

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

OA 2634/2023

Col Vedvrat Vaidya **Applicant**
Versus
Union of India & Ors. **Respondents**

For Applicant : Mr. Piyush Thakran, Advocate
For Respondents : Mr. K.K. Tyagi, Sr. CGSC for R1 to R4
Mr. Mohan Kumar, Advocate for R5

CORAM

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

ORDER

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has filed this OA with the following prayers in Para 8, as under:

"8. (a) Call for complete proceedings of No.2 Selection Board (No.2 SB) as held in Jun 2023 in respect of Applicant's Batch leading to the non-empanelment of the applicant and after perusal thereof, set aside the said No.2 SB's in so far as the same relates to the applicant and respondent No 4 herein;

(b) Direct the respondents to convene a fresh No 2 Selection Board for selection of the applicant for the rank of Brig.

(c) Issue such other order/direction as may be deemed appropriate in the facts and circumstances of the case.

2. In addition, the interim prayer is stated in Para 9, as under:

9. In view of the facts and circumstances of the case and due to the fact that the respondent No.4 does not possess the requisite mandatory criteria which is required for being promoted, it is prayed that the result of the No 2 Selection Board as declassified vide MS Brach letter num, A/2150/2SB/result/TA/MS-5 dated 07 August 2023 and the consequential outcome be held in abeyance till the finalization of this OA"

3. The brief facts of the case are that the applicant, a serving officer in the Territorial Army, was commissioned on 01.02.1997 and is presently holding the rank of Colonel with more than 26 years and 8 months of service at the time of filing this OA. The applicant is aggrieved by the order of the respondents dated 07.08.2023 pursuant to which he was rendered non-empanelled by No 2 Selection Board when he was considered as a Fresh case. The applicant had earlier been selected by No 3 Selection Board for promotion from Lt Col to Col, following which he commanded 127 Infantry Battalion (TA) Eco Garhwal Rifles and subsequently commanded 137 CETF Battalion (TA) 39 Gorkha Rifles.

4. The applicant is also aggrieved that Respondent No.5 was empanelled for promotion to the rank of Brigadier by the same No.2 Selection Board in which the applicant was not

empanelled, despite Respondent No.5 not fulfilling the mandatory requirement of passing the prescribed promotion examination Part C; a criterion essential for consideration for promotion to the rank of Brigadier.

5. The applicant further submits that the next vacancy for the rank of Brigadier in the Territorial Army is expected to arise only after approximately seven years, i.e., in the year 2030, by which time he would have superannuated. Accordingly, it is his prayer that an additional vacancy in the rank of Brigadier, reserved for the Railway (Territorial Army), be granted to him.

Submissions on behalf of the applicant

6. It is submitted on behalf of the applicant that he was commissioned in the Territorial Army as a TA Cadre officer on 01.02.1997 in the rank of 2nd Lieutenant upon successful completion of Territorial Army training. He subsequently participated in all embodiments as and when called upon and diligently performed all assigned duties at the areas where he was deployed.

7. Mr. Piyush Thakran, learned counsel for the applicant further argues that when the applicant had already completed 13 years of service in the Army, Respondent No. 5, namely, Col Amit Pande (now Brigadier), was commissioned into the Territorial Army after serving 14 years in the Indian Navy. At that time, Respondent No.5 had only completed Naval courses and being a technical officer his qualifications had no direct relevance to the operational functioning of the Indian Army.

8. In contrast, it is submitted that the applicant possesses extensive experience in the Indian Army, having served in various operational environments which provided a strong foundation for his subsequent assignments in the Territorial Army. It is further submitted that the applicant has served in numerous field and CI operational areas where he has seen action against terrorists. For his acts of gallantry, he has been awarded Commendation Cards twice.

9. It is the case of the applicant that he was approved for promotion to the rank of Colonel by No 3 Selection Board

in May 2018 and was subsequently posted as CO (Designate) of 127 Inf Bn (TA) Eco Garhwal Rifles at Dehradun. He further avers that during his tenure in command, he performed exceptionally well in all aspects of duty.

10. However, when he was considered by No 2 Selection Board, the results of which were declassified on 07.08.2023, he was shocked to learn that he had not been empanelled for promotion to the rank of Brigadier whereas Respondent No. 5, namely, Colonel Amit Pande, had been empanelled for promotion to the said rank despite not meeting the requisite technical criterion of having cleared the Part 'C' examination, which is mandatory for consideration by No 3 Selection Board as well.

11. Relying on the provisions of the ADG TA letter dated 27.03.2018, it is submitted on behalf of the applicant that as per Para 21 of SAO 2/S/2007/GS, SAI No.3 dated 02.08.2010 and Paras 11 and 12 of Appx V of the TA Regulations, 1948, as amended from time to time, the exemptions from passing promotion examinations are clearly

laid down and Respondent No.5 is not exempted from the Part C promotion examination.

12. It is further relied vide the aforementioned letter that there is no provision or policy for exemption from passing Promotion Examination Part C. In fact, ex-servicemen officers who have already passed Promotion Examination Part B while serving in the regular Army are still required to pass Promotion Examination Part C for grant of substantive rank of Lt Col in the Territorial Army, and since, Respondent No.5 had not qualified Promotion Examination Part C, as such, he is not even entitled to hold the rank of Col (Substantive).

13. It is further submitted that Respondent No. 5 has served only for a total of 3 years and 5 months in active field areas during his entire service, whereas the policy for consideration by No.3 Selection Board clearly mandates that a Territorial Army officer must have a minimum of 5 years of field service to be eligible for promotion to the next higher rank.

14. Accordingly, it is argued on behalf of the applicant that Respondent No. 5 was not even eligible for consideration by No.3 Selection Board and, therefore, could not have been validly promoted to the rank of Colonel. Similarly, Respondent No.5 would not be entitled to promotion to the rank of Brigadier by No.2 Selection Board as per the provisions of the ADG TA policy letter dated 29.09.2011, as amended by policy letter dated 03.03.2015. These policy documents have been annexed to the OA as Annexure A9 and A10.

Submissions on behalf of the respondents

15. Per contra, a detailed counter affidavit has been filed by the respondents, including Respondent No. 5. It is submitted by the respondents that Respondent No. 5, namely, Col Amit Pande was granted commission into the Territorial Army on 03.12.2011 with seniority for the rank of Lieutenant fixed from 03.12.1997. The officer physically assumed the rank of Lieutenant Colonel on 03.12.2012.

16. Elaborating, it is submitted that Col Amit Pande (now Brigadier) has a total commissioned and embodied service of 11 years, 10 months, and 11 days, in addition to his previous service in the Navy amounting to 14 years and 4 days, thereby bringing his total commissioned service to 25 years, 10 months, and 15 days.

17. The respondents, in their submission regarding the issue of promotion examinations, have contended that the policy governing the requirement of passing promotion examinations is clearly stipulated under Para 3 of Appx V of the TA Regulations, 1948 (Revised Edition 1976). It is laid down therein, *inter alia*, that all officers are required to pass the practical examination (Part C) and the written examination (Part D) for promotion from the rank of Captain to Major. Subsequent to the AV Singh Committee recommendations, the Part A and B examinations became mandatory for promotion from Lieutenant to Captain, and thereafter, the Part C and D examinations became mandatory

for promotion from Captain to Major and from Major to Lieutenant Colonel, respectively.

18. It is further submitted that the criteria for promotion to the substantive rank of Colonel are detailed in the TA Directorate letters dated 29.09.2011 and 03.03.2015. These letters prescribe that a candidate must have served in a field area, in accordance with Rule 33/21A of the TA Regulations, 1948 (Revised Edition 1976), preferably involving counter-insurgency/counter-terrorism operations for a minimum period of five years. In this regard, previous field service rendered by officers in the regular Army is also taken into account.

19. It is, therefore, the submission of the respondents that the promotion of Respondent No. 5 is in accordance with the applicable policy. The exemption granted to him from passing the Part C examination, as well as the field and counter-insurgency service rendered by him, have been considered as per the laid down policy. Consequently, there

is no irregularity or perversity in his promotion either to the rank of Colonel or Brigadier.

20. Further vide affidavit dated 14.10.2025, it is submitted by the respondents that the Territorial Army consists of two distinct cadres: Non-Departmental and Departmental. The Non-Departmental Territorial Army units are combat and combat support units, comprising 33 Infantry TA units, 10 Home & Hearth units, and 03 Engineer TA units. These units are funded and controlled by the MoD and promotions to Selection Grade Ranks within these Non-Departmental TA units are directly managed by the MoD. The applicant belongs to the Non-Departmental Cadre of the Territorial Army and hence he cannot be promoted in the vacancy of TA (Railway) which is a Departmental Vacancy.

21. Explaining the cadre operations, it is submitted by the Respondents that the Departmental TA units were previously comprised of units/establishments raised under various Departments/Ministries, such as the Ministry of Railways, ONGC, etc., and were funded by their respective parent

Ministries. However, orders for the disbandment of six Railway TA units had been issued and these units now stand disbanded.

22. With respect to the Railway TA vacancy, it is submitted that there existed a Brigadier (Railway TA) vacancy which was earlier tenanted by an officer from the Railway Cadre. All expenditures related to the Railway TA units, including manpower, were borne by the Ministry of Railways. As of date, since all Railway TA units have been disbanded, the relevance of the appointment of Brigadier TA (Railway) no longer exists. Furthermore, the TA Directorate does not have the authority to promote a TA officer from the Non-Departmental Cadre (to which the applicant belongs) to a post specifically designated for an officer of the Departmental TA Cadre of Railways.

23. It is specifically contended by the respondents that only two vacancies exist for Non-Departmental officers in the Territorial Army at the Brigadier rank and both have already been filled. A vacancy for Brigadier in the Non-Departmental

cadre will now arise only upon the retirement of one of the incumbents, as Brigadier is the highest rank that can be attained by a Territorial Army officer. This fact was already within the knowledge of the applicant, as stated in his OA, wherein he used this as a ground to justify approaching the Hon'ble Armed Forces Tribunal directly without exhausting departmental remedies.

24. Learned counsel draws our attention to Para 1 of the OA, an extract of which is reproduced below:

"1.xxx Since the applicant will not get any further consideration due to the next vacancy arising after a hiatus of approx. 07 yrs in the year 2030 and the applicant retiring before that , therefore the same does not meet the ends of justice, warranting intervention of this Hon'ble Tribunal."

and it is contended by the respondents that no vacancy exists as on date in the TA Directorate for promotion to the rank of Brigadier in the Non-Departmental Cadre, either for the applicant or for any other officer.

Consideration

25. Considering the fact that the applicant was due to retire shortly, i.e., on 31.10.2025, we had considered the

interim prayer and passed detailed orders on 11.10.2023 and 31.10.2023, wherein we sought a response from the respondents and called upon them to show cause as to why the promotion order of Respondent No.5, issued on 07.08.2023, should not be stayed.

26. After examining the responses submitted by Respondents No.1 to 4, as well as by Respondent No. 5, we granted permission for an urgent hearing on the interim relief. The interim relief pertained to the promotion of Respondent No. 5 to the sole available vacancy, a position the applicant was also seeking.

27. Further having perused various documents submitted by the parties, it was *prima facie* found that Respondent No. 5 meets the criteria for minimum service in field areas, while the issue of exemption from the Part C promotion examination was to be addressed at the time of the final hearing.

28. It was visible from the records that Respondent No. 5 was granted the rank of Major w.e.f. 03.12.2005, based on

ante-dated seniority, and was subsequently granted the rank of Lieutenant Colonel (Substantive) w.e.f. 03.12.2012 within one year of joining the Territorial Army. This was despite the fact that he had not qualified the Part C examination, as he is an ex-officer of the Indian Navy. He had joined the Territorial Army on 03.12.2011 as a Major and due to his ante-date seniority he retained that rank as he could not have been made to undergo Part C examination as a Major.

29. Accordingly, taking into account the principles of prima facie case, balance of convenience, and irreparable loss, we concluded that there was no need to interfere with the promotion of Respondent No.5 to the rank of Brigadier. However, in case the applicant is found eligible for promotion to the rank of Brigadier, it was held that he shall be granted the same benefit consequent to the hearing of this OA.

30. We have heard the parties and examined the records submitted by all the respondents, including Respondent No.5, Brig. Amit Pande. We have also considered various documents and materials placed before us to determine

whether the applicant is entitled to promotion to the rank of Brigadier.

31. Having examined the service details of both the applicant and Respondent No. 5, we have carried out a comparative analysis of their respective careers, as they claim to be the only contenders for the sole available vacancy for the rank of Brigadier.

32. In consideration of prayer of the applicant that he instead be placed in the assignment of Brigadier-in-Charge, TA (Railways), a post which is currently unutilized and vacant, we have carried out a thorough perusal of the documents placed before us. We are of the considered view that since all TA Railway Battalions have already been optimized, any appointment as Brigadier-in-Charge, TA (Railways) would effectively be without a functional assignment. As no such unit of TA (Railways) currently exists on the strength of the TA, we find no justification to hold that the vacancy of Brigadier, TA (Railways) subsists as on date. Even if the same was available; in consideration of the fact

that it is tenable only by Departmental officer from Railways, we hold that the same is not available to the applicant who is a regular officer of TA. This fortifies our conclusion earlier while deciding the interim prayer of the applicant.

33. As regards the aspect of Respondent No.5, Brigadier Amit Pande's promotion through various ranks, it is pertinent to note that his seniority has been fixed after grant of TA commission on 03.12.2011 as follows vide letter dated 05.06.2013:-

(a) Lieutenant w.e.f. 03.12.1997

(b) Captain w.e.f. 03.12.2003

(c) Major w.e.f. 03.12.2005

(d) Lieutenant Colonel w.e.f. 03.12.2012

34. It is further observed from the records that respondents No.5 had joined Indian Navy on 05.08.1996 and after having completed 14 years and 04 days in the commission service he was released on 05.08.2010 in the substantive rank of Commander (equivalent to Lt Col in the Indian Army) and subsequently, he was granted commission

into the TA on 03.12.2011 with seniority in the rank of Lt fixed from 03.12.1997. He physically assumed the rank of Lt Col on 03.12.2012. His total commission in TA as well as embodied service was 11 years 10 months and 11 days and taking into account his previous service in Navy, his total commissioned service was 25 years 10 months and 15 days.

35. We find it essential to note the relevance of Part C for the 1997 batch officers to which both the applicant and respondents No.5 belong for promotion from Captain to Major. It has now emerged that the applicant had cleared his Part C examination to become a substantive Major, and therefore, the relevance of Part C has to be seen for Promotion of Respondents No.5 for sake of parity; and the QR for both the batchmates need to be maintained. Mandatory requirement of passing Part 'C' examination for Respondent No.5 as provided for in Para 41 of TA Regulations, 1948 (as amended in 1976), and reproduced herein as under:

"41. Promotion Examination—Officers—Lieutenants and Captains will be required to qualify

for promotion to the next higher substantive rank. Details of the examination are shown in Appendix V."

36. Noting that the promotion examination in TA is solely for officers tenanted the rank of Lt and Capt for their promotion to the next higher rank, we also find it pertinent to refer to relevant paragraphs of Appendix V to the TA Regulations, 1948, herein:

APPENDIX V

**PROMOTION EXAMINATION-TERRITORIAL ARMY
OFFICERS OTHER THAN AMC (TA) OFFICERS**

INTRODUCTION

"1. With effect from 1st January, 1971, Territorial Army officers will have to pass promotion examination before they are granted substantive promotion from Lieutenant to Captain and and Captain to Major. Syllabus for promotion examination is given in Appendices 'A' and 'B' for Territorial Army officers of nondepartmental and departmental Territorial Army units respectively.

2. The object of promotion examination is to ensure that officers have the necessary professional knowledge before promotion to the next substantive rank.

3. Promotion examinations will be held as under:-

*(a) Lieutenant to Captain -- Part 'A' Practical Examination
-- Part 'B' Written Examination*

*(b) Captain to Major -- Part 'C' Practical Examination
-- Part 'D' Written Examination*

4 to 10 xxx xxx xxx xxx"



37. It is clear from the analysis of Para 2 and 3 above that for promotion from Captain to Major rank, a TA officer is mandatorily required to clear Part C & D exam, whichever is applicable, which now takes us to exemption provided for under Para 11 of the TA regulations, 1948, reproduced as under:

EXEMPTION

11. The following will be exempted from passing the promotion examinations:--

(a) Officers of the Army Medical Corps.

(b) Officers who have already passed these examinations while serving with the Regular army.

(c) Officers who are permitted to count their full pay commissioned service in the Regular Army for seniority which would entitle them to promotion to the next substantive rank in less than two years from the date of joining the Territorial Army.

(d) Officers of departmental TA units (Railways, Signal, Post and Telegraphs, Docks and Inland Water Transport) from Parts 'A', 'B', 'C' and 'D' applicable to Non- Departmental TA officers. They will, however, be required to pass an examination to be called- Departmental TA Officer Promotion Examination (Lt to Capt) - within the first five years of their service, without attaining substantive rank of Lt, as laid down in para 6 above. Those who are unable to pass within this period will, however, be permitted to pass this examination before they complete the prescribed period of service, that is 8 years as laid down in para 38 (a) of TA Regs for

promotion to the substantive rank of Captain. Officers failing to pass this examination will be permitted to complete the examination within one year from the date they are due for promotion but will be promoted from the date of passing the examination.

(e) EME Territorial Army officers are exempted from passing Parts 'A' and 'C' of the Promotion Examination.

***(f) to (g) xxx xxx xxx
(emphasis supplied)***

38. From a perusal of aforesaid Para 11, it is clearly laid down in Para (c) that those officers who are permitted to count their full commissioned service in regular Army for the purpose of seniority will be exempted provided that this counting of seniority entitles them to promotion to next substantive rank within two years from the date of joining the Territorial Army.

39. From the records, it is evident that Respondent No.5 has full commissioned service of 14 years and 4 days in Indian Navy which has been counted for the purpose of calculation of ante-date seniority in TA, and he was due for promotion to the substantive rank of Lt Col within 1 year on completion of 15 years of service (14 years in Navy + 1 year

in TA), which makes him eligible for the exemption provided for in clause (c), and thus, we find that the Respondent No.5 has been promoted to Lt Col, following due process in line with the TA Regulations, 1948. Even though the policy laid down formalize for Regular Army whereas Respondent No.5 is an officer of Indian Navy who has already been granted the benefit of Regular service; at this belated stage we cannot reopen or re-evaluate the validity of his promotion earlier to the ranks of Lt Col and Colonel. That apart, observing that the respondent No.5 was already a Lt Col in TA in Dec, 212, letter dated 27.03.2018 cannot be applicable to the case under consideration.

40. Even if the applicant had any grievance in respect of those earlier promotions of respondent No.5, he ought to have challenged the same at the relevant and opportune time specially, at the time of those earlier promotions. As he failed to do so, we cannot now *"put the clock back."* Therefore, the issue that falls within our consideration at this juncture is the applicant's non-empanelment for promotion to the rank of

Brigadier in the Territorial Army, pursuant to the No. 2 Selection Board.

41. Further, a critical point that emerges from our examination of the No. 2 SB results, submitted before us by the MS Branch (which was responsible for conducting the No.2 Selection Board) is that the applicant and Respondent No.5, both being batchmates from the 1997 batch, were considered by the said Board for promotion to the rank of Brigadier. The Board, duly constituted, convened in June 2023, considered **four** eligible candidates from the 1997 batch for one available vacancy. This fact is quite in contrast to submission on behalf of the applicant that Respondent No.5 and he were the only two candidates competing for one vacancy of Brigadier (TA).

42. On a bare perusal of the Board's proceedings and result, it is evident that Respondent No. 5, Col Amit Pande, was awarded 91.383 marks (inclusive of the Board Members' assessment) and was placed No.1 in the order of merit. In comparison, the applicant

secured 90.935 marks and was placed at No.4 in the merit list. Between the applicant and Respondent No. 5, there were two other candidates who were ranked higher than the applicant.

43. Therefore, even if we were to hypothetically hold the promotion of Respondent No. 5 as null and void, such an outcome would not benefit the applicant, as the two other candidates ranked above him would still take precedence. Thus, the applicant's prayer for setting aside the promotion of Respondent No. 5 cannot lead automatically to his own empanelment or promotion in the given circumstances.

44. In view of the above analysis, we find no merit in the contentions raised by the applicant. The challenge to the promotion of Respondent No. 5 is misplaced, untimely, and even if entertained, would not result in any consequential benefit to the applicant. The promotion process to the rank of Brigadier was conducted fairly and in accordance with established procedure, and thus, this OA deserves to be dismissed being devoid of merit.

45. Accordingly, the OA 2634/2023 is dismissed.

46. No order as to costs.

47. Pending miscellaneous application(s), if any, are disposed of.

Pronounced in open Court on this ¹⁴ 7 day of November, 2025.


[JUSTICE RAJENDRA MENON]
CHAIRPERSON


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

/PS/