

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

OA 2330/2019

Lt Col Sandeep Singh Thakur ... Applicant

Versus

Union of India & Ors. ... Respondents

For Applicant : Mr. I.S. Singh, Advocate

For Respondents : Gp Capt Karan Singh Bhati, Sr. CGSC

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 ('AFT Act'), the applicant has filed this application and the reliefs claimed in Para 8 read as under:

"(A) Call for the Records based on which the Respondents have rejected the Statutory Complaint filed by the applicant vide impugned order dated 16.10.2019 and thereafter quash the same;

(B) Direct the respondents that the entire profile of the Applicant including the CRs of reckonable/non reckonable service be analyzed and inconsistencies/

aberration if any be set aside including any adverse remark in pen picture.

(C) Direct the Respondents for expunction of part criteria CR for the period from 22 Aug 2009 to 31 Dec 2009, 01 Jan 2010 to 31 Dec 2010 and 01 Jan 2011 to 31 Dec 2011, being technically invalid and thereafter consider the case of the Applicant as a Special Review Fresh Case by the next No. SB."

BRIEF FACTS

2. The applicant was commissioned as Lieutenant in the Corps of EME of Indian Army on 15.10.2000. The applicant herein has filed instant OA being aggrieved by the wrongful, illegal and arbitrary actions of the respondents of not empanelling him for promotion to the next higher rank of Colonel in his third consideration while during holding of No. 3 Selection Board in the month of October 2019 and instead rejecting his Statutory Complaint vide their impugned order dated 16.10.2019 passed by the respondents and forwarded to him on 23.10.2019 finding no merit therein.

3. The applicant vide filing his statutory complaint had requested the competent authority to expunge his 'Part Criteria' CR-1 for a period from 22.08.2009 to 31.12.2009, CR-

2 for a period from 01.01.2010 to 31.12.2010 and CR-3 from 01.01.2011 to 31.12.2011, on a ground that the same was an inadvertent omission on the part of the IO of the applicant who had assessed him in his official capacity of being a Workshop Officer in Stn Wksp (Col Comds) by applying the regular EME Bn standards which are non-criteria appointments overlooking the fact that in terms of new policy on criteria appt and quantification system dated 28.04.2008 issued by the respondents themselves, the appointment of Workshop Officer of Stn Wksp (Col Comds) was included as part criteria appt and greater weightage was given to criteria reports.

4. The applicant apprehends that despite being graded outstanding in his pen pictures, the proportionate figurative assessment has not figured in the Initiating Officer (IO) reports, mainly due to this omission. This leads to cascading effect of comparatively stringent figurative assessments by HTO, RO and SRO, due to very limited interaction and could have influenced the grading given by IO during his assessment of CRs for the period from 01.01.2010 to 31.12.2010 and 01.01.2011 to 31.12.2011.

5. The grievance of the applicant further arises from the fact that the respondents, without going into the merits of the case and considering genuine grievances raised by him in his statutory complaint, rejected the same reiterating their previous stand taken by them while disposing of the Non-Statutory Complaint of the applicant without due application of mind. The applicant is further aggrieved by the fact that the respondents, without considering his entire performance and reckonable profile, failed to order for considering him as a Special Review Fresh Case by the next No 3 Selection Board.

6. Under these circumstances, the applicant was left with no option but to approach this Tribunal seeking urgent direction in the matter as the applicant is being put to grave disadvantage due to such arbitrary actions on behalf of the respondents. Hence, the instant Original Application.

CONTENTIONS OF THE PARTIES

7. The learned counsel for the applicant submitted that the respondents issued a new policy bearing letter No. 04560/MS Policy dated 28.04.2008 as per which the pcst of Workshop Officer at Stn Wksp, EME was declared a criteria appointment,

however, since the same was not circulated by the respondents, the applicant could not gain any knowledge about it. The learned counsel further added that as per the said policy, the MS Branch had issued a revised list of criteria appointments in the rank of Lt Col/Maj of all the Arms/Services for consideration by No. 3 Selection Board and as per the abovementioned policy instructions, the appointment of the applicant i.e. Workshop Officer Armd/Arty Static Wksp / Stn Wksp (Col Comds) was held to be a part criteria appointment.

8. The learned counsel for the applicant further submitted that vide MS Branch letter No. A/75001/123/Post/MS-16 dated 17.06.2009, the applicant was ordered to be posted to Station Workshop EME Bangalore to replace Maj Jiju Varghese for whom the posting orders were still awaited.

9. The learned counsel for the applicant further submitted that on joining Station Workshop (EME) Bangalore, the applicant was taken on strength on 22.08.2009 as additional officer to relieve Maj Jiju Varghese as OIC WSG and was reflected as Workshop Officer in IAFA-3008 and that the

Commanding Officer of the applicant did not hand him over the responsibility of OIC WSG and continued with Maj Jiju Varghese in that appointment. The learned counsel submitted that the applicant held the appointment as additional officer during the period from 22.08.2009 to 31.10.2009 and he assumed appointment of OIC WSG only on 01.11.2009 after Maj Jiju Varghese was SOS and thus, it is the apprehension of the applicant the period of two months from 01.11.2009 to 31.12.2009 would have been grossly inadequate to judge his professional competence in the appointment of OIC WSG by his I.O.

10. The learned counsel for the applicant further submitted that during this period while the applicant stood posted to Station Workshop, CR for the period from 22.08.2009 to 31.12.2009 was initiated and the applicant remained under an impression that his appointment was a non-criteria appointment, as is the case in all other EME Battalions. The Initiating Officer, who actually had the responsibility to intimate the applicant about him holding a criteria appointment in terms of the policy instructions issued, failed

to do so and the situation was so pathetic that neither the Applicant nor the Initiating Officer endorsed "Criteria Appointment" in the relevant portions of all the respective CRs of the applicant i.e. CR-1, CR-2 and CR-3.

11. The learned counsel for the applicant submitted that during the intervening period from August 2009 to December 2009, though the respondents treated the appointment of Workshop Officer, Station Workshop as a criteria appointment however, such a fact was never brought to the knowledge of the applicant by his IO due to which the applicant remained ignorant of it for long and although, the applicant's hard work and professional competence in executing the tasks were duly highlighted by IO in the pen-pictures, the applicant apprehends that proportionate figurative assessment were not given in his CR because of the ignorance of the IO about applicant's appointment as criteria appointment.

12. The learned counsel for the applicant further submitted that during the period from 01.01.2010 to 31.12.2010, the CR of the applicant was initiated by his IO wherein the appointment of the applicant as treated as non criteria

appointment and added that it was because of the anomaly that crept in the CR of the applicant for a period from 22.08.2009 till 31.12.2009 due to which the CR for period from 01.01.2010 to 31.12.2010 also got affected jeopardizing the case of the applicant. The learned counsel submitted that during the applicant's assessment, once again the Initiating Officer failed to place the applicant on criteria appointment and repeatedly graded him for a non-criteria appointment.

13. The learned counsel for the applicant submitted that during the period from 01.01.2011 to 12.08.2011, the CR of the applicant was initiated by his IO wherein the appointment of the applicant was once again treated as non criteria appointment. It is pertinent to mention that all the three CR's of the applicant i.e. CR- 1, CR-2 and CR-3 have been recorded as criteria appointment CR in MS Branch whereas the Initiating Officer had placed the Applicant in a non-criteria appointment and thus, rated him accordingly. The learned counsel added that it was a fault on the part of the IO of the applicant which happened due to his ignorance of changes in policy brought into existence by the respondents.

14. The learned counsel for the applicant submitted that applicant, for the first time, was considered for promotion to the rank of Colonel during the Selection Board No. 3 held in October, 2017 and despite having meritorious career profile, the applicant could not be empanelled for his promotion to the rank of Colonel in terms of the results declared vide order bearing no. A/21508/3SB/Result/MS-5 dated 11.10.2017 passed by the respondents. The learned counsel submitted that being aggrieved by the wrongful actions of the respondents of not empanelling him for promotion, the applicant preferred his Non Statutory Complaint dated 28.11.2017, however, the respondents, vide their order dated 11.05.2018, rejected the Non Statutory Complaint of the applicant and later in October 2018, the applicant was once again considered by No. 3 Selection Board for his next promotion to the rank of Colonel during his 2nd consideration. However, similar to the previous occasion, this time also the applicant was not empanelled for promotion to the rank of Colonel by Selection Board No. 3 vide their order bearing no. A/21508/3SB/Result/MS-5 dated 02.11.2018.

15. The learned counsel submitted that aggrieved by his non-consideration for promotion by No. 3 Selection Board during his 2nd consideration, the applicant preferred his Statutory Complaint. However, vide an order dated 16.10.2019 the respondents rejected the statutory complaint of the applicant finding no merit in it and reiterating the same justification as given by them while rejecting his Non-Statutory Complaint.

16. The learned counsel for the applicant concluded the arguments by saying that the applicant for the third time was considered by the Selection Board No. 3 for promotion to the rank of Colonel. However; once again he was not empanelled for the next promoted rank vide order No. A/21508/3SB/Result/MS-5 dated 04.10.2019.

17. *Per contra*, the learned counsel for the respondents submitted that aggrieved by his non empanelment to the rank of Colonel by No. 3 Selection Board (Fresh) held in October 2017, the applicant submitted a Non-Statutory Complaint dated 30.11.2017 and the said complaint was duly examined by the competent authority, upon detailed examination of the complaint along with his overall profile and other relevant

documents and after consideration of all aspects of the complaint, it emerged that all CRs in the reckonable profile of the applicant, including the impugned CRs 01/09 - 08/09, 08/09 - 12/09, 01/10 - 12/10 and 01/11 -08/11 are well corroborated, performance based, objective and technically valid. The learned counsel for the respondents added that there being no evidence of any bias or subjectivity, and therefore none of the CRs merit any interference. The learned counsel further submitted that the technical reporting channel in CR 01/09 - 08/09 is correct as per extant policy uniformly applicable to all similarly placed officers and also, CRs 08/09-12/09, 01/10-12/10 and 01/11-08/11 have been correctly edited by the MS Branch as part criteria reports as per the extant policy.

18. The learned counsel for the respondents further submitted that the applicant has not been empanelled for promotion to the rank of Colonel on account of his overall profile, relative merit and comparative evaluation as assessed by No. 3 Selection Board held in October 2017 and accordingly, the competent authority vide a detailed speaking

order dated 11.11.2018 rejected the Non-Statutory Complaint of the Applicant. The learned counsel for the respondents submitted that the applicant thereafter submitted a Statutory Complaint dated 18.12.2018, challenging the CRs for the periods 08/09 - 12/09, 01/10 - 12/10 and 01/11 - 08/11 and the said complaint was duly examined by the competent authority and after consideration of all aspects of the complaint, it emerged that all the three impugned CRs i.e. CR 08/09 - 12/09, 01/10 - 12/10 and 01/11 - 08/11 are well corroborated, performance based, devoid of any inconsistencies and technically valid. The technical reporting channel in CR 01/09 - 08/09 is correct as per extant policy uniformly applicable to all similarly placed officers. Also, CRs 08/09 - 12/09, 01/10 - 12/10 and 01/11 - 08/11 have been correctly edited as part criteria reports as per extant policy. There being no evidence of any bias or subjectivity, none of the CRs merit any interference. Accordingly, the competent authority vide a detailed speaking order dated 16.10.2019 rejected the Statutory Complaint of the applicant.

19. The learned counsel for the respondents further submitted that the assessment of officers in Annual Confidential Report (ACR) was regulated by Army Order 45/2001/MS (which has now been replaced by Army Order 02/2016/MS) and other relevant policies at any given time. The learned counsel for the respondents submitted that the gradings in the ACR are numerical from 1 to 9 and the assessment of Outstanding denoted by numeral 9 is reserved for some exceptional special achievements of the officer reported upon during the reporting period which is beyond the performance of an officer with Above Average performance and no officer has any right to claim an 'Outstanding' assessment in the Confidential Reports. The learned counsel for the respondents submitted that further, it is solely the Reporting Officers who have observed the officer during the period are competent to objectively assess an officer's performance and such assessments fall outside the purview of judicial review unless in a case where the Confidential Report is technically invalid for contravention of any rule or procedure or the applicant through positive averments with supporting

facts/evidence establish bias/malafide against the Reporting Officers to the satisfaction of the Court and importantly after arraying them as a parties and being heard.

20. The learned counsel for the respondents submitted while considering an officer for promotion to a selection rank, the Selection Board takes into consideration a number of factors such as war/operational reports, Course Reports, Annual Confidential Report (ACR), performance in command and staff appointments, honours and awards, disciplinary background etc. and not just the ACRs or one/few ACRs and Empanelment/Non Empanelment is based upon the overall profile of an officer and comparative merit within the Batch as evaluated by the Selection Board.

21. The learned counsel for the respondents submitted that MS Branch Letter No 04560/MS Policy dated 28.04.2008 deals with criteria appointments tenable by Lt Col/Maj of all Arms and Services for consideration by No. 3 Selection Board. The learned counsel for the respondents further submitted that the aforesaid policy letter was promulgated to the environment and the same was disseminated to all units and

the applicant cannot plead ignorance with regard to the contents of the said policy letter and also submitted that all officers are supposed to have acquainted themselves with Regulations and Orders which are promulgated to the environment as per Para 324 of Regulations for the Army (Revised Edition, 1987). The learned counsel submitted that moreover, there is no policy which mandates separate intimation to any officer of the IA that he/she is placed on Criteria Appointment. The learned counsel added that the concept of Criteria CR is governed by the appointment being held by an officer and the same is to be endorsed in Para 4 of the CR form. Since the impugned CRs initiated were in correct appt, i.e. Workshop Officer at Station Workshop, and same matches with Posting Order (Annexure A-3 of OA) and IAFF 3008 (Annexure A4 of OA) and therefore it was correctly captured as Criteria Report.

22. The learned counsel for the respondents submitted that policy dated 13.01.2009 is not applicable to Officers of the rank Major and Lt Col. The said policy is applicable for promotion to Brigadier. It was further added by the learned

counsel that the rationale in the said policy is explained at Para 2 and 3 i.e. extraordinary situation arising due to release of additional vacancies in rank of Lt Gen, Major Gen, Brigadier and Cols as per AVSC Committee report. The same necessitated placing the officers of those ranks immediately in newly created authorization, where certain appointments were identified to be upgraded as criteria appointment on case to case basis as Widening of Command Funnel. Thus, while posting such Colonel and above on said upgraded appointment, it was specifically intimated in the posting orders that said appointments would be counted as criteria appointment for said officers.

23. It was further submitted by the learned counsel for the respondents that the paramount card is essential document required to be attached with CR. The paramount card of an officer (which is accessible by all officers of IA on MS-Web through Army-Intranet), is a document in which the details of all past CRs, their period and whether captured as criteria /non-criteria is reflected. The applicant therefore had full opportunity to raise grievance regarding status of CR at

relevant time period or at least within reasonable time instead of challenging it only after consideration by No. 3 Selection Board. It was further added that no attempt to seek any clarification regarding any confusion, if applicant's appointment was criteria or non criteria was raised by him during the three year tenure. Therefore, the said contention is merely an afterthought. The learned counsel submitted that even otherwise, numerous policies have been issued time and again for all officers to raise grievances in respect of anomalies in their paramount cards vide Respondent's policy letters dated 04.10.2012, 22.07.2014, 28.01.2016, 02.12.2016.

24. In view of the aforesaid submissions, the learned counsel for the respondents prayed that the OA lacks merit and substance and the same may be dismissed.

ANALYSIS

25. The concerned Board proceedings of the Selection Board, the CR dossier of the applicant, the statutory complaint file, the relevant policies and rules governing ACRs and various other documents as produced by the applicant and the respondents were perused by us.

Firstly, 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	Sep 2017	Fresh	EME 2000 Batch	Applicant - 91.163 Last Officer selected - 91.312
B	Oct 2018	First Review	EME 2001 Batch	Applicant - 90.835 Last Officer selected - 91.176
C	Sep 2019	Final Review	EME 2002 Batch	Applicant - 91.185 Last Officer selected - 91.486

26. 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. The applicant has been correctly compared with the batches as brought out above given table at Para 25 and has been rejected by all the SBs due to him being lower in merit than the **last officer selected** in the respective batches.

27. The other main issue raised by the applicant is that the applicant himself and his Initiating Officer (IO) during his appointment as Workshop Officer' of station workshop (EME

Bangalore) were not aware that the said appointment was a 'Criteria' appointment and three successive CRs were raised on the applicant by his IO wherein all these ACRs were raised as non-criteria CRs by the IO of the applicant. The applicant has also made out a case that whilst the professional competence in executing the task by the applicant was duly highlighted in the pen pictures of these three impugned ACRs however, the proportionate assessment were not given by the IO in these ACRs because of the ignorance of the IO of the applicant that the said appointment was a 'Criteria' appointment.

28. It is pertinent to mention that as per para 93 of AO 45/2001 it is the personal responsibility of the Ratee' to correctly fill up the ACR portion pertaining to personal data, in accordance with records maintained in the unit, in part I of the CR from and whether it is 'criteria/non criteria' appointment is at para 4(b) of Part 1 of the ACR from. Hence it was the responsibility of the applicant to ensure that the correct data was filled up in Para 4(b) of Part 1 of the ACR.

29. From the perusal of records it is clear that the appointment of the applicant is duly mentioned as "Workshop Officer" in Pen Pictures in CRs for the period 01.01.2010 to 31.12.2010 and 01.01.2011 to 12.08.2011 and in Appx 'B' enclosed with all three impugned ACRs. The CRs have been initiated in the appointment to which the officer was posted and the same matches with the IAFF 3008 (Strength Return) and satisfies the requirement of AO 45/2001. It is pertinent to mention that criteria or non criteria status of a CR alongwith number of months is reflected with letter 'C' and 'N' in Paramount Card of each officer of Indian Army while Part Criteria status is reflected as letter 'P'. Scrutiny of the CR Dossier reveals that the Paramount Card submitted by the applicant under his own signature alongwith his ACR for the period 27.05.2013 to 25.04.2014 reflects the Part Criteria status of the impugned three ACRs. Similarly, the Part Crit Status of the impugned three ACRs is reflected in Paramount Cards submitted by the applicant duly signed while initiating his ACRs for the period 05/14-05/15, 6/15-05/16, 01/17-06/17, 06/17-12/17 and 12/17-05/18. The submission of the

applicant that he was not aware of the status of CRs whether criteria or otherwise is therefore not borne out from the scrutiny of CR Dossier of the applicant. Further, the CR Dossier also reflect that subsequent to the years 2009, 2010 and 2011, the applicant approached the concerned department, ie. MS Branch vide his Letters dated 40901/Est dated 20.04.2014 from 875th Fd workshop Coy EME regarding gap in CR from 13.08.2011 to 12.02.2012 alongwith a signed copy of his Paramount Card as well another Letter No. 40902/Gen/GS/WE-6 dated 26.05.2015 regarding corrections to be carried out in his Paramount Card. The CR status of impugned ACRs is also found duly reflected in these Paramount Cards. It is however, observed that no observations or request to apparently correct the purported criteria/non criteria status was raised by the applicant. It is only after being non empanelled in the No. 3 Selection Board in September 2017, that he made the first request regarding the criteria status for his impugned CRs.

30. In view of the posting order, appointment tenanted by the applicant which is corroborated by IAFF 3003, it is observed that the impugned CRs have been initiated in the appointment held by the applicant during the period of the impugned CRs and captured as Part Criteria CR as per prevailing policies on the subject by editing them as criteria appointment after due scrutiny at the MS branch of the Army. The CRs have also been examined and found to be well corroborated with positive pen pictures and positive recommendations requiring no interference from this Tribunal.

31. The issue brought out by the applicant that in all the three impugned ACRs whilst the applicant's professional competence was duly highlighted in the pen pictures of these ACRs, however, the proportionate assessment were not given by the IO because of the ignorance of the IO of the applicant about the appointment of the applicant being criteria appointment is completely untenable. The IO/RO/SRO is required to assess the 'Ratee' strictly as per the performance of the 'Ratee' during

the period under review and is not guided by whether the CR being written is a criteria or non-criteria report.

32. In view of the above, no relief can be granted to the applicant and the OA 2330/2019 being devoid of merit is thus dismissed.

33. It is however observed that the respondents have failed to intimate the IO of the applicant in the instant case wherein in three successive CRs, the same mistake was committed by the 'Ratee'/IO of the applicant about the type of appointment being tenanted by the applicant (the correct appointment of the applicant was a criteria appointment whereas all the three CRs reflected appointment as Non-criteria appointment). The respondents should have apprised the 'Ratee'/IO of the applicant about the mistakes made in the ACRs but failed to do so on three successive occasions which is surprising. The respondents are therefore directed to put in place a Standard Operating Procedures (SOP) in their internal mechanism at the MS branch to inform the 'Ratee'/IO if such mistakes are

committed whilst rendering ACRs so that in future such lapses are not repeated.

Pronounced in the open Court on this 8th day of July, 2024.

**[JUSTICE RAJENDRA MENON]
CHAIRPERSON**

**[REAR ADMIRAL DHIREN VIG]
MEMBER (A)**

/ng/nmk/