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

OA 493/2018

Wg Cdr V V Singh ... Applicant
Versus
Union of India & Ors. ... Respondents

For Applicant : Mr. S.S. Pandey, Advocate
For Respondents : Mr. V Pattabhi Ram, Advocate

CORAM :
HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN CP MOHANTY, MEMBER (A)

ORDER

Invoking the jurisdiction of this Tribunal; under Section 14, the applicant who is an officer in Indian Air Force has sought following reliefs :

(a) *To call for relevant records including the policy if any based on which the Respondents may have carried out down moderation of the ARs of the Applicant which were otherwise strictly performance based report and highly consistent with his past profile, awarding lower board marks when as per the applicable criteria the Applicant deserved better Board marks resulting in his non promotion and thereafter rejecting his statutory representation by passing orders including order dated 13.02.2018 and thereafter quash the same including any such policy, if exists for moderation.*

(b) *To direct the Respondents to consider the Applicant for promotion against the first available vacancy after restoration of his original ARs and grant him promotion with seniority of 2016 and all other consequential benefits in case his merit is found above the last approved officers in PB-2 of 2016 and otherwise grant him such promotion with seniority of 2017 and all other consequential benefits if he meets the bench mark of merit of any of the officers approved for promotion by PB-2 of 2017.*

(c) *Pass any such and other orders, as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.*

Brief Facts of the Case

2. The applicant was commissioned in the Logistics Branch of the IAF, on 16 Dec 1995. The officer was posted to a number of Air Force bases during his service in various appointments and was promoted to the rank of Wing Commander. The officer was awarded with AOC-in-C Commendation Card in 2001, Chief of Air Staff (CAS) Commendation Card in 2006 and Vishisht Seva Medal in 2010.

3. The applicant was considered by Promotion Board No 2 (PB-2) for the first time in PB-2/2016, as per the promotion policy of Air Headquarters 04/2013 for promotion to the rank of Group Captain, but could not make the grade to Select Main List/Select Reserve List. Later on, when he was considered for PB-2 in 2017, his name did not figure in the list of empanelled officers for promotion and thus, he continues to hold the rank of Wing Commander.

Submissions on behalf of Applicant

4. Learned counsel for applicant submits that the applicant has not been granted fair opportunity for consideration by Respondents, by purposefully awarding him low board marks by not giving the Board Members the actual profile and presenting them the downward moderated profile

and arbitrarily promoting officers lower in actual merit which can be verified from the records thereby resulting in denial of promotion to the applicant.

5. It is the case of the applicant that having served as the Staff Officer of the Marshal of the Air Force who was authorized active list status in IAF from April 2007 and the applicant was posted as his Staff Officer in Oct 2007, but the Air HQ purposely did not include the Marshal of the Air Force in the level of assessment of report in Air Force Order 02/08.

6. Learned counsel submits that the applicant has come to know now that the Appraisal Report of the applicant raised by the Marshal of the Air Force from 2008 to 2011 were in the range of 8.5 to 8.7 which can be verified by calling upon the actual assessments which may have been brought down to below 8 in the range of 7.7-7.8, and that the reports of these 4 years from 2008 to 2011 were not actioned till March-April, 2011, which is against the Para 59 of the AFO 08/12.

7. It is submitted further by the applicant that with respect to the lowering of the Appraisal Report of 2013, the applicant was given to understand the new Air Force Order 06/2012 on Appraisal System, and that after the

issuance of new AFO, the applicant was posted from CAS Sectt to Directorate of Engineering B with additional duty of Staff Officer to the Marshal of the Air Force, and therefore, two ARs were raised for the Applicant; one in his capacity as Joint Director in Directorate of Eng Mirage, Air HQ (VB) and second, in his capacity as Staff Officer to the Marshal of the Air Force.

8. It is submitted by the applicant that for Staff Officer to the Marshal of the Air Force & ADCs to Governors/President of India, Form 57D of Appraisal is to be initiated, but the procedure adopted in the AFO 06/12 as applied in the case of the applicant was incorrect as the Marshal of the Air Force was the Senior Most Officer of the Indian Air Force on the active list as authorized vide Govt. of India letter dated 17.04.2007. However, as per AFO 06/12, he has been shown as non-IAF officer and in status lower to the Chief of Air Staff, and hence, the chain of reporting for Staff Officer to the Marshal of the Air Force for writing Appraisal Report is incorrect as he is a serving IAF Officer drawing full salary on active list, and therefore, the review of Appraisal Report of the applicant already initiated by the Marshal be therefore set aside and nullified.

9. Stressing further, learned counsel submits that as per Para 18 of AFO 06/12, the RO will be the officer senior to IO and higher in the chain of command, the SRO will be officer senior to RO and another step higher in the chain of command, and the grading by the SRO would be considered as final grading, and that the same was supposed to be followed for Staff Officer to the Marshal of the Air Force, and therefore, any review of the said assessment by any officer lower in the rank and status of the Marshal deserves to be set aside.

10. Arguing on the issue of downgrading of ARs, learned counsel submits that the as per Para 42 of the AFO 06/2012, Appraisal should be strictly confined to the appraisee's performance during the period of report, and while making assessments, appraisers should not be influenced by incidents and happening outside the period of report as well as their previous knowledge of the appraise. However, it appears that for reviewing and downgrading the ARs extraneous issues may have been taken into consideration.

11. Focusing on his service career, applicant submits that he has neither faced any disciplinary action nor Court of Inquiry, and no adverse reports or comments have been made against him by his IOs in the ARs, and that in

Aug 2010 and April 2012, he was sent to France as a part of IAF delegation for which his character and antecedent was thoroughly checked by all concerned agencies before he was cleared for visiting abroad. Thus it is the grievance of the applicant that he has been deliberately denied his legitimate right for promotion in spite of being a deserving candidate.

Submissions on Behalf of Respondents

12. Per contra, learned counsel for the Respondents submits that the applicant has highlighted the last three Appraisal Report Feedback (ARFs) provided to him in 2011, 2013 and 2016 in support of his performance, but the ARF is limited in its scope and the feedback letter provided to the officers clearly states that *"the ARF only gives the average numerical assessment during the last five years and it should not be construed as the only input for promotional prospects/career advancement."*

13. It is the case of Respondents that the ARs of the applicant from 2007-2016 were studied for any inconsistencies/discrepancies in the ibid ARs and the performance vis-a-vis the duties carried out by the officer was appropriately commented upon by various reporting officers in his ARs and the good work done by him have

found mention in the pen-picture by the various reporting officers, and that the analysis of ARs reveals that they have been initiated, reviewed and processed as per provisions of the AFO 06/2012, hence, there is no discrepancy or anomaly in any of the ARs.

14. Learned counsel argues that the applicant was duly considered by the Promotion Board as per the existing policy HRP 04/2013, wherein a multitude of factors comprising of AR marks for the last ten years, decorations/awards/commendation marks, performance in DSSC entrance exam/IASCO final exam, weightage for seniority and negative marks for discipline are considered, as well as the disciplinary and intelligence inputs are obtained from the Dept of JAG(Air), Dte of Intelligence and Dte of OM (Air), and that the complete profile of the officers is presented to the Board which consists of each Board Member of the rank of Air Marshal.

15. Concluding his submissions, Ld. Counsel submits that in the face of limited vacancies, the applicant's name not figuring in the Select Main List/Select Reserve List of both the PBs is due to his relative merit amongst the empanelled officers in the Logistics Branch, and the applicant has not made it to the merit list, purely on merit.

Analysis

16. Having heard learned counsel for both parties and perused the policy letters issued by the Ministry of Defence and Air Headquarters, the documents related to calculation of vacancies and the promotion board proceedings of the applicant, the questions that remain to be answered are:-

a) Whether the ARs initiated when the applicant was Staff Officer to the Marshal of the Air Force were technically valid ?

b) Whether the ARs of the applicant were downgraded and if yes, did the respondents act as per law in downgrading the ARs?

(c) Third, if the answer to the above question is affirmative, whether the applicant was correctly considered by PB-2 for promotion to the rank of Group Captain ?

17. It is essential to refer to relevant orders and regulations which lay down policy with respect to appraisal reports of Indian Air Force officers wherein the Para 48 and 49 of AFO 02/08 relevant to issue of Review of ARs at Air HQs/ Command HQ are extracted as under:-

*"48. **Mandatory review of all ARs must be carried out at Air HQs/ Command HQs.** The ARs of all officers up to the rank of Gp Capt (TS) should be reviewed by the senior most officer working under*

the respective PSO at Command HQ. These reviewing officers should be delegated by name by the AOC-in-C of respective Command in writing. Letter authorizing these officers for review at Command level should be sent to DPO-4 at Air HQs. The ARs of all officers of the rank of Gp Capt (Select) and above should be reviewed by AOsC-in-C at Command HQ and by PSOs at Air HQs for units directly under Air HQ. This is not applicable for re-employed officers.

49. *Whenever the RO/SRO are posted at the Command HQ/Air HQ, their review would be constructed as Command HQ/Air HQ review. The reviewing officers at Air HQs/Command HQ should check correctness of the AR as mentioned in this AFO and should also include the following in their review.*

(a) ARs of Wg Cdrs holding appointments of Unit Commander, COO, CEO and C Adm O at Units/ Stations/ Wings should be reviewed by the AOsC-in-C at the Command HQ and the respective PSOs at Air HQs. This is not applicable to Re-employed officers holding any of these appointments. ARs of Sqn Ldrs/Flt Lts holding the appointments of CO of units should be reviewed at the level of respective PSOs at Command HQ.

(b) The rank of reviewing officer at Air HQ/ Command HQs should at least be the same as that of the last reviewing officer in the appraisal channel. If the reviewing officer so detailed is junior in service to the officer who last reviewed the AR, then he should endorse the report if in agreement. In case he is not in agreement with the last reviewing officer, he is to put up the report for review to the concerned PSO.

(c) Check assessments, recommendations and remarks of the reporting officers for inconsistencies and anomalies, if any.

(d) Reviewing officers at Command HQ/Air HQ, who are not IO/RO/SRO, may give their overall assessment in Professional/Behavioural traits. They should enter their numerical grading in the boxes provided in their remarks column only if they are not in agreement with the SRO's grading. If they are in agreement with the SRO's assessment then they should put a cross mark in the boxes. Whenever a reviewing officer wants to change the numerical assessment given by the previous reporting officer, reasons for doing so must be adequately justified in narrative form in the remarks column.

(e) All ARs with grading of 7.5 and above in either professional factors or in Behavioural factors and all Adverse Reports are to be reviewed by AOsC-in-C at Command HQ or respective PSOs at Air HQs.

And similar procedure for review of ARs also resonates in Para 18 and 19 of AFO 06/2012 with are reproduced below:-

> *18. The RO will be the officer senior to the IO and higher in the chain of command. The SRO will be the officer senior to the RO and higher in the chain of command. Grading/Av Grading given by the SRO or the last officer in the reviewing chain would be considered as the final grading of an AR. If the remarks of the reporting and reviewing officers are at variance, then the remarks annotated by the last reporting/ reviewing officer would be considered as the final remarks. The final marks awarded to an appraise would be reviewed in light of his/her performance profile. Any anomalies in assessment would be reviewed at Air HQ. Review of ARs for officers up to the rank of Gp Capt (TS) will be carried out by a board of officers (BOO) presided over by an officer who is of the same or higher rank than the last reviewing officer. Amongst numerous aspects, the appraisee's performance profile, job content, location and IO/RO/SRO combination are to be taken into account when carrying out this review and awarding the final marks.*
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> *19. While it is difficult to lay down in this order as to who should be the IO, RO ad SRO for each level of appraiseee and in each type of unit, general guidelines for most types of formations and units are provided at appendix E to this order. Clarification/requests for changes in the stipulated appraisal chains due to any reason should be forwarded to DPO-4 at Air HQ through the controlling Command/Branch at Air HQ. Appraisal channels in tri-service organization like IDS, ANC, SFC and institutions like NDC, NDA, CDM, DSSC, MILIT, NCC etc. would be governed by the orders on the subject promulgated by the respective controlling HQs. Changes to the approved appraisal chains in respect of IAF officers in these organizations/institutions are to be carries out in consultation with Air HQ.*
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> *xxx xxx xxx xxx*
> *xxx xxx xxx xxx*
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> *48. Review of all ARs must be carried out at Command HQs/Air HQs. The ARs of all officers up to the rank of Gp Capt (TS) should be reviewed by the senior most officers working under the respective branch head at Command HQ. These reviewing officers are to be designated by name by the AOC-in-C of the respective HQ in writing. The letter authorizing these officers for review at Command HQ should be sent to DPO-4 Air HQs. The ARs of all officers of the rank of Gp Capt (Select) and above should be reviewed by AOsC-in-C at Command HQ and by PSOs at Air HQ.*

49. Whenever the RO/SRO is posted at Command/ Air HQ. their review would be construed as Command HW/Air HQ review. The reviewing officers at Air HQs/Command HQ should check correctness of the AR as mentioned in this AFO and should also include the following in their review:-

(a) ARs of Wg Cdrs holding appointments of Unit Commander, COO, CEO and C Adm O at Units/Stations/Wings should be reviewed by the AOsC-in-C at the Command HQ and the respective PSOs at Air HQ. ARs of Sqn Ldrs/Flt Lts holding the appointments of CO of units should be reviewed at the level of respective Branch heads/PSOs at Command/ Air HQ.

(b) The rank of reviewing officer at Command HQs/Air HQ should at least be the same as that of the last reviewing officer in the appraisal channel. If the reviewing officer so detailed is junior in service (even if of the same rank) to the officer who last reviewed the AR, then he/she should endorse the report if in agreement. In case he/she is not in agreement with the last reviewing officer, he is to put up the report for review to the next higher level. There is no mandatory period of contact with the appraise for the Command review.

(c) Check the assessments, recommendations and remarks of the reporting officers for any inconsistencies and anomalies. Take necessary corrective action and detail the same in the remarks column.

(d) Reviewing officers at Command HQ/Air HQ, who are not IO/RO/SRO, may give their overall assessment in Professional/ Behavioural traits. They should enter the numerical grading in the boxes provided in their remarks column only if they are not in agreement with the SRO's grading. If they are in agreement with the SRO's assessment then they should put a cross mark in the boxes. Whenever a reviewing officer wants to change the numerical assessment assigned by the previous reporting officer, reasons for doing so must be adequately brought out in narrative form in the remarks column.

(e) All ARs with grading of 7.5 and above in either professional factors or in behavioural factors or in both and all Adverse ARs are to be reviewed by AOsC-in-C at Command HQ or respective PSOs at Air HQ."

(Emphasis supplied)

18. It is the grievance of the applicant that his AR initiated by Marshal of the Air Force was not liable to be reviewed by

Chief of Air Staff (CAS) who is lower in rank than the former. It is a well-established principle that no one is above the law and in the instant case on perusal of the charter of duties it clearly establishes that CAS is the functional heard of IAF and for all purposes and there are not documents or policies produced before us by the learned counsel for the applicant to suggest that the Air HQ acted illegally in carrying and review of the AR of the applicant initiated by the Marshal of the Air Force which has been carried out as per policy laid down by vide the aforequoted ARO. Moreover on perusal of the five ARs initiated by Marshal of Air Force 2008 to 2012. We have observed that the applicant has been awarded marks well above his profile not only before, even after his tenure as staff officer to Marshal of Air Force; as all the above reports are 'One Man' reports with no RO or SR empowered to review the said ARs. It is our view that this case under consideration is a fit case to undoubtedly establish the necessity of institutional mechanism to moderate ARs either way to normalize such unusual aberration which are not in synchronization with rest of the AR profile of an officer. Absence of such moderation may give unfair advantage/disadvantage to the candidate when the ARs are considered by Promotion Boards and other actions by the

respondents towards ensuring a fair career progression of all officers of the cadre. Therefore, we uphold the action of review of the ARs by the Air HQ herein.

19. While dealing with the submission of the applicant regarding his high marks in his Appraisal Report feedback dated 23.08.2011 and 29.08.2013 to submit to the effect that he has been non empanelled despite holding very high marks in the said report in 2011 and the highest in 2013, it is essential to refer to Para 3 of both the letters which reads as under:-

> *3. The intent of ARF is to help you in self-analysis and personal development. This will also give you an idea of you performance vis-à-vis other officers in your peer group. This ARF gives only the average numerical assessment during the periods indicated, which should not be constructed as the only input for promotional prospects/career advancement.*

20. Having dealt with the issues related to the ARs of the applicant it is now imperative to examine methodology of his consideration by PB2 for promotion to the rank of Gp Capt for which we refer to promotion policy issued by Air HQ vide their letter No.Air HQ/C98824/I/POS dated 20.09.2013 for conduct of PB-2.

> *"Composition of the Board*
>
> *4. Permanent Members.*
> *(a) VCAS*
> *(b) AOC-in-C of an Operational Command.*
> *(c) AOP*
> *(d) SASO of an Operational Command.*

Note. *Senior most Air officer amongst these officers will be the Presiding Officer.*

5. *Specialist Members.*

(a)	*DCAS.*	*For Flying and met branches.*
(b)	*AOM.*	*For AE and Lgs branches.*
(c)	*AOA.*	*For Adm, Accts and Edn branches.*

6. *Secretary.* *ACAS (PO).*

21. We have perused the merit position of the applicant in PB-2 held in 2016 and 2017 wherein he was considered for First and Second time respectively. It is our observation that on both occasions the applicant was well within in the promotable zone before award of Board Assessment marks and yet due to low marks awarded by the members of the Promotion Board the applicant has been considered non-promotable due to resultant low merit within his batch.

22. In this context we place reliance on the judgment of this Tribunal in the case of ***Brig Dinesh Kumar Ahluwalia Vs. UOI*** in ***OA No 1498 of 2018*** where Hon'ble Tribunal have observed to the effect :

> *"A fair reading of the above policy letter clearly elaborates that these are guidelines that need to be considered by the Board members for allocation of five marks (Value Judgment). At this stage, we recall the arguments of learned counsel for the respondents, who have emphasized that the Board consists of nine very senior officers headed by the Chief of Army Staff, in fact, the senior most hierarchy of the Indian Army, many of whom know the applicant and other candidates and thus comment on their attributes, achievements, potential or otherwise during deliberations in the Board. Not doing so, would amount to injustice to the Value Judgment, which, in any*

case, are earmarked for non-quantifiable parameters in respect of the applicant and are thus best left to the judgment, views and experience of the members of the Board. This allocation of marks, as we understand, brings into fore the human angle in the otherwise quantifiable merit based on computerized inputs available from the records of the applicant. If this was not to be allowed, then there would have been no reason to hold a Selection Board comprising of such very senior officers for assessing officers for promotion to the next level of higher ranks. We do not wish to comment on the deliberations during the proceedings, as long as there is no bias or discrimination, and we would leave the allocation of these Value Judgment marks to the collective wisdom of the Board members who, we are confident, have only the organizational interest as the prime objective, more so, when they are assessing officers to hold senior ranks in the Army for the future. Attributing any mala fide, bias or discriminatory thrust to their wisdom should be curbed, if not entirely discouraged. A detailed scrutiny of the Board proceedings and without casting any aspersions, we are convinced that the value added judgment marks during the No. 1 SB held on 14.10.2017 allocated by the members of the Board after due deliberations and recording of their reasoning in the record satisfies our jurisprudence."

23. Similarly, this very bench while deciding the case of *Maj Gen Ashok Kumar Vs. UoI & Ors* in *OA 919/2023* has discussed the award of Board Members Assessment (BMA) in following manner :

"We note that the respondents have recorded the reasons for lower Board Members Assessment (BMA) marks in their Speaking Order in the board proceedings which is as per the policy laid down as Para 12 of the Military Secretary's Branch, IHQ of MoD (Army) Policy letter on Quantification System of Selection dated 23.12.2017 which reads as follows :-

Board Members Assessment (BMA)

12. Five marks are allocated for Board Members Assessment. The assessment will be based on an officer's overall profile including those aspects which have not been quantified. Unquantified aspects of an officer's performance in his entire career will be considered for award of BMA. The following unquantified aspects will be assessed :-

(a) Performance

(i) Operational experience/ Battle Performance Reports.
(ii) Service in difficult areas/challenging environment.
(iii) Overall consistency in performance.

(b) Potential. Suitability for being employed in higher ranks."

24. In light of above quoted judgments, while we have no reason to question the wisdom of the Promotion Board Members who are amongst the senior most hierarchy of IAF as their marks are based on unquantifiable factors of officers potential for employability in the next rank, we do not find any reasons ascribed in the Board proceedings as a mean of speaking order to justify award of low Board Assessment Marks to the applicant. Therefore, we hold that unless there is a speaking order recorded by the Board as a reason of low marks by the members despite the high quantified marks leading to significant drop in merit of the applicant and resultantly his non empanelment for promotion, we are unable to rule out bias and arbitrariness for reason not

known to us. Therefore, we set aside the results of the PB2 held in 2016 and 2017 qua the applicant.

25. We direct the respondents to consider him by PB2 afresh for promotion to rank of Gp Capt as per same AR profile of earlier consideration and as part of his original batch within three months of issue of these orders. If found fit for promotion the respondents are directed to promote him with restoration of seniority as per extant policy.

26. With the aforesaid, the case is thus disposed of.

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

28. No order as to costs.

Pronounced in the open Court on 22 day of May, 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

Akc/ps