions of service for BC officers do not entitle them for consideration for any Select Rank;

(f) That the Officer was considered for Gp Capt (Select) rank erroneously by PB-2/2022 for Lgs branch. Erroneous consideration is due to oversight and therefore corrective action is being taken.

5. *The officer may be informed that his application dated 28 Jul 22 and 13 Sep 22 stands disposed of by the competent authority at Air HQ and acknowledgment of the receipt be obtained for retention in the record.*

*sd/-
(Manish Sharma)
Gp Capt
Gp Capt PO-4*

Action of Respondents

17. The terms and conditions of service for BCOs are laid down in AFI 2/91. Para 8 of the AFI stipulates that '*BC officers will be allowed to serve up to the age of 55 years and given career prospects upto the rank of Sqn Ldr*'. Vide Corrigendum No.7 to AFI 2/91 dated 01.12.1999 the retirement age was extended to 57 years. With the implementation of AVSC Committee the rank of Wg Cdr (and equivalent rank) which hitherto was a select rank, became a time scale rank. Thus, while earlier as per AFI 2/91, a BCO could be promoted to the rank of Sqn Ldr, provided the officer is considered fit in all respects, this was now extended to the rank of Wg Cdr, since this rank had now become a time scale rank. Thus, the underlying principle is that BCOs are entitled to time

bound promotions (i.e.) to time scale ranks. Thus, consideration of BCO for select rank of Gp Capt is contrary to the provisions of Para 8.

18. The policy on promotion to the select rank of Gp Capt is governed by HRP 03/18. The HRP does not expressly bar the consideration of BCOs for promotion to the rank of Gp Capt. However, while AFI is an administrative instruction issued by the Govt, the HRP is issued by the Air HQ. When there is a conflict between the provisions of AFI and HRP, the provisions of AFI will prevail.

19. It is not disputed that the applicant was considered by PB No 2 in Mar 2022 and was placed in the select list which was promulgated vide Air HQ PO/388 dated 07.03.2022. The respondents have categorically stated that the applicant's consideration was a mistake due to an administrative oversight.

20. What is relevant in this case is to examine, whether the applicant has any vested right for promotion, when in the first place he was not eligible for consideration for promotion to a select rank, contrary to the provisions of AFI 02/91. It is the settled principle of law that a bonafide mistake does not create a valid right and that the mistake can be rectified by the competent authority. We have

no hesitation in upholding the fact that since the consideration of the applicant for promotion to the select rank was a mistake, it can be corrected by the competent authority. Such a situation and the correction of the mistake by the competent authority is upheld by the Hon'ble Supreme Court in the case of **Narendra Singh** (supra). The Apex Court after examining this case of an officer of Audit Dept was promoted without having passed the requisite departmental examination, held as under:

15. *Having heard learned counsel for the parties, in our opinion, the appeal deserves to be partly allowed. So far as the promotion of the respondent is concerned, it is not in dispute that he was promoted as Senior Accountant (Functional) on 1-1-1990. It is not the allegation of the appellant that the respondent had obtained such promotion by concealing facts or by playing fraud.*

16. *At the same time, however, in our opinion, the learned counsel for the appellants is right in submitting that the respondent was not eligible and qualified to be promoted to the post of Senior Accountant. In this connection, he invited our attention to Article 148 of the Constitution. Clause (1) of the said Article declares that there shall be a Comptroller and Auditor General of India who shall be appointed by the President by warrant under his hand and seal. Clause (5) deals with staff of Comptroller and Auditor General of India. and reads thus:*

"148. (5) Subject to the provisions of this Constitution and of any law made by Parliament, the conditions of service of persons serving in the Indian Audit and Accounts Department and the administrative powers of the Comptroller and Auditor General shall be such as may be prescribed by rules made by the President after consultation with the Comptroller and Auditor General."

xxx

xxx

xxx

20. *It is not the case of the respondent that he had passed the departmental examination for Accountants. It is, thus clear that the respondent was not qualified for promotion to the post of Senior Accountant under the Rules.*

xxx

xxx

xxx

32. *It is true that the mistake was of the Department and respondent was promoted though he was not eligible and qualified. But, we cannot countenance the submission of the respondent that the mistake cannot be corrected. Mistakes are mistakes and they can always be corrected by following due process of law. In ICAR v. T.K. Suryanarayan² it was held that if erroneous promotion is given by wrongly interpreting the rules, the employer cannot be prevented from applying the rules rightly and in correcting the mistake. It may cause hardship to the employees but a court of law cannot ignore statutory rules.*

33. As observed by us, statutory rules provide for passing of ✓ departmental examination and the authorities were right in not relaxing the said condition and no fault can be found with the authorities in insisting for the requirement of law. In the circumstances, the action of the authorities of correcting the mistake cannot be faulted.

34. True it is that before such an action is taken and a person is actually reverted, he must be given an opportunity to show cause why the proposed action should not be taken. He may be able to satisfy the authorities that there was no such mistake. But even otherwise, principles of natural justice and fair play require giving of such opportunity to him. But as observed earlier, in the instant case, in accordance with Rule 31-A of the Fundamental Rules, notice was issued to the respondent employee, explanation was sought and thereafter the order was passed. The said order, in our considered view, was just, proper and in consonance with law and it ought not to have been set aside by the Tribunal or by the High Court. To that extent, therefore, the orders impugned in this appeal deserve to be set aside.

35. The last prayer on behalf of the respondent, however, needs to be sympathetically considered. The respondent is holding the post of Senior Accountant (Functional) since last seventeen years. He is on the verge of retirement, so much so that only few days have remained. He will be reaching the age of superannuation by the end of this month i.e. 31-12-2007. In our view, therefore, it would not be appropriate now to revert the respondent to the post of Accountant for very short period. We, therefore, direct the appellants to continue the respondent as Senior Accountant (Functional) till he reaches the age of superannuation i.e. up to 31-12-2007. At the same time, we hold that since the action of the authorities was in accordance with statutory rules, an order passed by the Deputy Accountant General cancelling promotion of the respondent and reverting him to his substantive post of Accountant was legal and valid and the respondent could not have been promoted as Senior Accountant, he would be deemed to have retired as Accountant and not as Senior Accountant (Functional) and his pensionary and retiral benefits would be fixed accordingly by treating him as Accountant all throughout.

36. For the foregoing reasons, the appeal is partly allowed. Though the respondent is allowed to continue on the post of Senior Accountant (Functional) till he reaches the age of retirement i.e. 31-12-2007 and salary paid to him in that capacity will not be recovered, his retiral benefits will be fixed not as Senior Accountant (Functional) but as Accountant. In the facts and circumstances of case, there shall be no order as to costs.

21. The Hon'ble Supreme Court at Para 34 opined that before action is taken and a person reverted, he must be given an opportunity to show cause as to why the proposed action should not be taken. However, in the instant case, since the applicant was only approved for promotion and actually not promoted, in our considered opinion, the necessity of a SCN does not arise here. It is also pertinent to note that even if the respondents had indeed

placed him in a local rank of Gp Capt, he would have retired in the local rank with the pension as admissible to a Wg Cdr, since all the substantive slots were available commencing Apr 2023 only. Thus, no material prejudice has been caused to the applicant except had he been promoted, he would have held the local rank for a few months prior to retirement, albeit with the pay and allowance of only a Wg Cdr and pensionary benefits of a Wg Cdr.

Conclusion

22. With the above consideration we conclude the following:-

(a) Branch Commissioned officers are a different category governed by AI 02/91 as amended from time to time and they are entitled to be promoted to the time scale ranks, subject to their eligibility and meeting the laid down criteria as per HRP 08/2021.

(b) A BCO is not entitled for consideration for promotion to the select ranks, commencing with the rank of Gp Capt. Thus, a BCO has no vested right for such a consideration.

(c) The consideration of the applicant by PB-2 for promotion to the rank of GP Capt and his being subsequently placed on the select list having been found fit, is a mistake committed by the Respondents due to an oversight.

(d) The Apex Court has upheld the right of the competent authority to correct an administrative mistake such as this. The Respondents have corrected the mistake by not issuing instructions for promotion and assumption of an appointment in the rank of Gp Capt, although the list of officers, including the applicant, approved for promotion to the rank of Gp Capt was promulgated. We find no mala fide in this action.

(e) AFI 02/91 is required to be amended to reflect time scale promotion to the rank of Wg Cdr.

(f) HRP 08/2021 dated 17.12.2021 is required to be amended to the extent that it specifically states that a BCO will not be considered for promotion to the rank of Gp Capt, since a BCO is eligible only for promotion to time scale ranks up to Wg Cdr currently.

(g) Vide policy letter dated 12.01.2006 the BC entry was merged with the SNCO Commission entry into a common entry called 'Service Entry Commission (SEC)'. Thus, currently there are only a few BCO in the IAF.

Directions

23. In view of the above consideration and conclusion, the OA is dismissed. The respondents are however directed to issue necessary

amendments to AI 02/91 and HRP 08/2021 dated 17.12.2021 to reflect the ineligibility of BCOs for promotion/consideration to select ranks.

24. No order as to costs.

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

Pronounced in open Court on this 17th day of September, 2024.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

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

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