

COURT No.3
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA 1684/2018

WITH

MA 1833/2023

Col. M S Prakash	Applicant
VERSUS		
Union of India & Ors	Respondents

For Applicant	:	Ms. Archana Ramesh, Advocate
For Respondents	:	Mr. Anil Gautam, Sr. CGSC

Dated: /6th December, 2025

CORAM

HON'BLE MS. JUSTICE NANDITA DUBEY, MEMBER (J)

HON'BLE MS. RASIKA CHAUBE, MEMBER (A)

ORDER

MA 1833/2023

Keeping in view the averments made in the miscellaneous application and finding the same to be bona fide, in the light of the decision in Union of India and others Vs. Tarsem Singh [(2008) 8 SCC 648], the MA is allowed condoning the delay in filing the OA.

OA 1684/2018

The applicant, Col. M.S. Prakash, has filed the present OA seeking the following reliefs:

- (a) *Quash and set aside the ADG DV, Army Headquarters Policy Letter dated 11.08.2017 (Annexure A1), on the ground that its retrospective application renders it legally unsustainable ab initio and contrary to the principles of equity, justice, and fair play;*

- (b) *Issue directions to the Military Secretary to consider the applicant in the next Selection Board in 2019 without imposing the embargo arising from the censure recorded in his service dossier, as such censure is no longer operative;*
- (c) *Pass any other appropriate order including exemplary compensation for harassment, agony, and humiliation.*

2. The applicant was commissioned in the Armoured Corps on 11.06.1994 and was subsequently promoted to the rank of Colonel and commanded 16 Light Cavalry. During his command, one Sowar Arun V committed suicide. Certain administrative lapses were recorded against several personnel, including the applicant in his capacity as Commandant. The applicant was awarded a "Severe Displeasure (Recordable)" censure by the GOC-in-C, Western Command on 29.06.2013. His statutory complaint against the award was rejected by MoD order dated 27.07.2015 (communicated on 29.07.2015). This rejection has not been challenged in the present OA. As on the date of award of censure (29.06.2013), the policy dated 23.04.2007 governed recordable censures and stipulated an operative validity of three years i.e. up to 29.06.2016. Amendments dated 22.03.2016 and 11.05.2017 maintained status quo reiterating that the operative duration would remain three years. However, on 11.08.2017, a new ADG DV policy letter was issued enhancing the validity period of recordable censure from three years to ten years. Though stated to be effective "with immediate effect," Paras 24 and 27 of the policy made past censures, including that of the applicant, subject to consideration before Selection Boards for at least 10 years, thereby making the policy operate retrospectively in effect.

3. Learned counsel for the applicant contends that the censure of "Severe Displeasure (Recordable)" awarded on 29.06.2013 had a statutory and policy-based operative life of three years, as per the ADG DV Policy Letter dated 23.04.2007, which remained unchanged through the amendments of 22.03.2016 and 11.05.2017. Therefore, the censure stood extinguished by operation of policy on 29.06.2016. It is also argued that the subsequent ADG

DV Policy Letter dated 11.08.2017, which enhanced the operative period of censures from three to ten years, cannot be applied to the applicant because (i) it is substantive and not procedural in nature; (ii) it affects vested rights accrued to the applicant; and (iii) it operates to his detriment, in violation of the well-settled principle that executive instructions cannot be applied retrospectively unless expressly authorised by law. The Counsel further submits that by the time the 11.08.2017 policy was issued, the applicant's censure had already become non-operative and ceased to have any legal effect. Applying the new ten-year rule to revive a lapsed censure amounts to arbitrary and unfair retrospective operation violating Articles 14 and 16 of the Constitution. It is next contended that because of the illegal retrospective application of the 11.08.2017 policy, the applicant was denied consideration in the 2019 Selection Board. He continues to suffer stigma and career detriment, which is impermissible in service jurisprudence, when the underlying punishment has exhausted its operative life. Counsel therefore submits that the policy dated 11.08.2017 deserves to be quashed as ultra vires, arbitrary and violative of principles of natural justice and prays that the applicant may be considered by the next Selection Board without the embargo of the said censure.

4. On the other hand, the learned counsel for the respondents submits that the applicant was awarded a recordable censure for established command and administrative lapses following the suicide of a soldier under his command and the said censure was upheld by the competent authority through rejection of the statutory complaint on 27.07.2015. This order has not been challenged and therefore the censure has attained finality. It is argued that the policy dated 11.08.2017 is prospective, operative from the date of its issuance and merely prescribes the period for which a punishment remains relevant for disciplinary and promotion purposes. This, according to the respondents, is procedural and administrative and the Army as an organisation requiring discipline and hierarchy is fully empowered to revise such parameters through executive policy. The respondents contend that the policy nowhere

states that past punishments are “revived” but merely stipulates the operative duration applicable to all existing punishments as on the date of issue. The policy is described as clarificatory in nature, intended to standardise and strengthen the disciplinary framework and ensure that officers with serious lapses do not get undue advantage. It is further submitted that no vested right of the applicant is violated since mere expectation of promotion is not a fundamental or enforceable right. The Selection Board must evaluate the complete profile of an officer in accordance with the prevailing policies and the applicant’s case was considered strictly in accordance with such policies. The counsel further asserts that the OA is devoid of merit, that no arbitrariness or mala fides are made out and that the Tribunal ought not to interfere in policy matters relating to discipline, which fall within the domain of military administration. Accordingly, dismissal of the OA is prayed for.

5. Having heard the learned counsel for the parties and perused the records made available to us, the following issues arise for our consideration:

- (i) Whether the ADG DV Policy dated 11.08.2017, by requiring consideration of censures of the last 10 years, operates retrospectively against officers who were awarded censures under the earlier regime of 3-year validity.
- (ii) Whether subjecting the applicant’s 2013 censure (valid originally till 29.06.2016) to consideration in 2019 SB amounts to revival or re-operationalisation of a lapsed punishment.
- (iii) Whether such retrospective application violates Articles 14 and 16, or the principles of fairness, non-arbitrariness, and legitimate expectation.
- (iv) Whether the applicant is entitled to relief.

Issue (i):

6. Para 27 of the 2017 policy states that earlier recordable censures “will be operative as per original award.” On its face, this maintains the earlier 3-year validity. However, Para 24 mandates that all recordable censures

awarded within the reckonable period or at least 10 years be placed before the Selection Board. In effect, though the punishment is not “operative,” the censure continues to produce adverse consequences far beyond the original period of operation, because It is again taken into account for comparative merit; it affects empanelment prospects and it imposes an embargo on promotion consideration.

7. The censure originally expired on 29.06.2016. The 2017 policy revives its effect for consideration until 2023 (ten years), and was applied specifically in the 2019 Selection Board, which is three years after expiry. This constitutes a retrospective extension of the adverse consequences of the censure despite para 27 of the 2017 policy. The doctrine of substance over form applies: what matters is not whether the punishment is called “operative,” but whether it continues to affect service rights. The Hon’ble Supreme Court has repeatedly held in ***Hardev Singh vs Union Of India & Anr AIR 2012 SUPREME COURT 286*** and ***Union of India v. Lt. General Rajendra Kadyan, 2000 (6) SCC 698*** that executive policies cannot retrospectively take away accrued rights unless expressly authorised by statute. Here, the applicant had an accrued right to have the censure treated as inoperative after 29.06.2016. Therefore, we hold that operating the 2017 policy retrospectively to the prejudice of the applicant is not valid.

Issue (ii):

8. The censure had exhausted its validity under the 23/04/2007, 22/03/2016 and 11/05/2017 policies. The 11.08.2017 policy re-exposes the officer to its adverse consequences. Once the validity period of a punishment stands completed, the award of censure becomes non-est and hence the officer acquires a legitimate expectation that it will not be opened or considered thereafter. The respondents’ argument that the punishment is not revived but merely placed before the board and “reflected for factual completeness” is untenable. A Selection Board is obliged to differentiate officers and an expired censure displayed in the dossier inevitably influences comparative merit. This

Tribunal in ***Lt. Col Sandeep Mishra Vrs. Union of India, O.A. 1605 of 2022 and Ors.*** has already held that validity of a censure cannot be extended beyond what was prescribed when awarded. Further, the new 2023 common policy (JAFO) has restored the principle of maximum 3-year validity showing institutional recognition that 10-year validity was excessive. Therefore, applying the applicant's lapsed censure in 2019 SB amounts to revival of a punishment, which is impermissible.

Issue (iii):

9. Executive instructions must adhere to non-arbitrariness and fair procedure (***Maneka Gandhi v. UOI, (1978) 1 SCC 248***). Retrospective application of policy that prejudicially affects service rights is arbitrary unless the policy expressly clarifies such intent with justification in public interest. In this case, there is no justification to apply the 11/08/2017 policy to officers whose censures had exhausted their validity. Officers similarly situated prior to 11.08.2017 were differently treated depending on whether their promotion boards were held before or after the policy change. This results in hostile discrimination violating Article 14 of the Constitution. The applicant had a legitimate expectation that after June 29/06/2016, his dossier would be free from the impact of censure. Therefore, the action is arbitrary, discriminatory and violative of constitutional principles of fairness.

Issue (iv):

10. Given the retrospective impact and revival of an expired punishment, the applicant is entitled to quashing of the 11.08.2017 policy to the extent it retrospectively affects censures awarded earlier and also a direction to consider his case without the censure embargo and appropriate consequential relief.

11. In view of the foregoing analysis, we are of the view that retrospective operation of 11.08.2017 is illegal, arbitrary and violates the applicant's legitimate expectations arising from the 2007 and 2016 policies. The applicant's 2013 censure, which expired on 29.06.2016, cannot be

considered for any Selection Board held after that date and the respondents' contention that the policy does not revive the censure is factually incorrect and legally unsustainable.

12. Accordingly, the present OA stands allowed to the following effect:

- (i) The ADG DV Army HQ Policy Letter dated 11.08.2017 is quashed to the extent it operates retrospectively upon censures awarded prior to the issuance of this letter;
- (ii) The applicant's censure dated 29.06.2013, which expired on 29.06.2016, shall not be placed before or considered by any Selection Board held after that date;
- (iii) The applicant shall be considered afresh for the 2019 Selection Board or the next appropriate Board, without reference to the censure which expired in 2016.
- (iv) If found fit, the applicant shall be empanelled for promotion and extended all consequential benefits, including notional seniority and pay fixation.
- (v) No order as to costs.

13. Pending miscellaneous application(s), if any, are disposed off.

Pronounced in the open Court on 16th day of December, 2025.

(JUSTICE NANDITA DUBEY)

MEMBER (J)

(MS. RASIKA CHAUBE)

MEMBER (A)

yb