

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

OA 1200/2023 WITH MA 1844/2023 AND MA 3498/2024

Col Amit Soni ... Applicant
Versus ... Respondents
Union of India & Ors.

For Applicant : Mr. S.S. Pandey, Advocate
For Respondents : Mr. Anil Gautam, Sr. CGSC

CORAM :

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

ORDER

MA 1844/2023

Keeping in view the averments made in the application and in the light of the decision in Union of India and others Vs. Tarsem Singh [(2008) 8 SCC 648), the delay in filing the OA is condoned.

2. MA stands disposed of.

MA 3498/2024

3. Counter affidavit has been filed. There being some delay in filing the counter affidavit, this application has been filed seeking condonation of delay. Delay condoned. Counter affidavit is taken on record.

4. MA stands disposed of.

OA 1200/2023

5. This application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant who is a serving Colonel of 8 JAK LI and is aggrieved by refund of Transport Allowance claim and rejection of Non Statutory and Statutory Complaint against the adverse remarks endorsed by the SRO in the ICR, wherein he has prayed for the following reliefs:-

(a) Calling for entire records based on which the Respondents have issued the illegal order dated 21.6.2017 vide which the Applicant has been directed to refund the Transport allowance for claimed by the Applicant, even when he was legally entitled to claim the same and thereafter using the same as basis have illegally awarded him Reproof vide order dated 31.8.2017 as also endorsed the adverse remarks in the ICR covering the period from 01.09.2016 to 4.1.2017 along with the records based on which Respondent No 1 have rejected the Statutory Complaint dated 12.01.2022 of the Applicant vide impugned order dated 06.10.2022 and thereafter quash all such orders along with order dated 06.10.2022.

(b) Direct the Respondents to carry out all necessary correction in the profile of the Applicant consequent to setting aside of the impugned orders as mentioned above including removing the entire the ICR covering the period from 1.9.2016 to 4.1.2017 including the adverse remark as well, along with refund of transport allowance claimed by the Applicant with interest @ 12 percent thereafter consequent to upward revision of his profile after removal of such below benchmark downgraded assessments/adverse remarks grant him fresh consideration on modified profile for nomination of Higher Command Course.

(c) Issue such other order/direction as may be deemed appropriate in the facts and circumstances of the case.

6. The applicant was granted Permanent Commission on 12.12.1998 in 8 JAK LI of the Indian Army and has rendered many regimental - both administrative and technical appointments in all types of terrain. He was awarded GOC-in-C Commendation Card in the year 2005 & 2008, Force Commander UN Commendation in 2006 and COAS Commendation Card; also twice for Mountaineering Expedition & Rescue operation in 2014 and 2017 during his command tenure.

Submissions on behalf of the Applicant

7. It is the case of the applicant that while the unit of the applicant was deployed in Delhi, Maj VR Deshmukh (Later, Lt Col) an officer of the unit who did not like the legitimate action of the applicant to advise the aforesaid officer to improve his personal and professional conduct. The officer misunderstood him, whereinafter he sent complaints to the higher authorities that the applicant was claiming transport allowance illegally; but the reality was that the applicant was well within his right since there was no government vehicle exclusively dedicated to the applicant even though he was holding the appointment as

Commanding Officer (CO) due to peculiar working environment in Delhi where he was commanding the battalion 8 JAK LI.

8. Elaborating on the aforesaid background, it is submitted by the applicant that he used his personal vehicle with Registered No bearing last four digits as 5967 for conveyance from residence to office three to four times in a day for Physical Training (PT), Parade, Games and Night Parades etc for which the permission to use the personal vehicle was obtained from the Ministry of Defence vide Pass Ser No 7416, SLIC No D15556.

9. Arguing on the difference between a Staff Car and War Equipment Table (WET) vehicles authorized to an Infantry Battalion, it is submitted by the applicant that as per Para 3(v) of Gol, Min of Finance letter No 21(1)/97/E.II(B) dated 03.10.1997, a Staff Car which is a dedicated vehicle is entitled to officers of the rank of Joint Secretary & above and if they opt for Staff Car, they are not authorized to claim Transport Allowance; whereas WET military vehicles authorized to an Infantry Battalion, are operational military vehicles and is not a

dedicated vehicle to any Officer, which means that it is not meant for usage for conveyance of Officers from residence to place of duty.

10. Elaborating further, it is submitted by the learned counsel for the applicant that in the instant case, since no Staff Car was authorized to the Applicant, coupled with the fact that the unit was functioning with 30% deficiency of vehicles, and the WET vehicles were used only from one place of duty to another; as the Unit was deployed in various locations to include Rashtrapati Bhavan, India Gate, Army HQ, Army House, Red Fort, Delhi Area HQs, etc. However, he used his personal car for conveyance from residence to office three to four times in a day for several activities which included Physical Training (PT), Parade, Games, Night Parades etc.

11. Sequencing the further chain of events, it is submitted on behalf of the applicant that after attaining knowledge of the complaint initiated by Major (Later Lt Col) VR Deshmukh with respect to claim of transport allowance against him, the applicant sought clarification from CDA (O) Pune vide letter dated 18.11.2016 and CDA (O), Pune who had clarified that the

Transport Claim of the applicant is authorised through letter No LW-01/011/190648K dated 24.11.2016 which are annexed at A-6 & A-7.

12. It is further amplified that a specific query was raised to CDA as to confirm whether Transport Allowance is admissible in Field areas along with Field Allowance, the CDA vide it's reply dated 20.12.2024 intimated that the Transport Allowance is admissible in Field Areas. Thus, it is clearly evident that the officers' claim for Transport Allowance in field areas where driving personal vehicles is not possible and later on denial of Transport Allowance to an officer while he was in Delhi and he has used his personal vehicle after obtaining due permission is gross injustice.

13. It is contended on behalf of the applicant that the HQ, Delhi Area, the immediate higher HQ has accepted in writing that the claim cannot be rejected as they were aware that the applicant was using his personal vehicle for which permission was sanctioned, while on the other hand, the new SRO located 250 kms away, without making any inquiry in respect thereof, put an adverse remark against the applicant in the

Interim Confidential Report (ICR) holding him guilty for claiming the Transport Allowance on the basis of letter dated 02.02.2017.

14. It is further contended by the Learned Counsel that the entire case was based on a false assumption of SRO that the Applicant herein was not authorized Transport Allowance; the fact which was neither verified by the SRO nor was he aware of the rule positions on the subject, for which, reliance has been placed on regulation governing grant of Transport Allowance issued vide Para 1 of GoI, Min of Finance letter No 21(1)/97/E.II(B) dated 03.10.1997 which states as mentioned below:

"the grant of transport allowance to Central Govt employees is to suitably compensate them for the cost incurred on account of commuting between the place of residence and the place of duty."

15. With respect to the adverse CR, it is submitted by the applicant that he had earned Four ACRs and One ICR during his command tenure for the periods 22.09.2013 to 06.03.2014, 21.03.2014 to 31.08.2014, 01.09.2014 to 31.08.2015 and 23.11.2015 to 31.06.2016 and one ICR from 01.09.2016 to 04.01.2017 wherein he had been graded outstanding in all

the CRs except the five months ICR, wherein the SRO of the applicant endorsed an adverse remark in the impugned ICR of the applicant that "the officer claimed transport allowance even though a dedicated vehicle was used by him for his tenure as CO at Delhi".

16. Elaborating further, it is contended that the adverse remark awarded to him by his SRO on 16.03.2017 is factually incorrect since the applicant had already ceased drawing Transport Allowance on 02.02.2017 based on the orders of HQ Delhi area, wherein no inquiry whatsoever was conducted to ascertain the veracity of the false assumption and its endorsement as an adverse remark, and the pertinent fact is that the applicant was awarded with COAS Commendation card for his outstanding contribution on 26.01.2017, whereas the adverse remarks was awarded to him for the same period for which Commendation Card was awarded.

17. Throwing light on the award of 'Reproof', it is submitted by learned counsel that the applicant was awarded Reproof by the General Officer Commanding, Delhi Area on 31.08.2017 for claiming transport allowance on the basis of complaint made

by Maj (later Lt Col) Deshmukh and the applicant in compliance of the directions of the Competent Authority ceased to draw the transport allowance since 2014 vide Part II Order No 026 dated 02.02.2017 and entire amount was thereafter recovered by the PCDA (O). His Non Statutory complaint dated 19.09.2017 challenging the complete ICR was rejected vide order dated 05.09.2018 and also the Statutory complaint against the ICR and the adverse remark endorsed by the SRO was also disposed off vide order dated 06.10.2022 in arbitrary and unjust manner.

Submissions on behalf of the Respondents

18. Per contra, it is the case of the respondents that that the Non-Statutory complaint dated 12.01.2022 against CR period 09/16 to 01/17 was rejected by the Competent Authority vide order dated 06.10.2022 on the ground that it is objective, performance based and technically valid and there being no evidence of any bias or subjectivity, the CR did not merit any interference.

19. It is contended by the Respondents that the ADG DV, IHQ od MoD (Army) vide letter no. B/29185/II/1167/AG/DV-4A

dated 21.06.2017 had sought confirmation on deduction of amount of cancelled Transport Allowance by PCDA (O), Pune and directed for appropriate administrative action which was taken against the applicant for the deliberate lapse of claiming transport allowance.

20. With respect to the use of personal vehicle, it is contended by the Respondents that as per tradition and convention, a suitable vehicle is earmarked for key appointments such as the CO of an Inf Bn and it is not expected from a person to put forth a transport allowance claim and hence the applicant was directed to get Part II Order published for cessation of Transport allowance and return the money received so far to PCDA (O).

Consideration

21. We have heard both the parties at length and have perused the documents placed on record by both the parties. It can be safely concluded from the pleadings that while the dispute arises from the same transaction of use of personal vehicle by the applicant, there are two issues which merit our consideration – *First, whether the applicant is entitled for grant*

of Transport Allowance and second, whether the impugned ICR 09/16-01/17 merits interference by us or not ?

22. Before considering the rival submissions, it is important for us to record that while issuing notice vide our order dated 16.05.2023, as many as ten opportunities were granted to the Respondents to file a detailed Counter Affidavit, vide our orders 25.07.2023, 25.08.2023, 06.10.2023, 22.11.2023, 08.01.2024, 21.03.2024, 01.05.2024, 10.07.2024, 06.08.2024, 23.08.2024, wherein the Counter Affidavit was only filed on 28.08.2024. However, the defects were not cured, post which this Tribunal vide its order dated 30.08.2024 directed the office to place Counter Affidavit on record, even without curing the defects.

23. The case was further heard partially on 03.09.2024, wherein during the course of arguments, after hearing both the parties, we found it essential to peruse the relevant car diaries/vehicle log books of the Light Vehicles of the applicant's unit 8 JAK LI, while the applicant was Commanding Officer at Delhi, and hence, the Respondents were directed to produce the

same vide our order dated 03.09.2024, granting four weeks to comply with the order.

24. The case again came up for hearing on 15.10.2024, wherein on account of the earlier order not being complied, Respondents were again granted four weeks time to produce the same. Subsequently, when the case came up for hearing before us on 12.12.2024, the aforesaid directions issued vide our order dated 03.09.2024 were yet not complied. Further, on account of certain arguments made by the learned counsel for the applicant, we were pleased to pass appropriate directions vide our order dated 12.12.2024 against OA 1200/2023 which is reproduced as under :

"OA 1200/2023

5. *Learned counsel for the applicant is directed to file an affidavit within four weeks indicating certain facts with regard to issue in question.*

6. *Taking note of letter of HQ Delhi Area dated 02.02.2017 placed as Annexure A2 and the averments of learned counsel on behalf of the applicant that other Commanding Officers are drawing transport allowance, we direct the respondents to place on record through an affidavit whether all Commanding Officers of Infantry Battalion under jurisdiction of HQ Delhi are assigned government transport for their use for official duties in said appointment of Commanding Officer and if so whether all Commanding Officers are not permitted to draw transport allowance thereby for reason quoted hereinabove. Exception thereto if any may also be placed on record within four weeks.*

7. Further, the respondents are also directed to bring on record the car diaries/log books to establish that the applicant was using government transport for performance of his official duties as directed vide our order dated 03.09.2024.

8 to 9

xxx

xxx

xxx.”

25. Again, when the case came up for hearing on 03.04.2025, we noted that in compliance of our order dated 12.12.2024, the applicant has filed an additional affidavit. However, since respondents had neither complied with the order dated 03.09.2024 nor the order dated 12.12.2024, four more weeks were granted as a matter of last indulgence, with a caution that no further time shall be granted and the case would be heard on the basis of material and documents placed on record.

26. On the next date of hearing on 08.05.2025, the applicant has filed the Written Submissions and the same was served on the learned counsel for the respondents to seek instructions. However, our orders dated 03.09.2024 and 12.12.2024 directing filing of additional affidavit and the car diaries/vehicle entries were still not complied with. Finally, the case was listed for arguments on 22.05.2025, wherein after oral arguments, it was 'Reserved' for judgment. At the time of arguments,

respondents produced certain documents which on perusal were found to be car diaries of a vehicle used by a Commanding Officer in 2025 and therefore, in no case, it is relevant to the present case, nor supports the case of the respondents, since the dispute pertaining to applicant using Government or Private Vehicle ranges back to 2014.

27. Therefore, in view of the aforesaid observations, and non-filing of additional affidavit and the car diaries/vehicle entries by the Respondents, we now proceed to adjudicate the aforesaid two issues framed for our consideration, on the basis of material and documents placed on record.

28. With respect to Issue No-1, we find that as per the records of the Respondents, the applicant has assumed the appointment of Commanding Officer, 8 JAK LI on 22.09.2013 at Bomdilla, whereinafter the unit was inducted to Delhi in Mar 2014, wherein the issue of Transport Allowance has arisen.

29. Furthermore, we note that nowhere in Counter Affidavit the claim for Transport Allowance has been refuted by the Respondents, who only sought to rely upon an ADC DV, IHQ of

MoD (Army) vide letter no. B/29185/II/1167/AG/DV-4A
dated 21.06.2017, reproduced as under:

“Tele 35119

*Additional Directorate General
Discipline & Vigilance DV-4(A)
Adjutant General's Branch
Integrated Headquarters
Ministry of Defence (Army)
DHQ PO, New Delhi-110011*

B/29185/II/1167/AG/DV-4A

21 Jun 17

*COMPLAINT IN R/O COL AMIT SONI, SM, CO 8 JAK LI
BY LT COL VR DESHMUKH*

1. *Pl ref-*

*(a) DV Dte (DV-4A) letter No 8/29185/11/1167/AG/DV-4A dt 24
Nov 16.*

*(b) HQ Western Comd (DV) letter No 0300/COMP/DA/2016/DV-16 dt
16 May 2017*

2. *The recom of HQ Western Comd on the subject Complaint have
been perused by the Competent Auth who has directed the fwg:-*

*(a) Confirmation of deduction of amount of cancelled Tpt Allce by PCDA
(O) Pune.*

*(b) Appropriate Adm Action to be taken against Col Amit Soni for the est
lapse claiming Tpt Allce*

3. *It is requested to fwd confirmation at the earliest to close the case*

*Sd/-xxxxx
(SK Kothiyal)
Col*

*AAG
For ADG (DV)*

Copy to :-

COAS Sectt (Complaint Cell) - For info wrt Diary No 17/01020 dt 17 Feb 17”

30. A perusal of the contents of this letter reveals that the same shows a purported administrative action sought to be initiated against the applicant pursuant to the complaint filed by Maj

(Later Lt Col) V R Deshmukh dated 29.08.2016 against the applicant, which is clear from the order dated 12.09.2017 passed by Hon'ble Delhi High Court in Lt Col V R Deshmukh Vs. Union of India & Ors. [WP (C) No. 10489/2016], which categorically records that a complaint has been filed by Maj (Later Lt Col) VR Deshmukh against the applicant.

31. Further, we note that the aforesaid letter records that the recommendations of the HQ Western Command have been perused, which has directed for confirmation of deduction of amount of cancelled Transport Allowance by PCDA (O) Pune, and subsequently, the information about the appropriate administrative action is to be taken against the applicant for lapse on claiming Transport Allowance, with a request to forward the confirmation at the earliest to close the case

32. At this point, we find it pertinent to analyse the chain of letters leading to the aforesaid letter, wherein we find it important to refer to a HQ Delhi Area letter No. 3335/25/Comp/DV (O) dated 02.02.2017, issued to the applicant, which is reproduced as under:

"Tele: 36178

Mukhyalaya Delhi Area
HQ Delhi Area
Delhi Cantt-10

3335/25/Comp/DV (O)

02 Feb 2017

Col Amit Soni
Commanding Officer
8 JAK LI (SIACHEN)
Pin-911 008
C/o 56 APO

COMPLAINT AGAINST CO TO THE SUPERIOR AUTH REGARDING
MISAPPROPRIATION OF FUNDS, MISUSE OF POWERS &
HARASSMENT TO THE OFFRS AND LADIES, JCOS AND OR

1. Ref 8 JAK LI (SIACHEN) letter No 1069/A dt 11 Jan 2017
2. It is intimated that technically an offr can claim tpt allce if a DD veh is not auth to him. As in this particular case CO of an Inf Bn is not auth a veh as per WET and accordingly the claim put forth by you cannot be rejected.
3. However fact also remains that invariably there is a dedicated year marked veh for a CO of the Bn to discharge his responsibilities and as a CO you are no exception to it. Therefore as a matter of principle tpt allce should not have been claimed. Therefore following is advised :-
 - (a) Advised to cease claim of tpt allce forthwith and confirmation may be rendered to this HQ.
 - (b) Advised to deposit the claimed amount in Govt treasury through MRO and photocopy of the same be fwd to this HQ.
4. For necessary action pl.

Sd/-xxxxx
(Rakesh Karwasra)
Col
Col A (D&V)
for GOC"

33. On a perusal of the contents of the aforesaid letter, we find that it has been intimated to the applicant that an officer can claim transport allowance if a Defence Duty (DD) Vehicle is not authorized to him. It has further been accepted by the authority

that CO of an Infantry Battalion is not authorized a vehicle as per WET and concluding, that the claim of the applicant cannot be rejected.

34. However, the same reasoning is subsequently overridden by an argument that there is a dedicated earmarked vehicle for a CO of a Battalion to discharge his responsibilities and the applicant is no exception to it, so the claim of transport allowance should not have made, with a follow up direction to cease the claim and deposit the claimed amount with necessary documents to be forwarded to the Headquarters.

35. We observe that pursuant to the complaint dated 29.08.2016 made against the applicant, he has asked for a clarification from the Office of the CDA (O), Pune vide his letter dated 18.11.2016, which is reproduced as under:

"CDA (O) ACCOUNT No: 01/011/190648K

BY HAND

*8 JAK LI (SIACHEN)
PIN-911008
c/o 56 APO*

1009/Est

18 Nov 2016

Office of the CDA (O)

*Golibar Maidan,
Pune 411001*

CLARIFICATION OF TRANSPORT ALLOWANCES

1. Certain clarifications are being sought with regards to transport allowances. The clarifications required are on the issues given as under :-

(a) As a Commanding Officer, am I auth to draw transport allowance especially if I have not been authorized a staff car.

(b) The VI pay commission had amalgamated the transport allowance and city compensatory allowance into a single entity and authorized it as transport allowance depending upon the class of city. The Officer is using his personnel vehicle in addition to the vehicle authorized to the Infantry Battalion on WE since the task mandated to be performed necessitate Commanding Officer visit to the Unit location 3 to 4 times in a day for PT. Office, Games and night parades.

2. An early action is requested please.

Sd/xxxx
(Amit Soni)
Col
Commanding Officer"

36. The aforesaid letter is replied to by the Office of PCDA (O) vide their reply no. LW-01/011/190648k dated 24.11.2016, which reads to the effect:

"LW-01/011/190648k
PCDA (O)
GOLIBAR MAIDAN
PUNE-411001
Dated : 24/11/2016

To,
Col Amit Soni
8 JAK LI (SIACHEN)
PIN-911008
C/o 56 APO

Sub : Transport Allowance r/o Col Amit Soni Personal No IC58430P
Cda A/C No 01/011/190648K

Ref : Letter No 1009/Est dated 18/11/2016

Officer is entitle for Transportation allowance as per clarification of cities. Please publish part II Order as per documentation procedure along with requisite certificate.

Sd/xxxxxx
Sr. Accounts Officer"

37. Further, we note that the applicant has raised a query on 13.12.2024 to confirm whether the Transport Allowance is admissible in Field areas along with Field Allowance wherein the CDA (O) has affirmed vide their reply dated 20.12.2024 that Transport Allowance is admissible in Field Areas. The Grievance Details received from the PCDA (O) is reproduced below :-

*Principal Controller of
Defence Accounts (Officers)*

GRIEVANCE DETAILS

DAK-ID : 1312234
Section : Transportation Wing
Subject : Transport allowance
Reference:
Date : 13-Dec-2024 12:00:00
Description/Details of
grievance : Query 1-Pl confirm whether Transport allowance
is admissible in Field areas along with field
allowance.
Reply : Sir,
Transport Allowance is admissible in Field Areas.
***Grievance Approved by SAO-SANJAY KUMAR*
*SINHA***

Reply Date : 20-Dec-2024 12:00:00
Status : completed
Status Date : 23-Dec-2024
Please give separate Grievances relating to TA/DA and Pay and
Allowances."

38. Admittedly, a cursory look at aforesaid letter addressed by the applicant to the PCDA (O), and their reply, along with the response to Grievance, makes it clear that on the basis of factual matrix informed by the applicant to the PCDA (O), he was

entitled for Transportation Allowance, for which there is no refutation, whatsoever.

39. We observe that post receipt of the reply no. LW-01/011/190648k dated 24.11.2016, the applicant has replied to the complaint filed against him vide his reply to the HQ Delhi Area (DV), vide its letter no. 1073/A dated 26.11.2016, which is reproduced as under:

1073/A

HQ Delhi Area (DV)
Delhi Cantt-10

"8 JAK LI (SIACHEN)
PIN-911008
c/o 56 APO
26 Nov 2016

COMPLAINT AGAINST COMMANDING OFFICER TO THE SUPERIOR
AUTHORITY REGARDING MISAPPROPRIATION FUNDS, MISURE OF
POWERS AND HAKRASMENT TO OFFRS AND LADIES, JCOS & OR

1. Please refer to your HQ letter No 3335/25/Comp/2164/DV(O) dt 05 Nov 2016 and Addl Die Gen of Mov letter No 12630/Tpt A/Mov Cdt 16 Dec 2008 (copy att).

2. The fwg is submitted for your info and consideration please :-

(a) No staff car is auth to the Commanding Officer as the case with other CO and OCs of Delhi Area.

(b) The auth Lt veh (GS Vehs) to unit is as per WE of an Inf Bn. Details of veh auth is as under :-

<u>Lt Veh</u>	<u>Auth</u>	<u>Present Status (Hold)</u>	<u>Remarks</u>
Gypsy		11	10
Jeep Mod for ATGM	08	-	
Jeep Mod for M/MG	04	-	

(c) The resp entrusted entails Commanding Officer presence for PT, Office, Games, evening office/ Roll Call/ Night Parade and Ceremonial tasks at various locs in Delhi These duties requires the undersigned to vis the unit loc at Delhi Cantt and Rashtrapati

Bhavan min 3-4 times in a day, of which at least twice the undersigned uses his pers veh.

(d) The commitments to ensure the welfare of families (approx str 300) residing in family qtrs and participation in stn activities the CO's wife is using pers vehicles on regular basis.

(e) Post 6th CPC the City Compensatory allce has been subsumed with tpt allce.

3. Clarification regarding tpt allce recd from CDA (O), Pune is also enclosed herewith.

4. For your info pl.

*Sd/-xxxx
(Amit Soni)
Col
CO*

Encls :: As above

Copy to :-

*HQ Western Comd (DV)
PIN-908543
C/o 56 APO"*

- For info pl.

40. From a perusal of the aforesaid reply, we observe that the applicant has tried to justify that no staff car is authorized to the applicant as is the case with other COs of the Delhi Area and that he has to visit the unit location at Delhi Cantt to Rashtrapati Bhavan 3-4 times a day along with several other locations for the purpose of PT, Office, Games, Evening Office/Roll Call/Night Parade etc. and Ceremonial tasks, for which he was using his personal vehicle.

41. It is essential to record that none of the claims above have been refuted by the Respondents and that the HQ Delhi Area

letter No. 3335/25/Comp/DV (O) dated 02.02.2017 without any concrete evidence to that effect goes on to presume that since the applicant has been allotted a Government vehicle for discharge of his official duties, he has not used his personal vehicle and therefore he is not entitled to claim Transport Allowance.

42. Further, it is important to observe that a Car Sticker has been placed on record, of personal vehicle of the applicant, ending with 5067, and bearing Serial No. 7416. This sticker shows Ministry of Defence, DHQ Zone as the Authority, with date of issue being from 20.02.2014 to 31.03.2015, with SLIC No. D-15556, which admittedly shows that the personal vehicle of the applicant was allowed entry and exit from Delhi HQ Area.

43. Therefore, on the basis of material placed on record and in the event of the claim being adequately satisfied by the applicant, coupled with the fact that the Respondents have nowhere refuted such claim of the applicant in their counter affidavit, nor produced any evidence on record to the effect to conclusively establish that the applicant never used his personal vehicle for official duty which could have the potential to refute

the claim of the applicant, we are of the considered opinion that the applicant is entitled to grant of Transport Allowance. This answers Issue No-1.

44. Proceeding to examine Issue No. 2, before perusal of the CR dossier, we find it essential to refer to administrative action initiated against the applicant, wherein we note that subsequent to issuance of the ADC DV, IHQ of MoD (Army) vide letter no. B/29185/II/1167/AG/DV-4A dated 21.06.2017, the applicant has been awarded 'Reproof' vide HQ Delhi Area Letter No 3335/25/Comp/ DV(O) dated 31.08.2017, which is reproduced as under:

"Tele 36178

*Mukhyalaya Delhi Area
HQ Delhi Area
Delhi Cantt-10*

3335/25/Comp/DV (O)

31 Aug 2017

*IC-58430P
Col Amit Soni, SM
Col Trg
HQ Purva UP & MP Sub Area
Pin-900479
C/o 56 APO*

REPROOF IC-58430P COL AMIT SONI, SM

1. Ref the fwg:-

(a) HQ Delhi Area (DV) letter No 3335/25/Comp/DV (O) dt 02 Feb 2017

(b) ADG D&V DV-4(A), AG's Branch, IHQ of MoD (Army) letter No B/29185/11/1167/AG/DV-4A dt 21 Jun 2017 (Copy att)

2. Transport allowance claimed wef 21 Mar 2014 vide Part-II Order No 037 dt 26 Mar 2014 by you is against the spirit of the organisation as there is a dedicated veh earmarked for a Commanding Officer of Infantry Battalion to discharge his duties.

3. This reproof is hereby conveyed to you in terms of Para 327 of the Regulations for the Army (Revised Edition), 1987 for te claiming transport allowance, not in keeping with accepted norms.

Sd/-xxx
(MM Naravane)
Lieutenant General
General Officer Commanding
Delhi Area"

45. It is essential to observe that prior to award of 'Reproof', which is an administrative action awarded by the Competent Authority, there are no records to show that an effort was made to inquire into the allegations of the complaint made against the applicant, nor any Inquiry initiated to ascertain as to whether the applicant was actually using his personal vehicle.

46. We are constrained to record that the said 'Reproof' was awarded on the sole basis of HQ Delhi Area letter No. 3335/25/Comp/DV (O) dated 02.02.2017, which nowhere indicts the applicant of claiming the transport allowance on false premise, but only presumes that the applicant might have been using any of earmarked vehicles of his Infantry Battalion in his

capacity as CO of the unit for all official duties and never used his personal vehicle for performance of his official duties, and thus, cannot be granted transport allowance. There is no evidence placed on record to establish whether any inquiry was made to ascertain the actual facts or scenario, for which the 'Reproof' awarded to the applicant is purely without any legal sanction and reasoning, and therefore violates the basic principles of natural justice.

47. Within the realm of judicial review in present constitutional mechanism, it is established that courts are entrusted with the responsibility of ensuring the lawfulness of executive decisions. This constitutional architecture has further led to a shift of judicial review to include aspects of review of administrative action. The current architecture goes beyond the traditional approach restricted to procedural considerations which was previously the focus of judicial review, to now include a consideration of the merits of administration action or decision forming the subject of the judicial review proceedings.

48. We find the resonance in the observations made in the case of *Reg. Vs. Governor of Brixton Prison, Armah, Ex Parte*,

(1966) 3 WLR 828 at p. 841, that when we say that where the circumstances or material or state of affairs does not at all exist to form an opinion and the action based on such opinion can be quashed by the courts, we mean that in effect there is no evidence whatsoever to form or support the opinion.

49. Therefore, in view of the aforesaid observations, we conclude that in the absence of any substantiated evidence, an administrative action, undertaken, solely based on factual presumption without any effort to inquire, or conduct an inquiry to ascertain the true facts, is illegal, and thus, void ab initio. Hence, the 'Reproof' awarded to the applicant merely based on presumption is set aside, holding it as illegal.

50. Before examining the impugned ICR under consideration, we find it pertinent to refer to the Order of the Govt of India No. 36501/17033/Inf/2017/MS-19/346/SC/2024-RoG/Stat dated 22.01.2025 rejecting the Stat Complaint of the applicant, reproduced as under:

"No. 36501/17033/Inf/2017/MS-19/346/SC/2024-RoG/Stat

भारत सरकार / Government of India

रक्षा मंत्रालय / Ministry of Defence

सैन्य कार्य विभाग / Department of Military Affairs

New Delhi, the 22nd January, 2025

ORDER

1. IC-58430P Col Amit Soni, SM, Inf (JAK LI), has submitted a Statutory Complaint dated Mar 2024 against non empanelment for promotion to the rank of Brig by No 2 Selection ard (Fresh) held in Jun 2023. The main points of the complaint are as under: -

- (a) The Officer has briefly covered his service profile, highlighting his achievements during various regimental and staff tenures.
- (b) The Officer has stated that presumably, an adverse remark by Lt Gen Surinder Singh, GOC-in-C, WC on ICR (Sep 2016 to Jan 2017) could have been a probable reason for his non empanelment. The Officer has averred that the impugned ICR was reviewed by Lt Gen Surinder Singh in the capacity of RO (as GOC Delhi Area) while actually he was the SRO. The Officer has disputed the technical validity of the CR. Contesting the award of Reproof, the Officer has stated that no dedicated vehicle (military vehicle) was authorized or used by him. The Officer further states that sanction and relevant access pass to Rashtrapati Bhavan for his personal car was obtained from Security Officer, IHQ of MoD (Army) through HQ Delhi Area, which approves use of personal car for official purposes

2. The Officer has requested for the following: -

- (a) Weak Remark by the SRO in capacity of RO be expunged and connected biases/ influence be removed.
- (b) He be considered as a fresh case in No 2 Selection Board.

3. The Statutory Complaint of the Officer has been examined in the light of officer's overall profile, previous complaints, other relevant documents and recommendation of AHQ. After consideration of all aspects of the complaint and viewing it against the redress sought, it has emerged that the assessment by all the reporting officers in all the CRs including the impugned CR 09/16-01/17 in the reckonable profile are fair, objective, consistent, performance based and technically valid. There being no evidence of any bias or subjectivity none of the CRs merit any interference.

4. The Officer has not been empanelled for promotion to the rank of Brig on account of his overall profile, relative merit and comparative evaluation as assessed by No 2 Selection Board (Fresh) held in Jun 2023.

5. The Central Government, therefore, rejects the Statutory Complaint dated 22 Mar 2024, submitted by IC-58430P Col Amit Soni,

SM, Inf (JAK LI), against non empanelment for promotion to the rank of Brig by No 2 Selection Board (Fresh) held in Jun 2023.

By order and in the name of the President

Sd/- xxxx

(Vazir Singh)

Deputy Secretary to the Government of India

The Chief of the Army Staff (in quadruplicate):- For further communication to the officer through staff channels with the necessary administrative instructions and for action in accordance with the existing procedure."

51. It is clear from the perusal of the aforesaid order that the rejection of the Statutory Complaint is nothing more than a generic order passed without considering the issue under consideration, and again, no efforts were made to verify the factual background leading to the claim of bias and subjectivity.
52. Hereinafter, we now proceed to examine the impugned CR of the applicant, wherein, going through the CR dossier of the applicant, we find it pertinent to refer to the ICR of the applicant for period 01.09.2016 to 04.01.2017 which is initiated by the RO for reasons of IO not being posted. The RO's report is an Outstanding report with '9' in the Box grading with the applicant having been graded '9' in most of the qualities in Personal Qualities (PQ), Demonstrated Performance Variables (DPV) and Qualities to Assess Potential (QsAP) parts of the CR

initiated on 02.05.2017 with overall a laudatory pen picture highlighting the work of the ratee in discharging his duties as CO of the battalion responsible for Rashtrapati Bhawan & Army House.

53. We note that the SRO, who is GOC-in-C Western Command has reviewed the CR barely 14 days later on 16.03.2017 with Adverse Remarks, *"The Officer claimed Tpt Allowance even though a dedicated vehicle was used by him for his tenure as CO as Delhi"*. In addition, he has recorded at Para 16(b) "Details of Guidance for Improvement during Reporting Period" in his remarks *"Advised through GOC Delhi Area that he should be more careful in his financial dealings"*. However, there is no such mention in the remarks of RO who is the officiating GOC of Delhi Area; thereby, bringing us to the conclusion that the gradings and the remarks of the SRO are not supported by facts or records.

54. Having observed that the gradings are awarded by the SRO only in Box Grading at Para 16, QsAP at Para 24 and Recommendations for Promotion/ Employment/Courses at Para 26 B (a) & (e) of the ACR Form, it is pertinent to note that

gradings awarded by the SRO are clearly biased; wherein he has rated the Report of IO (in this case initiated by RO) as 'Liberal' and awarded '7' in the Box grading with relatively low ratings in all qualities in QsAP and Recommendations for Promotion/Employment/Courses at Para 26 (B) (a) & (e) are also carries adverse or weak endorsements by SRO as compared to the RO.

55. Further, we find it essential to observe that the aforesaid adverse remark of the SRO was given on 16.03.2017, which is communicated to the applicant vide HQ Western Command letter no. 11204/Obsn/MS dated 10.08.2017, whereas the Reproof is awarded to the applicant on 31.08.2017, which means that the adverse remark has already been recorded in the ICR of the applicant, even five months before the administrative action culminated into award of punishment, showing it to be nothing more than a prejudicial and biased intention to harm the applicant.

56. Having perused the entire CR dossier of the applicant we have observed that with the exception of the impugned report of the SRO, the entire CR profile of the applicant is largely

'Outstanding' and therefore the report in question in our opinion is not in consonance with the entire CR profile. Accordingly, we have no hesitation in holding that the CR endorsed by SRO is prejudiced, biased and inconsistent without adequate reasons.

57. In view of our aforesaid analysis, we pass following directions :-

- (a) We set-aside MS Branch, IHQ of MoD (Army) letter No 36501/17038/Inf/2018/MS-19 dated 05.09.2018 which disposes off the Non-Statutory Complaint of the applicant dated 19.09.2017 and MoD Order No 36501/17033/Inf/MS-19/346/SC/2024-RoG/Stat dated 22.01.2025 in response to Statutory Complaint of the applicant dated 22.03.2024.
- (b) The entire assessment by the SRO in the ICR 01.09.2016 to 04.01.2017 including numerical gradings at Para 16 and 24, Pen Picture and Recommendations at Para 26 of CR are hereby expunged.

- (c) The directions by ADG DV, IHQ of MoD (Army) vide letter no. B/29185/II/1167/AG/DV-4A dated 21.06.2017 and order of HQ Dehi Area vide their Letter No 3335/25/Comp/ DV(O) dated 31.08.2017 awarding the 'Reproof' to the applicant are set aside and the said 'Reproof' is directed to be expunged from the CR dossier of the applicant.
- (d) In light of the aforesaid directions, the applicant shall be entitled to all consequential benefits including consideration for promotion by No 2 Selection Board (No 2 SB) as Special Review Case and consideration for Career Courses such as Higher Command and equivalent courses as prayed for at Para 8(b) of the OA; irrespective of any disqualifying embargo of age and service, if any.
- (e) The applicant is entitled to grant of Transport Allowance for the period as claimed by him which shall be refunded to him.

58. The Respondents are directed to complete this exercise within a period of three months from the date of the pronouncement of this order.

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

60. No order as to costs.

Pronounced in the open Court on 5th day of August, 2025.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

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

akc/