

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

O.A. No. 611 of 2019

In the matter of :

Col Bharat Singh

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Mr. Indra Sen Singh, Advocate

For Respondents : Mr. V.S. Mahndiyar, Advocate

CORAM :

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

O R D E R

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

- (a) Call for the entire record leading to the rejection of the Applicant's statutory-complaint dated 01.02.2017 and set aside the impugned order dated 20.09.2017 passed by the Respondents No.1, being arbitrary and illegal;***
- (b) Call for the Applicant's complete Service Dossier and after perusal thereof set aside the Applicant's CR covering the period from 07 May***

2010 to 31 Aug 2010 and the CR covering the period from 01 Sep 2010 to 31 Dec 2010;

- (c) *Set aside any other assessment in any of the Applicant's CRs within the reckonable profile, which is found to be inconsistent with the applicant's overall service profile in the reckonable period;*
- (d) *Direct the Respondents to restore the original grading awarded by the IO in the Applicant's CR covering the period from 01 Sep 2008 to 14 April 2009 which has been arbitrarily and unauthorizably expunged by the Respondent No. 2 and 3;*
- (e) *After setting aside the impugned CRs, and restoring the FTO's original assessment/grading in the CR covering the period 01 Sep 2008 to 14 April 2009, as prayed for above, direct the Respondents to update the Applicant's record of service accordingly and re-consider the applicant for promotion to the rank of Brigadier as Special Review (Fresh) case of 1989 batch through No. 2 SB with his updated record of service;*
- (f) *Direct the Respondents that as a Special Review (Fresh) case of 1989 batch, the Applicant's case must be considered in accordance with the policy on Special Review Cases obtaining as in Nov 2015 when he was given the original (Fresh) consideration; and*
- (g) *Issue any other order(s) and direction(s) as deemed appropriate by this Hon'ble Tribunal under the facts and circumstances of this case."*

2. The facts of the case in brief are that the applicant was commissioned in the Indian Army on 16.12.1989. The applicant was promoted to the ranks of Capt, Maj, Lt. Col and ultimately was promoted to the rank of Col w.e.f 26.07.2008 as a fresh case through Selection Board No.3 (SB No.3). On being promoted, the applicant was posted as Commanding Officer in 5 Mtn Div Ord Unit of Army. The applicant successfully commanded the unit for two and a half year till 31.12.2010 and for this period of appointment, the applicant earned five CRs. All these five CRs are Command-Criteria CRs which have greater numerical weightage than other Non-criteria/staff CRs. It is the case of the applicant where the applicant is aggrieved by the illegal, non-objective and downgraded assessments made by the IO which assessments were possibly copied/followed by other reporting officers which are affecting his professional career adversely.

3. The applicant was not empanelled for the promotion to the rank of Brigadier in 2016 and therefore on 01.02.2017 the applicant filed a statutory complaint challenging his non-

empanelment to the rank of Brig impugning therein his 4th and 5th CRs and expunction of FTOs 'Outstanding' grading in his 1st CR. The applicant's said statutory complaint was rejected by MoD which was communicated to the applicant vide letter dated 26.09.2017. Aggrieved by the above, the applicant has filed the present OA on 10.04.2019. In the interest of justice, it is considered appropriate to take up the present OA for consideration, in terms of Section 21(1) of the AFT Act 2007.

CONTENTIONS OF THE PARTIES

4. The learned counsel of the applicant submitted that the applicant has served in the Indian Army with complete dedication and to the entire satisfaction of his superior officers without any blemish in his service. He was awarded with the COAS' Commendation Card in 2014 due to his outstanding professional acumen as Director at OS Directorate/MGO Branch and that the applicant attended all mandatory army courses and other career courses and he excelled in all of them.

5. It is further submitted by the counsel that the applicant came up for his 1st and 2nd DSSC attempt in Aug 2000 and Aug 2001. (around the time of Operation Kargil and Operation Prakram). However, HQ 4 Corps (where the applicant was then posted) did not adequately spare the applicant to prepare for the entrance examination for DSSC, as he was an Ammunition technical officer and was actively involved in ammunition management in the Corps Zone; his 3rd attempt never materialised as DSSC exams were cancelled in the year 2002 due to Operation Prakram and the applicant was not allowed to sit in his compensatory chance in the year 2003, as he was on deputation in Indian Army Training Team, Botswana. It is submitted by the counsel for the applicant that throughout his career, the applicant has held very challenging and prestigious assignments which any Ordnance Officer will feel proud of and the applicant's posting profile is indicative of the trust and confidence imposed by the system in his capabilities. The counsel for the applicant highlighted his some important appointments which are reproduced hereinunder:-



Sr. No.	Appt Held	Rank	Period	Location
i)	Adm Offr/OIC Amn Tech Area	Lt Col	May 05-Jul08	Bathinda
ii)	CO 5 Mtn DOU	Col	Jul 08-Dec 10	Tenga
iii)	Instr CI B CMM Jabalpur	Maj	July 01-May 02	Jabalpur
ii)	Instr CI B IATT Botswana	Maj	May 02-May 05	Botswana
iv)	DADOS HQ 4 Corps	Maj	Jun 98-Jun 01	Tezpur
v)	DIR 'A; Vehicle & Spares	Col	Jan 11-Feb 14	N Delhi

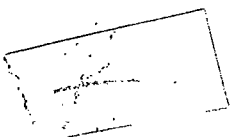
6. The learned counsel submitted that on the basis of his outstanding performance, the applicant was promoted to the rank of Col w.e.f 26.07.2008, the applicant successfully commanded the 5 Mountain Divisional Ordnance (5 Mtn DOU) which is a frontline Ordnance Logistics Echelon, where he was deployed on the line of Actual Control for 2 and a half years for that period he earned five CRs.

7. The learned counsel reiterated that facts to the effect that the 1st CR covering the period from 01.09.2008 to 14.04.2009 the IO (Maj Gen Manvender Singh VSM) and the FTO (Brig Sartaj Singh) rated the applicant as outstanding with box grading "9" and the applicant believed that other

higher reporting officers too would have rated the applicant similarly. In the 2nd CR covering the period from 15.04.2009 to 31.08.2009, the new IO (Maj Gen Sanjeev Anand) and the FTO (Brig Sartaj Singh) rated the applicant nearly outstanding. In this rating the IO did not give 90 days' notice to the RO and SRO which was mandatory under the then existing policy to assess an officer. The 3rd CR covering the period from 01.09.2009 to 06.05.2010 was initiated by the same I.O. and FTO who rated him in 2nd CR but this time they rated him 'Outstanding' unlike the 2nd CR. The applicant's 4th CR covering the period from 07.05.2010 to 31.08.2010 was initiated by the new IO namely Maj Gen AK Ahuja and was technically assessed by MGAOC (namely Maj Gen MSS Krishnan) as FTO. Both of them rated the applicant as "Above Average", here too the counsel contended that the FTO's assessment was influenced by the IO's assessment who didn't have sufficient time of the 90 days' notice to be given to the RO and SRO which was mandatory under the then existing policy to assess an officer as outstanding. The applicant's 5th CR was initiated by the same I.O who initiated

the 4th CR and the same HTO rated the applicant "Above Average". The learned counsel submitted that on 02.02.2011 the MS Branch, Army HQ unauthorizedly expunged the outstanding grading of the applicant's 1st CR which was communicated to the applicant on the same day and clarification was issued by the Army HQ MS Branch vide their letter dated 31.01.2011 clarifying that it was not mandatory in all cases to give advance notice of 90 days before initiating an outstanding CR (with box grading 9). The learned counsel further explained as to how the unfair report given by the IO as 'Above Average' in the 4th and 5th CRs in place of 'Outstanding Report' and submitted that the applicant, for no fault of his, became a victim of downgrading of his CRs; that the inconsistency and lack of objectivity in the two short period reports of the 4th and 5th CRs ought to be analyzed with regard to his over-all CR profile to rule out inconsistency.

8. The learned counsel referring to Para 137 of the Army Order 45/2001 which provides that any CR when examined for objectivity in reporting ought to be analyzed for



consistency of performance of the ratee and in the present case, the applicant's performance was assessed in the first three CRs as 'Outstanding'. The learned counsel referred to various policies in support of his contentions. The learned counsel further submitted that the respondents committed an error in not following the general order of MoD in not restoring the applicant's original 'outstanding' grading, when the 'outstanding' CRs of other officers were downgraded, were restored subsequently to original 'outstanding'. In view of these circumstances, the learned counsel prayed that OA be allowed.

9. *Per contra*, the learned counsel for the respondents submitted that all officers of a particular batch are considered together with same cut off Annual Confidential Reports (ACRs), inputs, on the basis of individual profile of the officer and the comparative batch merit, they are either empanelled / not empanelled and seniority in itself is no consideration before the Selection Board for empanelment or non-empanelment.



10. The learned counsel further submitted that assessment of officers in ACR was regulated by Army Order 02/2016/MS and other relevant policies at any given time. The gradings are numerical from 1 to 9 and in the form of pen picture also. The entire assessment of an officer in any ACR consists of assessment by three different Reporting Officers i.e. Initiating Officer (IO), Reviewing Officer (RO) and Senior Reviewing Officer (SRO) whose assessments are independent of each other. 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. Thus, no officer has any right to claim an 'Outstanding' assessment in the Confidential Reports. Further it is submitted by the learned counsel that it is solely for the reporting officers who have observed the officer during the period who are competent to objectively assess an officer's performance; 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. It is also to test the assessment of a particular Confidential Report which is the reflection of performance during that particular period covered in the report.

11. It was also submitted by the learned counsel of the respondents that 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, ACR performance in command and staff appointments, honours and awards, disciplinary background etc. and not just the ACRs or one/few ACRs; empanelment/Non Empanelment is based upon the overall profile of an officer and comparative merit within the batch as evaluated by the Selection Board.

12. The learned counsel for the respondents submitted that it is up to the Selection Board to assess the suitability of



the applicant for promotion. The assessment of the Selection Board is recommendatory in nature and not binding until approved the competent authority; viz, Chief of the Army Staff (COAS) or the Central Government as the case may be. The learned counsel for the respondents submitted that the Hon'ble Supreme Court has held that the courts should not substitute the findings of the Selection Boards by its own judgments. In this context respondents placed reliance on the following judgments:

- (a) **Union of India Vs Lt Gen RS Kadyan**, (2000) 6 SCC 698.
- (b) **Maj Gen IPS Dewan Vs UOI and Others**, (1995) 3 SCC 383.
- (c) **AVM SL Chabbra, VSM VS UOI**, 1993 Supp (4) SCC
- (d) **Dalpat Abasaheb Solunke Vs BS Mahajan**, (1990) 1 SCC 305.
- (e) **Lt Col Amrik Singh Vs JOI**, (2001) 10 SCC 424.
- (f) **Major Surinder Shukla Vs Union of India and Others**, (2008) 2 SCC 649.
- (g) **Brigadier Vishal Mohanlal Murada Vs. Union of India & Ors.**- O.A. No. 1256 of 2022 [AFT, PB]



13. The learned counsel for the respondents submitted that considering both his non-statutory as well as statutory complaint the applicant's overall profile was analyzed and examined. All CRs earned by the applicant were examined in detail and the same were corroborated, technically valid and devoid of any aberration in tune with his overall profile. The learned counsel further submitted that specific CR for the period 09/08 to 04/09 wherein the expunction of FTO's assessment was challenged by the applicant was also duly analyzed and there was no anomaly in the matter. Thus, the learned counsel prayed for dismissal of the OA.

ANALYSIS

14. We have heard the parties at length and perused the various documents produced before us by both the parties.

15. We have perused the Statutory Complaint of the applicant dated 01.02.2017 against the Non-Empanelment for promotion by the No. 2 Selection Board (Fresh) held in November 2015. The applicant had earlier submitted a Non-Statutory Complaint dated 08.03.2016 against the same No. 2 Selection Board which was rejected by the competent

authority. We find that the impugned Confidential Reports (CRs) have been analyzed in depth by the respondents and have found that the applicant's case does not meet any relief and therefore had rejected the statutory complaint of the applicant on 26.09.2017.

16. There are two issues involved in the case. Firstly, is the issue of restoration of the FTO's original assessment/grading in the CR covering the period from 01.09.2008 to 14.04.2009. From the perusal of records and the CR dossier of the applicant it is clear that the respondents here moderated the FTO's grading of '9' and expunged the said grading in the impugned CR of the applicant. In this context it is important to note Military Secretary's Branch, Army Headquarters' letter A/1715/MS 4 (Coord) dated 09.07.2004 which deals with inflationary reporting. The said letter vide Paras 3 and 4 provides as under:-

"In order to arrest this inflationary trend, existing policy on inflationary reporting, which have been laid down vide the above quoted letters (Para 1 refers) is being strictly enforced, where warranted, especially so in respect of 'Perfect Nine Point/Near

Perfect Nine Point' assessments. Which have been defined as under:-

(a) Perfect Nine Assessment Award of '9' in box as well as '9s' in all qualities by any reporting officer.

(b) Near Perfect Nine Assessment Award of '9' in box and award of figurative in individual qualities as under:-

(i) Award of 19 or more '9s' out of 22 PQs/DPVs/QsAP.

(ii) Award of eight or more '9s' out of 10 PQs, as applicable to civilian officers.

(iii) Award of seven '9s' out of eight TPVs applicable to technical reporting.

4. Some of the important provisions of this policy are reiterated as under:-

(a) Expunctions and enfacements will be carried out in respect of assessments which after analysis at MS Branch are considered to be inflated and out of tune with the past profile of the ratee.

(b) In order to keep the rising trend in inflationary reporting in check, higher reporting officers in chain are required to:-

(i) Recommend expunction of assessments of lower reporting officer considered to be inflationary.

(ii) Counsel lower reporting officers who repeatedly indulge in inflationary reporting as identified by them or when intimated by MS Branch.

(c) It is mandatory for the SRO to endorse a CR if IO and/RO have awarded an 'outstanding' assessment.

(d) Expunctions will be carried out with approval of the COAS while enfacements will be done at the level of MS.

(e) Expunctions approved by the COAS are irrevocable."

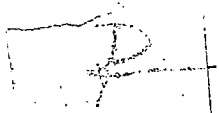
17. From the perusal of the impugned CR covering the period 01.09.2008 to 14.04.2009, it is clear that the FTO

has endorsed 'Near Perfect Nine Point' assessment in the said impugned CR and there is no specifics in the pen picture to justify this outstanding assessment. The assessment in the impugned CR was corroborated with the past profile of the applicant and the assessment of the FTO emerges as 'inflationary' reporting. The said case was processed on file and CoAS being the competent authority has approved the expunction of the said grading of the FTO in the CR on 31.01.2011. It is therefore, clearly established that the FTO's grading was expunged by the competent authority strictly in accordance with the prevailing policy in vogue and there is no merit in the contention of the applicant to restore the FTO's grading.

18. The second issue pertains to two CRs covering the period from 07.05.2010 to 31.08.2010 and the CR covering the period for 01.09.2010 to 31.12.2010 which applicant has prayed to be set aside. The said two CRs of the applicant were perused by us and compared with the overall profile of the applicant. The applicant has been assessed as 'Above Average' in both the said CRs which have been

rendered by the applicant's IO/RO/SRO based on the performance of the applicant during the period under review. The IO/RO/SRO is the best judge to assess any 'Ratee' as they closely monitor the performance of the 'Ratee' and report upon the 'Ratee'. After perusing through the complete ACR records of the officer, it is established that both the said impugned CRs are well corroborated and in line with the overall profile of the officer. We also find that all the recommendations in both the impugned CRs are positive in nature and there is no technical invalidity that has been observed. It is our considered opinion that the Courts are not an expert to assess the competence of the employee and override the assessment of the reporting officers to upgrade Above Average (8) to Outstanding (9) in absence of any malafide on record.

19. If the courts were to upgrade all above average (8) Confidential Reports to Outstanding (9), we will be swarmed by applicants seeking the intervention of courts for upgradation of their CR ratings which would cause grievous injury to the overall health of the Armed Forces and render



the entire system of Confidential Report and Quantification System of Selection redundant. Thus, we do not consider it prudent to upgrade the Confidential Report ratings through our judgment.

20. It is pertinent for us to refer to the case of Brigadier Mandeep Singh Vs Union of India (OA No 905/2015) deserves mention wherein the Armed Forces Tribunal has noted:-

"Firstly, we would like to reiterate that the guidelines have no statutory effect. Thus it is clear that box gradings are assessments to be made by the Reporting officers who are in the best position to assess the officer in his individual qualities and also his performance when compared to his peers. They are legally entitled to do so and being responsible officers senior in the chain of Command to the applicant, are eminently competent to do so. Unless any clear infraction of rules, orders, regulations or instructions in the recording of the impugned CRs are brought to our notice, we would not be in a position to interfere in the matter in any way".

21. In a similar case of Union of India Vs SK Goel and Ors 2007; 14 SCC 641, the Hon'ble Apex Court has observed :-

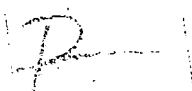


"It has to be held that the Tribunal was in error in going into the question whether the applicant had been rightly graded as 'outstanding' in ACR for the years 1990-91 and 1991-92. The observations of the Tribunal that of the two 'outstanding grading' does not flow from various parameters given and the reports entered there in, cannot thereof, be upheld and are accordingly set aside".

"Evaluation made by an expert committee should not be easily interfered with by the Courts which do not have the necessary expertise to undertake the exercise that is necessary expertise to undertake the exercise that is necessary for such purpose."

22. The contention of the applicant that the period of report of the both the CRs were very short and the IO did not have sufficient time period to inform the R.O that the applicant may be rated as 'Outstanding' due to policy constraint of the minimum time which an I.O. must give to the R.O. informing him that the I.O. is likely to assess the Officer Reporting upon as 'Outstanding' also does not have much merit.

23. Towards this, the relevant Policy for intimation to the R.O about grading a 'Ratee' 'Outstanding' which was in vogue when the said two impugned CRs covering the period from 07.05.2010 to 31.08.2010 and the CR covering the



period for 01.09.2010 to 31.12.2010 were raised are MS Policy letter No. A/17151/ MS 4 Coord dated 19.11.2007 and Policy letter No. A/17151/MS 4 Coord dated 20.07.2010. The said policy letters whilst mandating 90 days' prior to due date notice to the R.O/S.R.O by the I.O/R.O in case of the 'Ratee' being assessed as 'Outstanding' gives leeway to I.O/R.O in case such a minimum notice of 90 days cannot be given. Towards this, it is important to note Para 3(a) of the Policy letter dated 19.11.2007 which reads as under :

“(a) Prior Intimation of Outstanding Grade. Any reporting offr intending to grade an offr ‘Outstanding’ must give a min of 90 days notice to the higher tier reporting offr to enable them to gauge the performance of the ratee. However, under certain circumstances, when it is not possible to do so, ‘adequate notice’ must still be given to the reporting chain. Eg, if the I.O of the rate receives his posting order or the period of report is the mandatory min (90 days), the IO should info the higher tier reporting offr immediately, for it to be considered ‘adequate notice.’”

24. The above mentioned provision has not been superseded by the MS Policy letter dated 20.07.2010. The contention, therefore, of the applicant that the IO of the applicant keeping the provision of these Policy letters which


mandates prior intimation of 'Outstanding' Grade was not able to assess the applicant as 'outstanding' as he did not have minimum 90 days notice to inform his R.O., does not hold much water.

25. The spirit of these Policy letters which stipulates that the IO/RO must inform RO/SRO of their intention to grade any officer as 'Outstanding' is that the RO/SRO should have adequate notice to closely monitor the work of officers who are likely to be graded 'Outstanding' so that they can carefully watch the performance of such officers and can objectively assess such officers when rendering report on them. However, these Policy letters have given leeway to the IO/RO to give 'adequate' notice to the RO/SRO in case the IO/RO are not able to give such notice of 90 days to their superior reporting chain.

CONCLUSION

26. Keeping the above in view, there is no merit in the contention of the applicant and the case is dismissed being devoid of merit.

27. There is no order as to costs.



Pronounced in open Court on this 26th day of
September, 2024.

**[JUSTICE RAJENDRA MENON]
CHAIRPERSON**

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

/nmk/