

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

OA 2061/2022

Maj Naman Pandey
Versus
Union of India & Ors.

... Applicant
... Respondents

For Applicant : Mr. Indra Sen Singh, Advocate with
Mr. Aditya Bari, Advocate
For Respondents : Mr. Anil Gautam, Sr. CGSC with
Mr. Ranbir Singh Chillar, Advocate

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 being aggrieved by rejection of grant of Permanent Commission and prays for the following reliefs:-

“(a) Call for complete proceedings of No. 5 Selection Board (No. 5 SB) held in respect of Applicant’s Batch leading to the impugned Order dated 14.07.2022 and, after perusal thereof, set aside impugned Order dated 14.07.2022 in so far as the same relates to the Applicant herein;

(b) Call for the Applicant’s entire record of service and, after perusal thereof, set-aside the low figurative assessments, and the negative recommendations, made by the IO/RO in unshown portion of Applicant’s Confidential Report (CR) covering the April 2021 to Nov 2021 as well as the negative recommendations made by said IO/RO in the Applicant’s application dated 12.03.2022 for Permanent Commission (PC), same being invalid, inconsistent, subjective and not performance based.

(c) Call for the Applicant's entire record of service and after perusal thereof, set-aside any other CR/ICR found to be subjective or inconsistent with Applicant's overall profile, or containing an un-communicated adverse/weak remarks or negative recommendation for grant of Permanent Commission;

d) Direct the Respondents to reconsider the Applicant's case for grant of Permanent Commission afresh, keeping in view the points urged by Applicant in the instant OA;

e) Direct the Respondents not to release the applicant from the Army service until completion of the complete process of re-consideration of his case by No.5 SB as prayed for herein above;

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

Facts of the Case

2. The applicant was commissioned on 15.09.2012 into the Corps of Mech Inf as a Short Service Commissioned officer. He was considered by the No 5 SB for grant of PC/extension in Jun 2022, wherein he opted for 'Permanent Commission only' and 'Release if not granted PC'. However, he was rejected for both the grant of PC as well as extension of service, and thus, release from service on 14.09.2022 on completion of the initial contractual period of 10 years of service. Aggrieved by the aforesaid rejection by the No. 5 SB, the applicant has filed this OA.

Submissions on behalf of the applicant

3. Taking us through the service profile of the applicant, Ld. Counsel for the applicant submits that the applicant was recommended through University Entry Scheme of July 2011 for PC from SSB Bangalore, but due to lack of adequate training infrastructure in IMA as communicated vide letter dated 24.09.2010, the applicant gave his willingness to convert his entry scheme to Short Service (Technical) from OTA Chennai. Also, in all the appointments tenanted so far, he has always discharged his duties with élan and utmost dedication, zeal and sincerity. He has also served with Rashtriya Rifles in Poonch as Coy Cdr, and Team Cdr at Special Action Group, NSG.

4. It is the case of the applicant that he has reasons to believe that the IO, having graded the Applicant above-average in the shown portion of the said CR, may have downgraded the assessment in the unshown portion (QsAP) and additionally may have given a recommendation for grant of PC contrary to extant policy on the subject.

5. It is submitted by the applicant that it is a settled principle of law that having given a 'high-above average' rating in the CR, it is not proper to make a negative recommendation for promotion/grant of Permanent Commission and that he has reasons to believe that the RO/SRO may have technically

endorsed the assessment and the negative recommendation made by the IO in said CR.

6. It is contended by the applicant that the figurative assessment and recommendation possibly made by IO/RO in unshown portion of the impugned CR also suffers from the varies of 'inconsistency' as the same does not match with the Applicant's over all profile and stands out as an aberration, and all the CRs earned by the Applicant prior to and after the impugned ICR are in the range of 'High Above Average' (with over-all figurative grading being not less than 8.5) to 'Outstanding/nearly outstanding (with overall figurative grading being not above 8.5), with excellent 'Pen-Picture' without any adverse comments ever.

7. It is elaborated by the applicant that before the impugned CR, the applicant had earned about 9 CRs from different IPs and to the best of the knowledge of the applicant, all of the said CRs are 'High Above-Average' to 'Outstanding/Nearly Outstanding CRs,' with positive recommendation for PC, and thus, the assessment of IO/RO in impugned CR, particularly the figurative assessment made in the unshown portion, stand out as an aberration, and hence, the 'weak/adverse' remark possibly

endorsed by the IO too are 'inconsistent' with the Applicant's overall profile.

8. Deliberating on the issue of subjectivity, Ld. Counsel for the applicant submits that the applicant had earned an excellent CR from the same CO/IO for the period preceding the impugned CR, and that the figurative assessment and recommendation possibly made by IO/SRO in unshown portion of the impugned CR, does not truly reflect the Applicant's actual performance and potential exhibited during the relevant period, and thus, the applicant's CR for the period April, 2021 to Nov, 2021 deserves to be set-aside on the ground of same being inconsistent, non-objective and not being performance based.

Submissions on behalf of the respondents

9. Per Contra, arguing on the issue of award of marks in CR, learned counsel for the Respondents submits that it is solely based on the assessment by the Reporting Officers who have observed the officer's performance during the period of report and thus are competent for objective assessment and that such assessments fall outside the purview of judicial review unless the Confidential Reports are technically invalid or in contravention to rules and regulations or a bias/arbitrariness is clearly established to the satisfaction of the Court.

10. It is the case of respondents that that the contested Confidential Report (CR) for the period 23 Apr 2021 to 31 Oct 2021 is fair, objective, well-corroborated, performance-based, and technically valid. As there is no evidence of bias or subjectivity, the impugned CR does not warrant any interference.

Consideration

11. We have given our balanced consideration to the submissions of both the parties and have perused the documents placed on record including the relevant policy letters under which the applicant has been considered for grant of Permanent Commission.

12. In a fair interpretation of the submissions on behalf of the applicant and prayers for our consideration, we note that the applicant has been aggrieved due to his commissioning in Short Service Stream even though he was recommended through University Entry Scheme a category of Permanent Commission which he attributes to the lack of adequate training infrastructures in Indian Military Academy (IMA) for being commissioned as a Permanent Commission Officer rather than Short Service (Technical) from Officer's Training Academy (OTA), Chennai, a choice which he was forced to make.

13. It is pertinent to observe that subsequently, even though he opted for Permanent Commission at the end of 10 years of service, he was not granted the same by No 5 SB due to which he was released from service on 14.09.2022. Thus, before proceeding to adjudicate on the issue of No 5 SB, it is important for us to examine the issue of commissioning of the applicant.

14. On a perusal of records with respect to commissioning letter for UES-20 course, we note that the course had 225 candidates against 60 vacancies of which the Mechanical Stream had 08 vacancies. The applicant being an optee for the Mechanical Stream was placed as Order of Merit position 45, wherein he could not have qualified for UES-20 course in any case, and thus, on being offered a chance in SSC (Tech) Course-37, submitted a voluntary willingness certificate which reads to the effect:

*"For TGC Section, Recruiting - 6
WILLINGNESS CERTIFICATE*

I, Roll No. 5498 Mr. NAMAN PANDEY of MECHANICAL Engineering Stream, a wait listed candidate of UES-20, Merit position 45 in MECHANICAL Engineering stream, am willing to Join SSC (Technical) Course - 37 commencing in OTA, Chennai wef Oct 2011 in case offered to me. I certify that I have read the terms and conditions as applicable for the Short Service Commission for Technical Graduates and am willing to serve as per the terms and conditions specified therein.

Place: ALLAHABAD

Signature of the candidate

Sd/-xxxxxx

Date: 10/08/2011

Name : NAMAN PANDEY

15. Records show that, in addition to the above certificate, the applicant has signed a declaration certificate at the time of commissioning wherein Para 19.12 reads as under:

"19. Declaration

1 to 11 xxx xxx xxx

12. I undertake to join any other parallel entry i.e from TGC/UES to SSC (T), subject to availability of vacancies and agree to the terms and conditions of that entry. (Applicable to TGC and UES Entries only).

13 to 14 xxx xxx xxx

Place : ALLAHABAD Sd/-xxxxx

Signature of Applicant

*Signature of Parent/
Guardian*

Date : 06/10/2009"

16. Therefore, in consideration of the above documents, we do not find any merit in the arguments on behalf of the applicant that he was not commissioned as a PC officer under UES scheme, due to lack of adequate infrastructure in the Indian Military Academy, Dehradun, an argument made on a proper false premise. Accordingly, the prayer is found to be devoid of any merit.

17. Proceeding to examine the non-empanellment of the applicant by No 5 SB, we observe that the applicant apprehends that his rejection by No 5 SB is largely due to low rating by the reporting channel in CR 04/2021 to 11/2021. However,

before proceeding to place on record our observation on the impugned CR, we have observe from the records that the applicant was considered by No 5 SB in June 2022. The CR for period January 2022 to March 2022 was not even part of the reckonable profile of the applicant for consideration by No 5 SB and therefore any interference or setting aside of adverse remarks or non-recommendation in the CR does not help the case of the applicant.

18. On further perusal of the CR dossier, we note that the applicant had filed a non-statutory complaint on 27.09.2020 against his CR for period 11/19 to 08/20. The same was disposed off by the competent authority as rejected as there was no bias or subjectivity observed in the CR. Since the OA does not challenge this CR, we do not find any reason for further discussion other than noting our observation as above.

19. While perusing the CR dossier, we haven't found any record of the applicant having exercised his rights for seeking departmental remedies before challenging his CR 04/2021 to 11/2021 through this OA. Therefore, there is no analysis of reasons of relatively low ratings in his impugned CR. We find that in the impugned CR, the IO has rated the applicant with six '8's, five '7's in the PQ, five '8's and two '7's in DPV and three

‘8’s and two ‘7’s in QsAP portion with a Box grading of ‘8’. The pen picture has mostly positive remarks except the remark which reads to the effect, *“During his review period he has completed most of the tasks successfully with due guidance and performed adequately to my satisfaction. However, offr needs frequent advice on basic mil discipline and etiquette”*. While the above details are expected to be known to the applicant, he did not seek department recourse.

20. That apart, we observe that the applicant was served a performance counseling vide letter No 110/3/A dated 04 Oct 2021. Similar gradings have been awarded in the CR by the RO with remarks that the IO’s report is ‘Justified’. The SRO has also endorsed near similar gradings with remarks that the report by IO and RO are ‘Justified’. Having observed the factum that the ratings by IO are supported by appropriate endorsement in the pen picture and reports by RO and SRO, the gradings are similar to the performance counseling, we do not find any reasons to set aside the impugned letter wholly or in part. Accordingly, we uphold the report as being valid.

21. While upholding the impugned CR as valid, we find it essential to place reliance on the case of the *Union of India and others v. Lt. Gen. Rajendra Singh Kadyan and another*, wherein

the Hon'ble Supreme Court dealing with the issue of exercise of judicial review in such case, cautioned to the effect:

"29. ... 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 decision has been observed correctly and not the decision as such. In that view of the matter, we think there is no justification for the High Court to have interfered with the order made by the Government."

22. We find our resonance in the views expressed by this very Bench while passing orders in the case of Brig Vishal Mohanlal Murada Vs. Union of India & Ors. in OA 1256/2022 which reads to the effect:

"16. It is our considered opinion that the courts are not in a position to assess the competence of the employee and over ride the assessment of the reporting officers to upgrade for Above Average (8) to Outstanding (9). We are neither privy to the performance of the employee nor the inter personal aspects of the organizational health. This aspect has been adequately answered by Honorable Supreme Court in the case of Union of India Vs Lieutenant General RS Kadyan (2000) 6 SCC 698 and Major General IPS Dewan Vs Union of India and Ors (1995) 3 SCC 383 (Supra). If the courts were to upgrade all above average (8) Confidential Reports to Outstanding (9), we will be swarmed by applicants seeking the intervention of courts for upgradation of their CR ratings which would cause gravious injury to the overall health of the Armed Forces and render the entire system of Confidential Report and Quantification System of Selection redundant. Thus we do not consider it prudent to upgrade the Confidential Report ratings through our judgment. For this, case of Brigadier Mandeep Singh Vs Union of India (OA No 905/2015) deserves mention wherein the Armed Forces Tribunal has noted :-

"Firstly, we would like to reiterate that the guidelines have no statutory effect. Thus it is clear that box gradings are assessments to be made by the Reporting officers who are in the best position to assess the officer in his individual qualities and also his performance when compared to his

peers. They are legally entitled to do so and being responsible officers senior in the chain of Command to the applicant, are eminently competent to do so. Unless any clear infraction of rules, orders, regulations or instructions in the recording of the impugned CRS are brought to our notice, we would not be in a position to interfere in the matter in any way".

17. In a similar case of *Union of India Vs SK Goel and Ors* 2007; 14 SCC 641, the Hon'ble Apex Court has observed :-

"It has to be held that the Tribunal was in error in going into the question whether the applicant had been rightly graded as 'outstanding' in ACR for the years 1990-91 and 1991-92. The observations of the Tribunal that of the two 'outstanding grading' does not flow from various parameters given and the reports entered there in, cannot thereof, be upheld and are accordingly set aside".

Commenting further on the issue, the Apex Court held :

"Evaluation made by an expert committee should not be easily interfered with by the Courts which do not have the necessary expertise to undertake the exercise that is necessary for such purpose".

18. Dwelling further on the aspect of examination of the other Confidential Reports of the applicant in the rank of Brigadier, we have once again observed that there is no bias or arbitrariness in any of the four reports examined and thus there is no cause of action therein. Similar impressions have also resonated in the disposal of the second statutory complaint by the Respondents. The entire CR profile of applicant has mix of Above Average (8) and Outstanding (9) box gradings by reporting officers. Since the ratee officer is not privy to the entire contents of the Confidential Report except for the part which he/she signs as read, most rating being Outstanding as perceived by the applicant are not true. In conclusion, we do not find any cause for us to affect an upgradation in the subject Confidential Report."

23. Similar observations have made by this Tribunal in the case of *Brig Mandeep Singh* in OA 905/2015 while discussing the judicial review of CRs and the interaction between the reporting officers with the ratee which read to the effect :

9. As far as adjudicating on the grading given in a CR is concerned, we would like to emphasize that the role of the courts on this account is restricted within a very narrow compass confined to bias, arbitrariness or illegality, Hon'ble

Apex the case of UOI v. S.K. Goel, 2007: 14 sec. 641 has held as follows:-

"It has to be held that the Tribunal was in error in going into the question whether the applicant had been rightly graded as 'outstanding' in ACR for the years 1990-1991 and 1991-1992. The observations of the Tribunal that of the two outstanding grading' does not flow from various parameters given and the reports entered there in cannot therefore, be upheld and are accordingly set aside".

Commenting further on the issue, the Apex Court held:

"Evaluation made by an expert committee should not be easily interfered with by the Courts which do not have the necessary expertise to undertake the exercise that is necessary for such purpose".

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12. As regards the issue of following the guidelines and the claim of the applicant that getting seven '9's in the individual qualities out of 11 would amount to predominance and the box grading should have been '9', we find no legal mandate to support the claim of the applicant. Firstly, we would like to reiterate that the guidelines have no statutory effect. Be that as it may, para 35(b)(1) of the box grading specifically states that box grading represents overall assessment of performance as well as potential for promotion. Para 35(b)(ii) states that the reporting officer must clearly differentiate between truly outstanding officers and others. Grading all officers outstanding would defeat the very purpose of appraisal system. Para 35(b)(ii) states that the box grading is not meant to be a mathematical average of the awards in indl qualities. The word 'predominance' heavily relied upon by the learned counsel for the applicant. It has no legal definition. The dictionary meaning of 'predominant' is 'present as the strongest or main element; having or exerting greater control or power'. On the other hand Oxford English Dictionary clarifies 'Outstanding' as 'exceptionally good' or 'clearly noticeable'. Box grading of seven '9 was predominant in the gradings made but only that each grading numbered more than the lesser gradings. Predominance demands eclipsing of the lesser gradings as insignificant, and it can be so only in a case where lesser grading is limited to one or two. Thus it is clear that box gradings are assessments to be made by the Reporting Officers who are in the best position to assess the officer in his individual qualities and also his performance when compared to his peers. They are legally entitled to do so and being responsible officers senior in the chain of Command to the applicant, are eminently competent to do so. Unless any clear Infraction of rules, orders, regulations or instructions in the recording of the impugned CRs. are brought to our notice, we would not be in a position to interfere in the matter in any way. Neither has the applicant brought any such infraction to our notice nor has he made out a case of malice or bias against any of the respondents.

On the power of the courts to interfere in such matters, the Hon'ble Supreme Court in the case of Air Vice Marshal S.L. Chhabra v. UOI (1993 Supp (4) SCC 441 has stipulated as follows:

"According to us, neither the High Court nor this Court can moderate the appraisal and the grading of the appellant for a particular year. While exercising the power of judicial review, a Court shall not venture to assess and appraise the merit or grading of an officer".

In view of the above, we find no reason to interfere in the box grading of '8' given to the applicant in the impugned CRs."

24. Lastly, we have examined the board proceedings of No 5 SB held in June 2022 to consider officers of SSC-94 (NT) & parallel courses for grant of Permanent Commission. The board considered the applicant as part of SSC-37 (T) Course along with another 350 candidates in which 143 candidates were granted Permanent Commission with 80 vacancies being sub-allocated to Tech course.

25. We find that the minimum marks for qualification were set to be 60 marks, wherein the marks scored by the applicant were 48.69. That apart, even though the cutoff marks were 60, the marks scored by last officer in merit had scored 81.75, which is well beyond the marks secured by the applicant. The board members also have graded the applicant 'Z' which translates to Rejection for award of Permanent Commission and Extension. Accordingly, the applicant was released from services on completion of 10 years of service wef 14.09.2022.

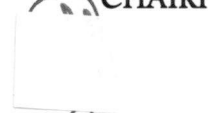
26. Therefore, in view of aforesaid analysis, we are of the considered opinion that the aforesaid OA is devoid of merit and hence, dismissed.

27. No order as to costs.

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

Pronounced in open Court on this 31 day of July, 2025.


[JUSTICE RAJENDRA MENON]
CHAIRPERSON


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

Akc/-