

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

OA 5088/2024

Maj Gen Praveen Chhabra ... Applicant
Versus
Union of India & Ors. ... Respondents
For Applicant : Mr. S S Pandey, Advocate
For Respondents : Mr. Neeraj, Sr. CGSC

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 Armed Forces Tribunal 2007, the applicant who is a serving Major General of Armoured Corps of Indian Army has filed this OA challenging his non-empanelment for promotion to the rank of Lieutenant General (Lt Gen) by the Special Selection Board (SSB), with the following prayers:-

- (a) *To call for the records on the basis of which the Respondents have passed the impugned order dated 20.11.2024 and 20.11.2023 wherein the Respondent No. 1 has granted partial relief to the Applicant and thereafter set aside both the impugned order dated 20.11.2024 and 20.11.2023 passed by the Respondent No. 1 to the extent relief has been denied to the Applicant.*
- (b) *To pass the order setting aside entire Confidential Reports of the Applicant covering period of 10/2021-06/2022 and 07/2022-10/2022 on basis of the biasness and subjectivity.*

- (c) *Direct the Respondents to give a fair opportunity to the Applicant for consideration for promotion by adopting any of the course of action available and fair in the presence case after expunction of the Impugned CRs:--*
- (i) *An opportunity to the Applicant to get one more command report as GOC of a Division by directing him to give the said assignment afresh;*
- (ii) *or, extrapolate reports earned by the Applicant as IG Operations of NSG, a challenging and sensitive appointment where he controls the elite special counter terror force of the nation which is the size of a division:*
- (iii) *or, in lastly if the same is not held to be feasible retain the Impugned ACRs by upward moderation by expunction of figurative assessment of '8's from the impugned CRs which otherwise do not match his past profile and has been awarded subjectively*
- (d) *With further direction to consider the Applicant for promotion after such direction/rectifications of the CRs as deemed appropriate and grant him promotion to the Rank of Lt Gen as granted to his Batch mates without loss of seniority and continuity of service with other consequential benefits.*
- (e) *Issue such other order/direction as may be deemed appropriate in the facts and circumstances of the case.*

Facts of the Case

2. The applicant, a serving officer in the rank of Major General (Maj Gen) was commissioned into the Indian Army in the Armoured Corps on 09.06.1990. During the course of service he continued to get his promotion to rank of Brigadier alongwith his batchmates. He got nominated and successfully completed the prestigious Higher Defence Management Course

(HDMC) in the rank of Colonel and the National Defence College (NDC) Course in the rank of Brigadier.

3. However, he was not empanelled for promotion to the rank of Lt Gen in the Selection Board (SSB - Fresh Case) held in October 2023. The applicant filed a Statutory complaint dated 01.05.2023 against CR for the period 07/2022 – 10/2022. The Competent Authority granted partial redressal to the applicant by expunction of recommendations of the Initiating Officer (IO), Review Officer (RO) and Senior Review Officer (SRO) at Para 14(b) on the grounds of inconsistency.

4. The applicant again preferred a Statutory Complaint dated 22.11.2023/10.12.2023 against his CR 10/2021-06/2022 and 07/2022 – 10/2022. The competent authority after due consideration of the second Statutory Complaint granted partial redressal by way of expunction of entire assessment of IO in CR 07/2022 – 10/2022 on the grounds of subjectivity and biasness. Aggrieved by the aforesaid rejection, the applicant has filed this OA.

Submissions on behalf of the applicant

5. Taking us through the service profile of the applicant, learned counsel for the applicant submits that the applicant received the President's Gold Medal for standing first in the Order of Merit in 86th Regular Course while being commissioned into the Indian Army and was amongst three youngest officers of his course. He has served in various Command, Staff, and Instructional appointment during his career and in varied terrains in active operational areas including overseas appointments twice and one overseas advance course at US Army Armor School, US. The applicant has excelled in all career courses, standing first in many of them and has been awarded several times for his excellent performance with GOC-in-C Northern Commendation Card, COAS Commendation Card for CI operations where he was wounded twice and earned the Wound-Medal; with Chief of Air Staff (CAS) Commendation Card for role as the Defence Advisor in Embassy of India Malaysia and with a Vishist Seva Medal (VSM) for operations and training innovations.

6. Learned Counsel further submits that the applicant on promotion to the rank of Maj Gen was given command of 20 Mountain Division (Mtn Div) and made remarkable achievements on the operational fronts and several operational innovations to enhance overall operational capabilities of his formation. On the welfare front, he led the citizen-soldier partnership and converted his station into a green station with zero waste; with major infrastructural improvements. However, however his sterling performances got overshadowed by the circumstances of a General Court Martial (GCM) in the last four months of his command, wherein the applicant took correct stand and did not bend to the unethical orders of the IO to take any illegal action and therefore he argues that his CRs have been affected by subjectivity and biasness of the IO and resultantly the RO & SRO which has been accepted in the redressal granted in the two Stat Complaints filed by him.

7. Submitting further, the learned counsel argues that the applicant filed his first statutory complaint on 01.05.2023 impugning the IO's assessment in his 2nd Confidential Report (CR) (01.07.2022 to 13.10.2022) on the ground of bias and

subjectivity. The GCM awarded 'Severe Reprimand' and two years' loss of seniority to the accused, the CO 33 Corps Intelligence Battalion which was against the biased and desired wish of his IO, who had directed the applicant that the accused must be awarded dismissal from service with rigorous imprisonment irrespective of the recommendations of the Summary of Evidence (SOE) and merits of the case.

8. Learned counsel further argues that the Respondent No.1 vide its impugned order dated 21.11.2023 granted partial relief by way of expunction of recommendations of the IO, RO and SRO at Para 14(b) – "Employment and Fitness" for Promotion for "Staff Only" appointments on the ground of inconsistency from the 2nd CR (07/2022 to 10/2022) which was a proof that the entire chain of command had got negatively influenced by the assessment by the IO, whereas the same IO, RO and SRO had recommended the applicant for 'Command & Staff' in the 1st CR just 3 months earlier. Hence this redressal completely ignored the aspect of biasness and gross subjectivity in the figurative assessment of all reporting officers.

9. Stressing further, the learned counsel submits that with the redressal granted in First Stat Compliant dated 20.11.2023, understanding that the entire chain of command had got influenced by the circumstances of the GCM & IO's biased assessment and in light of such evidence the applicant filed Second Statutory Complaint initially on 22.11.2023 and finally on 10.12.2023 impugning both his CRs as fresh evidence clearly highlighted that both his CRs had got influenced by circumstances of the GCM.

10. Learned counsel for the applicant submits that the applicant filed second statutory dated 10.12.2023 wherein he highlighted the new facts about which he was earlier not aware and these facts disclosed the circumstances which not only suggested the biasness and subjectivity in assessment of applicant by the IO in CR for the period 07/2022 to 10/2022 (2nd CR) but also established biasness and subjectivity in the assessment of Applicant by IO in CR for the period 10/2021 to 06/2022 (1st CR) and all the actions of IO to influence the whole transaction of manipulating GCM award from the initiation of SOE to GCM of accused is duly supported by the

officers part of this Summary of Evidence as well as GCM of the Accused.

11. Learned counsel further submits that Respondent vide order dated 20.11.2024 disposed off the second statutory complaint while setting aside the entire assessment of IO in CR 07/2022 to 10/2022 on ground of subjectivity and biasness. However, the CR for the period 10/2021 to 06/2022 was retained without considering the fact that the bias of the IO cannot be partial and respondent also failed to appreciate that any action which is affected by even a 'real danger of bias' is liable to be interfered with as the competent authority ought to have considered the issue which was clearly established that the trigger point of biasness has crept when SOE did not recommend trial of the Accused by way of the GCM which was not in Applicant's control as it has to be based on finding of SOE conducted by other officers including Deputy GOC, the Commanding Officer (CO) of the accused.

Submission on behalf of the Respondents

12. Per contra, learned counsel for respondents submits that the Army has a pyramidal structure and the vacancies for

promotion to higher ranks is limited. From the broad base of the pyramid, only those officers whose record of service are best suited for tenantry higher appointments, are selected to fill up the vacancy accruing in the higher ranks. The selection board are conducted under Para 108 for Regulation for the Army, Revised Edition 1987 read with Army Headquarters letter No 31525/P/MS-5B dated 06.05.1987, under the authority of Chief of the Army Staff for selecting officers of various Arms/Service for promotion to various ranks upto the rank of Lt Gen.

13. Learned counsel further stated that the aim of the Selection System is to serve the best interest of the service by selecting only those officers who are considered competent to shoulder the responsibilities of higher ranks. The Selection Board assesses all eligible officers who reckon seniority during one calendar year through objectivity, impartiality and in the best interest to the service in accordance with the Quantified System of Selection guidelines contained in policy dated 23.12.2017.

14. It is further submitted by the Learned counsel that in case any officer gets relief through the mechanism of Statutory/Non Statutory complaints he is entitled Special Consideration with the dispensations affecting the changed profile, and that the Outstanding grading of '9' is awarded based on the exceptional performance of the ratee officers and cannot be claimed as a right.

15. Arguing on the issue of award of marks in CR, learned counsel 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.

16. With respect to the preliminary objections, the learned counsel for the respondents submits that the applicant had leveled categorical allegations of bias and prejudice against his Initiating Officer (IO) for the CR 10/21 – 06/22

and 07/22 – 10/22 and contended that due to the circumstances of a GCM of Col PP Dubey, CO 33 Corps Intelligence Battalion in the last four months of his command as GOC 20 Mountain Division. However, the applicant has not arrayed any of his Reporting Officers as a party to this OA. The contentions of the applicant are within the personal knowledge of official(s) against whom it is alleged and other authorities concerned and it is incumbent upon the applicant that they should be arrayed as respondent(s) to answer the allegations attributed to them.

17. Learned counsel for the respondents submits that the applicant is a 1990 Batch General Cadre (Armd Corps) officer who was considered for promotion to the rank of Lt Gen by SSB held in Oct 2023 as per the policies in vogue and was not empanelled due to being low in overall comparative merit. Accordingly, the result of the Selection Board was declassified on 10.01.2024 and the status of officers considered by the Selection Board was published on 30.01.2024.

18. Learned counsel further submits that as directed by Ministry of Defence, the next Special Selection Board (SSB)

P

for 1991 Batch of General Cadre (GC) was scheduled and held in December 2024 in which the applicant has been considered as a First Review Case and the Selection Board proceedings have been forwarded to Ministry of Defence for obtaining approval of competent authority.

19. Advancing his arguments further the learned counsel for the respondent submits that a Stat Complaint dated 01.05.2023 against CR for the period 07/22- 10/22 was preferred by the applicant. The Competent Authority after due examination of the same granted partial redressal to the applicant by way of expunction of recommendations of the IO, RO and SRO at Para 14(b) on the grounds of inconsistency which was communicated vide MoD letter No A/45501/26/2023/SC/MS(X)/477/2023/SC/ RoG/Stat dated 09.11.2023. Thereafter, the applicant again filed a Stat Complaint dated 22.11.23/10.12.2023 against CRS 10/21-06/22 and 07/22-10/22. Again, the competent authority after due examination of the second Stat Complaint, granted partial redressal by way of expunction of the entire assessment of IO in CR 07/22-10/22 on the grounds

of subjectivity and bias vide MoD letter No dated A/45501/97/2023/SC/MS(X)/161/SC/ 2024-RoG/Stat 09.08.2024 which was received by concerned section on 19.11.2024 and same was communicated to the Applicant vide letter dated 20.11.2024.

20. Learned counsel further elaborated that thereafter, the applicant vide his letter dated 20 Nov 24 again requested for rectification of error in grant of relief on Stat Complaint dated 10.12.23 which was forwarded to all concerned. The Competent Authority vide letter/Note No 161/SC/2024/D(RoG/Stat) dated 28.01.2025 has disposed of the matter.

21. Arguing further, the learned counsel prays that the Applicant has sought various reliefs in his prayer clause in which at Para 8(c) he is seeking a relief to get one more opportunity to earn one more command report as GOC of a Div. In this regard it is submitted that the Applicant has already tenanted the Command Criteria Appointment in the rank of Maj Gen which is a mandatory requirement to make the officer of Maj Gen rank eligible for his SSB consideration for promotion to

rank of Lt Gen. Applicant having undergone 2 x SSB considerations with such reports is now estopped to seek this relief which will result in serious command and control issues between the officers in Apex rank. As regards the prayer to extrapolate the CRs earned by the applicant as Inspector General Operations of Nation security Guard (NSG), it is submitted that the Command Criteria Report is mandatory for making the officer eligible for SB/SSB consideration and same cannot be overlooked. Further extrapolation of Non Criteria CRs earned outside Army environment cannot be considered for SSB consideration as applicant being General Cadre officer is required to be Adequately Exercised (AE) compliant in terms of applicable AE Policy for making him eligible for consideration by SSB.

22. The learned counsel for the respondents submits that as regard the moderation of impugned CRs, it is submitted that in Indian Army the concept of Moderation is unknown. Based on overall CR profile of officer, the CRs are accepted as they are or they are edited as inflated or deflated if they are not within permissible limits. The applicant is already granted relief by

Competent Authority in his two Stat Complaints filed in r/o both the CRs wherein the competent authority on re-examination of the CRs have granted partial redress to the Applicant on two occasions.

Consideration

23. We have heard the submissions of counsels on behalf of parties. The respondents have submitted before us all the personal and confidential documents called by us to adjudicate this case which include the CR dossier, file of Ministry of Defence (MoD) containing all documents pertaining to the Statutory Complaints of the applicant on two occasions and the Board Proceedings of the Special Selection Board (SSB) conducted in October 2023 and December 2024 when the applicant was considered for promotion to the rank of Lt Gen.

24. On careful perusal of the documents as above in consideration of the prayers of the applicant, we have observed the applicant has made certain allegations against his Initiating Officer (IO), Lt Gen Tarun Kumar Aich, the then General Officer Commanding 33 Corps. Ordinarily, in accordance with the principles of natural justice, we would have directed the

applicant to implead the said officer as a party to these proceedings so that his version could be duly considered. However, in the interest of expeditious adjudication and having noted that the comments of the Initiating Officer were duly obtained and examined by the Complaint Advisory Board (hereinafter CAB) while dealing with the Applicant's Statutory Complaint, and the same have been considered in detail, we are of the view that the impleadment of the said officer may not be necessary in the present case.

25. On a detailed perusal of records, including CR dossier of the applicant, SSB Proceedings and the file of Complaint Advisory Board, the questions that have now come up before us for our consideration are :-

Question No. 1

(a) Whether the applicant is entitled to the relief to extent of expunction of both the reports earned by him during his tenure as GOC 20 Mountain Division i.e. from period 10/21 – 06/22 and 07/22 – 10/22 ?

Question No 2

(b) If the applicant is found entitled to relief, whether, subject to grant of relief in either both or one of the CRs by this tribunal, if the applicant is entitled to grant of :-

(i) Another opportunity to earn a fresh Command Report as GOC of a Division ?

Or

(ii) Extrapolate the report earned by Applicant as Inspector General (IG) Operations of National Security Guard (NSG) ?

Or

(iii) Upward moderation of CR by expunction of 8s from the impugned CRs, in consonance with his past profile.

26. On a cursory look at the CR dossier of the applicant, we are convinced that the applicant has had an impeccable record during his entire service, as averred by him in every sphere, including career courses and performance in every assignment, which is adequately reflected in all his CRs. We observe that the applicant has represented against his CR for the

period 07/2022 – 10/2022 earned as Maj Gen in the appointment of General Commanding Officer (GOC) 20 Mtn Div vide Statutory Complaint dated 01.05.2023 seeking expunction of the CR. Further, he had prayed to be judged as per his demonstrated performance during the period of report which should be compared to his first report by the same IO i.e 10/2021 -06/2022 as well as his past profile.

27. The competent authority entrusted with the power to review the CR, i.e. CAB, COAS Secretariat had sought the comments of the IO in view of certain allegations leveled against him by the applicant in his statutory complaint, wherein we observe that these allegations pertained to a General Court Martial (GCM) convened against Colonel P.P. Dubey, Commanding Officer, 33 Corps Intelligence Battalion, who was then, attached to Headquarters 20 Mountain Division, under the command of the applicant, and it is the apprehension of the applicant that the outcome of the said GCM, not being in conformity with the verbal instructions allegedly issued by his IO, may have led to a lower assessment in the CR under

consideration, despite a higher grading awarded by the same IO in the previous report.

28. The records show that the CAB duly recorded the IO's comments, which we have reviewed. In his response, the IO has categorically stated that the applicant was assessed fairly and in accordance with his demonstrated performance. He further asserted that the applicant's allegations and apprehensions are unfounded and the applicant was rated as 'Outstanding' in line with the guidelines of the MS Branch, issued vide letter No. A/17151/4/MS CR Policy dated 06.04.2021. The Reviewing Officer (RO), who was the then General Officer Commanding-in-Chief, Eastern Command, has also submitted that the applicant was assessed in an objective and unbiased manner and has accordingly recommended disposal of the complaint on its own merits. It may, however, be noted that the comments of the Senior Reviewing Officer (SRO), namely the Chief of Army Staff (COAS), were not obtained, which appears to as per the existing policy provisions governing the complaint redressal mechanism.

29. Moving on to proceed to examine the CR, we find that the CR of the applicant for the period 07/2022–10/2022 is a command criteria report, and also, the second CR in the appointment of GOC, 20 Mtn Div. All three reporting officers, i.e., the IO, RO, and SRO have graded the applicant '9' in the overall box grading. The IO has awarded Outstanding grading (9) in eight qualities and Above Average (8) in four qualities including two (8)s in "Qualities to Assess Potential" (QsAP). This report, compared to the previous report by the same IO, has only one 9 less, due to which the average of the impugned CR is 8.75 in comparison to the average of 8.81 recorded in the previous CR. However, the applicant has been recommended only for Staff Appointment by IO and 'Not Recommended' for 'Command' appointment in Para 14 (b) of CR form, which was similarly endorsed by RO and SRO. Having noted the same, the competent authority granted 'Partial Redressal' to the applicant by setting aside the recommendations of all three reporting officers at Para 14(b) of CR vide their order dated 09.11.2023.

30. The applicant submitted the second Statutory Complaint on 10.12.2023, this time not only challenging the same

CR once again but also the previous CR for the period 10/2021–06/2022. We have taken note of the fact that the applicant, in his earlier complaint, had sought redressal of his second command CR for 07/2022–10/2022 on the grounds of the same being inferior to the CR for the period 10/2021–06/2022, which he now challenges. The reason for the same as submitted is that since the enquiry was being conducted by his formation, he may have been rated lower than expected and therefore prays for setting aside or up-moderating the CR for a level playing field with his other batch mates. We have perused the contents of the complaint, which once again contains fresh comments obtained from the IO, as well as an entire analysis of the complaint by the CAB. The first CR for period 10/2021 – 06/2022 has only 3 x ‘8’s by IO with a detailed complimentary pen picture and recommendations for ‘Command’ assignment. The report by RO is also similarly laudatory, with 4 x ‘8’s and rest of the gradings in all qualities are ‘9’s. We are satisfied with the reasons of the competent authority to retain the CR ‘As it is’ for

period 10/2021 – 06/2022 and without any interference. We do not find any further grounds or reasons to set aside the CR.

31. We must record that although, the competent authority dealing with the complaint did not find any fresh grounds for interfering once again with the second CR, i.e., for the period 07/2022–10/2022, which was challenged earlier, they have, on the basis of detailed and fresh analysis, set aside the entire assessment by the IO, including all numerical gradings and pen pictures, vide order dated 09.08.2024, while retaining the assessments by RO & SRO without any interference.

32. We have further perused the remaining part of the CR based on the averments of the applicant for setting aside the entire CR, wherein we observe that the RO has rated the applicant three X '8's in 'Personal Qualities' (PQs) and 'Demonstrated Performance Variables' (DPVs) and two x '8's in QsAP with a commendatory pen picture and recommendation for 'Command' assignments. The SRO's gradings have 2 x '8's and 3 x '9's in QsAP with a good pen picture and recommendation for Command assignment.

33. At this stage it is essential to observe that although the IO's figurative ratings were entirely set aside by the competent authority while dealing with the second complaint; in the terms of quality of the report the IO had rated the applicant with all qualities with Nine ('9's) except only 2 x '8's in PQs/DPVs and 2 x '8's in QsAPs.

34. Therefore, in our considered opinion, there was no necessity to set aside the figurative ratings of the IO by the competent authority; after the damaging part of the complaint i.e. the 'Recommendation' had already been expunged. We have also further observed that the report of IO being set aside had led to reduction of Quantified Marks of the applicant.

35. We find accurate resonance in our observations in Brig Vishal Mohanlal Murada Vs. Union of India and Ors. (OA 1256/2022 Date of decision: 27.09.2023) which is extracted herein below.

17. It is our considered opinion that the Courts are not an expert to assess the competence of the employee and override the assessment of the reporting officers to upgrade Above Average (8) to Outstanding (9) in absence of any malafide on record.

18. We are of the opinion that we are neither privy to the performance of the employee nor the interpersonal aspects of the organizational health, and 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).

19. 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 grievous 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.”

36. Therefore, in the background of the observations of this Tribunal in Brig Vishal Mohanlal Murada (supra) and on a detailed observation of remaining portion of impugned CR, we do not find any grounds to set aside the entire CR based on the apprehension of the applicant that the incident of GCM as detailed earlier had impacted the quality CR by the IO and the same would have been reflected on the quality of reports by RO and SRO, and therefore, in the absence of any evidence on record to substantiate this apprehension, merely because the applicant had been awarded a fewer number of ‘9’s than his expectations, we are not inclined to interfere in the aforesaid CR.

37. We further take into consideration a subsequent representation by the applicant through a letter dated 20.11.2024 requesting the competent authority, i.e., the Chief of Defence Staff (CDS), for rectification of error in the

grant of relief on the statutory complaint, as the same led to an adverse impact on the Quantified Merit of the applicant, to which in a response to the representation, MoD vide their communication dated 06.02.2025, held that the grant of second relief to the applicant vide their order dated 09.08.2024 was 'Final'; even though it was not denied that apprehensions of the applicant were correct.

38. It is observed from the records that the overall Quantified Marks of the applicant had dropped consequent to the grant of the second redressal. However, on perusal of MS Branch policy letter No 04502/MS Policy dated 17.09.2010; it is observed that such eventualities have been taken note of and answered in this policy, of which relevant Para 8(f) of this document is reproduced herein: -

8(f). Special Review will not be granted in case the amended profile results in the quantified merit of the officer becoming lower than that with which he was considered earlier.

39. Having noted the fact that such eventualities have been dealt with in the policy letter, we do not find any reason to differ from the aforesaid policy, and thus, Question No. 1 is answered accordingly with the applicant not entitled to any further relief in the impugned CRs.

40. Consequent to our detailed analysis pertaining to Question 1 and the answer rendered above, we are of the considered opinion that Question No. 2, being an ancillary issue, with the applicant praying for the grant of another opportunity to earn another Command Report, is thus answered in the negative.

41. However, we find it pertinent to have a cursory observation, taking note of the principle of extrapolation which is laid down in Para 6 of the MS Branch Policy letter dated 23.12.2017 on the Quantified System of Selection which is extracted as under :-

“Confidential Reports

6. *The allocation of marks for CRs is based on the following considerations:-*

(a) Primacy of CR. Primacy of the CR vis-à-vis other parameters like performance on Courses and Gallantry Awards has been maintained.

(b) Criteria CRs vis-à-vis other CRs. Greater weightage has been given for performance on Criteria appointments as compared to Non Criteria appointments, ie, Staff/Instructional/Extra Regimental Employment appointments. The term Criteria reports will be inclusive of Part Criteria reports for the purpose of this policy.

(c) War/Operational Reports Earned Outside Reckonable Profile. These CRs will be reflected in MDS for the purpose of Board Members Assessment.

(d) Extrapolation of Reports.

(i) In case an officer does not get any exposure in a Non Criteria appointment in a particular rank, then

extrapolation of Quantified Marks to derive marks for Non Criteria reports will be done as under:-

(aa) No 3 Selection Board. Extrapolation from Criteria reports of the same level, ie, Maj/Lt Col.

(ab) No 2 and Higher Selection Boards. Extrapolation from Non Criteria reports of the previous rank.

(ii) Extrapolation of marks from Non Criteria reports to Criteria reports will not be carried out. Exception to this rule will be admissible only to BC(WW) offrs for whom 100% AE waiver is permitted under specific provisions.”

42. It is equally essential to refer to MS Branch letter No 04560/1/MS Policy dated 22.11.2018 reproduced herein as under:-

“Tele : 23018826/35586

*Military Secretary’s branch
Integrated HQ of MoD (Army)
New Delhi-110011*

04560/1/MS Policy

22 Nov 2018

Headquarters

Southern Command (MS)

Eastern Command (MS)

Western Command (MS)

Central Command (MS)

Northern Command (MS)

ARTRAC (MS)

South Western Command (MS)

IDS (MS & SD)

ANC (MS & SD)

SFC (MS)

*CRITERIA APPOINTMENTS: MAJOR GENERALS
AND BRIGADIERS*

1. Reference MS Branch letter No 04560/1/MS Policy dated 26 Apr 2012 (as amended from time to time).

2. Revised list of criteria appointments in the rank of Major General and Brigadier are as given at Appendices A and B respectively to this letter.

3. Brigadiers presently tenanted appointments, listed earlier as criteria appointments and deleted with issue of this letter, will be granted benefit of criteria status for the entire current tenure. Brigadiers posted to appointments newly included in the list of criteria appointments as per Appendix B to this letter, will be granted criteria status only for Confidential Reports initiated after date of issue of this letter.

4. MS Branch policy letter referred to at Para 1 and all amendments issued subsequently are hereby superseded.

5. This letter may be disseminated to formation level.

Sd/-xxxx

(CP Sangra)

Maj Gen

Addl MS (B)

for Military Secretary

Appendix A

(Refers to Para 2 of MS Branch letter No 04560/1/MS Policy dated 22 Nov 2018)

CRITERIA APPOINTMENTS IN THE RANK OF MAJOR GENERAL

<u>Ser No</u>	<u>Arms/Services</u>	<u>Appointments</u>
1.	Gen Cadre	(a) GOC Armd/ Mech/ Inf/ Mtn Div (b) GOC CI Force (c) IGAR
2.	Supporting Arms/ Services	All appointments within the Corps and outside

Appendix B

(Refers to Para 2 of MS Branch letter No 04560/1/MS Policy dated 22 Nov 2018)

CRITERIA APPOINTMENTS IN THE RANK OF BRIGADIER

<u>Ser No</u>	<u>Arms/Services</u>	<u>Appointments</u>
1 to 13	xxx	xxx

43. A bare perusal of the above quoted letters brings us to the conclusion, that there is no provision for extrapolation of “Non Criteria” report earned by applicant as IG, NSG on deputation for the purpose of making up the shortfall of the Command Criteria Report.

44. In addition, we find it pertinent to reproduce Para 5,8,9 and 14(a), 15, 16(b) and 17 of MS Branch Policy letter No.04479/MS Policy dated 20.03.2013 on AE Policy for Consideration of Officers by No. 2, No. 1 SBs & SSB, being relevant to the issue under consideration :-

“Tele : 23018826/35671

*Military Secretary’s branch
Integrated HQ of MoD (Army)
New Delhi-110011*

04479/MS Policy

20 Mar 13

Headquarters

Southern Command (MS)

Eastern Command (MS)

Western Command (MS)

Central Command (MS)

Northern Command (MS)

ARTRAC (MS)

South Western Command (MS)

IDS (MS & SD)

ANC (MS & SD)

SFC (MS)

**ADEQUATERLY EXERCISED (AE) POLICY FOR CONSIDERATION
OF OFFICERS BY NUMBER 2, NUMBER 1 AND SPECIAL
SELECTION BOARDS**

1 to 4

xxx

xxx

xxx

(b) Non-General Cadre.

(i) Earn minimum two Reports in the rank of Major General.

(ii) Serve in the rank of Major General for minimum 18 months.

15. xxx xxx xxx

16. (a) xxx xxx xxx

(b) Number 1 Selection Board and Special Selection Board.

For approval by the COAS as under:-

(i) Maximum of three months of tenure period on Criteria Appointments.

(ii) Maximum of six months for holding the rank of Brigadier or Major General, as applicable.

17. As a norm, the criteria of minimum two Reports on Criteria appointments will not be waived or reduced. In exceptional cases, if it is not in best interest of the organisation to post the officer again on a Criteria/Part-criteria appointment, a waiver for the lack of one AE criteria report may be granted by the COAS on a case to case basis. However, in such cases the officer should in addition have at least one Report on a non-criteria appointment in the present rank, to be considered AE.

18 to 21. xxx xxx xxx

Sd/-xxxxxxx

(JS Sandhu)

Major General

Additional MS (B)

For Military Secretary”

45. We observe that the aforesaid AE policy has been amended vide MS Branch letter issued on 02.04.2013, which is reproduced herein as under:

“Tele : 23018826/35671

(Army)

Military Secretary’s branch
Integrated HQ of MoD

New Delhi-110011

04479/MS Policy

Headquarters

Southern Command (MS)

Eastern Command (MS)

Western Command (MS)

02 Apr 13

Central Command (MS)
Northern Command (MS)
ARTRAC (MS)
South Western Command (MS)
IDS (MS & SD)
ANC (MS & SD)
SFC (MS)

ADEQUATELY EXERCISED (AE) POLICY FOR CONSIDERATION OF OFFICERS BY NUMBER 2, NUMBER 1 AND SPECIAL SELECTION BOARDS

1. Refer MS Branch letter No 04479/MS Policy dated 20 Mar 2013.
2. Para 16 of MS Policy letter under reference is hereby replaced as under:-

"16. In the extreme case where an officer is not AE owing to management constraints of the organisation, case for waiver may be processed by the relevant Controlling Group in MS Branch as under:-

(a) Number 2 Selection Board. Maximum of three months of tenure period on Criteria/ Part-criteria appointments for approval by MS.

(b) Number 1 Selection Board and Special Selection Board.
For approval by the COAS as under:-

(i) Maximum of three months of tenure period on Criteria Appointments.

(ii) Maximum of six months for holding the rank of Major General."

3. Contents of this letter may be disseminated to unit level.

Sd/xxxxxx
(Ashok Singh)
Col
Col MS (P, CM & C)
for Military Secretary"

46. We have further perused the MS branch letter No 04530/MS Policy dated 01.04.2015 formulates the tenures for Formation Commanders, and the same is reproduced herein :-

"Tele : 23016637/35673

*Military Secretary's branch
Integrated HQ of MoD (Army)
New Delhi-110011*

*04530/MS Policy
Headquarters*

01 Apr 15

*Southern Command (MS)
Eastern Command (MS)
Western Command (MS)
Central Command (MS)
Northern Command (MS)
ARTRAC (MS)
South Western Command (MS)
IDS (MS & SD)
ANC (MS & SD)
SFC (MS)*

TENURES FOR FORMATION COMMANDERS

1. *Release of additional Select rank vacancies in 2009 in the rank of Brigadier and Major General and the need to absorb them in a mandated time frame necessitated move of Brigadiers and Major Generals from command to staff appointments in an early time frame on completion of minimum Adequately Exercised (AE) Period. This resulted in relatively shorter tenures, thus affecting the stability in command appointments.*
2. *As the additional vacancies have now been absorbed, it is now feasible to provide the desired stability by providing longer tenures in higher command assignments. Apropos, with immediate effect, the command tenures will be as under:-*
 - (a) *Brigade Commanders. 18 months.*
 - (b) *GOC Division. 15 months.*
3. *There is no change to the AE criteria for various Selection Boards as stipulated vide MS Branch letter No 04479/MS Policy dated 20 Mar 13. In organisational interest, the tenure of an officer may be curtailed or extended beyond the above stated period subject to meeting the laid down AE parameters.*

4. This letter may be suitably disseminated.

*Sd/-xxxxx
(VG Khandare)
Maj Gen
Addl MS (B)
For Military Secretary*

47. On a concluding look, we observe that while the extant policy provisions vest certain discretionary powers in the COAS to grant waivers in cases involving a shortfall of the Command Criteria Report, the same is not material herein, and the issue does not warrant consideration in the instant case, in view of our answer to Question 1, holding that the applicant is not entitled to any relief in the impugned CRs; and thus, the aforesaid issue is left open to be adjudicated in appropriate case.

48. With respect to the relief sought at para 8(d) of the OA, we move on to examine the proceedings of the Selection Board (SSB) wherein we observe that the applicant was considered for promotion to the rank of Lieutenant General for the General Cadre 1990 Batch held on 19–20 October 2023, wherein nine (09) officers of the rank of Major General were recommended for the ‘Command & Staff’ stream, and five (05) officers were recommended for the ‘Staff Only’ stream, with the applicant securing an Order of Merit position of 48 with an aggregate

of 95.666 marks, whereas the last officer recommended for promotion had secured 96.375 marks.

49. In his second chance, the applicant was considered by SSB for the General Cadre 1991 Batch held on 17–18 December 2024, wherein his rank in the merit list was 54, and the Board recommended nine (09) Major Generals for promotion in Command & staff stream and two (02) Major Generals for 'Staff Only' stream, wherein the total marks, including BMA marks, secured by the last officer recommended for promotion was 96.668, and the applicant had been awarded 95.493 marks, including BMA marks. Therefore, we are of the considered opinion that the applicant has not been empanelled, being low on merit.

50. However, before parting, it is essential for us to record that while in the process of adjudicating the instant matter, it has come to the notice of this Tribunal that an increasing number of officers, despite having been awarded the highest possible overall grading of '9', signifying 'Outstanding', are approaching this forum with grievances pertaining to the award of individual gradings of '8' in certain attributes or qualities.

51. We note that the grievance in such cases stems from a perceived shortfall vis-à-vis the applicants' personal expectations, and the present case is a clear-cut illustration of this emerging trend.

52. We cannot hesitate but observe that if every officer who has been awarded an 'Outstanding' grading with '9' in the overall assessment were to seek judicial redress merely on the ground that the number of '8s' awarded in individual qualities does not align with their personal sense of entitlement, and were to seek substitution of such '8s' with '9s' or the setting aside of the Confidential Report itself, then, the role of judicial forums would stand reduced to nothing but only to determine the precise number of '8s' or '9s' that should have been awarded by the Reporting Officer in the assessment of each officer.

53. Such a trajectory, in our considered view, carries grave and far-reaching consequences for the sanctity and efficacy of the Confidential Report system, which may also have an adverse bearing on the integrity of the quantification-based methodology adopted by Promotion Boards for the purpose of

selection to higher ranks, which is fundamentally premised on the objectivity and credibility of the grading system.

54. It is essential to record that this Tribunal is neither privy to the interpersonal dynamics between superior and subordinate officers in the Armed Forces nor placed in a position to directly assess the actual performance of the officers concerned, and thus, in the absence of impleadment of the Reporting Officers, and based solely on the averments made by the applicants, we are constrained to observe that it would be legally impermissible to interfere with a CR unless it is established through cogent material that the CR suffers from demonstrable bias, subjectivity, or illegality.

55. It is well-settled that each CR pertains to a defined period of service and must be assessed in the context of the ratee's performance during that specific timeframe, where we are also mindful of the fact that Reporting Officers are not expected to be aware of the ratee's past CRs or overall dossier at the time of rendering their assessment. Accordingly, in the absence of any reference material or continuity of record, a Reporting Officer is bound to evaluate the officer based on his individual

benchmarks and on the performance actually observed during the reporting period in question.

56. In the course of adjudicating a series of similar matters concerning CRs and promotions to senior ranks, it has come to our notice that the Military Secretary (MS) Branch maintains informal characterizations of certain Reporting Officers as 'Liberal,' 'Justified,' or 'Strict'. However, at the same time, no established procedure or validated tool exists within the MS Branch to unilaterally alter or moderate the gradings awarded by such Reporting Officers.

57. In view of the foregoing observations, we are of the considered opinion that it is imperative for the Competent Authority responsible for policy formulation in the matter of CRs to undertake a comprehensive review of the existing system, wherein appropriate corrective measures must be instituted to address these systemic shortcomings, which appear to have led to genuine grievances being raised by a number of affected personnel.

58. We must express our anxious concern on the perusal of SSB proceedings that the gap in marks between officers placed

at Order of Merit 14 (last officer empanelled) and Order of Merit 48 is barely 0.709 and the case is equally dismal in the next SSB where the difference of marks between Order of Merit 11 and 54 is 1.175, implying thereby that there are 34 and 43 officers placed, respectively, within this narrow bandwidth of marks. ✓

59. This explains, in our opinion, the anguish of the officers not empanelled based on Comparative Merit within the batch and they are compelled to approach the judicial forums for expunction or redressal even when rated with one less '8' than their batch mates who are competing for limited vacancies for promotion to the next higher rank. This case under consideration is no exception. ✓

60. We must specify and observe that this aspect, in our visualization, will have serious repercussions in times to come, and therefore, needs to be given course correction by the competent authority. ✓

61. Therefore, in light of the aforesaid discussion, we are of the considered opinion that the present OA No.5088/2024 is devoid of merit and hence, dismissed.

62. No order as to costs.

63. Pending miscellaneous applications, if any, stand disposed of.

Pronounced in the open Court on 4 day of September, 2025.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

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

PS