

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

TA 02/2016 WITH OA 21/2014 (RB KOLKATA)

Col. Arun Dattaji Patole ... Applicant
Versus
Union of India & Ors. ... Respondents
For Applicant : Mr. SS Pandey, Advocate
For Respondents : Mr Neeraj, Sr. CGSC

CORAM :

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

ORDER

Invoking the jurisdiction of this Tribunal under Section 14 of Armed Forces Tribunal 2007, the applicant who is a retired 1971 Batch Army Ordnance Corps (AOC) Colonel has filed this OA challenging his non-empanelment to the rank of Brigadier by Number 2 Selection Board (No 2 SB), praying for following reliefs :

- (a) *In the facts and circumstances stated above, your applicant most humbly prays that Your Lordship would be pleased to declare the action of the respondents as unjust, arbitrary and illegal;*
- (b) *To quash and set-aside the impugned order dated 30.08.2011 and 25.03.2013;*
- (c) *To direct the respondents to hold the board of March, 2014 under supervision of this Hon'ble Tribunal and/or to disclose the parameter under which the respondents are going to hold the board to make the process more transparent before the applicant.*

- (d) *To direct the respondents to transmit all records vis-à-vis the entire list of the Officers of AOC 1971 Batch along with their ACR and MDS who are promoted to the rank of Brigadier and thereafter, to compare the ACR and MDS of the applicant to do conscionable justice.*
- (e) *To award exemplary costs upon the respondents Authority.*
- (f) *Such further order or orders, direction/directions be passed so as to this Hon'ble Tribunal may deem fit and proper in accordance with law.*

2. The applicant was commissioned in Infantry into the Regiment of MARATHA LIGHT INFANTRY in 1971. Later, due to his Battle Casualty status he got transferred from Infantry to Army Ordnance Corps (AOC) the applicant superannuated from service in the rank of Colonel on 30.11.2003.

3. The consideration of 1971 Batch AOC for promotion to the rank of Brigadier by No 2 Selection Board was held as per details hereunder:-

Sl. No.	Type of Consideration	Remarks	Result
(a)	Fresh	Cut off CR 08/97	Not Empanelled
(b)	First Review	With 1972 Batch Fresh	Not Empanelled
(c)	Final Review	With 1973 Batch Fresh	Not Empanelled

4. The Applicant has been given three Special Review considerations in Apr 2011, Mar 2013 and Mar 2014 with the same cut off CR at par with his 1971 Batch as per details given below:-

Sl. No.	Type of consideration	Last CR considered	Merit Comparison	Result
(a)	Special Review (Fresh) Apr 2011	01/97 to 08/97	Last Empanelled Officer of 1971 Batch	Not Empanelled
(b)	Special Review (First) Mar 2013	01/98 to 08/98	Last Empanelled Officer of 1972 Batch	Not Empanelled
(c)	Special Review (Final) Mar 2014	11/00 to 08/01	Last Empanelled Officer of 1973 Batch	Not Empanelled

Submissions on behalf of the Applicant

5. The applicant states that the Military Secretary informed that the applicant's overall merit was lower than the last officer of the 1971 batch who was promoted to the rank of Brigadier. The Military Secretary further informed that the last officer had qualified the Staff College, NDC and his profile and merit were much higher than the petitioner's as per the Member's Data Sheet (MDS).

6. The learned counsel for the applicant further states that the applicant was surprised as none of his course-mates of Army Ordnance Corps (AOC) had qualified at Staff College and NDC in the rank of Colonel at the time of being empanelled for promotion by No 2 Selection Board, for the matter, none from 1971 Batch of AOC. The applicant then made a request to reveal the name of the last officer who

was promoted to the rank of Brigadier and to see the Member Data Sheet. The request was denied by the Military Secretary on the ground that on the MDS names of officers are not endorsed and that he himself is not aware of the name.

7. The applicant submits that the applicant again expressed his surprise that, as the Military Secretary in his capacity of the complete MS branch, he has the complete authority and access to the complete service record and promotion results of all the officers of Indian Army and whatever details/information he desires/seeks for, from any of the sub branches of MS branch. The applicant submitted to the Military Secretary that he must have gone through his complete case and fully aware of the details to which the Military Secretary nodded in agreement.

8. The applicant further submits that the applicant argued that the assessment of April 2011 was again technically wrong. The comparison was to be carried out with the officer who had the lowest overall merit and was selected for promotion and in case the applicant's profile was higher or equal to the officer promoted, the applicant was to be promoted. As per the information from the Military

Secretary, the comparison was carried with officers who had qualified on Staff college and NDC and was last to be promoted in 1998 but surprisingly not mentioned the years 2000, 2001 and 2002, in as much as such purported classification is not at all reasonable and thus opposed to principles of Article 14 of the Constitution of India.

9. It is submitted by the applicant that the applicant informed the Military Secretary that he is very sure that none of his course-mates from Army Ordnance Corp (AOC), for that matter others from 1971 Batch of AOC, were qualified in Staff college and NDC in the rank of Colonel, whenever the No. 2 Selection board was held for 1971 batch of AOC. The applicant gave the names of two of his course-mates i.e. Brig. MJS Sandhu (Retd.) and Maj. Gen. S.K. Malhotra who were not approved initially and after protracted representations they managed to get promoted.

10. It is the applicant's case that in the case of Brig MJS Sandhu, the officer at every stage of selection grade, rank had to represent, that is, from Major to Lieutenant Colonel, Lieutenant Colonel to Colonel, and Colonel to Brigadier to be promoted to next higher rank. His performance has been low and his course reports are just average. Whereas the

applicant was Instructor Class B at the College of Material Management Jabalpur and also a Battle casualty. The applicant is very sure that this particular officer's profile was much lower than the applicant. Similar is the case of Maj. Gen. S.K. Malhotra, who was always in the low medical category due to various ailments.

11. It is the applicant's contention that the Military Secretary however avoided the discussion in the AFT and that he has nothing to say on these points and that he is only here to comply with the directions given by the AFT and that the Selection board members are not revealed nor the names of officers considered and the process is fair and judicious, without any bias. Applicant when questioned M.S that the Selection Boards can only decide on the Data/information put in front of each member, wrong/incorrect/incomplete information/data will definitely result in the wrong decisions, and in reply the Military Secretary stated that such cases do occur, because of human error

12. The applicant states that the Military Secretary replied that he will only go by the Member Data Sheet and the applicant was not empanelled as he was low in merit. The applicant then told the Military Secretary that assuming the

applicant was found to be lacking in mandatory parameters in the Internal Assessment, why corrective measures were not taken to give career protection to war wounded officers and also what was the necessity/need to target the applicant repeatedly, if he was not a threat? Was it, if the facts of being war wounded, not required to be AE and being instructor (which carry extra points in assessment) included in the MDS, the applicant's overall merit would have been higher than the other officer's of his batch: The Military Secretary evaded giving a reply by diverting the discussion to the special Review of April, 2011.

13. The applicant further states that the applicant also tried to hand over a Questionnaire to the Military Secretary to seek clarifications on various points. The Military Secretary gave only a cursory glance to the first page and returned the questionnaire. The applicant then asked the Military Secretary as to why only one Special Review (Fresh) has been given to the applicant, when as per the policy on special reviews; the applicant is authorised three special reviews for each of the consideration given in the years 2001 and 2002 when the No. 2 Selection Boards were held.

14. The applicant submits that to this the applicant objected/disagreed and informed that officer from MS (legal) branch had personally apologised in the Tribunal for the injustice caused to the petitioner. The applicant asked the Military Secretary that he should not be treated as a retired officer, because he was a serving officer in the years 1998, 2000, 2001 and 2002 and therefore the special review be held as per the Data of 2001 and 2002 and as if the applicant is in service. Further the special reviews were held on CR profile from 1996 to 2002.

15. The applicant contends that in the applicant case extraordinary circumstances were created by MS branch by concealing and omitting facts and as much the petitioner case should be treated in extraordinary manner and two more special reviews be held. The applicant further said that to meet the ends of justice, his case be treated in extraordinary manner, otherwise it will be denial of justice.

16. It is the applicant's case that on the basis of the above facts, the applicant moved an application being T.A. No. 14 of 2010 and which was ultimately disposed off by an Order dated 28th February, 2011 wherein the respondents were directed to consider the following aspects:

a) *The Military Secretary branch shall hold a Special review No.2 promotion board for the applicant and consider him as a fresh case for promotion to brigadier with same imputs as was in May 1998, when he was considered for the first time with his batch-mates from AOC.*

b) *The ibid promotion board shall be held under rules as was in vogue in May 98, with all considerations and relaxations to him as was then applicable to a war wounded officer.*

c) *In case he makes it in comparative merit as being equal to or higher than the merit of the last officer approved in that board of May 98; he shall be accorded a notional promotion to the rank of brigadier with no back-wages or claim for reinstatement or change in the date of superannuation that has already been implemented.*

d) *In case of 'C' above, the petitioner shall be eligible to the pension of a Brigadier with effect from the day he has retired. His pension shall be re-fixed accordingly with arrears of such enhanced pension as admissible.*

e) *In case, however, he remains low on comparative merit and does not make it to the higher rank, the MS shall give him a personal hearing and explain the reasons in a fair, transparent and dignified manner as be fitting to a war wounded veteran.*

17. The applicant states that on or about 03.01.2014 as well as 16.01.2014 the applicant was informed that Special Review Final in No 2 Special Board will be held in March, 2014 and further informed that the documents cannot be given, such may be collected by the applicant under Right to Information Act.

18. The learned counsel for the applicant states that the respondents in the most casual manner without any application of mind are acting mechanically and with a prejudiced mind and with a pre-determination of not promoting the applicant to the rank Brigadier and as such,

the respondents have resorted to all their means to deprive the applicant from his legitimate claim of being promoted to the rank of Brigadier.

Submission on behalf of Respondents

19. *Per contra* the learned counsel for the respondents has submitted that the Applicant belongs to 1971 Batch Army Ordnance Corps (AOC). The applicant earlier filed WP(C) No. 15548(W)/ 2003 before Hon'ble High Court Kolkata against his Non Empanelment to the rank of Brigadier which later got transferred to this Tribunal and numbered as TA No. 14/2010. The above application was disposed of by this Hon'ble Tribunal vide judgement dated 28.02.2011 granting partial relief with the following directions:-

(a) The Military Secretary Branch shall hold a Special Review No. 2 Promotion Board for the applicant and consider him as a fresh case for promotion to Brigadier with same inputs as was in May 1998, when he was considered for the first time with his batch mates from Army Ordnance Corps (AOC).

(b) The ibid promotion board shall be held under rules as was in vogue in May 1998, with all consideration and relaxations to him was then applicable to a war wounded officer.

(c) In case he makes it in comparative merit as being equal to or higher than the merit of the last officer approved in that board of May 1998; he shall be accorded a notional promotion to the rank of Brigadier with no back-wages or claim for reinstatement or change to the date of superannuation that has already been implemented.

(d) In case of 'c' above, the petitioner shall be eligible to the pension of a Brigadier with effect from the day he has retired

His pension shall be re-fixed accordingly with arrears of such enhanced pension as admissible.

(e) In case, however, he remains low on comparative merit and does not make it to the higher rank, the Military Secretary shall give him a personal hearing and explain the reasons in a fair, transparent and dignified manner as befitting to a war wounded veteran.

(f) Let the respondents ensure compliance in the directions given above within 90 days of receipt of this order.

20. In compliance of above directions dated 28.02.2011 of this Hon'ble Tribunal, the applicant was considered as Special Review (Fresh) 1971 Batch Army Ordnance Corps (AOC) by No 2 Selection 08 April 2011 as per his profile then existing and with merit of his batch mates under the then prevailing system of selection ie Value Judgment system. He was not empanelled to the rank of Brigadier on the basis of his overall profile and comparative batch merit vis a vis last empanelled officer of 1971 batch as evaluated by the Selection Board.

21. The applicant filed Contempt Application No 08/2012 (in TA No 14/2010) on the ground that consequent to his non empanelment he had not been given personal hearing by Military Secretary as directed by Hon'ble Tribunal. The above contempt application was disposed of vide order dated 29.11.2012 (Annexure E to Original Application) with the following directions:-

"We direct that Military Secretary, during his visits to various Headquarters including Pune and Kolkata where the applicant resides must intimate the applicant and grant all possible facilities to give him a personal hearing in which all aspects must be explained to him in detail within the limits of security. The applicant should be apprised as to why he was low on merit and whether all points that were to be covered have indeed been covered while considering his case by Special Board subsequently to such a personal hearing. It will only be appropriate for the Military Secretary on behalf of Respondents to express regret to the War Veteran for the delay and agony thus caused. Thereafter the Military Secretary shall pass a speaking order in writing explaining the details of interview and reasons for non empanelment of the applicant in the special board that was conducted on the order of this Tribunal"

22. In compliance of order dated 28.02.2011 and 29.11.2012 of Hon'ble Tribunal, the applicant was personally interviewed by Lieutenant General SA Hasnain, UYSM, AVSM, SM, VSM the then Military Secretary at Kolkata on 26.02.2013 as a special case and given due respect and dignity to War Veteran. Considering request of the applicant, to the Military Secretary during interview and peculiar facts of the case Military Secretary directed that the applicant be also given two more corresponding Special Review considerations by No 2 Selection Board.

23. Further, the applicant has been given Special Review (First) and Special Review (Final) considerations by No 2 Selection Board held in March 2013 and March 2014 and Non Empanelled on account of overall profile and comparative batch merit as assessed by No 2 Selection Board.

Consideration

24. We have heard the submissions of learned counsel on behalf of both parties and carefully perused the material placed before us including the pleadings, Confidential Dossiers and Statutory Complaints of the applicant. The only issue for adjudication before us is whether the applicant is entitled to be empanelled for promotion in any of the said selection boards.

25. It is pertinent to note that prior to introduction of the Quantification System in 2009 vide MS Branch policy letter No.04502/MS Policy dated 31.12.2008, the boards were conducted by Value Judgment method as per policy letter No.31525/P/MS5B dated 06.05.1987 which is relevant for the case under consideration. Consequent to perusal of board proceeding of all the Selection Boards in which the applicant was considered for promotion to rank of Brigadier with due diligence, we consider it essential to place on record our finding and observations and accordingly do so in Sub-Paras below :-

- (a) The applicant was considered by No 2 SB held in May 1998 as a fresh case of AOC 1971 Batch comprising a batch of 16 officers which included five

Review Cases of earlier batches and 11 officers of the fresh batch including the applicant wherein he was Deferred due to disciplinary case against the applicant being in progress and therefore NOT graded. The applicant was once again Deferred in No 2 SB held in March 2001 for same reason.

(b) The applicant was considered by No 2 SB held on 17-18 September 2001 as a Fresh/Defer Case and declared as 'UNFIT' for promotion as all members of the board had graded him 'UNFIT' after consideration of his career profile recorded in the MDS in comparison to his original batch considered in 1998 wherein he was deferred.

(c) The applicant was considered by No 2 SB held in March 2002 as a First Review case of AOC along with Fresh Batch of 1974 AOC Officers and he was declared a 'UNFIT' by the Board wherein all the member had recorded their verdict as such.

(d) In the No 2 SB held in September 2002, the applicant was considered as a Final Review Case and once again the verdict of the board was UNFIT with all members unanimously holding their opinion as such.

(e) Consequent to grant of redressal the applicant was considered by No 2 SB held in April 2011 as a Special Review (Fresh) case of 1971 batch and yet the Board declared him as UNFIT by a unanimous decision. While this board was conducted by newly introduced Quantified system the applicant continued to be considered by erstwhile Value Judgment Method in consonance with prevailing policy applicable to his original batch.

(f) The applicant was considered as Special Review (First) case by No 2 SB held in March 2013 wherein the applicant was graded 'Not Empanelled' by all the members of the Selection Board.

(g) While being considered as a Special Review (Final) case by the No 2 Selection Board held in March 2014, the applicant's grading remained unchanged as 'Not Empanelled'

26. We are satisfied by the execution of our order dated 28.02.2011 in TA No 14/2010 by the respondents which has resulted in the applicant having been given due consideration by No 2 SBs held as per the order of this tribunal and the applicant having been also given a personal

hearing by the Military secretary as per Para (e) of the order. Similarly, on perusal of the board proceeding of the No 2 SBs wherein the applicant has been considered for promotion to rank of Brigadier, it is our well-considered opinion that the respondents have given a fair consideration to the applicant as per MS Branch Policy letter dated 06.05.1987 and the applicant has not been approved for promotion due to his low profile in comparison to other officers of the batch under consideration. While we have highest regard for the applicant who is a War Veteran of 1971 War, where he was injured and thereafter transferred to AOC, a very deliberate examination of the records of the Selection Board lead us to believe that the respondents have taken into consideration all the factors with respect to the profile of the applicant before declaring him non- empanelled for promotion.

27. Before concluding, we feel it necessary to also place our detailed observations on record with respect to consideration of the applicant by Value Judgment Method wherein as per the policy dated 06.05.1987 the candidates were considered by the

Promotion Boards by visual inspection of the reckonable CR profile, performance in courses, battle performances, Honours and Awards, Discipline etc; as there was no method of quantifying the above mentioned factors. Since the applicant was considered on dates well after the consideration of his original batch for promotion by No 2 SB, his entire profile was compared to the bench mark, i.e., the officer empanelled with weakest profile from his original batch. Based on this deliberate paired comparison, his profile was found to be weaker than the compared profile and therefore he was not approved for promotion. We have observed that similar process has been followed for all the considerations for the applicant by the respondents as per policy guidelines. Having perused the averment of the applicant at Para 8 and 9 above with regard to his interview with the Military Secretary and now having gone through the entire Board proceedings of No SB2 we are satisfied with the action taken by the respondents. It is, however, noted by us that there is no officer of the batch of the applicant who is NDC qualified at the time of

conduct of the Selection Board as the NDC course is only done by the officers in the rank of Brigadier. Thus, there is nothing more that merits our further attention.

28. In consideration of aforesaid discussion we do not find any merit in this TA and thus deserves to be dismissed.

29. Accordingly, OA 21/2014 [RB Kolkata] (numbered as TA 02/2016) is dismissed.

30. No order as to cost.

31. Pending miscellaneous application, if any, stands closed.

Pronounced on open court on this 30th day of July 2024.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

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

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