

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

O.A. No. 1146 of 2021

In the matter of :

CMDE Vinay Kalia

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Shri Ankur Chhibber, Advocate

For Respondents : Gp Capt Karan Singh Bhati, Sr. CGSC
with Shri Yogeshwar Krishna, Advocate

CORAM :

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

ORDER

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

- (a) *Call for the records of the case based on which the Respondents most arbitrarily passed the impugned orders dated 14.08.2020 and 22.02.2021 rejecting the ROGs initiated by the Applicant dated 23.03.2020 and 21.11.2020 respectively and thereafter quash the same;*
- (b) *Direct the Respondents to convene a Special Board in terms of Para 9 of Navy Order (Special) 01/2012 in respect. of Executive Officers of SLY 2010A Batch for PBIA of 2019 enunciated vide order dated 04.10.2018 following the ratio of 50% laid down in NO (Special)*

and thereafter consider the Applicant for promotion to the rank of Rear Admiral with ante dated seniority of PB1A of 2019 in accordance with Navy Order (Special) 01/2012 as amended vide IHQ/ MoD (Navy) letter RS/3508/05/OA&R/15 dated 13.06.2017;

(c) Pass any other order/orders as deemed appropriate by this Hon'ble Tribunal in the facts and circumstances of the present case.

2. The facts of the present case, in brief, are that the applicant was commissioned on 01.01.1989 in the Indian Navy. Subsequently, after having completed his S. Lt Technical Courses he joined the Submarine Arm in July 1991, thereafter, in June, 1994, he was nominated for Navigation and Direction specialization course after which the applicant served as Navigation Officer of two submarines. The applicant excelled in the 58th Staff Course (2002-03) at DSSC Nilgiris and won the prestigious 'Thimayya Medal' for being the most spirited student officer among the 65 in Naval Wing. On completion of the abovementioned Course, the applicant was appointed to the Directorate of Naval Operations at IHQ/MoD (N), and the applicant was promoted to the select rank of Commander in the year 2003. Thereafter, the applicant has mentioned about his excellent and meritorious career profile giving details of various postings at a higher level and his performances and

achievements and also efforts and honest and dedicated services rendered by him for which he also got promotion and earned awards and recognition till Jan 2018.

3. According to the applicant, in January, 2018 to September, 2019, the applicant was appointed as Commodore Commanding Submarines (West) and CO Vajrabahu wherein he had many achievements to his credit.

4. According to the applicant, he was considered for promotion to the rank of Rear Admiral (X/GS) by PB1A of 2019; however, despite being a suitable candidate, he was not selected for promotion by the Board as promulgated vide 466 IG of 21.11.2019. Aggrieved by this, the applicant preferred his ROG dated 22.03.2020 to Respondent No. 1. The ROG of the applicant was dismissed vide order dated 14.08.2020 passed by Respondent No. 4, treating same to be devoid of merit. Feeling aggrieved by the said order, the applicant again preferred second ROG dated 21.11.2020. Respondent No. 1, vide its order dated 22.02.2021 (impugned herein), rejected both the ROGs of the applicant dated

22.03.2020 and 21.11.2020. Aggrieved by the impugned order, the applicant has filed the present OA.

CONTENTIONS OF THE PARTIES

5. The learned counsel for the applicant submitted that the action of the respondents of rejecting both the ROGs of the applicant dated 23.03.2020 as well as 21.11.2020 seeking review of the results of PB1A of 2019 in accordance with Navy Order (Special) 01/2012 as amended vide IHQ/MoD (Navy) letter dated 13.06.2017 and thus, consider him for promotion to the rank of Rear Admiral with ante date seniority of PB1A of 2019 vide its impugned orders dated 14.08.2020 and 22.02.2021 respectively is wrongful and arbitrary in nature and thus, is contrary to the Fundamental Rights amenable to the applicant as enshrined in the Constitution of India. Learned counsel further submitted that the action of the respondents of rejecting the ROGs was bad in law as the same had been initiated on account of the fact that the non-selection of the applicant to the rank of Rear Admiral during the holding of Promotion Board (PB1A) of 2019 was not in line with the orders in vogue and which

required reconsideration, which has not been done by the respondents.

6. The learned counsel further submitted that the impugned orders have been passed by the respondents without due application of mind and in sheer absence of proper reason to it and passed in a very casual manner without even considering the grievances of the applicant. The learned counsel submitted that the career-profile of an individual is a fair indicator of his HR Managers assessment of his abilities, knowledge and aptitude and these also become tools for self-assessment by the officers; and the applicant, having completed four command tenures of front line surface and sub-surface units, diverse staff tenures in IHQ/MoD(Navy)including two as Principal Director, Naval Assistant to one FOC-in-C and two Chiefs of Naval Staff, completed all career courses with distinction including NDC overseas and a final challenging command tenure as COMCOS(W) and CO Vajrabahu, he was confident of making his mark, however, despite being suitable and promotion-worthy, he was not selected for promotion by the Board as promulgated vide 466 IG of 21.11.2019 which thus, merits

the interference of this Tribunal. It is further submitted that with regard to the selection procedure for promotion to Flag Ranks, Para 11 and 12 of the Navy Order (Special) 01/2012 postulates as mentioned below:

“11. Number of Vacancies. All substantive vacancies available during a period of one year following the Promotion Board will be taken into consideration for the purpose of promotion to the ranks of RAdm and VAdm.

- 1. Number of Officers to be Considered. Number of officers to be considered for promotion to the ranks of RAdm and VAdm will be decided by Chief of the Naval Staff based on seniority-wise distribution of officers and the number of vacancies available in the higher rank. All officers belonging to a particular batch/Select List Year (SLY) will be considered together for promotion irrespective of their date of confirmation in the present rank.”*

The learned counsel for the applicant submitted that the said Navy Order further held that if officers belonging to a Select List Year are further distributed into sub-groups A, B and so on, each such group of officers will be considered as a separate batch; that Respondent No.1, while amending/deleting the aforesaid Para Nos. 11 and 12 of Navy Order (Special) 01/2012 vide its letter dated 13.06.2017,

framed a selection procedure for promotion to flag ranks and directed as mentioned below:

"3. Existing Para 11 and Para 12 of NO (Spl) 01/2012 are deleted and replaced by the following: -

(a) Para 11. Number of Vacancies. All substantive vacancies available during a fixed period of one year, i.e. from September to August every year, will be taken into consideration for the purpose of promotion to the ranks of RAdm and VAdm.

NOTE: In case of administrative problems in cadre management, selection period may be varied with prior approval of MoD.

(b) Para 12. Number of Officers to be Considered (Zone of Promotion). Fresh look officers numbering twice the number of vacancies occurring will be considered for promotion. All the officers of a particular Select List Year(SLY)/batch will be considered together, even if their number is more than twice the number of vacancies and the SLY/batch will not be split. The next SLY/batch is to be included for consideration, if the number of officers in first SLY/batch are less than twice the number of vacancies in that promotion year and even in this case SLY/batch will not be split. All R-2 & R-1 cases will necessarily be considered for promotion along with fresh look cases irrespective of the number of vacancies.

NOTE 1 (Promotion to the rank of Rear Admiral by PB1A). If officers belonging to a Select List Year (SLY) are further distributed into sub-groups A,B & so on,

each sub-group of officers will be considered as separate batch."

7. The learned counsel further submitted that a comparison of the original and amended orders reveals that the language in the amended paragraphs of the Navy Order (Special) follows the same syntax to convey the same intent as it existed in the original order, hence, these are to be construed as orders and not a policy; the corollary is that these orders cannot be deviated arbitrarily unless they are revoked; no orders to revoke the amendment of 13th June 2017 had been issued by IHQ/ MoD(Navy) till Sep 2019, when PB1A of 2019 was conducted, and thus the amended orders were to be considered in force until then. Because going by the orders in vogue, as against the existing vacancies, the respondents were required to have considered double the number of eligible officers so as to make it 50% chances for an eligible officer to make into the bracket and thus, get promoted to the rank of Rear Admiral and no further batch was required to be considered by the respondents; and that it was only in an eventuality wherein the appropriate number of officers were not available to make it 50%, that another batch of the officers may be considered

for promotion to the rank of Rear Admiral; however; contrary to the provisions mentioned in the abovementioned Navy Order (Special) 01/2012 as well as its amendment issued vide letter dated 13.06.2017, as against the existing six (6) vacancies, the respondents most illegally, arbitrarily and in an irrational manner not only considered both the fresh look officers of 2010A batch already comprising of a total of 16 eligible officers but also went on to consider the fresh look officers of 2010B batch as well which comprised of a total of 12 officers and, going by the calculation and keeping the laid down orders in view, as against the total of six (6) existing vacancies, the respondents considered 28 officers due to which the 50% chances of an officers aspiring to get promoted to the rank of Rear Admiral went down in an unjust manner.

8. The learned counsel for the applicant gave details of the list of Fresh Look Officers of 2010B batch, in a tabulated form, wrongly considered by the respondents for promotion

to Rear Admiral (X/GS) by PB1A of 2019 and are as mentioned below:

<u>Ser</u>	<u>Rank & Name</u>	<u>Personal Number</u>
1.	Cmde Jyotin Raina	03556F
2.	Cmde Venkat Raman Sai	03565A
3.	Cmde Atul Dewan	03537N
4.	Cmde Anand Yeshwant Sardesai	03558K
5.	Cmde Vivek Indudhar Hotti	03543A
6.	Cmde Vikram Menon	03550T
7.	Cmde Sivaram Ramakrishna Ayyar	03456B
8.	Cmde Somen Banerjee	03497Y
9.	Cmde Madan Mohan Singh Shergill	03567F
10.	Cmde Sushil Das	03536K
11.	Cmde Rajeev Singh Beniwal	03531Z
12.	Cmde Shobhit Srivastava	03561T

9. It was contended by the learned counsel of the applicant that non-selection of the applicant for the rank of Rear Admiral is erroneous in view of the fact that the Respondent No. 1 vide its order dated **04.10.2018** had already fixed the seniority of the officers being considered for Selection Board; vide that order, it was held that the PB1A Selection Board in respect of the Executive Officers of SLY 2010A batch only shall be held in the year 2019 and that the officers of SLY 2010B shall be held in the year 2020 along with the officers of SLY 2011A and that the said order had been passed based on the authority of MoD policy dated 13.06.2017; that the decision to consider 2010B batch for consideration by PB1A of 2019, was taken in **Aug 2018**, well

before issue of the order dated 04.10.2018, which was done while considering a panel for selection of CO of INS 'Vikramaditya', the only ship available for second sea command for Captain rank Executive Batch officers; the ship was at that time commanded by an officer of 2010A batch, and, therefore, it should have been logical for 2010B batch officers to be empanelled for selection, however, 2010B was overlooked deliberately on the premise of their impending consideration for promotion to RAdm rank in 2019 by PBIA, which is evident by the footnote placed in the order dated 04.10.2018, which stated that 'a case for review of the zone of consideration/SLYs is being progressed separately.'

10. The learned counsel further stated that the assessments of the superiors of the applicant, specifically his IO's and few RO's under whom the applicant served, who very fairly indicated that the applicant performed his duties extraordinarily well displaying utmost selflessness in his conduct and keeping the interest of the service and the Organisation above everything else, non-selection of the applicant was not proper; the Unit Citations received by two afloat units, one where the Applicant was the Executive

Officer (INS Shalki) and one in Command (INS Trikand), bear testimony to this fact and amply demonstrate his devotion to the service and Organisation; even in his last tenure as COMCOS (W), one frontline unit (INS Sindhuvijay) has been given the Unit Citation and her CO decorated with a gallantry award; the applicant had been given various important appointments, his performance has never been adversely reported or commented upon or communicated to him during all appraisals by his reporting officers; and because of his career profile so far and the performance feedback of his superiors, the applicant was confident that he merits his selection for promotion to the rank of Rear Admiral by PB1A of 2019, however, as he was not selected for promotion by the Board as promulgated vide 466 IG of 21.11.2019, he preferred his ROG dated 23.03.2020 addressed to the Respondent No. 1.

11. The learned counsel further submitted that instead of placing the said ROG before the Respondent No. 1 through proper channel, the same was placed before the Respondent No. 4 who was not empowered to deal with the issue; that Respondent No. 4 vide its order dated 14.08.2020 dismissed

the ROG of the applicant holding the same to be devoid of any merit and while rejecting the ROG, it was held that only CRs upto 28.02.2019 were considered for selection in respect of all the officers within the zone of consideration and that the delay that took place in conducting of the Promotion Board was due to administrative reasons; that as regards inclusion of SLY 2010B batch with SLY 2010A in PB1A/2019, the same was in accordance with policy mandated by IHQ MoD (Navy); it was further held by Respondent No. 4 that the applicant has missed selection for promotion purely on account of his low *inter-se* merit and limited number of seats. The learned counsel further submitted that being dissatisfied with the abovementioned order dated 14.08.2020, the applicant preferred his yet another ROG dated 21.11.2020 wherein he out-weighed the order dated 21.11.2019 passed by the respondents in not selecting him to the rank of Rear Admiral and instead opting officers from SLY 2010B batch which was contrary to the Navy Order /Regulation and policies in vogue, however, the Respondent No. 1 vide it's impugned order dated 22.02.2021 rejected both the ROGs of the applicant dated 23.03.2020 as well as 21.11.2020 without due application of mind and in

sheer absence of a reasoned speaking order. Because mere perusal of the impugned order dated 22.02.2021 reflects that the same has been passed in a very casual and formal manner without even considering the grievances of the applicant.

12. The learned counsel submitted that the orders regarding which batches are to be included for consideration by PBIA are enshrined in Navy Order (Special) 01/2012 Selection and Promotion to the Rank of Captain and Above. IHQ/MoD (Navy) have made no reference to this Navy Order (Special) in their response and the respondents have committed grave error in not complying with the Navy Order in true letter and spirit which was in force at that time; that promotion to Flag Ranks are governed by Navy Order (Special) 01/2012, which specifies the procedure, constitution and periodicity of the Promotion Boards. Till 2017, the decision on the number of officers to be considered for promotion to Vice Admiral and Rear Admiral ranks was to be decided by the CNS and based only on seniority-wise distribution of officers and number of vacancies available, thus, till 2017, the criteria for arriving at the number of

officers for consideration by the Promotion Board was variable each year and was subject to discretion. To illustrate, the batch-wise distribution of officers considered for promotion by PB1A from 2015-2019 is tabulated below:

Ser.	Year	Batch/Batches Considered
(a)	2015	SLY 2007A and 2007B
(b)	2016	SLY 2008A
(c)	2017	SLY 2008B and 2009A
(d)	2018	SLY 2009B
(e)	2019	SLY 2010A and 2010B

13. The learned counsel further submitted that the period for which vacancies were taken by the respondents was fixed as one year following the Promotion Board; the varying dates of conduct of the Promotion Board each year provided a room for discretion in choosing the batches considered for promotion; in addition to it, there was no clear distinction between 'Fresh Look' Officers and those officers who had been considered but not been selected for promotion by Promotion Boards in previous year(s); that the variation in batches considered for promotion resulted in varying ratio of numbers of officers considered for promotion vis-a-vis vacancies factored, eventually resulting in different probabilities of Promotion and moreover; the SLY batches have been arbitrarily split (considered for promotion in

different years) on certain occasions. For example, 2008A was considered in 2016 but 2008B batch was considered in 2017. Similarly, 2009A was considered in 2017, while 2009B was considered in 2018. The learned counsel stated that the amended orders dated 13.06.2017 passed by Respondent No. 1 brought in various changes in the selection process which the respondents ought to have considered, however; since the Respondents failed to abide by the orders stipulated in letter dated 13.06.2017 issued by them themselves, the impugned order passed by them is bad in law. The changes brought in by the respondents are as mentioned below:

- (a) The period for which vacancies were to be taken was fixed as one year from September to August every year.
- (b) The authority vested earlier with Chief of the Naval Staff to decide on the number of officers to be considered for promotion, was withdrawn. Instead, the amended orders fixed it to Fresh Look Officers equalling twice the number of vacancies available for the period September to August. Thus, irrespective of the number of Fresh Look Officers in a particular SLY/Batches, they will all be considered together and the SLY/ Batch will not be split. The whole of next (junior) SLY/ Batch will be taken into consideration, if the number of officers in the senior SLY/ Batch are less

than twice the number of vacancies in that promotion year.

(c) Particularly with respect to PBIA, the amended orders retained the existing order which dictates that each sub group (SLY A or B) is to be categorized as a separate Batch and it is to be considered separately.

14. The learned counsel submitted that there has been a gross deviation from an existing order which has adversely affected the applicant's selection for promotion to the rank of Rear Admiral by PBIA of 2019 which is incorrect, unjust and against the principles of natural justice.

15. *Per contra*, the learned counsel for the respondents submitted that the applicant was considered for promotion to the rank of Rear Admiral (X/GS) as a First Look case along with all eligible officers of SLY 2010A and 2010B by the Flag Board 1A(X/GS) on 25.09.2019; that the Board recommended 6 officers as 'Selected' and the applicant was not selected being lower in comparative merit. It is submitted by the learned counsel that the applicant's representation i.e. ROG dated 23.03.2020 was examined in detail and rejected by the Chief of Naval Staff (CNS) with recommendations of the Redressal of Complaint Advisory

Board (RACAB) and the said decision was communicated to the applicant vide letter dated RS/8618/ROG/OA&R/20 dated 4.08.2020; thereafter, the applicant preferred another ROG dated 21.11.2020, which was also examined in detail by the Ministry of Defence and the same was rejected vide MoD order No. RS/8618/ROG/OA&R/20 dated 22.02.2021. The learned counsel further submitted that the selection procedure for promotion to Flag ranks has been reviewed and the amended promotion procedure had been promulgated vide IHQ MoD (Navy) letter RS/3508/05/OA&R/15 dated 13.06.2017; that the promotion procedure was further amended vide letter No. RS/3508/05/OA&R/19 dated 21.08.2019. R-4 (letter dated 21 Aug 2019) clearly stipulates that *"for promotion to the rank of Rear Admiral, Fresh Look Officers of two consecutive batches (i.e. A&B or C&D) will be considered"*.

16. The learned counsel further submitted that the impugned Promotion Board i.e., PB1A (X/GS)/2019 was conducted on 25.09.2019 after the issuance of the aforesaid amended policy letter for promotion to the Flag rank and accordingly, the Promotion Board was conducted in

accordance with the amended policy and resultantly, Officers of both SLY 2010A & 2010B were considered for promotion and there has been no deviation from extant order/policy on the subject as alleged by the applicant. The learned counsel submits that there has not been any inconsistency in conduct of the promotion board and that the applicant was not selected solely due to his comparative lower Order of Merit (OOM) position *viz-a-viz* those officers who were selected by the Promotion Board.

17. It has been submitted by the learned counsel that letter No. NA/0247/8 dated 04.10.2018 is annexed as Annexure R-5, which clearly highlights that "The projected SLY's are in accordance with the revised MoD policy of 2017; that a case for review of the zone of consideration/SLYs is being progressed separately." Further Para 3 of the said letter also emphasizes that changes to the LY/SLY at Para 2 of letter *ibid*, if any, due to service exigencies would be disseminated on a case-to-case basis with approval of the Competent Authority; and that a conjoint reading of Para 2(t) and Para 3 of letter dated 04.10.2018 clearly highlights that a case for review of zone of consideration was being

progressed and changes, if any, would be disseminated on case-to-case basis. Accordingly, policy letter No. RS/3508/05/OA&R/19 dated 21.08.2019 which stipulates amending the zone of consideration was promulgated and the same was disseminated to all concerned.

18. The learned counsel further submitted that the Promotion Board 1A (X/GS)/2017 & 2018 were conducted as per extant policy, i.e., letter No. RS/3508/05/OA&R/15 dated 13.06.2017, which policy letter was based on the rationale of having a fixed period for calculation of vacancies and fixed number of officers to be considered for promotion. Earlier, CNS had the discretion to decide on the same and while conducting these two Promotion Boards based on provisions of letter dated 13.06.2017, it was found that application of the revised provision would have adverse impact on future cadre management. Hence, the process of further amendment was initiated during 2018; Govt. approval was accorded in 2019 and policy letter dated 21.08.2019 was issued which stipulates that both the batches A&B or C&D are to be considered together for promotion.

19. The learned counsel for the respondents submitted that prior to issue of the amendment letter No.RS/3508/05/OA&R/15 dated 13.06.2017, CNS had the discretion to decide on the number of officers to be considered for promotion, however, post-issue of the ibid letter, the number of officers to be considered has been fixed and it stipulates that Fresh Look officers numbering twice the number of vacancies will be considered and all the officers of a particular batch will be considered together even if their number is more than twice the number of vacancies; that the next batch is to be included if the number of officers in the fresh batch is less than twice the number of vacancies; and that in the 2017 board, 2009A batch was accordingly included since 2008B batch had less number of officers than twice the number of vacancies occurring in that vacancy year. It has been further submitted that post issue of the policy letter dated 21.08.2019, two batches are always considered together for promotion to flag rank for Commodore to Rear Admiral.

20. The learned counsel further contended that there was no requirement to revoke the entire order of 13.06.2017

as the letter dated 21.08.2019 is only a partial amendment and certain other provisions contained in that letter remained unaltered. He further submitted that the promotion board PB1A (X/GS)/2019 was conducted on 25.09.2019 i.e. after issue of policy letter dated 21.08.2019 and thus was held in accordance with NO (Spl) 01/2012 as amended vide policy letter dated 13.06.2017 and 21.08.2019, which mandated to include both batches A&B or C&D. In view of the above, the learned counsel submits that the applicant is not entitled to any relief and thus prayed for dismissal of the OA.

21. On behalf of the applicant, a rejoinder has also been filed. The learned counsel for the applicant contended that the entire response of the respondents is full of repeated incorrect statements and is premised on an order which is claimed to have been issued in August, 2019 amending the earlier order of June, 2017. This letter has neither been promulgated nor disseminated to any lower formation; that the letter of Aug 2019, referred to by the respondents has been produced as evidence of 'due process' for the first time since March 2020 when the applicant submitted his first

ROG and it was not referred to in their replies to the first ROG in August, 2020 as well to the second ROG in February, 2021. The learned counsel further added that the letter has not been promulgated and disseminated to any Command HQ or any other lower formation of the Navy, therefore, it would be fair to infer that during the conduct of PB 1A/2019 on 25.09.2019, this letter did not exist. The learned counsel prayed for a direction to be issued to the respondents i.e. MoD and NHQ to place on record the Approach Paper prepared by NHQ for consideration by the members of PB1A of 2019; the main File on which this letter was brought to MoD for approval, may also be requisitioned with the original IN/OUT movement record in relevant secretariats of MoD and NHQ.

22. The learned counsel further submitted that the respondents should explain as what made them alter the conditions of service relating to promotion rules for Cmde to RAdm within a period of one year; that the amendment to the NO (Spl) 1/2012, which was issued in June, 2017, was itself done under MoD directives and that the respondents are wrong to say that the averments mentioned by the applicant

in his OA are misconceived in nature; and infact, this mandate did not exist as on 25.09..2019 when PB1/2019 was conducted since it has neither been promulgated nor distributed within the Navy; that it was also not referred to in the replies to the two ROGs which were submitted in August, 2020 and February, 2021 respectively; and when the instant OA was admitted in the Tribunal on 09 Jul 2021, the respondents were given 6 weeks to respond. However; they took more than six months to produce the letter of August, 2019, which, in an *ex post facto* manner and attempts to amend, in hindsight, the promotion rules promulgated by NHQ in June, 2017 under MoD directives. The learned counsel further added that even if it is assumed that the purported letter of August, 2019 did exist on 25 Sep 2019, it is considered as deliberate attempt to deny chance of promotion to some officers of 2010A batch, while unduly giving the opportunity to others of 2010B to be promoted one year early; that by including 2010B batch, the probability of promotion was unjustly reduced from 37.5% (6 out of 16) to 21.4% (6 out of 28), which translates to a reduction of almost 50% in probability of promotion. On the contrary, if cadre management problems did exist, NHQ should have made all

efforts to increase the selection period to retain similar probability of promotion instead of wrongly expanding the zone of promotion and the same is grossly against the principle of natural justice.

ANALYSIS

23. We have heard the submissions made by the learned counsel for the parties and have also perused the record produced before us in support of both the parties.

24. The applicant was considered for promotion from Commodore to Rear Admiral by PB 1A (X/GS) 2019 held on 25.09.2019 as Fresh look and was not empanelled by the Selection Board. The officer had therefore, submitted a Redressal of Grievance (RoG) application dated 23.03.2020. The said RoG was examined by RACAB and the RoG was dismissed by the competent authority (CNS) on 07th August, 2020. The officer was informed of the dismissal of his RoG by IHQ MoD(N) vide its letter No.RS/8618/RoG/OADR/20 dated 14th August, 2020. The applicant, thereafter, again raised a statutory petition bearing No.242/VK/P&C dated 21st November, 2020 regarding his non selection to the Flag rank by the promotion board seeking *de novo* examination of

his requests by MoD in terms of Regulations 275-239 of Regulations for the Navy Part II (Statutory). The said statutory RoG was rejected by the MoD vide its letter dated 22nd February, 2021 and the same was communicated to the applicant vide IHQ MoD (W) letter RS/8618/RoG/OA&R/20 dated 02nd March, 2021.

25. The applicant thereafter has filed the instant OA. The main issues raised by the applicant in the OA are as follows:-

(a) The inclusion of SLY 2010 A&B batches (both batches) for consideration for promotion thereby violating the provisions of N.O.(spl.) 01/2012 and the IHQ MoD(N) Policy letter No.RS/3508/05/OA&R/15 dated 13th June, 2017.

(b) Non empanelment of the applicant to the rank of RAdm. despite outstanding performance.

26. The Selection Board proceedings of PBIA (X/GS) for the year 2019 and 2020 were perused by us. For the year 2019 the applicant was seventh(7th) in the overall order of merit (OOM) out of 58 officers who were considered for the empanelment. There were six vacancies for promotion and the officer very marginally missed his selection being seventh in the OOM. For the year 2020, the applicant was placed at

13th position in the OOM out of 62 officers who were considered in the selection board. There were 9 vacancies in the said year (2020) and the officer was not empanelled by the selection board. There is, therefore, no merit in the contention of the applicant that despite being a high achiever throughout his career, he was not empanelled for the Flag Rank. The applicant was low in the *inter se* merit in both the selection boards as compared to the officers who were empanelled for the board. The Value Judgment Marks(VJM) awarded to the officers who were considered by both the boards also did not alter the OOM of any officer in both the selection boards.

27. The other main issue raised by the applicant has been consideration of two batches of officers (SL 2010A and 2010B) thereby violating provisions of Navy Order and the policy letters in vogue. Towards this it is important to peruse the concerned Navy Order viz Navy Order(Spl) 01/2012 and the relevant para dealing with the issue reads as under:-

“12. Number of officers to be considered. Number of officers to be considered for promotion to the ranks of Radm and Vadm will be decided by Chief of the Naval Staff based on seniority-wise distribution of officers and the number of vacancies available in the higher rank. All

officers belonging to a particular batch Select List Year (SLY) will be considered together for promotion irrespective of their date of confirmation in the present rank.

NOTE: If officers belonging to a Select List Year are further distributed into sub-groups A, B and so on, each such group of officers will be considered as a separate batch.”(Emphasis supplied)

The said Navy Order was amended vide IHQ, MoD(N) letter No.RS/3508/05/OA&R/15 on 13th June 2017 and para 12 of ibid Navy order was replaced by the following amendment:-

“Para 12: Number of Officers to be considered (Zone of Promotion). Fresh look officers numbering twice the number of vacancies occurring will be considered for promotion. All the officers of a particular Select List year (SLY)/batch will be considered together, even if their number is more than twice the number of vacancies and the SLY/batch will not be split. The next SLY/batch is to be included for consideration, if the number of officers in first SLY/batch is to be included for consideration, if the number of officers in first SLY/batch are less than twice the number of vacancies in that promotion year and even in this case SLY/batch will not be split. All R-2 & R-1 cases will necessarily be considered for promotion along with fresh look cases irrespective of the number of vacancies.”(Emphasis supplied)

The said Navy Order was further amended by the IHQ MoD(Navy) letter No.RS/3508/05/QA&R/19 dated 21.08.2019, wherein in para 3 and 4 the following has been mentioned:-

“3. Existing Para 12 of NO (Spl) 01/2012 amended vide IHQ MoD (Navy) letter RS/3508/05/OA&R/15 dated 13 Jun 17 is further amended and may be read as under:-

Para 12. Number of officers to be Considered (Zone of Promotion). For promotion to the rank of Vice Admiral, Fresh Look officers numbering twice the number of vacancies occurring will be considered for promotion. For promotion to the rank of Rear Admiral, Fresh Look officers of two consecutive batches (i.e. A&B or C&D) will be considered. If the number of the officers in the first two batches to be so considered is less than twice the number of vacancies in that promotion year, the next two batches, considered by the same PB-2, are to be included for consideration. All R-2 & R-1 cases will necessarily be considered for promotion along with Fresh Look cases.”

Note 1: (Promotion to the rank of Vice Admiral by PB1). The concept of SLY will be followed and SLY will not be split.

Note 1: In case of administrative problems in cadre management, number of officers to be considered for promotion may be varied with prior approval of MoD.

Restricted

4. The amendment will be effective for Executive Branch from PB-2019 and for Technical Branch from PB-2020 onwards.”(Emphasis supplied)

28. From the above, it is clear that the policy letter dated 21.08.2019 was in force for the applicant's batch as the said policy vide its para 4 explicitly stated that it will be applicable for the Executive Branch from PB-2019. It also explicitly states that the Fresh Look officers of two

consecutive batches (A&B or C&D) will be considered together. It is, therefore, concluded that IHQ MoD(N) did not violate any provision of N.O.(Spl.) 1/2012 as the said Navy Order has been amended by IHQ MoD(N) vide its policy letter dated 21st August, 2019.

29. The applicant in his rejoinder to the counter affidavit has also alleged that the policy letter dated 21st August, 2019 may not have been in existence at the time of the conduct of the first selection board of the applicant held on 25.09.2019 as the respondents have not mentioned that the said policy letter whilst disposing off his 1st and 2nd ROGs. The file on which the said policy was processed with the MoD has been perused by us and it is clear that the policy dated 21st August, 2019 was processed with the MoD for approval much before the conduct of the first selection board and was approved by the MoD before the conduct of the first selection board of the applicant held on 25.09.2019. The assumption of the applicant that the said policy dated 21st August, 2019 was not in existence at the time of the conduct of the first selection board is, therefore, not correct.

30. The 'Approach Paper' for the selection board to be held on 25th September, 2019 was also perused by us. The first para of the Approach Paper reads as under:-

"1. This Promotion Board has been convened on the direction of the Chief of the Naval Staff, as per NO(S) 01/2012 amended vide IHQ MoD(N) letter No.RS/3508/05/OA&R/15 dated 13 Jun 17 and letter No. RS/3508/05/OA&R/19 dated 21 Aug 19 for placing Capts/Cmdes (X/GS) on the select list for promotion to the rank of RAdm (X/GS)." (Emphasis supplied)

It is also very clear from the above that the Policy letter dated 21 August, 2019 was taken into account for the conduct of the said selection board.

31. There is, therefore, no merit in the contention of the applicant with respect to the violation of the said Navy Order and any policy governing the selection board.

32. Keeping in view the above, there is no merit in the contentions of the applicant and the case is thus dismissed.

33. There shall be no order as to costs.

Pronounced in open Court on this 7 day of March, 2025.

**[JUSTICE RAJENDRA MENON]
CHAIRPERSON**

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

/vb/ng/