

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

OA 1785/2022

Lt Col Sunil Kumar ... Applicant
Versus
Union of India & Ors. ... Respondents

For Applicant : Mr Piyush Thakran, Advocate
For Respondents : Gp Capt Karan Singh Bhati, Sr. CGSC

CORAM :

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

ORDER

This application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant who is a serving Lieutenant Colonel (Lt Col) of KUMAON Regiment and is aggrieved by his non empanelment by No 3 Selection Board (SB) by all three chances and also aggrieved by the wrongful action of the Respondents by rejecting his statutory complaint against his Interim Confidential Report (ICR) being technically invalid. He has prayed for the following reliefs:-

- a) *Call for complete proceedings of No 3 Selection Board (No 3 SB) held in Nov 2016, 2017 and 2018 in respect of Applicant's Batch leading to the non-empanelment of the applicant and after perusal thereof, set-aside the said No 3 SB's in so far as the same relates to the Applicant herein;*
- b) *Call for entire records pertaining to the rejection of the non- statutory and statutory complaints of the applicant and thereafter quash the same being illegal and arbitrary;*
- c) *Call for entire records pertaining to the tenure of the applicant with 26 RR (Kumaon) where the CRs earned by the applicant for the period 29 Mar 2012-31 Jul 2012 and 01 Aug 2012-31 Dec 2012 were not*

expunged despite them being technically invalid, and for their inherent aberration/inconsistencies of the IO, RO and SRO resulting in non-empanelment of the Applicant and thereafter quash the same.

- d) Direct the Respondents to remove any other assessment of the entire reckonable period of the Applicant found to be inconsistent and thereafter grant him fresh consideration by way of special review by directing the Respondents to give due weightage to the Applicant for denial and deprivation for not getting a fair opportunity for SB-3 and promoting him to the Rank of Colonel with all consequential benefits of back wages, continuity of service and seniority etc.*
- e) Issue such other order/direction as may be deemed appropriate in the facts and circumstances of the case.*

2. The applicant was granted permanent commission on 08.12.2001 in the Kumaon Regiment of the Indian Army and has rendered many regimentals both administrative and technical appointments in all terrain. He was qualified for Army Aviation and earned pilot wings in May 2008. He was awarded with GOC-in-C Southern Command Commendation Card for meritorious service on 15 Jan 2010 and was selected for raising of 38 (I) R&O flight wherein he was awarded with ADG Army Aviation Appreciation card in July 2012.

3. Learned counsel for the applicant submits that the applicant after being commissioned joined his unit at High Altitude Area at Siachen Glacier (OP MEGHDOOT) and suffered a splinter injury by enemy shelling and was awarded "WOUND MEDAL (PARAKRAM PADAK)".

4. Learned counsel elaborates that the applicant after his brief stint with aviation was posted to 26 Rashtriya Rifles (KUMAON) in

Doda/Kishtwar in Mar 2012 to undergo his crucial AE period where he performed the duties of 2IC and involved in multitude of tasks which included not only operations but also Sadbhawana projects, Officer Mgt, Handling of Media Cell and setting up of Battalion Headquarters at new location. In addition he also officiated as Commanding Officer (CO), whenever the CO was not available. The applicant after his Rashtriya Rifles tenure was posted as Adjutant & Instructor Class 'A' in Infantry school and officiated the duties of Colonel 'A' in his absence and on all occasions his work was appreciated by Commandant Infantry School.

5. The learned counsel for the applicant submits that the applicant was posted back to his parent unit (20 KUMAON) just prior to his No 3 SB and even though he was non empanelled he was entrusted with the responsibility of OIC Advance Party to move his unit from Peace location to Field location by the CO. The applicant maintained high standard of movement and inducted the unit to the new location without any incident. The applicant was considered by the No 3 SB for selection to the rank of Colonel but he was shocked and surprised to find that he has been non-empanelled in the said No 3 SB which was held in Nov 2016.

6. The applicant preferred a Non Statutory Complaint against his non empanelment, on the ground that his CR's under CO 26 RR

were subjective as he did not get enough time to prove his worth which was rejected by the respondents vide their order dated 07.12.2017.

7. The applicant while challenging his ICR initiated at 26 RR due to change of ORBAT for the period from 29 Mar 2012 to 31 Jul 2012 submits that ICR which was not supposed to be initiated, the IO based on his pre conceived notions did not grade the applicant as per his performance for the said period. The applicant submits that he was on leave during transition period and did not complete 90 days physical service under Initiating Officer (IO) during the period hence the ICR initiated by the IO is technically invalid.

8. The learned counsel for the applicant argues that the applicant found the same anomaly in his ACR covering period 01.08.2012 to 31.12.2012 which was also technically invalid as the applicant did not complete 90 days physical service under the IO.

9. The learned counsel for the applicant submits that despite having initiated an Invalid CR and having been again harmed in his second crucial Adequately Exercised (AE) report under IO, the applicant continued his performance and in his next Adequately Exercised (AE) report covering a longer period and the same conditions, he earned an Outstanding grading which clearly depicts that his earlier CRs were not graded appropriately. The applicant

earned yet another Criteria Report under a new IO and he was graded Outstanding.

10. The learned counsel further submits that the applicant was selected for UN Peacekeeping with 4 KUMAON and submitted his Statutory complaint dated 03.02.2021 challenging his non empanelment as well as his ICR/ACR for the period from 29.03.2012 to 31.07.2012 and 01.08.2012 to 31.12.2012, however the Statutory Complaint has been rejected by the Central Government vide their cryptic and sketchy order dated 01.02.2022 that the CR's are technically valid and in tune with the overall profile of the officer.

11. Per Contra, the learned counsel for the respondents submits that the applicant was considered by NO 3 Selection Board for promotion to the rank of Colonel as per details below :-

Consideration by NO 3 Selection Board		
Fresh case	Dec 2016	Not Empanelled
First Review Case	Sep 2017	Not Empanelled
Final Review Case	Oct 2018	Not Empanelled

12. The learned counsel further submits that aggrieved by his non empanelment to the rank of Colonel by No 3 SB held in Dec 2016 the applicant submitted a Non Statutory Complaint

dated 08.03.2017 and Statutory complaint dated 03.02.2021 which were examined as per his overall profile and relevant documents and it was found that impugned ACRs 03/2012 to 07/2012 and 08/2012 to 12/2012 were fair, objective well corroborated, performance based and technically valid, accordingly, the competent authority rejected the Non Statutory complaint dated 08.03.2017 vide detailed order dated 07.12.2017 and Statutory complaint dated 03.02.2021 vide order dated 01.02.2022.

13. Elaborating further, the learned counsel for the Respondent further submitted in the CR period 29.03.2012 to 31.07.2012 and 01.08.2012 to 31.12.2012, the applicant as per policy in vogue was required to certify his physical service under IO as applicable vide AO 45/2001/MS. The applicant had rendered the certificate at Para 5 of CR Forms duly authenticated by IO hence both the CR was established to be entitled under IO and hence are technically valid.

14. We have heard the learned counsels of the rival parties and perused the records placed before us by the respondents which include the CR dossiers of the applicant, records of his non statutory complaint as processed by the Complaint Advisory Board (CAB) of COAS Sectt and the results of No 3 SB vide which he was considered for promotion from Lt Col to Colonel. Based on the submission we

have framed three questions for our consideration for adjudicating this case :-

- (a) Where the Impugned CRs of the applicant are legally tenable?
- (b) Have the respondents considered the Non-Statutory complaint of the applicant as per law and policy provisions in vogue?
- (c) Has the applicant been considered by No 3 SB as per law without any bias or subjectivity?

15. On examination of the Interim CR for the period 29.03.2012 to 31.07.2021, we have observed that this CR has been initiated on change of command and control of the unit from one HQ to another. The applicant has been reported upon as a Rifle Company Commander and later Second-in-Command of his unit for duration of four months in the rank of Major in criteria appointment. All the three reporting officers have graded the applicant as 'Above Average' officer in the box grading. The applicant has been graded as outstanding in most of the qualities in PQs/DPVs/QsAPs by the Initiating Officer (IO) which has also been endorsed by the Reviewing Officer (RO) with complimentary gradings and remarks that the IO's gradings are 'Justified'. The Senior Review Officer (SRO) too has remarked the gradings of both IO and RO as 'Justified' and graded the applicant with corresponding mix of outstanding and Above Average gradings in various qualities of QsAP. The pen

pictures of all three reporting officers are healthy along with positive recommendations conducive to professional growth of the applicant. The entire report is aligned to the trend of the previous CRs earned by the applicant. Accordingly, we have not observed any drop in his performance in the report under consideration to merit to in the entire CR or part of it. Therefore, having observed that the entire CR has no adverse impact in career progression of the applicant and the CR being in consonance with service and CR profile, we have not found any necessity to interfere with the CR from the period 03/2012 to 07/2012. Accordingly, we uphold the CR as being objective and performance based.

16. We have given due consideration to the next CR of the applicant from period 01.08.2012 to 31.12.2012. This CR is a better report than all the previous reports earned by the applicant which has been initiated in the rank of Major and in the appointment of Second-in-Command of the same battalion in a Counter Insurgency environment. The applicant has been graded outstanding by all three reporting officers in the box gradings along with complementary pen pictures and positive recommendations for promotion and for various assignments. Therefore, the CR being an 'Outstanding' report, we have observed that the apprehensions of the

applicant in this report are unfounded and therefore we once again do not find any reason to interfere with the Impugned CR.

17. Having given our detailed consideration to the examination of Non-Statutory complaint filed by the applicant dated 08.03.2017 challenging his non-empanelment in promotion Board No 3 SB held in December 2016, we have perused the files of CAB of COAS Sectt. The CAB has taken note of the various professional achievements of the applicant as well as his Battle Casualty status in OP PARAKRAM and award of GOC-in-C Commendation Card in 2010. His entire CR profile has been examined in great detail and the same has been dismissed as the reports were found to be well corroborated, objective and performance based. We, therefore, do not find any further reason to expunge any part of the CRs impugned by the applicant. Accordingly, we find that question framed by us at Para 16(a) and (b) have been answered and there is no relief that the applicant can be held entitled to.

18. Finally, we have given our conscious consideration to the promotion boards wherein the applicant has been a candidate for promotion to the rank of Colonel. The applicant is from 2001 Batch of Infantry who was considered for the first time as a Fresh case by No 3 SB in December 2016. Herein, the entire batch of 465 Infantry Offices were considered for 253 vacancies available for promotion.

The applicant's final merit was at 288 with total score of 89.828 wherein the last candidate promoted had 90.141 marks. The applicant was considered for the second time as a First Review Case along with 2002 batch of Infantry in September 2017. There were 218 vacancies allocated for a batch of 438 candidates. The applicant was placed at merit position 278 with 89.813 marks, whereas the last candidate promoted had quantified total marks of 90.522 out of 100. The applicant was considered as a Final Review Case in October 2018 with 2003 batch of Infantry, which has 140 vacancies for promotion for 328 candidates. The applicant was at order of merit 291 with total mark 89.467 compared to cut off marks of 91.044 of last candidate promoted. Therefore, we have come to a conclusion that the applicant has not been empanelled for promotion due to his relative position of merit within the batch under consideration. We have found no subjectivity or bias in his consideration by the selection boards. Accordingly we find no remit in his prayer.

19. Therefore, in view of our aforesaid analysis, we are of the considered opinion that since the Respondents have acted as per the policy in vogue, it would not be appropriate for us to sit in judicial review, with nothing on record to show any biasness or malafide on

part of the Respondents, and hence, the present OA 1785/2022 is liable to be dismissed.

20. Consequently, this OA is dismissed.

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

22. No order as to costs.

Pronounced in the open Court on 30th day of May, 2025.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

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

/akc/