

issue

COURT NO. 2, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No. 606 of 2017

with

M.A. No. 524 of 2017

and

M.A. No. 1524 of 2017

In the matter of :

Col (TS) Sudeep Roy ... Applicant

Versus

Union of India & Ors. ... Respondents

For Applicant : Shri Anil Srivastava, Advocate

For Respondents : Shri Avdhesh Kumar Singh, Advocate

CORAM :

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

O R D E R

Invoking the jurisdiction of the Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as 'AFT Act'), the applicant has filed this OA and the reliefs claimed in Para 8 thereof read as under :

"(a) To direct the order rejecting the Statutory Complaint of the applicant as communicated by DGDS letter dated 06.10.2015 (Annexure-A1) be set aside.

- (b) ***To direct the respondents to set aside the CRs 1998-1999 and 1999-2000 on the grounds of subjectivity and being out of tune with the overall career profile of the applicant.***
- (c) ***To direct the Respondents to expunge the assessments and the adverse remark endorsed by the HTO in the CR 2001-2002 and 2002-2003.***
- (d) ***To direct the respondents to reconsider the case of promotion to the rank of Col as a fresh case after setting aside /expunging of the assessment of the Reporting Officers in the impugned CRs.***
- (e) ***That the Applicant be awarded cost of the litigation @ Rs 75,000/-.***
- (f) ***To pass any such other and/ or further order or orders as this Hon'ble Tribunal may deem fit and proper in the interest of justice and in the facts and circumstances of the case."***

2. The brief facts of the case are that the applicant was commissioned in the Army Dental Corps (ADC) on 28.11.1991 in the rank of Lt. and was promoted from time to time, upto to the rank of Lt Col in May, 2005. When the applicant became eligible for promotion to the rank of Col, he was considered by

the Promotion Board (Medical) No. 3 for selection in the rank of Col held on 22.12.2008 (as a fresh case), however, he was not empanelled in the Board. Aggrieved thereby, the applicant filed a Statutory Complaint dated 02.06.2009, which was rejected by the respondents vide order dated 25.05.2010. Thereafter, the applicant was again considered in the PB (Medical) No. 3 held on 17.12.2009 as a 1st Review Case and on 23.12.2010 as a final Review Case, however, the applicant was not empanelled/selected in any of the Promotion Boards. The applicant vide DGAFMS letter No. 0198/SP(M) No. 3/rev/2011/DGAFMS/Dental-1 dated 02.08.2011 was informed that his case has been finally rejected for promotion.

3. The applicant again filed Statutory Complaint dated 28.02.2014 against non-empanelment to Col rank, which was also rejected by the Central Govt. and the same was communicated to the applicant vide DGDS IHQ of MoD (Army) letter No. 10026/SC/DGDS-1 dated 06.10.2015.

4. It is the case of the applicant that he received a communication dated 29.01.2010 from DGDS regarding adverse remarks recorded by the then DGDS as HTO in his

Confidential Report (CR) for the period 2002–2003. These remarks were communicated after an unexplained delay of seven years, contrary to established norms governing the rendition and communication of CRs. According to the applicant, uncommunicated adverse remarks are not permissible for consideration by a promotion board. It has been further submitted that although he topped the Master of Dental Surgery examination conducted by the Mumbai University in April 1998, he was strangely declared unsuccessful in the subsequent practical 'grading' examination held at AFMC, Pune, which shows personal bias of the then Head of the Dental Faculty of AFMC, Brig. P. N. Awasthi.

5. The learned counsel submitted that the applicant challenged his CRs for the years 1998–1999 and 1999–2000, rendered while serving at 16 Corps Dental Unit, stating that they are biased, prejudicial, and not reflective of his actual performance; that the Initiating Officer (IO) failed to assess him fairly and that the RO and HTO, Brig R. K. Sinha (DDMS) and Brig I.M. Kamra (CDA), had no personal interaction with him and thus might have been influenced by the IO's

assessment. It has been contended on behalf of the applicant that Brig I. M. Kamra, who endorsed his CRs for 2001–2002 and 2002–2003 as HTO, had on those occasions recorded highly appreciative remarks regarding his professional competence, which demonstrates that the earlier assessments (1998–2000) were influenced by unrelated considerations; he further contended that he was never counselled, warned, or advised during the periods covered by the impugned CRs. With regard to the CRs for 2001–2002 and 2002–2003, it has been alleged that the endorsement of Lt Gen J.L. Sharma (then DGDS) was biased and based on unsubstantiated communications from jealous or prejudiced senior officers.

6. The learned counsel for the applicant further contended that the adverse remarks of 2002–2003, which have been communicated after delay of seven years, should not have been acted upon by the Promotion Boards and that a comparative analysis of his CRs from 2001–2008 with the impugned CRs clearly indicates inconsistency and irregularity.

7. The learned counsel further submitted that the impugned CRs are vitiated for non-compliance with the

mandatory requirement of counselling prior to recording any adverse assessment and that the Promotion Boards illegally and erroneously relied upon uncommunicated adverse remarks, contrary to the settled law laid down by the Hon'ble Supreme Court that un-communicated adverse entries cannot be considered for promotion.

8. *Per contra*, the respondents, through the counter affidavit filed by them, after narrating the applicant's service profile and the three Promotion Boards in which he was considered but not empanelled/selected, submitted that all statutory complaints filed by the applicant were examined in accordance with rules and rejected by the competent authority as devoid of merit.

9. The learned counsel submitted that the applicant was fairly considered for promotion to the rank of Col by the Promotion Boards (Medical) No. 3 held on 22.12.2008 (as fresh case), 17.12.2009 (as 1st review case) and 23.12.2010 (as final review case), but was graded "Not Selected (NS)" due to comparative merit and restricted vacancies. The learned counsel then explained the promotion structure and

procedures that the promotion in the Armed Forces Medical Services (AFMS) is vacancy-based, and empanelment depends on comparative merit, and it not on mere eligibility basis; that the Promotion Policy governing AMC, ADC and MNS officers, issued vide MoD letters dated 14.01.2004 and 17.05.2006, clearly sets out the selection parameters.

10. The learned counsel then explained in detail the AFMS appraisal system, emphasizing that it is scientific, multi-tiered, and designed to moderate and balance assessments at various levels; Box grading, awarded only by senior authorities such as SRO/HTO/DGDS/DGMS/DGAFMS, is a complete, whole-number assessment reflecting both performance and capability; that the ACR gradings are based on a scale of 1 to 9 and that numerical averages are computed to two decimal places; that the Box Grading is not a simple mathematical average but an independent assessment. It has also been contended that interaction between a 'Ratee' and 'Reporting Officers (ROs)' occurs through numerous official channels and is not confined to formal meetings.

11. The learned counsel for the respondents reiterated that since promotion is based on comparative merit, even competent officers may be superseded if there are other officers who rank higher in merit; that the applicant was good but there were officers available whose overall profiles were better than him.

12. It has been further contended on behalf of the respondents that during examination of the applicant's Statutory Complaint dated 02.06.2009, it was observed that the HTO's pen-picture for CR 2002-2003 contained adverse remarks which were then communicated on 29.01.2010 but the applicant did not challenge these remarks and, therefore, the said statutory complaint was rejected by the Central Govt. vide order dated 25.05.2010. Thereafter, the subsequent statutory complaints were also rejected as devoid of merit. The learned counsel further argued that the challenge to CRs of 1998-2000 is hit by delay and laches and that the assessments in those CRs were well corroborated by pen-pictures and consistent with the applicant's profile and, therefore, allegations of bias against the HTO were found baseless.

13. The learned counsel further submitted that the HTO, being DGDS and located in Delhi during the relevant period, had direct knowledge of the applicant's work and had even motivated him to pursue higher qualifications. The learned counsel further submitted that the pen-picture written by DGDS as HTO clearly reflects familiarity with the applicant's performance and thus in the absence of any material to establish bias or *mala fides*, it has been contended that the CRs need no interference. In view of the above, the learned counsel for the respondents submitted that there being no evidence of any bias or subjectivity, none of the CRs merit any interference on ground of inconsistency and that the applicant could not be empanelled for promotion to the rank of Col (and equivalent) on account of his overall profile and comparative merit as compared to other candidates, as assessed by Promotion Boards No. 3; and thus prayed that the OA deserves to be dismissed.

14. The respondents, in support of their submissions, relied upon the following judgements and orders :

- (i) Dalpat Abasaheb Solanki Vs BSS Mahajan [1990 (1) SLR page 849]

- (ii) S.L. Chhabra Vs. Union of India (UoI) & Ors.
[MANU/SC/0786/1993]
- (iii) Union of India and Others Vs. Lt Gen Rajendra Singh Kadyan and Another [(2000) 6 Supreme Court Cases 698]
- (iv) Amrik Singh Vs. Union of India and Others – [(2001) 10 Supreme Court Cases 424]
- (v) Lt Col Ravindra Mann Vs. Union of India & Ors. – [O.A. No. 49 of 2013] order dated 05.01.2016 passed by the AFT, RB, Lucknow

15. It is pertinent to mention that, in response to our directions dated 29.05.2025 to apprise the Bench whether there has been any counselling register maintained in relation to the adverse remarks, the respondents submitted on 30.10.2025 before the Tribunal that no record is maintained qua any counselling done and no such Counselling Register can thus be produced.

ANALYSIS

16. We have heard the submissions made by both the parties and have also perused the available record.

17. The applicant was considered for selection to the rank of Col by the Promotion Board (Medical) No. 3 on 22.12.2008 as a fresh case and was not empanelled vide MoD ID No. 3(41)/2008/D(Medical) dated 31.12.2008. The applicant

thereafter preferred a Statutory Complaint against his non-empanelment vide his application dated 02.06.2009 and his Statutory Complaint was rejected by the MoD vide its letter No. 15(74)/2010/D (Medical) dated 25.05.2010. The applicant was thereafter again considered for promotion to the rank of Col by the Promotion Board (Medical) No. 3 on 17.12.2009 as 1st Review case and on 23.12.2010 as a final review case but was not empanelled by both the Promotion Boards. Against his non-selection in all the three Promotion Boards, the applicant preferred another Statutory Complaint on 28.02.2014, which was also rejected by the MoD vide its letter No. 15(1983/2015/D (Medical) dated 18.05.2015.

18. The applicant has impugned four ACRs viz. ACRs of 1998-1999, 1999-2000, 2001-2002 and 2002-2003.

19. The ACRs for the years 1998-1999, 1999-2000, 2001-2002 and 2002-2003, impugned in the statutory complaint of the applicant were perused by us and the following is revealed:

(i) ACR 1998-1999 (IMPUGNED) The applicant earned the CR in the rank of Maj while being posted to 16 CDU as a Dental

Officer. The box grading and pen picture of various gradings given by the officers qua the applicant are as follows :-

Grading Offrs	Grading	Pen picture
Col GP Singh, VSM CO	IO/6.90	A young dental officer possessing adequate military knowledge. He has served satisfactorily. He takes keen interest in management of his patient. He has performed the assigned task of Dental Cover to dependent clientele satisfactorily.
Maj Gen RK Sinha DDMS HQ (EC) Ex DDMS HQ 16 Corps	RO/7.05	An intelligent, sincere and loyal officer who cares for his patients. He can perform his duties independently.
Col GP Singh, VSM CO	FTO/6.90	A young Dental Surgeon who is possessing a good technical knowledge about his subject. He takes interest in his patients and quite considerate towards them.
Brig IM Kamra Command Dental Adviser (NC)	STO/7.00	A smart DO, having average knowledge of profession & documentation. His professional output of work has been satisfactory during the period of review.

This is the nadir report in the reckonable profile of the applicant. The report is the only report in shades of '6' (close to '7') hence itself does not mesh well with the vertical continuum. The IO/FTO who is the same individual, appears to have marked the CR very strictly. The negative influence of the IO/FTO is also reflected in markings of the RO and STO. The numerical gradings are not in consonance with the

applicant's overall profile. Further the pen picture endorsed by all grading officers does not mesh well with the numerical assessment awarded in the ibid CR. Hence, we consider it appropriate to expunge the entire CR with the entire assessment of IO/FTO, RO and STO.

(ii) ACR 1999-2000 (IMPUGNED) The applicant earned the CR in the rank of Maj while being posted to 16 CDU as a Dental Officer. The box grading and pen picture given by various grading officers *qua* the applicant are as follows :-

Grading Offrs	Grading	Pen picture
Col GP Singh, VSM CO	IO/7.00	A young dental officer who has managed satisfactorily his place of duty, that is No. 1 Det at Nagrota.
Brig PRS Rathore DDMS HQ 16 Corps	RO/7.30	A competent and devoted dental officer who i/c of independent Dental Chair, performed his duties efficiently. A willing worker with cheerful disposition who takes interest in any job entrusted to him.
Col GP Singh, VSM CO	FTO/7.00	A young Dental Surgeon, having good technical knowledge about his subject. He takes interest in management of his patients.
Brig IM Kamra Command Dental Adviser (NC)	STO/7.00	A hardworking & sincere young DO. Output of work has been satisfactory.

The report is in line with the earlier report earned by the applicant, which is the nadir report. The IO/FTO and STO are

also the same reporting officers who have endorsed the applicant's earlier report. The numerical assessments of the IO/FTO are neither substantiated by a matching pen picture nor are they in consonance with the overall profile of the officer. The negative influence of the IO/FTO influencing the RO & STO is substantiated with again a pen picture not meshing well with the numerical assessment in the ibid CR and an aberration in the vertical continuum. All grading officers in the ibid CR have graded the applicant very strictly, hence we consider it appropriate to expunge the entire assessment of IO/FTO, RO and STO in the ibid CR.

(iii) ACR 2001-2002 (IMPUGNED) The applicant has earned the CR in the rank of Maj while being posted to MDC (BHDC) as OC. The box grading and pen picture given by various grading officers *qua* the applicant are as follows :-

Grading Offrs	Grading	Pen picture
Brig ML Chawla, VSM DDMS HQ Delhi Area	IO/8.05	A forthright, sincere, well turned out, smart hardworking dental officer with good military bearing. He can forcefully and efficiently project his views. Takes keen interest in academic pursuit. He has good administrative acumen. Shoulders additional responsibilities cheerfully.
Maj Gen NS Pathania,	RO/8.05	A sincere and dedicated dental officer who has taken on a very heavy load

AVSM, VSM GOC Delhi Area		willingly and efficiently. Has shown administrative ability and the ability to work under stress and strain.
Brig IM Kamra Command Dental Adviser (WC)	FTO/8.00	A smart hard working & professionally sound D.O. professionally his performance has been satisfactory. Though he is MDS & not yet graded, he takes interest in oral surgery cases & has shown good results. He is strongly recommended to be considered for grading.
Lt Gen JL Sharma, VSM, PHDS DGDS	HTO/7.00	Professionally above average officer. At times he is carried away by emotions and tends to breakdown. Overall performance of the officer during the period of report has been satisfactory. Officer was detailed for grading but did not go due to OP Prakaram.

The numerical assessment of HTO is an aberration in the vertical continuum and does not mesh well in the ibid CR.

(iv) ACR 2002-2003 (IMPUGNED) The CR was earned by the applicant in the rank of Maj while serving with BHDC as OC. The box grading and pen picture given by various grading officers *qua* the applicant in the ibid CR is as follows :-

Grading Offrs	Grading	Pen picture
Brig ML Chawla, VSM DDMS HQ Delhi Area	IO/8.00	A tall well turn built officer. He is professionally sound and keeps him abreast of the latest in his profession. He is strict when required but sympathetic to his junior. He can enforce himself well. A good member of the team.
Maj Gen NS Pathania,	RO/8.00	A dedicated and hardworking dental Surgeon who has been able to

AVSM, VSM GOC Delhi Area		successfully cope with a tremendous load of patients in the Base Hospital. He is capable of keeping cool under pressure.
Brig IM Kamra Command Dental Adviser (WC)	FTO/8.20	Professionally competent officer. He has made certain improvement in his unit to provide better treatment facilities.
Lt Gen JL Sharma, VSM, PHDS DGDS	HTO/6.00	I do not agree with assessment of FTO. Officer, who has done Adv Spl Course in Oral and Maxillofacial surgery and failed in grading exam. Inspite of my personal motivational efforts the officer has shown no keenness in getting himself graded. He is just an average officer.

The applicant has been graded between 'Outstanding' to 'Exceptionally Outstanding' by all grading officers in the ibid CR except by the HTO. The low grading with a sudden downward moderation by the HTO is an aberration in the ibid CR. Though, the HTO has given justification to his low grading, but talks of events covered from 1998. The CR should be judged on the period covered under the report and not on earlier events, hence HTO assessment merits interference and needs to be expunged. Moreover, though the HTO has given adverse remarks whilst justifying his downgrading the profile of the officer, but the same has not been communicated to the ratee which is not as per the relevant AO i.e. Special Army Order

SAO 8/S/91. In this regard, Para 72(f) and 73(b) of the aforesaid SAO under the heading 'PART VII - OBJECTIVITY IN REPORTING AND COMMUNICATION OF CONTENTS (WHEN APPLICABLE TO RATEE)' read as under:

"Consistency in report

72. On receipt in De General Medical Services (DGMS-1A) a CR will be scrutinized for consistency in reporting. The criteria for the same is defined below:

(a)

(b)

(c)

xxx xxx

(d)

(e)

(f) Adverse remarks and guidance for improvement - For these to be consistent and acceptable. It will be essential that the remarks endorsed by the reporting officer(s) are supported by figurative assessment in relevant variable of personal qualities and or the demonstrated performance. In addition, the assessment of potential should also be in consonance with the remarks.

73. In case the requirements specified above are lacking in a CR, the concerned reporting officer will be querried by Dte General Medical Services (DGMS-1A), Army HQ. It will there-after be mandatory upon the reporting officer(s) to provide the requisite justification. During this process the following will not be accepted :-

(a)

xxx

xxx

(b) Exclusion of Adverse remarks or guidance for improvement to avoid communication to the ratee. In case reporting officer(s) fails to communicate the same, the requirement will be executed by Dte General Medical Service (DGMS-1A)."

The non-communication of the adverse remarks is not a mere procedural lapse, but is denial of justice to the officer without giving grounds and an opportunity to him to put his own point of view. Hence, we consider it necessary to interfere in the entire assessment of the HTO in the ibid CR.

20. In view of the above, it is directed that the following be expunged on grounds of aberration/inconsistency :-

- (a) Entire assessment of IO, RO, FTO & STO in ACR 1998-1999.
- (b) Entire assessment of IO, RO, FTO & STO in ACR 1999-2000.
- (c) Entire assessment of HTO in ACR 2001-2002.
- (d) Entire assessment of HTO in ACR 2002-2003.

21. The respondents are directed to consider the applicant afresh for promotion to the rank of Col with the modified profile with the cut-off merit as it existed whilst considering

him for the No. 3 Selection Board (Medical) on 22.12.2008 (Fresh consideration), 17.12.2009 (1st Review Case) and 23.12.2010 (Final Review Case). If the applicant is found within merit, the applicant be notionally promoted to the rank of Col (Selection Grade) with consequential benefits. Compliance of the aforesaid directions be made within three months from the date of receipt of a copy of this order.

22. With the aforesaid, the O.A. No. 606 of 2017 stands disposed of.

23. Accordingly, all pending miscellaneous applications also stand closed. There is no order as to costs.

Pronounced in open Court on this 6 day of January, 2026.

**[REAR ADMIRAL DHIREN VIG]
MEMBER (A)**

**[JUSTICE ANU MALHOTRA]
MEMBER (J)**

/ng/