

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

OA 1504/2023

Lt Col Nagendra Kumar	.....	Applicant
Versus		
Union of India and Ors.	.....	Respondents

For Applicant	:	Mr. Indra Sen Singh, 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

The applicant, vide this Original Application filed under Section 14 of the Armed Forces Tribunal Act 2007, seeks the following reliefs:

- a. *Call for the entire record of No.3 Selection Board Proceedings held in Oct 2022 leading to the Applicant's non-empanelment for promotion to the rank of Colonel and, after perusal thereof, set-aside said selection board proceedings and the result thereof as communicated vide Army HQ letter dated 31.10.2022 (Annexure A-1, Pg 41) so far as the same relates only to the Applicant;*
- b. *Call for the entire record of No.3 Selection Board Proceedings held in Mar 2022 leading to the Applicant's non-empanelment for promotion to the rank of Colonel and, after perusal thereof, set-aside said selection board proceedings and the result thereof as communicated vide Army HQ letter dated 20.03.2022 (Annexure A-11, Pg 68) so far as the same relates only to the Applicant;*
- c. *Call for the entire service record/ dossier of the Applicant and, after perusal thereof, set-aside the assessments of IO given in hidden/unshown portion and complete assessment of RO & SRO including the 'Adverse Remarks' (if any) in the following Confidential Reports (CRs) of the Applicant:-*
  - i. *CR for the period Oct 2019 to May 2019*
  - ii. *CR for the period Jun 2020 to May 2021*
- d. *To direct the respondents to reconsider the case of the Applicant for promotion to the rank of Colonel by No.3 SB as a fresh case on the basis of the Applicant's modified/updated record of service after setting-aside Applicant's impugned CRs as prayed for above; and*

*c. Issue any other order(s) and direction(s) as deemed appropriate by this Hon'ble Tribunal under the facts and circumstances of this case.*

### **Brief Facts of the Case**

2. The applicant was commissioned into the Corps of Engineers in the Indian Army in December 2004 as part of the 2004 batch. He was considered for promotion to the rank of Colonel by the No. 3 Selection Board on three occasions: as a Fresh Case in February 2021, in a Special Review (Fresh) in March 2022, and in the First Review in October 2022. However, he was not empanelled for promotion on any of these chances.

3. The primary grievance of the applicant centers around the retrospective application of the Quantified System of Selection Policy (QSS-2017), which reduced the weightage assigned to the Technical Staff Officers Course (TSOC) completed by the Applicant, placing him at a disadvantage compared to peers with Defence Services Staff College (DSSC) qualifications. Further, the Applicant challenges the downgraded value judgement marks which he believes has been attributed to him due to his low medical category status derived from a service-attributable injury.

4. In addition, the Applicant contests the alleged adverse remarks in parts of two Annual Confidential Reports (ACRs) 08/19 – 05/20 and 06/20-05/21, though earlier he has sought redress through non-statutory complaint dated 25.05.2021, wherein the assessment of IO and FTO in

CR 01/11-12/11 was set aside on technical grounds, unsatisfied by which, applicant has filed the present OA.

**Submissions on behalf of the Applicant**

5. It is the case of the applicant that his non-empanelment for promotion to Colonel by No.3 Selection Board in three consecutive assessments (March 2021, March 2022 Special Review (Fresh), and October 2022 First Review) stands in stark contrast to his unblemished, outstanding service record spanning over 18 years, which includes his exemplary service incorporating high grades in all military courses, commendations from senior officers, diverse and critical appointments, and contributions to significant infrastructure and operational developments. The Applicant's service profile, course grades, professional achievements, and multiple commendations clearly establish his eligibility and suitability for promotion, which heightens the arbitrariness of non-empanelment.

6. The primary ground of the Applicant's grievance is the retrospective application of the Quantified System of Selection Policy (QSS-2017) dated 23.12.2017. This policy reduced the weightage assigned to the Technical Staff Officers Course (TSOC) completed by the Applicant from 1.50 to 1.20, while the Defence Services Staff College (DSSC) course weightage remained unchanged at 1.50.

7. As per applicant, the retrospective effect of this policy to downgrade Applicant's merit score vis-à-vis officers who underwent DSSC is contrary

to settled principles of service law and the retrospective alteration of selection criteria to the disadvantage of a serving officer violates the principle of legitimate expectation and the law of estoppel, and accordingly, the retrospective effect of QSS-2017 Policy applied in all three Selection Boards has unjustly penalized the Applicant and rendered his non-empanelment legally unsustainable.

8. It is submitted by the applicant that he was assigned a Low Medical Category (SIH1A2PIEI with COPE Coding C-2x) due to a service-attributable injury. It is submitted that medical status is expressly not to be considered in awarding value judgement marks as per the QSS-2017 Policy (Paras 12 & 13), but the failure of the Selection Board to comply with this principle by awarding the Applicant a depleted value judgement mark on account of his LMC status is contrary to extant Army HQ MS Branch policies dated 14.12.2012 and 31.03.2015 which provide for Special Review Medical Boards for officers duly empanelled.

9. It is contended by the applicant that this practice effectively denies LMC officers a fair chance at promotion, and represents a circumvention of governing service rules and such arbitrary disparagement of an officer's merit on medical grounds is not permissible under the service law and equitably untenable.

10. With respect to the impugned CRs, it is submitted by the applicant that his' assessments in two confidential reports for October 2019 to May 2020 and June 2020 to May 2021 suffer from subjective, non-

objective downgrades by Reporting Officers (RO) and Senior Reporting Officers (SRO) without any communicated adverse remarks or prior counseling as mandated by service jurisprudence enshrined in Para 137 of Army Order AO 02/2016.

11. Drawing our attention to legal inconsistencies, it is submitted by the applicant that the assessments downgraded is inconsistent with the Applicant's overall service record and other segments of the CRs, which have been outstanding to nearly outstanding, confirmed by letters of appreciation and commendations from senior officers, including a DO letter dated 19.05.2020 by RO AVM K Anatharaman, wherein the lack of justification for these downgraded assessments violates the Applicant's right to fair consideration and is in breach of Para 129 of Army Order AO 02/2016/MS, which obliges RO/SRO to provide reasons for alterations in assessment.

12. It is contended by the applicant that he is entitled to expunction of the impugned CRs' downgraded portions and adverse remarks (if any), as uncommunicated adverse remarks cannot be taken cognizance of in promotion considerations under settled service law principles, and that the cumulative effect of retrospective policy application, LMC-based value judgement deprivation, and arbitrary degradation of CR assessments collectively vitiate the Applicant's chance for promotion, violating his fundamental right to fair consideration enshrined in Article 16 of the Constitution of India.

### Submissions on behalf of Respondents

13. Per contra, it is submitted by the Respondents that the Applicant was considered in the Fresh Case in February 2021, Special Review in March 2022, and First Review in October 2022, yet was not empanelled, whereas the assessments in Annual Confidential Reports (ACRs) are governed by Army orders including AO 02/2016/MS, and involve evaluations by Initiating Officer (IO), Reviewing Officer (RO), and Senior Reviewing Officer (SRO), all providing independent assessments measured on a 1 to 9 numerical scale, where 8 and 9 denote Outstanding.

14. It is submitted by the respondents that the courts have consistently held that "Outstanding" grading is reserved for exceptional achievements beyond "Above Average" and is at the discretion of reporting officers based on observed performance during the reporting period. Such assessments fall outside the scope of judicial interference unless procedural irregularities or malafide bias is demonstrated and the Applicant has failed to establish such bias or procedural impropriety.

15. Elaborating further, it is submitted by the Respondents that the promotion to selection grade ranks such as Colonel depends not solely on ACRs but also on overall service record, war/operational reports, command and staff appointments, honours, and disciplinary background. The Selection Board enjoys discretion in making merit-based recommendations which are not binding on courts.

16. Regarding the QSS-2017 policy, it is submitted by the respondents that the study group recommended revisions after extensive deliberations since 2014, culminating in promulgation in December 2017 and implementation effective January 2018. The Application of the revised QSS policy is prospective and uniform for all Boards held since that date, including the Applicant's consideration in 2021, 2022, and 2022-2023. T

17. With respect to the medical category of the applicant, and communication of adverse remarks, it is submitted by the respondents that the Applicant's medical category as per latest review is SIH1A2P1E1, and further, contrary to Applicant's claims, the adverse remarks in one of the impugned CRs were communicated by letter dated 7 March 2022 through official dispatch channels, as per procedure, and, further, the Applicant's allegations of uncommunicated adverse remarks and subjective downgrades lack substantiation and thus, the Original Application lacks merit and substance, since the impugned Selection Board proceedings were conducted strictly in accordance with applicable rules and policies based on fair and comparative merit assessments.

### Consideration

18. We have heard the learned counsel for both parties and carefully perused the records. At the outset, we note that the applicant has challenged his non-empanelment for promotion to the rank of Colonel by No. 3 Selection Board (SB) on multiple grounds. Firstly, he attributes his

non-empanelment to allegedly low assessments in the Confidential Reports (CRs) for the periods **10/2019–05/2020** and **06/2020–05/2021**, both earned during his tenure as GE, Air Force Station Subroto Park, New Delhi. Secondly, the applicant contends that improper and depleted value judgment marks were awarded by the Members of No. 3 SB in **February 2021** (Fresh Case) and **March 2022** (Special Review Fresh Case) and thirdly, he asserts that he was unfairly granted lower numerical weightage for the TSOC Course (qualified in 2015), due to changes of weightage introduced by the latest QSS-2017 policy which he submits has been applied retrospectively when he was considered by No 3 SB.

19. With regard to the impugned CRs, we observe that the CR for the period **10/2019–05/2020** is an “Outstanding” report, containing no aberrations whatsoever. The applicant was assessed by nine reporting officers and awarded ‘9’ and ‘8’ across all attributes. Therefore, the said CR does not warrant any interference. We further note that the applicant had earlier filed a non-statutory complaint on 25.05.2021 challenging his non-empanelment by the No. 3 SB (February 2021), wherein he impugned two older CRs (01/2012–11/2012 and 07/2012–12/2012), and redress was granted vide order dated 21.12.2021. However, the CRs presently challenged through this OA were never subjected to statutory or non-statutory complaint and therefore were not adjudicated earlier.

20. Upon examination of the CR for **06/2020–05/2021**, we find that although it was written in the same professional environment as the



previous CR, the Reporting Officer (RO) recorded certain weak observations in the pen picture. These remarks were duly communicated to the applicant in accordance with the policy vide MS Branch letter No. A/18056/Engrs/64678/3SB/MS-4D1 dated 07.03.2022, placed on record as Annexure R-1. The relevant remarks of the RO read as follows:

*"Many times he claimed more than he actually delivered on ground. He also needs to be tactful when dealing with senior officers."*

21. Though the applicant initially denied receipt of the communication, pursuant to our direction dated 10.12.2024, the respondents have now placed the communication on record dated 07.03.2022 to state to the effect that the adverse remarks on the CR was communicated. However, there is no evidence placed on record to suggest that the applicant received the said communication.

22. Upon perusal of the 06/2020–05/2021 in CR dossier, we also note numerous overwriting and corrections made by the RO in the sections relating to personal qualities at Para 8(a), (b), (d), (f), (g), (j), 9(d), (e), (f), 17(e) and 18. We find it surprising that even though the quality of figurative endorsement by IO and RO are clearly distinguishable and the RO has marked IO as 'Liberal', the SRO has simply recorded that, *"I agree with the remarks of IO and RO"*.

23. We, are therefore, constrained to hold that the entire assessment of the RO is clearly and visibly biased, unsustainable and, therefore, liable to be set aside, which is substantiated by our finding on record showing clear instances of cutting, overwriting, and endorsement of fresh gradings by RO

in the CR, thus, indicating a change of mind after having recorded certain gradings initially. The RO has failed to comment on the outstanding grading awarded by the IO which clearly establishes a bias on second thought by him.

24. Even though the applicant has not exhausted departmental remedies either by way of a statutory or non-statutory complaint against the said CRs, in the interest of justice, we consider it appropriate to set aside the entire endorsement of the RO including figurative gradings and pen picture from the said CR.

25. On the issue of numerical weightage for the TSOC Course (2015), we find that the applicant voluntarily opted for TSOC, a competitive course, in lieu of DSSC, as permitted under SAO 7/S/2005. The course merely equips officers for command and staff appointments and does not confer any guarantee of promotion. While the policy dated 04.01.2011 initially granted equal ceiling of 1.50 marks for DSSC and TSOC qualified officers, by the time the applicant's batch was considered by No. 3 SB, the Quantification System of Selection Policy dated 23.12.2017 was in force, under which DSSC qualified officers were eligible for a maximum of 1.50 marks and TSOC qualified officers for 1.20 marks.

26. With respect to challenge to the change in promotion policy, we find it pertinent to refer to the observations of the Hon'ble Supreme Court in Hardev Singh v. Union of India & Anr [AIR 2012 SC 286] reproduced as under:

*"25. In our opinion, it is always open to an employer to change its policy in relation to giving promotion to the employees. This court would normally not interfere in such policy decisions."*

27. We place reliance on the judgement of Apex Court in the case of *Virender S. Hooda & Ors. v. State of Haryana and Anr.* [(1999) 3 SCC 696] where it has been held in para 4 of the judgment that:

*".....When a policy has been declared by the State as to the manner of filling up the post and that policy is declared in terms of rules and instructions issued to the Public Service Commission from time to time and so long as these instructions are not contrary to the rules, the respondents ought to follow the same."*

28. Similarly, in the case of *Balco Employees' Union (Regd.) v. Union of India and Others* [(2002) 2 SCC 333], it has been held that a court cannot strike down a policy decision taken by the Government merely because it feels that another policy would have been fairer or wiser or more scientific or logical. It is not within the domain of the court to weigh the pros and cons of the policy or to test the degree of its beneficial or equitable disposition.

29. Thus, it can be clearly inferred that it is a well-settled principle that an employer is entitled to amend policy provisions to meet evolving organisational requirements. The applicant cannot therefore; claim the benefit of an obsolete policy no longer in force at the time he was considered for promotion by No 3 SB. Granting any such relief sought would require reopening the entire course evaluation, necessitating a fresh competitive examination for all similarly placed officers, which is legally impermissible. We accordingly find no merit in the applicant's prayer for grant of weightage under QSS-2011.

30. As regards the allegation of lower value judgment marks by the members of No. 3 SB, the record reflects that the applicant was considered as a Fresh Case of 2004 batch in February 2021 and was not empanelled. After redress vide order dated 21.12.2021, he was again considered as a Special Review (Fresh) Case in March 2022, compared with his original 2004 batch, and was again not empanelled due to lower merit vis-à-vis other officers. Thereafter, he was considered as a First Review Case of 2006 batch in October 2022 and as a Final Review Case of 2007 batch in November 2023, and in both boards he remained non-empanelled due to comparative merit.

31. Examining the scope of judicial review in cases pertaining to selection and award of marks by the Selection Board, Hon'ble Supreme Court in *Surinder Shukla vs. Union of India* [(2008) 2 SCC 649] observed as reproduced:

*"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....."*

32. In *Union of India v. Lt. General Rajendra Singh Kadyan* [2000 (6) SCC 698], Hon'ble Supreme Court observed as under:

*".....Critical analysis or appraisal of the file by the Court may neither be conducive to the interests of the officers concerned or for the morale of the entire force. Maybe one may emphasize one aspect rather than the other but in the appraisal of the total profile, the entire service profile has been taken care of by the authorities concerned and we cannot substitute our view to that of the authorities. It is a well-known principle of administrative law that when relevant considerations have been taken note of and irrelevant aspects have been eschewed from consideration and that no relevant aspect has been ignored and the administrative decisions have nexus with the facts on record, the same cannot be attacked on merits. Judicial review is permissible only to the extent*

*of finding whether the process in reaching a decision has been observed correctly and not the decision as such.....”*

33. In this background of judicial precedents, we have scrutinized the value judgment marks awarded to all officers considered in these Boards and find no material indicating bias, arbitrariness, or malafide, and thus, the applicant's contention on this issue, lacks merit and hence, rejected.

34. In view of the foregoing discussion, the Original Application (OA) is hereby **partially allowed**, and the matter is accordingly disposed of with the following mandate:

(i) The entire grading, including the numerical ratings and the pen picture, awarded by the Reporting Officer (RO) in the Confidential Report (CR) for the period 06/2020 to 05/2021, is hereby expunged. This action is necessitated by the finding that the subsequent alterations to the initial recorded gradings render the final assessment biased and vitiated.

(ii) The Applicant shall be considered afresh as a Special Review Case by No. 3 Selection Board strictly in accordance with applicable policy, after carrying out the above expunction.

(iii) All other reliefs sought by the Applicant in the Original Application (OA), specifically those pertaining to the weightage accorded to Time Scale Officers Course (TSOC), the value judgment marks, and the interference with the remarks contained within the pen picture, are hereby rejected, being devoid of merit.

(iv) If the Applicant is found fit for promotion by the Special Review No. 3 Selection Board during the Special Review, the Applicant shall be entitled to all necessary and resultant consequential benefits.

(v) The directions concerning expunction and consideration by Special Review No. 3 SB shall be complied with and concluded within a period not exceeding three (3) months.

35. Conclusively, the aforesaid OA 1504/2023 is disposed off in terms of aforesaid directions.

36. No order as to costs.

37. Pending miscellaneous application(s), if any, stand closed.

Pronounced in the open court on this 19<sup>th</sup> day of December, 2025

(JUSTICE RAJENDRA MENON)  
CHAIRPERSON

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

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