

**COURT No.2
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

OA 1117/2018

**Lt Col Rajesh Khokhar
VERSUS
Union of India and Ors.**

**..... Applicant
..... Respondents**

For Applicant : Mr. Rajiv Manglik, Advocate
For Respondents : Dr. Vijendra Singh Mahndiyan,
Advocate
Col Sarika, MS Legal

CORAM

**HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)**

ORDER

The applicant IC-47830F Lt Col Rajesh Khokhar vide the present OA instituted on **02.07.2018** had made the following prayers:-

“(a) To declare the action of the respondents as unjust, and illegal; and

(b) To quash and set aside the results of the applicant for selection to the rank of Col (TS) intimated to the applicant vide letter No dated 08 Jul 2013, 30 Dec 2014 and 10 Jul 2015; and

(c) To quash and set aside letter dated 21 Mar 2018; and

(d) To direct the respondents to grant the promotion to the applicant in the rank of Col (TS) from the due date of completion of 26 years of service; and

(e) To direct the respondents to pay the pay and allowances to the applicant from the due date of promotion to the rank of Col (TS) along with interest of 18% on such arrears; and

(f) Such further order or orders, direction / directions be passed so as to this Learned Tribunal may deem fit and proper in accordance with law.”

FACTS ON RECORD

2. The applicant was commissioned in the Corps of Engineers in the Indian Army on 11/06/1998 and was promoted to the rank of 'Lt Col' on 16/12/2004.

3. The applicant was due for promotion to the rank of Col(Selection) and was considered for the same but was not promoted. He was due for promotion to the rank of Col (TS) on completion of 26 years of service and though considered was, however, not promoted to the rank of 'Col (TS)' on completion of service of 26 years neither as a fresh case nor in the first review as per the result of the No. 3 Selection Board for Col (TS) held in June 2013 as per letter no. 37852/ Col(TS)/2013/I/ MS-8A dated 08.07.2013 nor as per the result of No. 3 Selection Board for Col (TS) held in December 2014 as first review as per letter no. 37852/ Col(TS)/2014/II/MS-8A dated 30.12.2024.

4. Furthermore, the applicant was considered by the Selection Board for Col (TS) held on 25th June 2015 as the Final Review case as per the policy of three looks promulgated vide MS Policy Letter No 04477/Col(TS)/MS Policy dt 08 May 14 & 04477/MS Policy dt 10 Jul 14 for promotion to the substantive rank of Col (TS) held on 05 Dec 2014. However, he was not approved for promotion to the said rank as final review in terms of the said policy in the Selection Board held on 25.06.2015 as per letter no. 37852/Col(TS)/2015/I/MS-8A dated 10.07.2015.

5. The letter no. 37852/Col(TS)/2013/I/MS-8A dated 08.07.2013 states that the applicant had not been empanelled for promotion to the rank of Col (TS). The letters dated 30.12.2014 and 10.07.2014 referred to hereinabove of the respondents state that the applicant had not been approved for promotion to the rank of Col (TS) based on his overall service profile.

CONTENTIONS RAISED

6. The applicant has submitted that after having been commissioned on **11/06/1988** after successful training at the National Defence Academy and the Indian Military Academy, he had been posted to various terrains and had served various appointments and had done several Army courses and that there were no allegations against his character or discipline **after** his

promotion to the rank of Lt Col, and that he ought to have been granted the rank of Col (TS) on completion of the stipulated period of service, i.e. 26 years.

7. The applicant has further submitted to the effect that whilst he was detailed to undergo the Engineer Officer's Degree Engineering Course at the College of Military Engineering from November 1991 to November 1994 in the rank of Captain, he was found absent during one class of BPET i.e. the Physical Training class and was awarded the punishment of Severe Reprimand on **21.03.1992**. It has further been submitted by the applicant that after completion of the degree in Engineering, he was posted to his unit as 2IC at 77 RCC. He further submits that he sought leave from his OC in September 1997 due to some marital discord and had to leave due to some urgent development and he was thus declared absent without leave for three days and was awarded Severe Reprimand. The applicant has further submitted that the time of this period of three days when he was absent without leave, had been spent by him only for the to and fro journey from his unit location to Guwahati and back and that he did not go to his hometown.

8. The applicant has further submitted that he was promoted to the rank of Major and was posted to 657 Engineer BR unit and

during 2003, he had observed some financial irregularities being committed by the Commanding Officer(CO) and he reported against the CO and on the basis of the complaint of the applicant, the CO was tried by the GCM and he was convicted but punished leniently but the applicant was awarded the punishment of reprimand on 13/10/2004 on the ground of belatedly reporting against the CO. The applicant submits that it was thereafter that he had been promoted to the rank of Lt Col on **16.12.2004**. The applicant has further submitted that though he was due for promotion to the rank of Col and was duly considered for the same, but he was not promoted.

9. The applicant has thus submitted that as per the Army Order (AO 9/2005), the rank of Col (TS) is to be granted by Time Scale on completion of 26 years and that said AO 9/2005 stipulates that the promotion would not be recommended if there was any disciplinary case involving moral turpitude, gross negligence, acts of cowardice or unofficer like behavior.

10. The applicant submits that the incidences qua him referred to hereinabove of:

- his having been severely reprimanded on **21.03.1992** for having been found absent in one class of BPET and,

- of having been absent for three days without leave in September 1997 and having been severely reprimanded for the same and
- for having been reprimanded on **13/10/2024** for having belatedly reported the matter of financial irregularities being committed by his Commanding Officer,-

do not fall within the category of cases involving moral turpitude, gross negligence, acts of cowardice or unofficer like behaviour.

11. The applicant submits that he thereafter submitted a Statutory Complaint dated **08/07/2017** against his non empanelment to the rank of Col (TS) but the respondents chose not to take any action on the same and thus the applicant filed OA 362 of 2018 in February 2018 which was disposed of vide order dated 12.02.2018 of the AFT (Principal Bench), New Delhi directing the respondents to accord consideration to the representation of the applicant already pending with them within 30 days from the passing of the order dated 12.02.2018 vide a speaking order. The applicant submits that despite the said order dated 12.02.2018, the Statutory Complaint of the applicant was not disposed of within the period of 30 days as directed vide order dated 12.02.2018 of this Tribunal in OA 362 of 2018 but thereafter the respondents rejected the Statutory Complaint of the applicant vide the impugned letter

no. 37852/Col(TS)/187/MS-8A/356/SC/2017-D(MS) dated
21/03/2018.

12. The applicant submits that his Statutory Complaint was rejected vide the impugned order dated **21.03.2018** without application of mind and that the same is not a speaking order and does not explain what requisite criteria the applicant does not meet. *Inter alia*, the applicant submits that he had specifically raised the issue in his Statutory Complaint that the disciplinary cases against him did not fall within the purview of the restrictions imposed in the AO 9/2005.

13. *Inter alia*, the applicant submits that the respondents failed to appreciate that the rank of Col (TS) is not a promotion in the real sense since no additional responsibilities of the higher rank were required to be shouldered by the officer in the rank of Col (TS), and that he continued to be working on the appointments tenable by the Lt Col on which he had been working before and after consideration for such rank. The applicant has thus submitted that he having been promoted to other Time Scales rank of Major and Lt Col after these punishments, the theory of "Waived Off/Washed off" is required to be applied for further promotions and that the rejection of the Statutory Complaint dated 08.07.2017 of the

applicant vide the impugned order dated 21.03.2018, which reads to the effect:-

"No. 37852/Col(TS)/167/MS-8A/356/SC/2017-DD(MS)

Government of India

Ministry of Defence

New Delhi, the 21 March, 2018

ORDER

IC-47830F Lt Col R Khokhar, Engr, has submitted a Statutory Complaint dated 08 Jul 2017 against non empanelment for promotion to the rank of Col(TS) by Selection Board in Jun 2013. Main points of the complaint are:-

(a) The officer states that his batchmates have been granted the rank of Col (TS) wef 11 Jun 2014, the same has been denied to him.

(b) He presumes that it has happened due to punishments awarded to him during his service. He avers that while it is a fact that certain punishments have been awarded to him, the same do not involve moral turpitude. Hence, he should be granted Col (TS) Rank along with his batchmates.

2. The officer has requested for grant of Col (TS) rank wef 11 Jun 2014.

3. The Statutory Complaint of the officer has been examined in light of officer's overall profile, other relevant documents, rules and regulations on the subject and recommendations of AHQ. After consideration of all aspects of the complaint and viewing it against the redress sought, it has emerged that officer has not been empanelled for the rank of Col(TS) by Selection Board as he does not meet the requisite criteria as per the extant policy. The policy has been uniformly applied to all similarly placed officers and no injustice has been done to the officer on this account.

4. The Central Government, therefore, rejects the Statutory Complaint dated 08 Jul 2017 submitted by IC-47830F LI Col R Khokhar, Engr, against non empanelment for promotion to the rank of Col(TS) by Selection Board in Jun 2013

By order and in the name of the President

XXX/-

(Revati Raman)

Under 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.”,-

is wholly bad in law.

14. The applicant has further submitted that the non grant of promotion to the applicant to the rank of Col (TS) on the basis of punishment of yesteryears amounts to punishing him again for an offence for which he has been punished earlier and amounts to double jeopardy.

15. The applicant has placed reliance on the verdict of the Hon'ble Supreme Court in ***Pyare Mohan Lal*** versus ***State of Jharkhand and Ors***, 2010 (10) SCC 693 to submit to the effect that if a promotion has been effected of an employee after adverse entries, then those previous adverse entries have no relevance and can be treated as wiped off when the case of the Government employee is to be considered for further promotion.

16. Reliance was likewise placed on behalf of the applicant on the order dated 13.05.2014 of the AFT PB New Delhi in OA 140 of 2013 in the case of ***Lt Col AK Singh EME*** vs ***UOI & Ors*** who was a Lt Col in the EME of the Indian Army and had challenged his lack of clearance to the rank of Col (TS), the said applicant had

been given adverse remarks in his ACR for the period **01/06/1993 to 31/05/1994** with a Severe Reprimand having been awarded to him by the GOC 15 Infantry Division on 16/10/1995 in relation to charges of omissions prejudicial to good order and military discipline by omitting to make entries of items being fitted in military vehicles, with it having been observed vide the said order that the charge sheet against that applicant only recorded omissions under Section 63 of the Army Act, 1950 and that the disciplinary proceedings had concluded against that applicant with the award of a Severe Reprimand with action having been crystallized and thus no long shadow could be cast from 1995 to 2008 based on allegations that found no mention in documents.

17. It was also observed by this Tribunal in **Lt Col AK Singh EME** (supra) that the consequent performance of the Officer as viewed on the MDS did not in any way substantiate any consequent manifestations of infirmities in the officer and that the restrictions/provisions of para 4 of the Appendix to the AO 9/2005 did not apply in that case and that the review of the profile of that applicant and his personal data revealed that there was no apparent impediment in his record service for him to assume the rank of Col (TS) and thus in OA 140 of 2013, the respondents had been directed to consider that officer for the grant

of rank of Col (TS) by the next ensuing No 3 Selection Board, *de hors* of any disciplinary implications linked to the Severe Reprimand awarded on **16/10/1995**, as it did not fall within the purview of AO 9 of 2005 Para no. 4 and had no nexus with moral turpitude or gross negligence. That applicant was thus directed to be considered as a fresh 2008 seniority case with his original seniority with directions to the respondents to view his case for grant of Col (TS) in the true spirit of AO 9/2005 keeping in view the aspirations, profile and service rendered by him.

18. Reliance was also placed on behalf of the applicant on the order dated 27.08.2014 of the AFT Kolkata Bench in OA 4 of 2014 in the case of **Lieutenant Colonel Mukul Dev** versus **Union of India and others**, in which case that officer's punishment of reprimand in his dossier was quashed as the DV Directorate of the AHQ at that point of time on 07/06/2001 was not competent to pass such order and the respondents were directed to consider the case of that applicant as Special Review (fresh) case for promotion to the rank of Col in the ensuing no. 3 Selection Board *de hors* of any disciplinary implications linked to the reprimand awarded to him on 17.04.2001 in the rank of Major and by way of ignoring the punishment entry of remand in view of his subsequent promotion to the Lt Col treating the same as **wiped off**.

19. *Inter alia*, it was observed vide order dated 27.08.2014 in the case of **Lieutenant Colonel Mukul Dev** (supra) that the award of the punishment of reprimand long back in April, 2001, in a Summary Trial, when he was in the rank of Major in the Regiment of Artillery, in relation to a certificate issued by him to a certain contractor regarding quality of the inverter supplied having not been considered to be that serious a charge, only a punishment of reprimand was awarded and that despite such adverse entry, he was given promotion as Lt Col on merit while serving in the artillery and then was permanently transferred to the JAG Branch and that in such circumstances, by passage of time, the relevance of the adverse entry recorded more than a decade back had lost its sting and ought to be deemed to be washed off and that it was in these circumstances that it was directed by this Tribunal that the case of that applicant be considered by no. 3 SB Special review on changed profile treating the said entry as being wiped off.

20. Reliance was also placed on behalf of the applicant on the verdicts of the Hon'ble Supreme Court in **The State of Punjab versus Dewan Chuni Lal**, AIR 1970 SC 2086 and **Baidyanath Mahapatra vs State Of Orissa & Anr 1989 AIR 2218**, to contend to similar effect that when a government servant is promoted to a higher post on the basis of merit and selection, adverse entries if

any contained in his service record lose their significance and those remain on record as part of past history.

21. The respondents vide their counter affidavit dated 12/11/2018 have submitted to the effect that **after the AVSC Recommendations vide Government of India letter No 18 (1)/2004-D(GS-1) dated 21.12.2004, pursuant to restructuring of the officers cadre of the Army, the substantive promotions upto the rank of Lieutenant Colonel were made time bound on completion of specified service.**

22. It is also submitted by the respondents that the rank of Lieutenant Colonel was made non select and granted to all officers on completion of 13 years of reckonable service, subject to meeting laid down eligibility criteria.

23. The respondents further submitted **that the rank of Col (TS) was introduced to be granted on completion of 26 years of reckonable service subject to fulfillment of laid down criteria.**

It was further submitted by the respondents that **in para 8** of the above policy letter, it was specified **“Detailed criteria and procedure for grant of substantive rank of Colonel by Time Scale will immediately be notified by the Army Headquarters through Army Order.”**

24. The respondents further submit that pursuant to para 8 of the said Government of India letter no. 18(I)/2004-D(GS-I) dated 21.12.2004, the Army Headquarters has issued AO 9/2005/PS laying detailed instructions and eligibility criteria for grant of substantive rank of Col (TS) and that vide paras 2 to 4 of the said Army Order (which ought to read as the Appendix to AO 9/2005) the detailed criteria has been laid out as under:-

“2. Personal Qualities

(a) The officer should not have obtained less than average marks more than twice in any of the following personal qualities in last six ACRS/ICRs:-

- (i) Dependability*
- (ii) Integrity*
- (iii) Loyalty*
- (iv) Decisiveness*

(b) The officer should not have been adversely commented upon more than twice in last ACRS/ICRs in any one of the traits such as financial management, drinking habit and personal morals.

(c) Reports earned during operations will be specially taken note of.

3. Professional /Demonstrated Competence. *If an officer does not earn recommendations for promotion from majority of Reporting Officers in last six ACRS/ICRs, he will be rejected.*

4. Discipline.

(a) The gravity and nature of the offence will be examined and promotion will not be recommended if the disciplinary case involved moral turpitude, gross negligence, acts of cowardice or un-officer like behavior.

(b) Where an officer has been a subject of disciplinary case on more than one occasion, his record will be carefully examined to ensure that he has not slid into a tendency towards indiscipline and apathy to profession.”

25. The respondents submit that AO 9 of 2005 vide para 4 of the Appendix thereto states that the gravity and nature of the offence will be examined whilst considering an officer for grant of substantive rank of Col (TS) and that the offence ought not to relate to cowardice, un-officer like behavior, moral turpitude and gross negligence. The respondents submit that the examination of the service profile of the applicant reveals that he has been awarded the following punishments:-

“(a) 'Severe Reprimand' by Commandant, CME Pune on 21 Mar 1992 under Army Act Section 39(d).

(b) 'Severe Reprimand' by Chief Engineer, Project Vartak on 03 Mar 1998 under Army Act Section 39 (a).

(c) 'Reprimand' by Commander 14(1) Armoured Brigade on 13 Oct 2004 under Army Act Section.”

26. The respondents further submitted to the effect that the applicant has been considered thrice for grant of substantive rank of Col (TS) and has been rejected all the three times by the Selection Boards of different composition due to disciplinary criteria and that the decision arrived at by the Selection Boards whilst considering the applicant for grant of rank of Col (TS) has taken into account the disciplinary criteria as given vide para 4 of the Appendix to AO 9 of 2005 wherein the Board had viewed the gravity

of the offence under the purview of moral turpitude / un-officer like behaviour.

27. The respondents have also placed on record vide para 7 of their counter affidavit to the effect:-

“

<i>Date of Commission</i>	11.06.1988			
<i>Batch/ Arm & Service</i>	1988 Batch	<i>Corps of Engineers</i>		
<i>Discipline Profile</i>	<ul style="list-style-type: none"> • ‘Severe Reprimand’ by Chief Engineer, Project Vartak on 03 Mar 1988 (which ought to read as 1998) under Army Act Section 39 (a). • ‘Severe Reprimand’ by Commandant CME, Pune on 21 Mar 1992 under Army Act Section 39 (d). • ‘Reprimand’ by Commander 14 (I) Armd Brigade on 13 Oct 2004 under Army Act Section 63. 			
<i>CONSIDERATIONS</i>	No 3 SB	<i>Fresh</i>	<i>May 2006</i>	<i>Not Empanelled</i>
<i>Considerations</i>		<i>First Review</i>	<i>May 2007</i>	<i>Not Empanelled</i>
		<i>Final Review</i>	<i>Dec 2007</i>	<i>Not Empanelled</i>
<i>Consideration by SB for Col (TS)</i>		<i>Final Review</i>	<i>Jun 2015</i>	<i>Not Empanelled</i>
		<i>First Review</i>	<i>Dec 2014</i>	<i>Not Empanelled</i>

		<i>Fresh</i>	<i>Jun 2013</i>	<i>Not Empanelled</i>
<i>Complaint</i>	<i>Statutory complaint dated 08.07.2017 against Non Empanelment for the rank of Col (TS) by SB in Jun 2013.</i>			<i>Rejected by the Central Govt vide Order dated 21.03.2018.</i>

”

28. The respondents thus submit that the applicant completed 26 years of reckonable service for the purpose of grant of substantive rank of Col (TS) on 11/06/2014 and was considered thrice for grant of substantive rank of Col (TS) and has not been empanelled in all the three times by the Selection Boards of different composition due to disciplinary criteria. *Inter alia*, the respondents submit:

- that the applicant had been awarded a Severe Reprimand by the Commandment of CME on **21.03.1992** for breaching discipline;
- that the applicant had absented himself without intimation for outstation journey for three days, which is a breach of discipline of the military,
- was tried summarily and on conclusion of trial was awarded a severe reprimand, and

- that the applicant was charged under Section 63 of the Army Act 1950 for an omission prejudicial to good order and military discipline for not reporting to the superior Authority about improprieties being done by the OC and was consequently awarded reprimand by the Commander 14(I) Armd Brigade on **13/10/2004**. *Inter alia*, the respondents submit that the applicant was considered by no. 3 Selection Board as **'Fresh'** in May 2006 but was not recommended for empanelment in the comparative merit and overall profile and that furthermore, the applicant was also considered as **"First Review"** in May 2007 and as **"Final Review"** in December 2007 but was not found suitable for empanelment.

29. The respondents have reiterated that the applicant was considered thrice for grant of substantive rank of Col (TS) and was not empanelled on all the three occasions by the Selection Boards of different composition due to disciplinary criteria and that the Selection Board had taken into consideration the disciplinary criteria as given in para 4 of the Appendix to AO 9 of 2005 and that the Selection Board had recommended **"Not Empanelled"** on the basis of the gravity of the offence under the rule.

30. The respondents submit that the applicant having been punished on three occasions from 1992 to 2004, his offences fall squarely within the ambit of AO 9/2005 and that the applicant was not empanelled for the rank of Col (TS) by the Selection Board as he did not meet the requisite criteria as per extant policy which has been uniformly applied to all similarly placed officers and no injustice has been done to the applicant.

31. The respondents further submit that the Central Government has examined the applicant's statutory complaint in the light of complete records, rules, regulations on the subject and that the case of the applicant was considered in a fair and impartial manner based on his overall profile by the three Selection Boards of different compositions which have viewed the gravity of the applicant's offence under the purview of moral turpitude / unofficer like behaviour and had thus rejected the Statutory Complaint of the applicant vide a speaking order dated **21.03.2018** which was communicated to the applicant vide letter dated **26.05.2018**.

32. *Inter alia*, the respondents submit that the promotion to Col (TS) is not linked to the appointment any officer is holding and that the promotion given to the applicant to the rank of Lt Col is a time bound promotion vide Government of India letter no 18(1)/2004-D(GS-1) dated 21.12.2004, vide which the promotion up to the

rank of Lt Col was time bound on completion of 13 years of reckonable service subject to meeting the laid down eligibility criteria and on the contrary, the grant of substantive rank of Col (TS) is recommended by the Selection Board and is regulated under the provision of Army Order 9 of 2005 whereas promotion to the rank of Lt Col is not a selection based promotion for which disciplinary criteria does not have much weightage whereas the grant of substantive appointment in Col (TS) is regulated under AO 9 of 2005 which is a selection process and not a time bound promotion. The respondents further submit that the disciplinary criteria for the grant of substantive appointment in Col (TS) is the same that the offence committed should not relate to cowardice, un-officer like behavior, moral turpitude and gross negligence.

33. The respondents thus submit that reliance placed by the applicant on the verdicts relied upon by him is wholly misplaced. *Inter alia*, the respondents submit that non promotion is not a punishment and that the grant of substantive rank to Col (TS) is done under a selection process by the Selection Board which scrutinizes the officers for their eligibility for grant of the substantive rank of which discipline is one of the criteria. The respondents placed on record copy of AO 8 /2005/PS of December 2004 as well as of AO 9 / 2005/PS of December 2004 to submit to

the effect that whereas as per AO 8/ 2005 which relates to the “WEARING OF BADGES OF SUBSTANTIVE RANK CAPTAIN, MAJOR AND LT COL”, it is for the CO to satisfy himself whether the officer meets the criteria fully to wear the badges of the substantive rank of Captain, Major and Lieutenant Colonel and in case of doubt, the views of the MS Branch are to be obtained, as per the said Appendix to AO 8/2005 also for the criteria for grant of substantive promotions to Captain vide clause 1(d), to Major vide Clause 2(e) and to Lt Col vide Clause 3(f) is to the effect that any punishment awarded to the officer has been taken into account,

- and that merely in as much as the allowing of the wearing of the badges of the said ranks of Captain, Major and Lt Col were left to the satisfaction of the CO vide AO 8 of 2005 on meeting the criteria, coupled with the factum that the promotion to the rank of Lt Col was a time bound promotion on 13 years, the same is not on similar footing as the permission to wear the badges of the rank of Col (TS) In terms of AO 9 of 2005, which reads to the effect:-

“ADJUTANT GENERAL'S BRANCH

*AO 9/2005 WEARING OF BADGES OF RANK (OFFICERS):
COL BY TIME SCALE (TS)*

*1. The badges of Col (TS) **rank will not be worn** by an officer until and unless the grant of rank is approved by the Competent Authority, ie, the COAS. In order to ensure that*

officers on completing 26 years reckonable commissioned service are permitted to wear the badges of the rank of Col (TS), MS Branch will initiate action well before the date on which officers become eligible for grant of this rank. The Commanding Officers will permit the officers to wear the badges of Col (TS) only on receipt of letters from MS Branch.

2. Cases for grant of substantive rank of Col (TS) to officers will be screened by a Selection Board as per criteria and guidelines approved by the COAS. These are outlined in Appendix to this Army Order.

B/32225/AG/PS-2(a)

Mohinder Singh

Lt Gen

Adjutant General”

(emphasis supplied)

34. The respondents have further placed reliance on the verdict of the Hon'ble Supreme Court in **Arun Kumar Gupta** versus **State of Jharkhand and Another** (2020) 13 SCC 355 which related to a case of judicial officers to draw an analogy to the effect that just like judicial service is not an ordinary government service, personnel of the Armed Forces do not perform an ordinary government service and the records of previous antecedents cannot be overlooked from consideration, and that the same would similarly apply in the case of personnel of the Armed Forces who perform duties which require integrity and discipline to the fullest.

35. Reliance was also placed on behalf of the respondents on the verdict of the Hon'ble Supreme Court in **Union of India and others** versus **Colonel Ran Singh Dudee** (2018) 8 SCC 53 to

submit to the effect that where the Selection Board comprising of high-ranking officials from the Indian Army declined the selection of that applicant to Col with no malafides having been attributed to them, it was held that the AFT could not have held the assessment made by the Selection Board to be perverse, having considered the profile and the assessment given in that case, where that officer had absented himself without leave for three days and in the year 1991 after which he was not granted selection as Col by the Selection Board, he could only have been granted a Time Scale promotion but not empanelment by way of selection.

36. The respondents have further placed reliance on the order dated 13.04.2022 of the AFT(PB), New Delhi in **Lt Col Rajeev Bhatt** versus **Union of India and others** in OA 1099 of 2021, in which case the prayer made by that applicant seeking the rank of Col (TS) on the basis of completion of 26 years was declined, taking into account the factum that the applicant had allegations against him of having unauthorizedly used Railway warrants for his wife and other family members for travel purposes and had been awarded only Severe Reprimand with it having been observed to the effect that the act of that applicant was an act of indiscipline and unbecoming of an officer and if on taking note of the same, the respondents had categorized the same to be one falling within the

prohibited category with regard to meeting of the disciplinary requirements under the AO 9 of 2025, this Tribunal found no reason to interfere with the matter and that the conduct of that applicant clearly fell within the ambit of an act which is unofficer like and that he could not be permitted to say that it was only an omission or a slight aberration on his part.

37. This Tribunal vide order dated 13.04.2022 in OA 1099 of 2021 in **Lt Col Rajeev Bhatt** (supra) further while distinguishing the facts of the said case from the case of **Lt Col AK Singh** (supra) and in the case of **Lt Col Mukul Dev** (supra) held that the theory of “**Wiping Off**” would not apply with observations in para 7 of the said order to the effect:-

“7. Evaluating the case of the applicant in the backdrop of the misconduct which was committed in the case of Lt Col A.K Singh v. Union of India and others (O.A No. 140 of 2013 decided on 13.05.2014), we find that the cases of the applicant and that of Lt Col A.K. Singh (supra) are entirely different. Similarly, in the case of Lt Col Mukul Dev (supra), the issue was not the one as is involved in this case but the issue was with regard to a punishment of severe reprimand recorded in his service book, which was found to be not recordable. The law laid down in the aforesaid cases will not help the applicant and the theory of wiping off will also not apply. In this case, the applicant is claiming benefit based on an expert committee report and the benefit is to be granted in accordance with the scheme and the policy framed and when the policy prescribes

disciplinary criteria for grant of the said benefit and the applicant's case was examined on three occasions by different Selection Boards and when all the Selection Boards found the applicant not to be meeting the disciplinary criteria, on account of his acts of commission and omission, which led to imposition of punishment of severe reprimand, we see no reason to interfere with the matter. The administrative decision taken by the respondents in the matter falls within the ambit of the prohibition created in the disciplinary criteria laid down in A.O No.9/2005 and in denying the benefit to the applicant on such consideration, we see no illegality or irregularity warranting consideration.”

38. In reply to a specific Court query, during the hearing on 14.07.2025, it was brought forth that the order dated 13.04.2022 in OA 1099 of 2021 in the case of **Lt Col Rajeev Bhatt** (supra) has been challenged by that applicant vide WP (C) 1939 of 2024 before the Hon'ble High Court of Delhi, and the same is now pending for the date and as per the website of the Hon'ble High Court of Delhi for **29.01.2026**.

39. Vide his rejoinder dated 13.01.2019, the applicant has reiterated that the offences for which the applicant has been punished are so trivial in nature and were at the early stage of the service whereafter he has had a unblemished service w.e.f 2004 to 2015, which unblemished service cannot be ignored

whilst taking a decision qua the disciplinary background and that the applicant ought not to have been deprived of a promotion to be Col(Time Scale) towards the end of his service.

40. The applicant has reiterated that the factum that the applicant was promoted to the rank of Lt Col after the 02 severe reprimands and 01 reprimand given to him with having promoted on **16.12.2004**, all previous antecedents for which he was given a severe reprimand on 21.03.1992 and another severe reprimand on 03.03.1998, and another reprimand on 13.10.2004 all stand wiped out and that the applicant be thus granted the timescale promotion to the rank of Col (TS) with all requisite pay and allowances being paid to him.

ANALYSIS

41. The copy of the Statutory Complaint dated 07.07.2017 of the applicant placed on record as Annexure-A4 indicates that the date of retirement of the applicant in the then rank of Lt Col was 30.06.2021 and apparently the applicant has already retired.

42. During the course of the proceedings, the respondents produced the ACR dossiers for the applicant and also the SB Col(TS) Board proceedings for June, 2013, December 2014 and June,2015 and also the records in relation to the disposal of the statutory complaint of the applicant.

43. The records produced by the respondents have been perused by this Tribunal and the same corroborate the averments made by the respondents in their counter affidavit of the non-empanelment of the applicant to the substantive rank of Col(TS) vide the SB Col(TS) Board proceedings of June 2013,December 2014 and June 2015. Placed on the record of File no. PC/ 37852/ Col(TS)/2014/II/MS-8A(23), there is an Amendment No. 1 to AO 9/2005/PS which reads to the effect:

“After existing sub para 4(b) to the appendix to AO 9/2005/PS. Add sub para4(c)“The disciplinary/administrative award of permanent nature of the officer will be taken into account while considering him for grant of substantive rank of Col (TS). However, officers with administrative award of temporary nature (like Recordable Censure) will be deferred for grant of the said rank till the award ceases to be operative (ie. after completion of three years from

the date of award), without loss of reckonable seniority on this account".

44. Thus, as per the AO 11/2009/PS which is an amendment 1 to AO 9/2005/PS after Para-4(b) to the Appendix to AO 9/2005/PS has been added the aforementioned amendment to state that the disciplinary/administrative award of permanent nature of the officer will be taken into account whilst considering him for grant of substantive rank of Col (TS), though officers with administrative award of temporary nature (like Recordable Censure) will be deferred for grant of the said rank till the award ceases to be operative (ie. after completion of three years from the date of award), without loss of reckonable seniority on this account.

45. Vide order dated 24.07.2025, the respondents were directed to place on record all relevant amendments made to AO 9/2005/PS from the date of its issuance till date, which were so submitted on 19.08.2025 by the respondents including the amendment made to AO/9/2005/PS vide AO 11/2009/PS, qua which reference has been made in Para-39 hereinabove. An opportunity was granted to either

side to make further submissions on 20.11.2025, which was so availed of by either side.

46. Apparently, in terms of AO 11/2009/PS of Aug 2009, the disciplinary/administrative award of permanent nature as the kind as imposed on the applicant of two severe reprimands and one reprimand on the dates of 21.03.1992, 03.03.1998 and 13.10.2004 in terms thereof have to be **considered and cannot be wiped off for consideration of the grant of substantive rank of Col(TS)** in the view of the contents of the AO 11/2009/PS which is an amendment to the the AO 9/2005 after para 4(b) and which amendment was brought forth in August 2009 **that is much before the consideration of the applicant in the Selection Boards held vide No. 3 SB held in June 2013, December 2014 and Jun 2015.** Furthermore in terms of the approval accorded by the Chief of Army Staff on 21.12.2004, the powers vested in the COAS for grant of substantive rank of Col by Time Scale have been delegated to the MS, which had also in continuation of the system prior to the issue of the Govt. letter dated **21.12.2004** on restructuring of the Officers Cadre in the Army for grant of

substantive rank of Lt Col (TS) wherever the COAS had delegated the authority vested in him to the MS vide para-2(c) of MS Branch letter No 04537/MS-98 dated 27.07.1989. Though, undoubtedly the ACR dossiers of the applicant do reflect that the applicant was recommended for the time scale promotion to the rank of Col (TS), the MS Branch in terms of the AO 9/2005 vide 03 Selection Boards of different compositions held in June 2013, December 2014 and June 2015 opined that the applicant was not recommended to be empanelled for promotion to the substantive rank of Col (TS) on disciplinary grounds of 02 severe reprimands and 01 reprimand for unofficer like behavior.

47. It is essential to observe that the promotion of the applicant to the rank of Lt Col on 16.12.2004 was a time based promotion and without involvement of any selection process and it was only for the promotion from the rank of Lt. Col to Col and upwards that the Selection Boards have been constituted both for the substantive rank of Col as well as for the substantive rank of Col (TS).

48. The observations of the Hon'ble Supreme Court in ***Union of India vs Rajendra Singh Kadyan*** (2000) 6 SCC 698 vide para 11 thereof read to the effect:

“11. The hierarchy in the Army and the method of selection and promotion to various posts starting from the post of Lieutenant and going up to the post of the Chief of the Army Staff will clearly indicate that the posts of Lieutenant, Captain and Major are automatic promotion posts on passing the promotion examination irrespective of inter se merit, whereas the posts from Major to Lt. Colonel, Lt. Colonel to Colonel, Colonel to Brigadier, Brigadier to Major General and Major General to Lt. General are all selection posts filled up by promotion on the basis of relative merit assessed by the designated Selection Boards.”

49. Vide the verdict dated 03.07.2018 in ***Union of India vs Col Ran Singh Dudee***(Supra), the Honble Supreme Court has observed to the effect:

“Since the aforesaid decision in Rajendra Singh Kadyan case, there has been an amendment and as the situation presently stands, all promotions up to the rank of Lt. Colonel are time-bound promotions without involvement of any selection process and it is only for the promotion from the post of Lt. Colonel to Colonel and

upwards that Selection Boards are constituted.”

50. Taking into account the factum that the applicant has not alleged any mala fides on the selection process, and has not attributed any/motive or malafide against any of the members of the Selection Board and there being no reason or occasion for this Tribunal to infer any such motive on the part of the members of the Selection Board, in terms of the observations of the Hon'ble Supreme Court in **Surinder Shukla vs UOI** (2008) 2 SCC 649, which read to the effect:

“11. Considering the comparative batch merit, if the Selection Board did not recommend the name of the appellant for promotion to the rank of Colonel which appears to have been approved by the Chief of Army Staff, it is not for the court exercising power of judicial review to enter into the merit of the decision. The Selection Board was constituted by senior officers presided over by an officer of the rank of Lt. General. It has been contended before us that the Selection Board was not even aware of the identity of the candidates considered by them because only in the member data sheet all the information of the candidates required to be considered by the Selection Board are stated, but the identity of the officers is not disclosed. The appellant moreover

did not allege any mala fide against the members of the Selection Board.”,-

there does not appear to be any infirmity in the impugned order no. 37852/Col(TS)/187/MS-8A/ 356/SC /2017-D(MS)dated 21.03.2018 rejecting the statutory complaint dated 08.07.2017 of the applicant against his non-empanelment for promotion to the rank of Col (TS) by the Selection Boards in June 2013 and even thereafter.

51. Likewise there is no infirmity in the non-empanelment of the applicant for the promotion to the rank of Col TS by the Selection Boards in Dec 2014 and Jun 2015 for the 03 offences for which the applicant was punished, i.e

- **the severe reprimand on 21.03.1992 for having failed without sufficient cause to appear at 0600hrs at the Officers Institute Ground College of Military Engineering, Pune on 24.01.1992 at the place appointed for the battle physical efficiency test when his service being at the time of committing the offence of 03 years 07 months**

- and the applicant having been found guilty of the offence under Article 39(d) of the Army Act, 1950;
- and then for absenting himself without leave at filed from the unit (77 Road construction Company) from 29.09.1997 to 01.10.1997 and having thus been awarded a severe reprimand on 03.03.1998 with the service of the applicant at the time of committing of the offence being 09 years 03 months with the conviction of the applicant under Section 39(a) of the Army Act 1950,
 - coupled with the conviction of the applicant who was awarded reprimand on 13.10.2004 under Section 63 of the Army Act, 1950 when the applicant between 01.06.2002 and 06.12.2002 at field being Second in Command of 657 Engineer Bridge Unit did not report the improprieties of use of Govt Transport equipment and unit resources for personal gain by IC-31416Y Lt Col Deo Karan Singh Khichar, Commanding Officer of

the said unit and had improperly omitted to report the same to the superior authority immediately on acquiring such knowledge with the service of the applicant at the time of the committing of the offence being 14 years.

52. Section 39 of the Army Act, 1950 and Section 63 of the Army Act 1950 provide as under:-

“39. Absence without leave. Any person subject to this Act who commits any of the following offences, that is to say,-
(a) absents himself without leave; or
(b) without sufficient cause overstays leave granted to him; or
(c) being on leave of absence and having received information from proper authority that any corps, or portion of a corps, or any department, to which he belongs, has been ordered on active service, fails, without sufficient cause, to rejoin without delay; or
(d) without sufficient cause fails to appear at the time fixed at the parade or place appointed for exercise or duty; or
(e) when on parade, or on the line of march, without sufficient cause or without leave from his superior officer, quits the parade or line of march; or
(f) when in camp or garrison or elsewhere, is found beyond any limits fixed, or in any place prohibited, by any general, local or other order, without a pass or written leave from his superior officer; or
(g) without leave from his superior officer or without due cause, absents himself from any school when duly ordered to attend there; shall, on conviction by court-martial, be

liable to suffer imprisonment for a term which may extend to three years or such less punishment as is in this Act mentioned.

63. Violation of good order and discipline. Any person subject to this Act who is guilty of any act or omission which, though not specified in this Act, is prejudicial to good order and military discipline shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.”

53. Apparently thus the offences that the applicant has committed having been considered by the 03 Selection Boards of different compositions in June 2013, December, 2014 and June 2015 which have to be considered to have been held in terms of the AO 11/2009/PS as an amendment to AO 9/2005, cannot be held to have been wrongly considered and thus the said offences for which the applicant had already been punished cannot be held to be wiped out by the subsequent time scale promotion to the rank of Lt Col on 16.12.2004, in view of the factum that as per the letter no. 18(1)/2004-D (GS-1) dated 21.12.2004 vide para 2 thereof it had been provided to be effect:-

“2. Substantive Promotion, To reduce the age profile and supersession levels in the Army as also to improve vertical mobility, promotion to the substantive ranks of officers will be made on completion of reckonable commissioned service as indicated below:-

<u>Rank</u>	<u>Reckonable Commissioned Service</u>
(a) Lieutenant	On Commissioning
(b) Captain	2 Years
(c) Major	6 years
(d) Lieutenant Colonel	13 years
(e) Colonel(Time Scale)	26 years

and vide para 4 of the said letter it has been provided categorically to the effect:-

“No further consideration for promotion to the rank of Lieutenant Colonel (Selection) shall be made after 16 Dec 2004.”,

with it having thus been stipulated that there was no further consideration for promotion to the rank of Lt Col (Selection) to be made after 16.12.2004 and thus making the promotion of the applicant on 16.12.2004 a wholly time bound promotion that took place to the rank of Lt. Col(Selection)as has also been so observed by the Honble Supreme Court in **Union of India vs Rajendra Singh Kadiyan** (supra).

CONCLUSION

54. In view of the above analysis, the OA 1117/2018 is dismissed, as being devoid of merit. All pending applications, if any, are accordingly disposed of.

Pronounced in the open Court on the 11 day of
December, 2025.

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

AP/TS/