

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

OA 3074/2022

Maj Prashant Moudgil ... Applicant
Versus ... Respondents
Union of India and Ors.

For Applicant : Mr. Rajiv Manglik, Advocate
For Respondents : Mr. Anil Kumar Gautam, Sr. CGSC

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN C.P.MOHANTY, MEMBER (A)

ORDER

The applicant, a serving Short Service Commissioned Officer of Indian Army has invoked the jurisdiction of this tribunal under Section 14 of Armed Forces Tribunal Act, 2007 and filed the OA with following prayers :-

- (a) *To declare the action of the respondents as unjust, arbitrary and illegal; and*
- (b) *To call for complete record of the proceeding of No 5 Selection Boards held in respect of the applicant; and*
- (c) *To quash and set aside impugned order dated 27 Oct 2022, Order dated 18 Feb 2022 and the adverse remarks of the IO on the application of the applicant for grant of PC; and*
- (d) *To quash and set aside the No 5 SB proceedings qua the applicant to the extent that he has not been granted the PC; and*
- (e) *To direct the respondents to consider the applicant by No 5 SB with the changed profile; and*
- (f) *To grant all consequential benefits to the applicant if the applicant is approved for grant of PC with the changed profile.*

Brief Facts of the Case

2. The applicant was commissioned into Army Service Corps as a Short Service Commissioned Officer (SSCO) on 18.09.2018 for initial contractual obligation of 10 year service, extendable by further 04 years. Before completion of initial 10 years of service, the SSCOs are considered for grant of Permanent Commission (PC)/Extension of Service by another 04 years/Release from service by No 5 Selection Board held in accordance with Govt of India letter No.B/32313/Criteria/AG/PS-2(a)/993/D-(AG) dated 24.02.2012. It is the grievance of the applicant that he was considered by No 5 SB in December 2020 and granted extension of 04 years of service only and was not recommended for grant of PC. Hence this OA.

Submissions of Behalf of Parties

3. Learned counsel for the applicant submits that the applicant who is a serving Major filed a statutory complaint dated 12.04.2022; being aggrieved due to non-grant of PC which has been rejected vide the Govt of India, Ministry of Defence letter dated 27.10.2022 on grounds of his overall profile, relative merit and comparative evaluation by No 5 SB.

The respondents have further clarified that as per relevant Govt letter there would be minus two marks for every non-recommendation for PC by Reporting Officers in Confidential Reports and not for non-recommendation in the application for Permanent Commission.

4. Explaining the probable reasons for his non selection for PC, Learned Counsel argues that the applicant was posted in High Altitude Area as Officer Commanding 725 (I) AD Platoon during July 2019; responsible for air maintenance of forward posts. As per MS Branch letter No A/18502/MS 4D(Channel) dated 26 Apr 2006 the reporting channel was Col Q HQ 101 Area and Commander 190 Mtn Bde being Initiating Officer (IO) and Reviewing Officer (RO) respectively. There was paucity of manpower for the operational duties due to local administration duties tasked by 190 Mtn Bde and that same was brought to the notice of competent authority vide a DO letter on 11.11.2019 in which the applicant inter alia had clarified that his unit was under the control of the higher formation HQ i.e. Division and not under 190 Mtn Bde and due to limited manpower and local detailments by HQ 190 Mtn Bde the unit was unable to perform its primary operation role. Later on, the channel of

reporting of the applicant was changed thus making Cdr 190 Mtn Bde as his IO and GOC of Division as RO vide letter No A/18502/ASC/MS 4D(Channels) dated 25.11.2019 issued by MS Branch, IHQ of MoD (Army).

5. Learned counsel further argues that probably being annoyed by the letter initiated by the applicant on 11.11.2019, Cdr 190 Mtn Bde started harassing him and refused to grant him leave for treatment of his wife in January 2020 and directed the applicant to get his medical board done for PC; failing which to render an adverse career certificate as per file notings placed at Annexure A-5 of the OA. It is further submitted that the applicant's application of PC was not endorsed by the IO on frivolous grounds and later on sent only two days prior to posting out of the Cdr 190 Mtn Bde with endorsement of non-recommendation for grant of PC. It is also argued on behalf of the applicant that no reason have been recorded for said non-recommendation which is in contravention to MS Branch policy letter dated 17.01.2020 and moreover there has been no warning or counselling of the applicant or any other adverse remark of his performance anywhere on record.

6. Learned counsel further submits that the PC application

of the applicant carries a negative recommendation for PC by Cdr 190 Mtn Bde despite of the same officer recording his laudatory remarks during administrative inspection of the unit just prior to forwarding the application. It is also stated that for the subsequent period the applicant was given an outstanding ACR by new IO and also awarded GOC-in-C Commendation Card and therefore under the circumstances, the non-recommendation for promotion is contradictory.

7. Learned counsel also submits that award of Low Value Judgment marks by members of No 5 SB could be a cause of lowering of merit of the applicant which has been resulted by the adverse commenting by Secretary of the selection Board highlighting the negative recommendation for PC of the applicant by his IO. He argues that the report of the committee of MoD in 2015 has recommended discontinuation of practice of commenting by Secretary of Selection Boards which has not been adopted by the respondents.

8. The applicant then submitted Non-Statutory Complaint dated 15.02.2021 which was rejected by the respondents vide their order dated 18.02.2022 and subsequently the Statutory Complaint dated 12.04.2022 which was met with the same

fate by order of the respondents dated 27.10.2022.

Submission on behalf of Respondents

9. Learned counsel for the respondent counters the submissions on behalf of the applicant to state that the applicant has not been selected by PC based on his overall order of merit, service profile and comparative evaluation as assessed by No 5 Selection Board held in December 2020. It is also submitted that the applicant's recommendation for extension only is unfounded and the negative marking of two points is only for non-recommendations of reporting officer in CR and not for the recommendation in application for PC and therefore the OA is liable to be dismissed.

Consideration

10. We have heard the Learned Counsels for both parties and perused the record placed for our perusal by the respondents. The questions placed before us for consideration are:-

- (a) Whether there has been any bias or illegality in recommendation of the applicant for PC?
- (b) Whether the applicant has been considered as per law and without any prejudice by No 5 SB?

11. On bare perusal of the application for PC qua the applicant, it is observed by us that Commander of 190 Mtn Bde has recorded his non-recommendation for grant of PC with certain reasons stated therein. However, the GOC of 5 Mtn Div in his capacity of RO of the applicant has overturned the non-recommendation of the IO with remarks which read to the effect:-

*“1. Offr is “RECOMMENDED” for grant of permt commission.
2. Aberration in performance of duty or any other shortcoming of the offr was never brought to my notice by Cdr 190 Mtn Bde. Thus I have no REASON to deny a fair chance in grant of PERMT COMMISSION.”*

12. We feel it essential to proceed with the examination of the Confidential Reports Dossier of the applicant to find any adverse communication by any of the reporting officers during the period when the applicant was holding the assignment of OC 725 (I) AD Platoon. We have noted that here is no Confidential Report initiated for the said period of 90 days due to non-completion of the mandatory period by the applicant under the reporting officer and there is no record of any verbal counselling or verbal/written warning against the applicant for the period of this assignment. Therefore in our opinion the negative recommendation and

the adverse comments of the IO are biased and subjective.

13. We have also taken note of Non Statutory Complaint of the applicant dated 15.02.2021 and Statutory Complaint dated 12.04.2022 against his non-grant of PC by No 5 SB and while doing so we do not find any infirmity in the analysis of the contents of the complaints and the decision of the competent authority conveyed to the applicant vide letter dated 18.02.2022 and 27.10.2022 which is based on the examination of entire CR profile and the results of the 5SB. However, although the non-recommendation for PC by IO is not a part of the CR dossier, in the interest of justice it is our considered view that the non-recommendation for the Permanent Commission being biased and arbitrary should no longer remain on the service record of the applicant and therefore merits to be expunged from the entire service record of the applicant.

14. On close scrutiny of the No. 5 SB proceedings conducted in December 2020 it is our observation that there were 77 vacancies for PC whereas the applicant is placed at order of merit 90 and therefore not granted PC. While examining the submissions on behalf of the applicant that his merit position has been lower due to grant of negative marks

due to non-recommendation for PC and low Value Judgment (VJ) Marks resulted by the commentary of the Secretary of the Selection of 5 SB, it is revealed that even prior to the award of VJ Marks out of 05, the applicant was well below the cut off merit which is based on Quantified factors out of 95 marks. There is no award of negative marks as perceived by the applicant and submitted in the OA. Further, we have observed that the candidate at 77th in order of merit which is the cut off merit and the candidates above the applicant from order of merit 78 to 89 (12 candidates) have quantified marks out of 95 higher than the applicant. We do not find any evidence of adverse effect of VJ marks alone on his overall merit position as his low merit is primarily attributable to low marks in his quantified merit out of 95 and not alone on the Value Judgment Marks out of 05. Therefore, it clearly emerges that he has been not granted Permanent Commission due to low merit and no merely because of low Value Judgment Marks. We are not inclined to go into the aspects of commentary by the Secretary of NO 5 SB as we find little relevance of this submission while considering the case. The value judgment marks are generally as per trend for all candidates similarly placed in the order of merit and we do

not find any evidence of out of pattern low Value Judgment marks awarded by the members of 5 SB. Moreover, all the members have recorded their recommendations for granting Permanent Commission to the applicant which is quite contrary to the apprehension of the applicant that he has been only recommended for extension of four years. It is also pertinent to mention on the passing that while the applicant submitted to have been was graded Outstanding in the next CR after the period under consideration, it is our observation that the said CR has been earned by him in a different assignment later and in a different formation and therefore it has no relevance here. Besides, there are no negative marks awarded to the applicant anywhere in any CR or in the No. 5 SB board proceedings. Therefore we have come to a conclusion that the applicant's non-empanelment of PC is due primarily to low order of merit.

15. In light of above conclusions, we direct only to the effect that the negative recommendations of Cdr 190 Mtn Bde on PC application of the applicant is hereby set aside. That apart, the OA is disposed of as dismissed being bereft of merit.

16. No order as to costs.

17. Pending miscellaneous application, if any, stands disposed of.

Pronounced in an open Court on this day 18^M of September, 2024.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

(LT GEN C.P MOHANTY)
MEMBER (A)

Akc/ps