

OA 3494/2023

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09/2014-04/2015 with rest of the valid records as were in previous SB-2 of 2018 & 2019.

Facts of the Case

2. The applicant was commissioned in the Indian Army in the Corps of Engineers on 15.12.1990 and has been in service for more than 33 years, at the time of filing this OA. The applicant having been promoted to the rank of Colonel in October 2008 was considered by No 2 Selection Board (No 2 SB) for promotion to the rank of Brigadier in November 2017 as a Fresh case wherein he was declared as NOT Empanelled. Thereafter he was again considered by the promotion board in July 2018 as First Review Case and he was once again Non Empanelled for promotion by the selection board. Meanwhile the applicant had filed a Non statutory complaint against his non-empanelment which was partially granted with directions to re-consider him as a Special Review (Fresh) case with the modified profile whereas he was considered as a Final Review Case instead and Non Empanelled. This aggrieved the applicant filed OA 587/2020 before Armed Forces Tribunal, Principal Bench, New Delhi challenging, inter-alia his non empanelment for promotion and setting

aside of his four ACRs for period 9/2012 to 8/2013, 10/2013 to 5/2014, 5/2014 to 8/2014 and 9/2014-4/2015 as technically invalid by the respondents.

3. While the Hon'ble Armed Forces Tribunal had heard the arguments and reserved the matter for orders on 10.11.2021, the applicant filed WP (Civ) No 787 of 2022 in Hon'ble Supreme Court seeking expeditious pronouncement of the judgment by the Armed Forces Tribunal in OA 587/2020 which was disposed of by Hon'ble Supreme Court vide their orders dt 26.09.2022 with following orders :-

"Having heard learned senior counsel for the petitioner and having perused the material placed on record, we are not persuaded to entertain this petition on the reliefs as claimed under Article 32 of the Constitution of India.

However, we leave it open for the petitioner in making appropriate request before the Armed Forces Tribunal for appropriate consideration.

We hope and trust that any such request, when appropriately made, shall be given due consideration by the Tribunal.

Subject to the observations foregoing, this petition stands dismissed.

All pending applications stand disposed of."

4. Consequently OA 587 of 2022 was disposed of by Armed Forces Tribunal, Principal Bench, New Delhi with following directions to the respondents vide order dated 24.01.2023 :-

"28. With the above consideration we conclude the following :-

(a) None of the CRs in the reckonable period merit any further interference.

(b) Setting aside of the four CRs covering the period 9/2012-08/2013, 10/2013-05/2014, 05/2014-08/2014 and 09/2014-04/2015 has caused prejudice to the applicant, and has been carried out without any consideration for the regularisation of the lapse.

(c) The No 2 SBs of Nov 2017, Jul 2018 and Jun 2019 in which the applicant was considered have been conducted as per the policy on the subject, and the applicant has not been empanelled due to his overall merit.

29. In view of the above, the OA is partially admitted and the Respondents are directed to :-

(a) Restore the four CRs covering the period 9/2012-08/2013, 10/2013-05/2014, 05/2014-08/2014 and 09/2014-04/2015 which have been set aside vide MS Branch letter No 36501/17294/ EME/ 2018/ 2018/ MS-19 dated 07.12.2018 (Annexure A-1).

(b) Para 5 (c) of MS Branch letter No 36501/17294/ EME/2018/2018/MS-19 dated 07.12.2018 related to the direction to set aside the four CRs be quashed.

(c) The applicant be considered as a Special Review Fresh case in those No2 SBs in which the four CRs were set aside and not included in the reckonable profile."

5. Accordingly the respondents considered the applicant as a Special Review (Fresh) Case in No 2 SB held in June 2023 wherein once again the applicant was non-empanelled for promotion to the rank of Brigadier.

6. During the course of submissions on 26.02.2024 it was fairly argued by Learned Counsel for the applicant that consequent to orders of this Tribunal dated 24.01.2023, the

applicant was considered as a Special Review case after restoration of four impugned Confidential Reports (CRs). It was reasonable to assume that there would have been an increase in quantified marks of the applicant in the subject promotion board which would have facilitated the empanelment of applicant. The second aspect on which Learned Counsel demanded greater transparency as to why was the applicant considered as a final review case during the promotion board held in June 2019 whereas he should have been considered as Special Review (Fresh) case after expunction in two CRs and setting aside of the four CRs as a result of redressal granted to him vide the Non Statutory Complaint in December 2018.

7. Detailed facts of the case have been adequately elucidated by us in our orders dated 24.01.2023 while adjudicating the case qua the applicant in OA 587 of 2020 with MA 715 of 2020 and therefore we do not consider it necessary to once again reinstate the facts already discussed. Moreover, since it has already been held by us while passing order on 24.01.2023 that "*none of the CRs in the reckonable period merit any further interference*", we don't consider it

necessary at this stage to once again dwell into the aspect of the CRs. Therefore, two short questions which merit our attention now are (i) whether the applicant's consideration as a Final Review case and NOT Special Review (Fresh) case was in order and legally tenable and (ii) has the applicant been fairly considered in the promotion board held in June 2023 after reinstatement of the four CRs as per our orders dated 24.01.2023.

8. We have perused the documents including CR dossiers, correspondence with respect to redressal granted by the respondents to the applicant on his non statutory complaint and board proceedings of various promotion boards that have been brought before us by the respondents.

9. It is opposite to place on record our observations which are relevant to seek answers to the questions stated hereinabove. The applicant who is a Colonel in Corps of Engineers of 1990 Batch has been considered as a 'Fresh' case in November 2017 by No 2 SB for promotion to the rank of Brigadier. The promotion board held him NE as his quantified total marks were 86.090 and having been awarded Board Member's Assessment (BMA) marks of 1.59, the

applicant scored a total of 87.680 marks which was well below 91.087 marks awarded to the last officer empanelled from his original batch.

10. Subsequently, the applicant was considered for the second time as First Review Case in Promotion Board held in July 2018 alongwith the next junior batch wherein his total marks stood at 90.068 including 3.35 marks as BMA whereas the last man promoted in this board had total marks of 92.462 including BMA marks. While the applicant was to be considered by the Promotion Board in June 2019, meanwhile he had already been granted redressal in December 2018 which led to expunctions into two CRs and setting aside of four CRs. Therefore, it was a logical expectation that, he should have been considered as a Special Review (Fresh) case with a better profile which would have enhanced his chance of being promoted. At this moment it is opposite to take note of relevant Paras of MS Branch, IHQ of MoD (Army) Policy letter No 04502/MS Policy dated 17.09.2010, wherein Para 8(f) of the letter reads as under :-

“Special Review will not be granted in case the amended profile results in the quantified merit of the

officer becoming lower than that with which he was considered earlier”.

11. It is relevant to observe here that there has been a drop in the quantified marks of the applicant after grant of redressal leading to expunctions in two CRs and setting aside of four CRs wherein as against his earlier total marks of 86.090 as in the SB 2 held in November 2017 now stands at 85.937 which is lesser than his previous marks and therefore considering the applicant once again with a reduced total marks now against the last man promoted @ 91.087 of his original batch would be an exercise in futility and therefore ratio of Para 8(f) of Policy letter dated 17.09.2010 stands to logic and accordingly the applicant has been considered as a Final Review case with a new CR cut off date of 31.08.2018 instead of CR cut of date of 31.08.2016 as would have been the case if he was to be considered as a Special Review (Fresh) case in the promotion board held in June 2019. Herein this promotion board, the applicant has a total of 89.097 marks (86.657 + 2.44) which is well below the quantified total of 91.659 scored by the last man promoted from that batch.

12. Finally, prior to superannuation, the applicant was considered by the respondents based on the orders of the Tribunal dated 24.01.2023 as a Special Review case with four CRs earlier set aside being reinstated into the record of the applicant. In the instant board held in June 2023 with the earlier cut off CR upto 31.08.2016, the applicant has a quantified total marks of 88.705 including the BMA marks of 2.56 whereas the last officer quantified for promotion has a total of 91.087 and therefore the applicant stood non-empanelled for promotion.

13. In light of the aforesaid discussion we do not find anything that further merits our consideration and accordingly the OA is dismissed being devoid of merit.

14. No order as to costs.

Pronounced in the open Court on 2 day of April, 2024.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

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

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