

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

OA 546/2022

Lt Col Sham Dev Kangotra ..... Applicant  
Versus  
Union of India & Ors. .... Respondents  
For Applicant : Mr. Sumit Sinha, Advocate  
For Respondents : Gp Capt Karan Singh Bhati, Sr. CGSC

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON  
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant, who is a serving Lieutenant Colonel (Lt Col) in the Indian Army, challenges the action of the respondents in not granting him promotion to the rank of Colonel (Col), the rejection of his Statutory Complaint dated 30.11.2018, and seeks intervention of this Tribunal regarding the Annual Confidential Reports (ACRs) for the reporting years 2011, 2012, and 2013 on various grounds. The relief sought by the applicant in Para 8 reads as under:-

- a) Call for the entire records, including Value Judgment Marks of each Agenda Point leading to the rejection of the applicant's Statutory- Complaint dated 30.11.2018 and set aside the impugned order dated 26.08.2019 passed by Respondent as the same is arbitrary and illegal.*

- b) Call for the entire records of the proceedings of No. 3 Selection Board held in Dec 2018, Aug 2019 and Nov 2020 and after making necessary scrutiny and comparison of value Judgment Marks as per qualification system, quash the Selection Board results in so far as the same relates to the applicant herein.*
- c) Set aside the ACRs for the reporting years of 2011, 2012 being malafide, vexatious, not objective and against the orders as contained in AO 45/MS/2001 and place in order the ACR of 2013 which has been expunged without regard to its effect on the applicants career profile.*
- d) Direct the respondents to re-consider the case of the applicant by Selection Board as a Special Review case for promotion to the rank of Colonel or conduct selection board afresh as per rules and regulations.*
- e) Direct the respondents to promote the applicant to the rank of Colonel as a fresh case, with original seniority, if he is found fit in the above mentioned special review/fresh consideration; and issue any othe orders (s) and direction (s) as deemed appropriate by this Hon'ble Tribunal under the facts and circumstances of this case.*

2. Facts, in brief, indicate that the applicant is a 2001 batch officer and was commissioned into the Indian Army on 08.12.2001. After successfully completing his training at the Indian Military Academy, Dehradun, he was commissioned into the Ordnance Corps and posted to 3 Bihar on attachment at a field location in Jammu and Kashmir. The career profile of the applicant detailed in the OA indicates his service from the date of his commissioning to the holding of the present post. In recognition of his excellent service record, significant

achievements and exemplary work throughout his career, he was awarded the Vice Chief of Army Staff Commendation Card. He further indicates various accomplishments and tasks performed by him from time to time.

3. The submission of the applicant is that the Annual Confidential Report (ACR) in the career of an officer is an important aspect of career progression, and anything that adversely affects the recording of ACRs can have a detrimental impact on the officer's career progression. It is further emphasized that the procedure and guidelines for the initiation and writing of CRs in the case of the applicant are outlined in AO 45/MS/2001, which pertains to the initiation, completion, and disposal and movement of confidential reports. According to Para 70 of the aforementioned AO, officers with more than eight years of the service shall be entitled to a CR on the form IAFT-1123-B1. Furthermore, Note 1 of Para 70 of the said AO states about the transition from UAC to CR become applicable from the ninth year of service onwards and this will be reckoned from the date of seniority or promotion.

4. It is the case of the applicant that, by virtue of the provisions of Para 70 of the AO45/MS/2001, it is clear that ACRs from the eighth year of service onwards shall be considered for the purpose of promotion. According to the applicant, applying the aforementioned provision, since the applicant was commissioned into the Indian Army on 08.12.2001, the applicant became eligible to earn ACRs from December 2009 onwards and these ACRs would be taken into account for grant of further promotion.

5. The grievance of the applicant, as indicated in this application, indicates that the ACR for the year 2011 was initiated by one Col IPS Sethi, who was holding the rank of Brigadier (Brig) at the time of filing this application in 2022. The applicant asserts that the said officer, who was the Initiating Officer (IO), was ineligible to initiate the ACR because he was involved in a disciplinary case in the year 2011. As a result of this, he was issued a recordable censure. Second grievance of the applicant is that the ACR for the year 2012 was again initiated by the same IO, Col (later Brig) IPS Sethi, after a huge delay. The applicant also contends that the ACR was subsequently reviewed by a retired officer, which is not permissible as per



AO 45/2001/MS. According to the provisions of the said AO, ACRs should be reviewed only by serving officers and not by those who have retired.

6. The third grievance of the applicant is that the delayed ACR for the year 2012, initiated by Col. Vinay Balachandran, is invalid as it violates the provisions of Para 75 of AO 45/2001/MS which states that if an early CR for any period has been initiated, then no further ACR (including delayed ACRs) for the balance period of that year can be initiated. Therefore, the delayed ACR for 2012 is in contravention of this Rule.

7. The fourth grievance of the applicant concerns the CR for the period from 20.05.2013 to 31.12.2013, which has been expunged from the record. The CR was initially initiated by Col. JBS Sidhu, but it was expunged on the grounds of the invalidity due to assessment in the numerical grading.

8. The applicant submits that between 2008-2009 the applicant tenanted two appointments simultaneously and because of his exemplary performance during this period he was in receipt of many DO letters from the officers praising the applicant and his professional competence and few of the said DO letters have been filed collectively

as Annexure-2(Colly), after having earned all these appreciation, the applicant details about his further performance while posted in various other places. The applicant also claims to have attended the Higher Munitions Course at CMM Jabalpur, where he got Bronze Medal with AI grading. After completion of the course, he was posted to Ammunition Depot, Panagarh, where his Commanding Officer was Col IPS Sethi. While being posted at the Ammunition Depot, Panagarh, under the command of Col IPS Sethi, certain irregularities were detected in the sale of Army Canteen items to personnel of the CISF. This alleged sale of items to unauthorized persons led to a Court of Inquiry (CoI) being conducted against Col IPS Sethi. During this period, the applicant was also performing additional duties as Company Commander Military Establishment (CCME), and was also the Unit's MTO, Quarter Master, and Officer in Charge (OIC) CSD. In the Court of Inquiry, the applicant deposed as a witness and based on the inquiry report, Col IPS Sethi was punished with a non-recordable censure. However, the applicant was not found guilty in the Court of Inquiry. The applicant alleges that due to his deposition in the CoI and the punishment imposed on Col IPS Sethi, the Commanding

Officer became biased against him. The applicant further alleges that the Commanding Officer sought to make him take the entire blame and exonerate himself with regard to the irregularity in sale of items from CSD. It is the applicant's allegation that this hostile attitude of the Commanding Officer is reflected in the Annual Confidential Report (ACR) for the period 2011. The applicant claims that, in light of the provisions of Para 36 of AO/45/2001/MS, the initiation of the ACR by Col IPS Sethi is unsustainable in law. According to Para 36 of AO/45/2001/MS, when the reporting officer is involved in a disciplinary case, the initiation or endorsement of the Confidential Report (CR) requires prior approval from the MS Branch. In this case, since Col IPS Sethi, who was the initiating officer, was involved in a disciplinary case, the initiation of the ACR for the period 2011 by him was not in compliance with the required provisions. The applicant contends that the ACR is tainted due to the biased attitude of the Commanding Officer, who initiated it despite facing a disciplinary case, rendering the ACR unsustainable and contrary to the provisions of Para 36 of AO/45/2001/MS. The applicant's grievance is that the ACR reflects unfair bias

and the initiation of the CR by the Commanding Officer should be declared invalid.

9. It is further stated that the biased attitude of Colonel IPS Sethi is clearly evident from the fact that the ACR was initiated after a delay of seven months from the due date. Additionally, the next ACR which was an early CR for the period from 01.01.2012 to 27.09.2012 was not written in accordance with the requirements of the AO 45/2001/MS. The applicant asserts that the ACR for the aforementioned period once duly completed was handed over to the Commanding Officer on time for his initiation. Colonel IPS Sethi, however, was posted out on 27.09.2012 and the ACR was initiated by him on 08.07.2013, i.e., after a gap of 253 days thus violating the provisions of Para 70 and Serial 1 and 2 of Appendix 'O' to the AO 45/2001/MS. The applicant submits that the IO/RO is required to initiate the CR on the due date or prior to moving out of the ratee/IO's command. Therefore, the delayed initiation of the ACR is in violation of the said AO and is unsustainable. Furthermore, the applicant raises the grievance that under AO 45/2001/MS, retired officers are prohibited from initiating or reviewing ACRs of serving officers. However, the early ACR for the period

from 01.01.2012 to 27.09.2012 was reviewed by two retired officers, namely, Major General K.S. Kumbar, VSM (Retd) as the RO, and Major General MSS Krishnan, VSM (Retd) as the HTO. The review of the ACR by officers who already retired from service at the time of the review is contrary to the policy laid down in AO 45/2001/MS. As such, the entire ACR becomes void ab initio.

10. It is the case of the applicant that the ACRs were initiated by Col IPS Sethi, against whom the applicant had deposed in the Court of Inquiry. The initiation of the ACRs was contrary to the Rules. The ACRs were reviewed by two Retd officers, and therefore, the entire ACR process stands vitiated for these reasons. Accordingly, on these grounds, the initiation of the ACRs and the recording of the ACR for the period 2011-2012 are challenged by the applicant. Furthermore, it is the grievance of the applicant that in the following year, i.e., 2013, the delayed ACR was initiated by Col Vinay Balanchandran for the period from 28.09.2012 to 06.01.2013. During this period, both the RO and SRO were located in a faraway place at Kolkata, and had no interaction with the applicant. Therefore, they would not have been aware of the applicant's work, and their

assessment would not have been an objective assessment. The applicant contends that under Para 75 of AO 45/MS/2001, "once an early ACR has been rendered for an officer, the ratee is not entitled to any CR for the remaining period of that particular reporting year." The applicant further argues that in accordance with Para 79, "the ratee is not entitled to a delayed CR when an early CR has been initiated for him during the reporting year."

11. It is the case of the applicant that he faced Selection Board No. 3 (SB No.3) for the first time in 2018, in which he was not empanelled for promotion to the rank of Col. Aggrieved by this outcome, he submitted a statutory complaint to the Central Government. As a result, he was granted partial redressal, wherein the portions of the ACR for the year 2010 assessed by the Reporting Officer (RO), Higher Technical Officer (HTO), and Senior Reviewing Officer (SRO) were expunged on the grounds of inconsistency. However, the applicant contends that his grievance regarding the assessments in the ACRs for the years 2011, 2012, and 2013 was not considered at all. Furthermore, relief was granted in respect of a portion of the 2010 ACR which was never challenged by the applicant. It is the case of the applicant that

the retention of the contested portions of the ACRs and the grant of relief only in relation to an unchallenged portion of the 2010 ACR vitiate the process by which the statutory complaint was adjudicated.

12. It is further the case of the applicant that he was posted in COD, Chheoki and earned his next report for the period 20.05.2013 to 31.12.2013 under Col JBS Sidhu. It is contended that instead of grading the applicant objectively, in a bizarre manner Col JPS Sidhu graded him with a full nine-point for the period of seven months, i.e. 20.05.2013 to 31.12.2013 and on account of inconsistency with the ACR reporting procedure under Para 137 of AO 45/2001/MS, the entire ACR was totally expunged by the MS Branch, as a result the IO for the next ACR, i.e., for the period 01.01.2014 to 11.10.2014 did not rate the applicant as a complete nine points and lowered his grading which effected and resulted in dip in his performance. It is the case of the applicant that the full nine point ACR itself was defective and was suffering from bias and delay. The expunction of this ACR completely was not proper and it should have been moderated in accordance with the policy

and an appropriate relief granted. It is the case of the applicant that the RO and SRO were also expected to moderate the unjustified, over exaggerated ACRs granting full nine point to the applicant. If the ACR was defective it should have been moderated and not expunged completely. Accordingly in a tabulated form the ACR for various periods and the infirmities in the same and the remarks for challenging them read as under:-

S/No	ACR/Unit	Period	IO/HTO/RO	Infirmities	Auth	Remarks
1.	ACR/A D Panagarh	09 Feb 2011 to 31 Dec 2011	Col IPS Sethi/Maj Gen MSS Krishnan/Maj Gen KS Kumbhar	Ratee deposed as essential witness in C of I ordered for misappropriation in CSD Canteen. IO got punishment being blamed Ratee not blamed. ACR written with bias after 07 months delay.	Para 32 (b) and 36 (c) IO not entitled to write ACR Para 70 and Ser 1 and 2 of Appx O delay not allowed more than 10 days Para 5 Appx G also refers to objectivity of ACR.	Entire ACR be expunged.
2.	Early ACR/A D Panagarh	01 Jan 2012 to 27 Sep 2012	Col IPS Sethi/ Maj Gen MSS Krishnan (Retd)/ Maj Gen KS Kumbhar (Retd)	Biasness continued- IO not entitled to initiate ACR ACR initiated after 253 days of leaving the unit on posting of IO. Reviewed by two Retd Officers.	Para 32 (b) and 36 (C), IO not entitled to write ACR	Entire ACR be expunged
3.	Delayed ACR/A D Panagarh	28 Sep 2012 to 06 Jan 2013 (90)	Col Vinay Balachandran	Delayed report not allowed once Early ACR written	Para 75 states that after an early CR has been initiated, no ACR for balance period	Entire delayed ACR be expunged



		days)			of the year shall be entitled	
4.	ACR/ COD Chheoki	20 May 2013 to 31 Dec 2013	Col JBS Sidhu/Maj Gen SK Manchanda	IO endorsed all 9 points in every column of ACR. Not moderated by SRO also. ACR expunged due to assessment invalidity	Para 137 of AO refer	The entire CR may not be expunged and be suitably moderated.

Accordingly, taking us through the provisions of AO 45/2001/MS and the facts as detailed hereinabove, the grievance of the applicant is that, in the matter of recording his ACRs for the periods as indicated in the tabulated form as hereinabove, and in rejecting his statutory complaint, not only has the policy envisaged in AO 45/2001/MS been violated, but as a result of improper, biased, and mala fide recording of the ACRs, the applicant's case, which was placed before the No. 3 Selection Board on three occasions, namely, as a fresh case in October 2018, as a Special Review Case in September 2019, and as a First Review Case in 2020 resulted in his non-empanelment. All of this, the applicant submits happened due to arbitrariness and non-compliance with the policy governing the recording of ACRs which ultimately led to the illegality that prevented his promotion to the rank of Col. On account of the element of bias, which is evident and

has been elaborated upon in the pleadings, the applicant seeks interference in the matter and submits that appropriate relief be granted.

13. The learned counsel for the applicant, apart from taking us through the facts as detailed above, also brought to our attention the statutory complaint submitted by the applicant on 30.11.2018 (Annexure-4). He further referred to the relief granted in the statutory complaint and emphasized Para 32 of the AO 45/2001/MS to contend that the initiation of the report by the Reporting Officer, who was himself involved in a disciplinary case, is unsustainable in law.

14. It was also submitted by the applicant that there was non-adherence to the policy as stipulated under Para 36 of the AO 45/2001/MS. Furthermore, the assessment of the applicant's report by two retired officers resulted in a one man report, which is impermissible under Para 41(b) of the AO 45/2001/MS. The learned counsel further indicated the violation of Para 76 in regard to delayed initiation of the ACR and the contravention of Para 137 concerning the expunging of Confidential Reports for the period 20.05.2013

to 31.12.2013 without moderation, both actions being unsustainable in law.

15. On the other hand, the respondents have filed a detailed counter affidavit on 21.03.2025. They submit that Army follows a pyramidal rank structure, where the number of vacancies at higher levels is extremely limited. From this broad based structure, only those officers whose records of service are outstanding and exemplary have a chance of moving up the hierarchy. Because of the decreasing number of vacancies as one progress up the pyramid only the best among the eligible candidates are able to secure promotion to higher ranks.

16. It is the case of the respondents that officers of a particular Batch are considered together with the same cut-off ACRs, and based on inputs and the personal profile of each officer; the comparative Batch merit is assessed. Empanelment seniority by itself is not a consideration for empanelment by the Selection Board. Instead, the service record and ACRs play a crucial role in the process. In cases where a statutory complaint is filed and relief is granted with regard to a Confidential Report, reconsideration is

undertaken after such relief is granted in the statutory complaint.

17. For promotion to select ranks, the consideration is made in three stages: Fresh Consideration, First Review, and Final Review. If an officer is not empanelled in the Fresh Consideration but is subsequently empanelled in the First Review or Final Review, he or she loses seniority. In case the officer is not empanelled in any of the three considerations, the officer loses the chance for promotion.

18. The respondents submitted that ACR are written based on the numerical values from 9 to 1 correspond to the grading scale as is indicated below:

Numerical Value	Grading
9	Outstanding
8 & 7	Above Average
6 & 5	High Average
4	Average
3 & 2	Low Average
1	Below Average

The overall assessment is based on personal qualities, performance variables, and various other criteria as laid down in the policy. Assessments are also made in the form of

a pen picture, and based on the evaluation made by the Initiating Officer (IO), Reviewing Officer, and Senior Reviewing Officer, the final consideration is made by the Selection Board.

19. It is the case of the respondents in general that selection board assesses the suitability of a candidate for promotion, it is recommendatory in nature and it becomes binding only after approval of the chief of the Army staff or the Central Government as the case will be. It is further the case of the respondents that the decision of the selection board and the recording of ACRs cannot be subjected to the review unless the same is permissible within the parameters laid down by the Hon'ble Supreme Court in the following judgments :-

- (a) Union of India Vs Lt Gen RS Kadyan, (2000) 6SCC 698.
- (b) Maj Gen IPS Dewan Vs UoI and Others, (1995) 3 SCC 383.
- (c) AVM SL Chhabra, VSM Vs UoI, 1993 Supp (4) SCC 441.
- (d) Dalpat Abasahev Solunke Vs BS Mahajan, (1990) 1SCC 305.
- (e) Lt Col Amrik Singh Vs UoI, (2001) 10 SCC 424.
- (f) Major Surinder Shukla Vs Union of India & Others, (2008) 2 SCC 649.

20. Based on the aforesaid general principles, it is the case of the respondents that the applicant, who was commissioned in 2001, was considered for promotion to the rank of Colonel

by four Selection Boards, as detailed in the table contained in Para 9 of the counter affidavit, which reads as under:

<u>Consideration by No 3 Selection Board</u>		
Fresh Case	Oct 2018	Not empanelled
Special Review (fresh) Case	Sep 2019	Not empanelled
First Review Case	Feb 2020	Not empanelled
Final Review Case	Sep 2020	Not empanelled

21. The applicant was not empanelled in all the four selection boards as he did not meet the merit criteria based on the assessment made by the Selection Board. It is the case of the respondents that all the impugned Confidential Reports (CRs), namely for the periods 2/11-12/11, 01/12-09/12, 09/12-01/13, and 01/13-05/13, which form part of the applicant's reckonable profile, were found to be fair, objective, well-corroborated, performance-based, and technically valid except for the entire assessment by the Reporting Officer (RO), Higher Technical Officer (HTO), and Senior Reviewing Officer (SRO) for the CR covering the period 01/10-06/10, which, notably, is not under challenge.

22. The applicant's case was reconsidered following a fresh assessment of his CR for the period 01/10-06/10 as a special review case after the applicant got partial relief through his

stat complaint and adjudicated by the Central Government vide its order dated 26.08.2019. Even thereafter, he was not empanelled. Subsequently, he was again considered during the first review and final review in February 2020 and September 2020, respectively. Despite these four considerations, as detailed above, the applicant was not empanelled.

23. The respondents further contend that the CR for the period 02/11-12/11 was submitted by the applicant on 10.03.2012, after a delay of two months. Regarding the debarment of a Reporting Officer to initiate any ACR, who is facing disciplinary proceedings, the same is done only with the approval of the MS Branch, as per Para 36 of AO 45/2001/MS. In the present case, no such debarment of the IO has been undertaken by the reporting chain.

24. According to the respondents, there is no bias in the reporting in the CR of period 2/11 to 12/11. The CR is well-corroborated, consistent, performance-based, and technically valid. The respondents have produced the CR dossiers for the aforementioned period for perusal of the Tribunal.

25. With respect to the CR 1/12 to 9/12 the endorsement of CRs by retired ROs and HTOs is concerned, the

respondents refer to Para 30 of the AO 45/2001/MS, which states that retired ROs, SROs, and HTOs may endorse CRs at their discretion even after retirement. The respondents also submit that the allegations of bias by the IO, based on the fact that he was facing a disciplinary case are mere personal conjectures of the applicant and not substantiated by any factual basis.

26. As far as the initiation of the delayed CR for the period 09/12–01/13 is concerned, it is the case of the respondents that, in view of Para 76 of the AO 45/2001/MS, the initiation of delayed CR is technically valid as the CR for the period 01/12–09/12 is an Interim CR (ICR) and not an early CR, as claimed by the applicant.

27. With regard to the expunction of the CR for the period 05/13–12/13 and the act of the Reporting Officer in awarding an exaggerated 9-point assessment, the respondents contend that the said CR was expunged by the Chief of the Army Staff on account of the assessment being invalid. This action was taken in accordance with Para 137 of AO 45/2001/MS.

28. The respondents further submit that moderation could not be carried out in the CR of period 5/13 to 12/13, as the



applicant was already aware that the designated RO was not posted during the CR period. Despite this, the CR was submitted, and the SRO did not endorse the CR for that period.

29. Accordingly, the respondents assert that the applicant's CRs have been assessed in compliance with the requirements of the applicable Army Order. The respondents, therefore, pray that there being no merit in the assertion of the applicant, the said OA be dismissed.

#### **ANALYSIS**

30. We have heard the learned counsel for the parties. The original CR dossiers of the applicant and the four Selection Board proceedings for the relevant periods have been produced and examined by us. Upon consideration of the rival contentions, the issue before us pertains to the applicant's grievance regarding the recording of his Annual Confidential Reports for the periods February 2011 to December 2011, January 2012 to September 2012, September 2012 to January 2013, and May 2013 to December 2013. The key issue for determination is whether, on the grounds urged by the applicant as detailed

hereinabove, any case for interference in the recording of the said CRs is made out.

31. With regard to the Annual Confidential Reports (ACRs) for the period 02/11 to 12/11, the primary objection of the applicant is that the Initiating Officer (IO), Col. I.P.S. Sethi, was involved in a disciplinary case during the same period. The applicant had appeared as a witness in the said disciplinary proceedings, which culminated in the IO being punished with a "Severe Reprimand." It is the contention of the applicant that the CR for the aforesaid period, initiated by Col. Sethi, is invalid for two reasons: (i) the IO was ineligible to initiate the CR; and (ii) the IO held bias and prejudice against the applicant due to the latter's role as a witness against him.

32. As far as the above grounds are concerned, we find that assessment of ACRs is governed by the provisions of AO 45/2001/MS (now replaced by AO 2/2016/MS), as well as other relevant policies and circulars issued from time to time.

33. In so far as the CR w.e.f. 2/11 to 12/11 is concerned, policy contained in Para 32 and 36 of AO 45/2001/MS are the relevant provision governing initiation of reports when

ratee or reporting officer is involved in a disciplinary case which reads as under:-

*32. CRs will be initiated on all officers under disciplinary proceedings, subject to following conditions being met :-*

*(a) The disciplinary proceedings are completed within the reporting period Ratee under this provision is also entitled for a Delayed CR, if reasons for delay are those other than the disciplinary case.*

*(b) In case, disciplinary proceedings are not completed within the reporting period and the officer continues to discharge his official duties for the appointment posted, the CR will be initiated with prior permission of the SRO. It will be ensured that such CRs are objective and do not contain reference to the officer's involvement in the disciplinary case*

*33. If the officer continues to remain under a disciplinary case during the reporting year, no CR will be initiated and a NIR will be forwarded to the MS Branch, provided the officer has not been discharging his official duties for the appointment posted.*

*34. An officer will be considered to be the subject of a disciplinary case with effect from the earlier of the following two dates :-*

*(a) The date on which a Court of Inquiry is ordered involving his character or military reputation (invoking of Para 180 of Army Rules), or*

*(b) The date on which formal cognizance of an offence is taken against him.*

*35. In case, the date on which cognizance was taken is, on or after the due date of initiation of CR, endorsement by affected reporting officers in respect of those CRs, which have not been initiated and processed to the next level may be debarred by the SRO. The CRs which are already initiated before the date of taking cognizance, will be commented upon for objectivity, by the higher reporting officers and all such CRs will be endorsed by the SRO. However, CRs having reached the MS Branch without the endorsement of the SRO, may be accepted without SRO's endorsement, as per procedures of MS Branch.*

*36. When a reporting officer is involved in a disciplinary case, the requirement of initiation or endorsement of CRs may be dispensed with prior approval of the MS, under the following conditions :-*

*(a) The disciplinary case is of a serious nature and it is considered by the higher reporting officer in the channel, that the concerned*

*reporting officer will not be able to render objective and balanced report.*

*(b) The date on which the concerned reporting officer is considered to have been involved, is the due date for the CR or any date prior to that.*

*(c) In such cases, the portion where the concerned initiating/reporting officer is debarred due to a disciplinary case, his portion will be left blank and the CR will be forwarded to the next higher reporting officer for his initiation / endorsement. In case the IO is involved, the CR will be initiated by the RO, with permission of the SRO.*

*(d) Applicability of these provisions is in consonance with the provisions of Para 34 above.*

34. A perusal of these provisions indicates that a CR may still be initiated even if the reporting officer is under disciplinary proceedings, provided objectivity is ensured. According to the respondents, the CR for the period in question was submitted on 10.03.2012 after a delay of two months. In addition, no case for debarment of the IO for initiating the CR of the applicant was taken up by the reporting chain with the MS Branch in accordance with Para 36 of the AO 45/2001/MS. The initiation of the CR by the Initiating officer is, therefore, technically valid. In so far the report being initiated by the IO after a delay of seven months is concerned, from the records it is found that no prejudice has been caused to the applicant on account of such delay in initiating the CR by his IO.

35. It is further the case of the respondents that the grievance of bias was also duly assessed in the said CR. The CR of the applicant covering the period February 2011 to December 2011 was perused by us. The IO, Col. Sethi, who was also the Commandant, box graded him '8' with grades of '8' and '9' across 17 qualitative attributes in which there were 11 ratings of '9' and six ratings of '8'. His pen picture remarks were positive and did not reflect any bias or prejudice. The Reviewing Officer (RO) similarly box graded him '8' and gave ratings between '8' and '9' in the 17 attributes. The assessment appears objective and is consistent with the CRs written in earlier and subsequent periods and we find no bias in writing of this ACR and therefore there is no reason to interfere in this ACR on the count of bias also.

36. The applicant also objected to the CR for the period 1/12 to 9/12 on the ground that it was reviewed by retired officers. Para 30 of AO 45/2001/MS permits retired ROs/SROs/HTOs to endorse CRs even after retirement at their discretion. Therefore, the endorsement of the CR for the period 1/12 to 9/12 by the retired officer (RO/SRO/HTO) meets the policy requirement and is technically valid. In so far the report being initiated by the IO after a delay of 253

days is concerned, from the records it is found that no prejudice has been caused to the applicant on account of such delay in initiating the CR by his IO.

37. Regarding the delayed CR initiated by the IO for the period 09/2012 to 01/2013, the applicant contends that it could not have been initiated, as an early ACR for the period 1/12 to 9/12 was initiated on him. The respondents, however, argue that in terms of Paragraphs 76 and 79 of AO 45/2001/MS, a delayed CR can be raised if it follows an interim CR. In this case, the CR for 01/2012 to 09/2012 was an interim CR and not early ACR as claimed by the applicant and the applicant was entitled to a separate delayed CR for 09/2012 to 01/2013. Thus, the CR for this said period is also technically valid and does not suffer from any legal infirmity.

38. As far as the objections with regard to the CR for the period 05/13 to 12/13 are concerned, we find that Para 118 to 138 of the AO 45/2001/MS deals with scrutiny of CRs by MS Branch and Para 137 reads as under :-

*137. The CR when checked for objectivity in reporting will also be analyzed for consistency of the performance of the ratee. Depending upon variation from past profile of the ratee against parameters defined in SOP of MS Branch, the CR may be accepted as it is, or with enfacement for Inflated / Deflated report, to be reflected on the MDS for SBs / Panels. However, CR identified as*

*grossly inconsistent or with inflationary / deflationary / subjective reporting, after due examination at appropriate level, may be expunged by the COAS. Expunctions approved by the COAS will be irrevocable. No reinitiation or review is permissible.*

39. In the applicant's case, the average CR rating was significantly higher than the past trend, showing a variation between +0.50 to +1.65 times, while acceptable variation is capped at +0.30 by the said AO. As the CR for this period was found to be highly inflated and inconsistent, the same was expunged along with CRs of nine other officers, with the approval of the COAS. The expunction meets the requirements under Para 137 of the AO 45/2001/MS and is valid.

40. We have examined the applicant's CR for the periods 02/2011–12/2011, 01/2012–09/2012, 09/2012–01/2013, and 05/2013–12/2013 and this entire dossiers of CRs. Across all other periods before and after the impugned CR, the applicant consistently has received grades between '8' and '9', with a consistent pen picture. The CR for 05/2013–12/2013 stood out with highly inflated scores and was, therefore, rightly expunged by the competent authority and therefore there is no ground for interference in the said CR.

41. Regarding the applicant's contention that the expunction of the CR 05/13-12/13 prejudiced his promotion prospects, we find no merit. His selection board assessments were based on the complete and available profile, and his name did not figure within the merit zone for empanelment.

42. The statutory complaint filed by the applicant was also meticulously examined by the competent authority. CRs for all reckonable periods were reviewed across all parameters Personal Performance, Pen Picture, and Other Qualitative Assessments and found to be fair, objective, and performance based.

43. The issue of possible bias was also considered and found to be unsupported by the record. The decision on the statutory complaint was taken after due deliberation at all levels, including by the COAS.

44. We have carefully considered the pleadings, perused the original records including the CR dossiers and the file related to the statutory complaint. We find that the respondents have acted in accordance with the provisions of AO 45/2001/MS, as amended from time to time, and followed all applicable policies and procedures.



45. We also note the consistent judicial position, including the judgment of the Hon'ble Supreme Court in *Air Marshal S.L. Chhabra, VSM (Retd.) vs. Union of India & Anr.* (Civil Appeal No. 2411/1993), that courts should not interfere with appraisal, grading, or performance assessments unless malafides or violation of statutory rules are clearly established.

46. We further find from the records that the applicant's case was considered in the Selection Boards of October 2018, September 2019, February 2020, and September 2020. The cut-off marks for selection during these boards were 90.695, 90.685, 90.440, and 91.016 respectively. The applicant secured 89.288, 89.368, 89.469, and 90.037 respectively in these selection boards. It is also noted that several other similarly situated candidates, having scored more than the applicant, but were also not empanelled due to availing at limited vacancies.

47. The entire selection proceedings for all four boards have been placed before us. We find no procedural infirmity or arbitrariness in the selection process. The applicant did not meet the merit threshold and, therefore, was not empanelled.

48. Accordingly, finding no merit in the contentions raised by the applicant and no illegality or irregularity in the impugned actions of the respondents, the OA is dismissed.

49. No order as to costs.

Pronounced in the open Court on this day of 1 July 2025.

[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]  
MEMBER (A)

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