

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

**O.A. No. 709 of 2022**

**In the matter of :**

**Maj Gen Dhiraj Mohan**

**... Applicant**

**Versus**

**Union of India & Ors.**

**... Respondents**

**For Applicant : Shri Indra Sen 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 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 thereof read as under :

- "a) Call for complete original record leading to the award of the Censure Order dated 18.02.2022 and after perusal there of set aside the said Censure Order;***
- b) Direct the Respondents to remove the Censure-Order dated 18.02.2022 from the Applicant's record of Service and place the Applicant in the***

*same position in which he was prior to award of the Censure;*

- c) Direct the Respondents that no cognizance of the said Censure Order dated 18.02.2022 shall be taken against the Applicant for any purpose what-so-ever and that the Applicant shall not be visited with any adverse consequence because of said Censure- Order;*
- d) Set-aside proceedings of the Technical Board of Officers (TBO), on the basis whereof the Applicant was served the Show Cause Notice dated 12 Aug 2021 and awarded the impugned Censure order dated 18.02.2022;*
- e) Set-aside the Show Cause Notice dated 12 Aug 2021 served to the Applicant by Respondent No.4 leading to the impugned Censure-Order; and*
- f) Issue any other order(s) and direction(s) as deemed appropriate by this Hon'ble Tribunal under the facts and circumstances of this case.*

*In Para 9, the applicant also prayed for interim order, which reads as follows :*

- a) *Stay the operation of the Censure-Order dated 18.02.2022, pending final adjudication and disposal of the instant Original- Application (OA);*
- b) *Direct the Respondents that pending final adjudication and disposal of the instant Original Application (OA), no cognizance of the Censure Order dated 18.02.2022 shall be taken against the Applicant for any purpose whatsoever;*
- c) *Direct the Respondents to set-apart one vacancy of Lt General and not consume the said vacancy of Lt General pending final adjudication and disposal of the instant OA, and*
- d) *Pass any other order(s) and direction(s) as deemed appropriate by this Hon'ble Tribunal under the facts and circumstances of this case.*

The Tribunal, while issuing notice to the respondents vide order dated 13.04.2022, directed that 'any action taken for promotion during the pendency of the matter shall be subject to final outcome of this petition'. Thereafter, vide order dated 24.08.2022, prayer for interim relief was

rejected by the Tribunal in view of the observations made in the order dated 13.04.2022.

2. The facts of the present case, in brief, are that the applicant was commissioned in the Indian Army on 11.06.1988. During his service, the applicant had participated in various Operations i.e. Op 'Pawan', Op 'Rakshak' (twice), Op 'Parakram', Op 'Orchid' and served in HAA stations in various parts of the country; has completed various courses including NDC and HDMC courses and received award of VSM (2019), and the commendation cards from COAS (1995, 2011), COAS (2007), FOC-in-C (1999) and GOC-in-C (2018) and thus he was granted Selection-Grade promotions to the rank of Colonel (Col) w.e.f. 02.05.2005, Brigadier (Brig) w.e.f. 18.03.2013 and Major General (Maj Gen) w.e.f. 02.12.2019, all as a fresh case. That on 22.03.2013, on being promoted to the rank of Brig, the applicant was posted as Chief Engineer Delhi Zone and became a part for the construction of the Cardiothoracic and Vascular Surgery (CTVS) project at Army Hospital (R & R) Delhi (which commenced in Nov 2009). On 02.01.2015, the applicant proceeded to join the

NDC course. The CTVS Project was completed on 31.05.2014 and finally closed on 15.11.2015 and inauguration of the same was done by the Hon'ble Raksha Mantri on 25.05.2015. In the meantime, the applicant completed the NDC Course with A+ grade. The applicant was posted as Brig MO (C) in the Directorate of Military Operations at Army HQ from May, 2018 to November, 2019.

3. It is the case of the applicant that a show cause notice (SCN) dated 30.12.2019 was issued to him by the COS South Western Command in respect of a TBO (Technical Board of Officers) which was held to investigate the contract agreement for construction of 200 bedded CTVS at Army Hospital (R&R). To the SCN, the applicant filed his interim reply dated 20.01.2020 and final reply dated 14.08.2020. In the month of July-August, 2020, an anonymous complaint was received alleging serious allegations against the applicant with regard to the MES project. The same was processed by the HQ Western Command and comments of E-in-C's branch were obtained, however, no comments were called for by the applicant which is in contravention of mandatory instructions issued

by the Central Vigilance Commission as well as Army HQ policy.

4. The applicant was issued another Show Cause Notice dated 12.08.2021 accusing the applicant for three different lapses as CE, Delhi Zone. To that, the applicant submitted his interim reply dated 16.09.2021 requesting for certain documents for preparing his defence followed by another letter, but when no documents were supplied, the applicant filed his final reply to the SCN dated 26.10.2021 denying all the allegations contained in the SCN with explanation. Consequently, the applicant was awarded with 'Displeasure' (the censure order impugned herein) by Respondent No. 4 on 18.02.2022 only for 13 days' delay in conduct of Phase II Monsoon Tests of the CTVS project at R&R Hospital. Aggrieved by this, the applicant filed a Statutory Complaint dated 18.03.2022, which was not disposed of by the respondents, despite specific request made by the applicant to dispose it of before the Special Selection Board (SSB) scheduled to be held on 20.04.2022 wherein the applicant was to be considered for promotion to the rank of Lt Gen.

5. The learned counsel for the applicant submitted that the impugned censure order was awarded in violation of the mandatory provisions of the Army HQ policy dated 11.10.2019 which provides that no culpability can be fixed on military personnel only on the basis of TBO, and that holding of a Staff Court of Inquiry (CoI) is 'a must' to investigate the culpability of military personal, in MES works/services related matters, and thus it is illegal and void '*ab-initio*'; that the TBO, on the basis whereof the impugned censure order was awarded, itself is illegal and *non-est* as the same has been convened and composed contrary to the Army HQ Policy dated 11.10.2019 and the entire TBO proceeding are vitiated as the applicant was not afforded an opportunity to participate in the proceedings thereof and violated the principle of natural justice.

6. The learned counsel also submitted that the TBO proceedings, on which the impugned censure is admittedly based, was composed in complete violation of mandatory instructions contained in Para 8 of the aforesaid policy dated 11.10.2019. The PO of the TBO is an Electrical Engineer who is not a qualified Mechanical Engineer, who

does not possess requisite knowledge and experience to comment on highly specialised work of HVAC system. There is no IEM (Jt Dir/SO1 Civil Officer) as member of the Board which is even essential in routine yearly inspection and performance check Bd for AC plants. It was further added that the Members are of the rank of AEs (Appx Estimate) of specialist work of HVAC system of 10 Cr. and that there is no Military Officer in the TBO wherein most of the officers involved in the work are **uniform preserved**. Thus, there may be a cadre bias to save this cadre officers and pass on the blame to Army Officers to tarnish the image of Indian Army.

7. The learned counsel added that the alleged supervisory lapse attributed to the applicant, which is alleged to be based on contravention of the CTVS project's Clause 32.2 of the Contract Agreement, sub-clause (a) which provides that, "*The Phase II Tests shall be carried out as soon as the stipulated load and weather conditions are available but not later than a year after Phase I Test.*" and Phase-I Tests were carried out in April, 2014 and the Phase II Monsoon Tests were held on 14-18 October 2014, and

thus Phase-II Monsoon Tests including Winter Test held in January, 2015, all were held within one year of Phase-I Test, is bad in law. The learned counsel for also submitted that the monsoon tests were only delayed by 13 days and the punishment of award of censure is very harsh and not as commensurate to the minor delay of 13 days in conduct of the said tests.

8. The learned counsel further submitted that the impugned censure order is admittedly based on the TBO proceedings as well as an anonymous complaint which is contrary to the mandate issued by the CVC as well as Chief of the Army Staff that no cognizance shall be taken of anonymous complaint; that the applicant was initially issued a SCN by COS South-Western Command and on the basis of his reply thereto, the case was closed and thereafter the case was reopened only on the basis of an anonymous complaint which was impermissible as per the CVC mandate issued vide letter dated 08.10.2018 and Army HQ (DV Branch) instructions issued vide letters dated 27.06.2014 and 01.08.2014.

9. It has been alleged on behalf of the applicant that the impugned censure is vitiated as the whole exercise which concluded into the award of the impugned censure to the applicant was motivated with the ulterior motive and aim of depriving the applicant of his rightful promotion to the rank of Lt Gen by the SSB which was scheduled to be held on 20.04.2022; that the impugned censure order has been awarded under the policy letter dated 11.08.2017, thereby giving retrospective effect to the said policy, as alleged lapses' record pertains to the period 2014-2015, and the censure awarded in respect thereof dated 30.03.2017; that the charter of duties of executive and staff laid down in Appendix C-2 of Technical Instructions-7/2002 issued by E-in-C's Branch, clearly shows that the applicant was not responsible for supervision of the Monsoon Phase-II Testing of which he has been found guilty in the impugned censure order. The learned counsel further added that at that point of time, the Award of Censure was governed by Army HQ Policy Letter bearing No. 32908/AG/DV-1 (P) dated 23.04.2007 in which Para 6 (d) states that a Censure awarded by a GOC-in-C in the form of 'Displeasure' shall be

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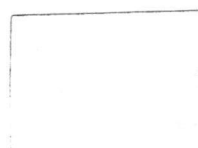
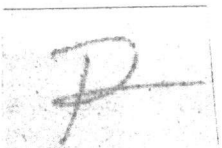
non-recordable and the same shall not be entered into the concerned officer's service record, but, according to the applicant, the impugned censure which is in the form of 'Displeasure' has been entered into his service record in accordance with the policy dated 11.08.2017, which amounts to giving retrospective effect to the said policy contrary to the spirit of Article 20 of the Constitution.

10. It has further been submitted by the learned counsel that there has been a number of decisions wherein the Hon'ble Supreme Court has held that the word 'penalty' in Article 20(1) necessarily connotes a punishment or a criminal offence. In this regard, the learned counsel placed reliance on the judgment of the Hon'ble Supreme Court in the case of **Virtual Soft Systems Ltd. Vs. Commissioner of Income Tax Delhi-I** [(2007) 9 SCC 665], wherein it was held that a penal liability, which is introduced through a subsequent amendment, cannot be imposed retrospectively in respect of a default which occurred prior to the date of such amendment. The learned counsel also relied on the judgment of Apex Court in the case of **C Gupta Vs. Glaxo Smith Kline Pharmaceutical Limited**, [(2007) 7 SCC

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**171]**, wherein it was held that 'whenever an amendment adversely affects substantive rights of an individual it cannot be given a retrospective effect, unless there is a clear provision to the effect that it is retrospective or unless such retrospectively can be implied by necessary implication/intendment, it must be held to be prospective', and it has been submitted by the learned counsel that in view of the law laid down in the aforesaid cases, the impugned censure order must be treated as non-recordable one under the Policy dated 23.04.2007 and the applicant should not be visited with any adverse consequences of the said impugned censure order.

11. The learned counsel for the applicant submitted that the impugned censure order is unduly harsh in its effects as, in view of the new policy, the censure order shall remain in the service record of the applicant for a minimum period of 10 years and thus shall affect the applicant's career, which has always been outstanding otherwise in his 34 years of service tenure. Further, the learned counsel referred to and relied upon the well settled legal maxim '*sublato fundamento cadit opus*' means 'when the



foundation is removed, the super-structure falls', and submits that as per the aforesaid legal maxim, the censure order cannot sustain because the same is based on an illegal TBO and illegal SCN. Reliance is also placed by the learned counsel on the Hon'ble Apex Court judgment in **Coal India Limited Vs. Ananta Saha [(2011) 5 SCC 142]**. The learned counsel submitted that in view of the facts and circumstances, the OA may be allowed granting the reliefs as prayed for.

12. The respondents have filed their counter affidavit and denied violation of any mandate laid down by various policies and instructions in awarding the censure order to the applicant. The learned counsel further submitted that although the TBO was not strictly composed of members as laid down by the policy in vogue but no prejudice has been caused to the applicant due to composition of the TBO members. The learned counsel for the respondents added that the Heating, Ventilation and Air Conditioning Systems (HVAC) being a technically intricate and a specialized work, the TBO was composed of suitable officers/staff with relevant qualifications, expertise and experience and since

no technical shortfalls have been brought out by the applicant in the TBO, the averment relating to the composition of the TBO at this stage by the applicant, lacks merit and objectivity.

13. It was also submitted that the applicant was afforded opportunity to peruse documents for furnishing his reply to the SCN in defence against the blame attributed to him; that before taking up the matter with Respondent No. 4, version of the applicant was obtained vide HQ CE Delhi Zone letter No. 42270/KKR/SCN dated 30.12.2019; that the interim reply to the SCN was received from the applicant dated 20.01.2020 and based on the request of the applicant for access to documents, he was asked to visit HQ Delhi Zone for perusing the documents by HQ CE Delhi Zone on 29.02.2020 and later, copies of the documents asked by the applicant were forwarded to him by HQ CE Delhi Zone on 06.08.2020 and based on which, final reply to the SCN from the applicant was received vide letter dated 14.08.2020 and since the applicant had already been provided documents in obtaining his version as above, he

had forwarded his final reply to SCN served by Respondent No.4 on 26.10.2021.

14. The learned counsel submitted that based on the reply of the applicant to SCN, a disciplinary case was processed with the competent authority by the Chief Engineer Western Command on 27.02.2021 and after due analysis of the case at the Engineer-in-Chief Branch/HQ Chief Engineer Western Comd, disciplinary action was initiated against the erring officials including the applicant and during that process, the applicant was given adequate opportunity to defend himself.

15. The learned counsel submitted that the statutory complaint of the applicant dated 18.03.2022 was duly processed by the competent authority and was rejected by the Central Government vide its letter No. 48545/STAT/WC/1455/AG/DV-4 (B)/900/DMA(AG-I) dated 05.04.2023.

16. It has been submitted on behalf of the respondents that a complaint dated Nil with regard to the corruption in MES Sr Army Officers was received by HQ Western Command and was forwarded to HQ CE WC for comments on 27.07.2020, however, the complaint being



'Pseudonymous' was closed as per CVC and DoPT guidelines on 24.12.2020.

16. It was submitted by the learned counsel that while the Phase-II Monsoon Test was to be conducted in Jul/Aug/Sep 2014, the same was carried out with effect from 13-16 October 2014. The respondents further submitted that as per clause 32.2 of Contract Agreement (CA) of CVTS project, the installation was to be taken over after satisfactory Phase-II Test certified by the applicant as Accepting Officer; the applicant's culpability adduced by the competent authority with respect to conduct of Monsoon test in the month of October 2014 is violation of CA provisions; that the Test Report for AC in OT indicated certain abnormal readings, which should have been observed by the IEM and the applicant before certifying satisfaction on the Phase-II Test; and by issue of satisfactory test certificate, the contractor was absolved of his liability to rectify/replace the defective installation or any part thereof, and thus the applicant had failed to exercise his responsibilities in supervisory role in terms of Para 367 of RMES and relevant clause of CA provisions. It

is contended on behalf of the respondents that since the applicant had failed in his responsibility to supervise/inspect the work in terms of Para 367 of RMES and Clause 32.2 of CA provisions, he has been penalized for the blame/charge attributed to him.

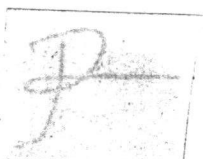
17. The learned counsel further submitted that the applicant's contention that as per Para 13 of DV Dte, IHQ of MoD (Army) Policy letter No. 61639/Gen/AG/DV-4(A) dated 11.10.2019, Staff CoI is mandatory to investigate culpability of military personnel post conclusion of the TBO proceedings is incorrect and baseless and instead, Para 12 of the said policy clearly indicates that Staff CoI may be ordered by the competent authority only in case TBO proceedings and action thereon is found insufficient to logically address the reasons for the defective work and shortcomings. The learned counsel added that a decision to order a CoI rests with the concerned Fmn Cdr based on the findings of the TBO.

18. It has been further submitted on behalf of the respondents that Para 13 of the said policy relates to the cases wherein, after conclusion of TBO, grave lapses emerge

which warrant strict disciplinary action against the delinquent. Moreover, as per Para 10 of DV Dte, IHQ of MOD (Army) Policy No 32908/AG/DV-1 (P) dated 11.08.2017 'a SCN can be issued either on the basis of a C of I or otherwise' and thus it is clear that for issue of SCN, conduct of C of I is not mandatory, if on the basis of any preliminary inquiry (TBO in the instant case), the competent authority is of the opinion that there exists sufficient material on record for issue of SCN, the same can be issued and disciplinary proceedings thereafter can be initiated based on the reply to the SCN.

19. The learned counsel for the respondents also submitted conferment of a Censure is not a disciplinary action but is rather an administrative action and, therefore, conduct of CoI was not necessary.

20. The learned counsel submitted that as per Para 24 of the ADG DV Policy Letter No. 32908/AG/DV-1(P) dated 11.08.2017, *"the award of censure does not debar an officer from being considered for promotion and other career aspects and may not by itself affect his promotion, selection, nomination etc."* The learned counsel further submitted



that an officer who is awarded Censure is eligible for consideration in SB in terms of QSS Policy i.e. MS Policy letter No. 04502/MS Policy dated 23.12.2017.

21. In view of the above, the learned counsel for the respondents prayed that the reliefs prayed for by the applicant are not admissible and hence the OA is liable to be dismissed.

### **ANALYSIS**

22. We have heard the learned counsel for the parties and have also perused the records produced before us. Although the applicant has raised several issues in defence of his case, however, the main issue before us for consideration is as to whether an officer of the Army can be given a censure based solely on the basis of the findings of the TBO and Staff Col is not mandatory as per Army HQ Policy letter No. 61639/Gen/AG/DV-4(A) dated 15.02.2019 where MES works matters are involved.

23. It is important to examine the relevant paras of the Army HQ Policy letter No. 61639/Gen/AG/DV-4(A) dated 15.02.2019 which deals with the streamlining the procedure for ordering/finalisation of Court of Inquiry (Col)/Boards of

Inquiry (BoI) ordered by Army/Navy/Air Force and processing thereof. The relevant Paras which deal with the ibid matter read as follows :

**“Tech Board of Officers (TBO)”**


5. *The TBO also referred as Departmental Inquiry, is first stage of Inquiry/investigation into any MES works/services related subject/issues/matters. It can be ordered at the level of CE Zone/CE Command/E-in-C Branch, as applicable. The TBO proceedings would invariably be taken into acct while convening a Staff C of I/B of I by Service HQs of Army, Air Force and Navy, as deemed fit and appropriate.*

6. **Necessity and Role of TBO.**

(a) **Necessity.** *A TBO/Departmental inquiry is a legal necessity in order to proceed against Civilian Officials under the Provisions of CCS (CCA) Rules, 1965. Since, Civilians in the Defence Services are governed by the CCS (CCA) Rules 1965, only the Appointing Authority is competent to direct and initiate disciplinary actions.*

(b) **Role of TBO.** *A TBO, being purely technical in nature, would go into the following aspects and bring out the defects/shortcomings/irregularities in quantitative/qualitative terms, in MES works/services/matters :-*

(i) **Specifications.**



- (ii) Quality of work.*
  - (iii) Design issues.*
  - (iv) Works procedure.*
  - (v) Accounting and storage.*
  - (vi) Any other issue pertaining to quality of work.*
- (c) TBO will examine the nature of irregularities. ascertain the defects, propose remedial measures including rectifications and pinpoint responsibility, if any. On finalization of TBO, It shall be forwarded to E-in-C's Branch, duly incorporating the comments/recommendations of CE Zone/CE Command."*

*xxx*

*xxx*

*11. The TBO proceedings and actions thereon, if found insufficient to logically address the reasons for the defective wk and shortcomings, it would be inquired/investigated by the competent Service HQ of Army, Air Force and Navy through a staff C of I/B of I. The TBO proceedings thereof can be included in such a Staff C of I/B of I, if deemed necessary. Decision to order C of I/B of I, rests with the concerned Fmn Cdr based on the finding on 'TBO'.*

*12. The disciplinary proceedings for civilian and Service personnel will be dealt with separately, after the TBO. The proceedings of MES civilian personnel will commence immediately after approval/concurrence of TBO under the provision of CCS (CCA) Rules. However,*

*to investigate culpability of military personnel, holding of staff court of Inquiry is mandatory.*

*xxx*

*xxx*

*14. Necessity. The inquiry/ investigation into MES matters, wherein Army and Air Force/Navy-executives and staff are involved, C of I/B of I must be ordered by the staff on behalf of the AOC-in-C/FOC-in-C or their subordinate formation Cdrs at appropriate HQs.*

*15. Staff C of I/ B of I is to fix responsibility regarding lapses on the part of persons, both Army and users, involved in the case. Invariably, following would be investigated/inquired into :-*

*(a) Breach of discipline.*

*(b) Non-adherence to laid down standards and criteria.*

*(c) Dereliction of duties in carrying out laid down supervision, checks and tests.*

*(d) Unauthorized deviation from the laid down orders and policies.*

*(e) Financial losses and apportioning responsibility for such losses.*

*(f) Non-observance of direction given by the higher authorities.*

*(g) Other aspect considered essentially by the convening authority.*

*xxx*

*xxx*

*20. Compliance of Provisions of Army Rule 180.*

*This Rule makes it obligatory that whenever during a C of I/B of I, the character/military reputation of a person subject to the Army Act is*

*likely to be affected, Army Rule 180 has to be complied with by the Presiding Officer. It has been observed that disciplinary proceedings/administrative action become legally untenable due to non-compliance of provision of Army Rule during C of 1/B of stage by Service HQ of Air Force and Navy. This not only causes unwarranted delay in finalization of disciplinary proceedings but renders the concern service HQ helpless in dealing with delinquent officers/subordinates, who are under the Army Act.*

*xxx*

*xxx*

**Conclusion**

*26. Staff C of I / B of I is a vital tool at the disposal of Service HQ of Air Force and Navy to investigate the reason for the sub-standard and poor quality of MES Works/services matters and get the culpable/blameworthy officials penalized by the concerned Disciplinary Authority. The purpose of this letter is to lay down the policy by refining the existing procedure, remove anomalies/ shortcomings noticed in works related cases dealt by Service HQ of Air Force and Navy in the past. Notwithstanding above, peculiar issues faced by Service HQ of Air Force and Navy on MES works/services-matters, if any, should be referred to E-in-C's Branch for timely and prompt action."*



24. Para 5 reveals that TBO is the first stage of inquiry/investigation into an MES/Works and its proceedings would invariably be taken into account while convening a Staff CoI/BoI by SVC HQ as deemed fit and appropriate. It was, therefore, very appropriate in the present case that a TBO was ordered to inquire into an MES related work (CTVS Project of R&R Hospital).

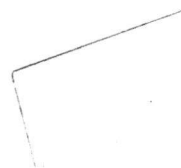
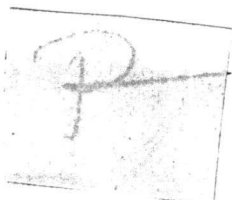
25. Para 6 reveals that a TBO is legal necessity in order to proceed against only civilian officials under the provisions of CCS (CCA) Rules, 1965, which means based only on the findings of the TBO, disciplinary action cannot be initiated against an Armed Forces Officer.

26. Para 11 reveals that TBO proceedings and actions thereon, if found insufficient to logically address the reasons for defective work and shortcomings, it would be inquired/investigated by the competent SVC HQ through a Staff CoI/BoI. The TBO proceedings thereof can be included in such a Staff CoI/BoI, if deemed necessary. **Decision to order CoI/BoI rests with the concerned Fmn Cdr based on the finding on 'TBO'**. The contention of the respondents that ordering a CoI/BoI rests with the concerned formation

Cdr based on the findings of the TBO is not completely true and out of context. The discretionary authority whether to order CoI/BoI into MES Works with the Formation Cdr is only to the extent of logically addressing the defective work and shortcomings if not sufficiently addressed by the TBO and **not for the purpose of initiating disciplinary/Administrative action.**

27. In so far as initiation of disciplinary proceedings is concerned, Para 12 of the said Policy is the relevant para which brings out clearly that the culpability of military personnel can only be investigated by mandatorily holding a Staff CoI. Furthermore, Para 14 of the ibid policy states that inquiry/investigation into MES matters, wherein Army and Air Force/Navy executives and staff are involved, **a CoI/BoI must be ordered by the Staff on behalf of AOC-in-C/FOC-in-C or their subordinate formation Cdrs at appropriate HQs.**

28. It is, therefore, very clearly brought out vide Paras 12 and 14 of the ibid policy that MES works where Army personnel are involved, the conduct of mandatory CoI/BoI is



a must before proceeding further to initiate disciplinary action.

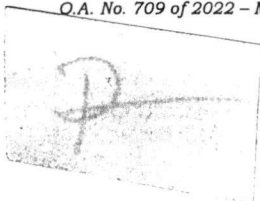
29. From the perusal of the file on which the award of Censure to the applicant was processed, it can be seen from the note-sheets 17, 18 and 19 that initiation of a Staff CoI was recommended by the Dy. JAG, Western Command, MGIC Adm and COS of Western Command respectively, and the same was approved by the Army Cdr, Western Comd vide note 20 on 21.04.2021. In fact the draft convening order for instituting a CoI was approved by the GOC-in-C, Western Cmd on 03.05.2021. However, it is not understood as to why the Staff CoI was not conducted and in lieu thereof, vide note 23 dated 03.08.2021, Col 'A' (D&V)/Western Command has recommended 'adm action' against the applicant based on the findings of the TBO and issue of SCN to the applicant as well as imposition of DV ban type 'A' which was approved by the GOC-in-C, Western Cmd on 07.08.2021. The rationale for change over from instituting a Staff CoI to proceed against the applicant purely based on the findings of the TBO has not been brought out on the relevant file. It is our considered view that the decision not to institute the Staff

CoI and take administrative action against the applicant based solely on the TBO findings is in violation of the Army HQ letter No. 61639/Gen/AG/DV-4(A) dated 15.02.2019 and is not sustainable in the eyes of the laid down law as brought out in Para 28 hereinabove.

30. The applicant was considered for promotion to the rank of Lt Gen by the Spl Selection Board (SSB) Corp specific stream held on 20.04.2022 and the results were forwarded to MoD for approval. However, due to certain reservation by the MoD the SSB held in April, 2022 was reconvened in August, 2022.

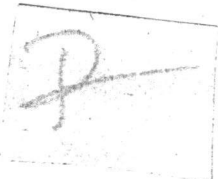
31. The Board proceedings of the reconvened SSB of Engineers 1986 batch (Re-convened) held on 25.08.2022 was perused by us. There were 2 (two) vacancies for the rank of Lt Gen in 'Engineers' branch. The applicant was second in the quantified merit and remained second after award of BMA marks. The applicant was, however, not recommended for the 2<sup>nd</sup> vacancy and a brief justification given by the SSB reads as follows :

***“(a) Maj Gen Dhiraj Mohan. The offr was at QM position 02 and maintained the same position in final merit after the award of BMA***



**marks. The offr has been reprimanded with 'Displeasure' by GOC-in-C, Western Comd on 18 Feb 2022 in a discp case. The Board considered the overall profile of the officer including present DV status and granted BMA marks accordingly. BMA marks given by the Board are about 45% less as compared to QM position 01 officer. The Bd considered the overall profile of the offr especially discipline issue and did not find him fit for recommendation for the 2<sup>nd</sup> vacancy."**

From the above, it is very clear that the applicant could not be promoted to the rank of Lt Gen on the 2<sup>nd</sup> vacancy by the SSB held on 25.08.2022 and the award of censure of 'Displeasure' by GOC-in-C, Western Comd on 18.02.2022 was one of the important consideration whilst deciding the applicant's case. It is, therefore, premised that the applicant who otherwise had a blemish free career record was not promoted mainly due to the award of censure which was based on the findings of the TBO, which, in our view, is an illegal action as the mandatory Staff CoI was not instituted to determine the culpability of the applicant prior to the award of censure. The respondents have submitted that the award of a Censure is just an administrative action and does not amount to a disciplinary action against the applicant. In our



considered view, the repercussion of an award of censure has resulted in the non-promotion of the applicant to the rank of Lt Gen and is considered a severe punishment inflicted on the applicant and not merely a simple administrative action. Therefore, the contention of the respondents that award of censure to the applicant was an administrative action and not a disciplinary action cannot be accepted.

32. Keeping in view the above parameters, the OA is partially allowed and the award of censure of 'Displeasure' to the applicant by the GOC-in-C, Western Comd is considered illegal and thus is quashed. It is directed that the applicant be considered as a special review case, with the next physically available Fresh batch as per the policy in vogue. It is also important to note that since the applicant has since retired on 31.03.2023 and there will not be any fresh ACR/input available on the applicant whilst considering him with the next physical available Fresh batch, the applicant be benchmarked as per the SSB held on 25.08.2022 along with his batch. The officer, if found fit for empanelment to the

rank of Lt Gen, be notionally promoted to the rank of Lt Gen with all consequential benefits.

33. There is no order as to costs.

Pronounced in open Court on this 12<sup>th</sup> day of November, 2024.

**[JUSTICE RAJENDRA MENON]  
CHAIRPERSON**

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

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