

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

O.A. No. 134 of 2022

With

M.A. No. 204 of 2022

In the matter of :

Wg Cdr Sudhir Nair

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicants : Shri Ajit Kakkar with Ms. Eti, Advocates

For Respondents : Shri Anil Gautam, Sr. CGSC

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
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 quash or set aside the Impugned Order dated 30.01.2020.

b. To direct the respondents to bring all service documents of the applicant on record including MPAC and ARs with advance copies of the applicant.

- c. To set aside/quash the ARs for the year 2016-2017 and 2017-2018.***
- d. To direct the Respondents to release time bound promotion of the applicant to the rank of Gp Capt and consequential benefits.***
- e. To direct the Respondents to grant pension as per the Rank of Gp Capt (TS).***
- f. To direct the respondents to take action against the officers for causing undue hardship to the applicant.***
- g. To grant such other relief appropriate to the facts and circumstances of the case as deemed fit and proper.***

BRIEF FACTS

2. The applicant was commissioned in the Indian Air Force on 21.06.1993. The applicant was considered for substantive promotion to the rank of Group Captain (Time Scale) [Gp Capt (TS)] from 21.06.2019, but he was not selected for the same. Aggrieved thereby, the applicant represented his grievance through a letter dated 24.05.2019 to HQ EAC, IAF C/o 99 APO. The said representation of the applicant was disposed of by the respondents on the ground

that he was not promoted to the rank of Gp Capt (TS) due to not meeting the Minimum Performance Assessment Criteria (MPAC). The applicant thereafter sent an application dated 05.07.2019 seeking review of his ARs for the period 2016-2017 and 2017-2018 and for grant of promotion wherein citing certain reasons, the applicant stated that his AR was rendered with low marks purposefully to affect his chances of promotion and the professional differences were taken as personal defiance. The applicant then submitted his RoG (Redressal of Grievance) dated 30.07.2019 which was disposed of without granting him relief as prayed for. In the meantime, on receipt of his AR for the year 2019, the applicant was again considered for promotion to the rank of Gp Capt (TS), however, he could not be promoted due to not meeting MPAC after taking into consideration of his ARs for the years 2015 to 2019. On 31.07.2019, the applicant proceeded on PSS from service. Subsequently, by a speaking order, the respondents disposed of the applicant's RoG dated 17.01.2000 rejecting the contentions made by the applicant therein. Feeling aggrieved thereby, the applicant has filed the present OA seeking aforesaid reliefs.

CONTENTIONS OF THE PARTIES

3. The learned counsel for the applicant submitted that the applicant was commissioned into service in fit medical category and maintained A4G1 medical category; that the applicant has an exemplary service record and his work has been commended by senior officers on various occasions, hence the adverse/unsatisfactory remarks in the ARs, which was the outcome of the personal vendetta of the respondents for not following their whims and fancies, are unjustified and the respondents have acted biasedly in not granting the applicant his due promotion. It is also submitted by the learned counsel that the applicant was considered after service of 26 years and he was thereafter informed that he would be considered further on the basis of his ARs of last five years and his medical category.

4. The learned counsel submitted that as per the earlier policy, for promotion from Wg Cdr to Gp Capt (TS) rank, last three years' ARs as well as aggregate gradings were to be considered; however, the respondents issued a new policy i.e. HRP 03/2013 dated 28.08.2013, and as per this policy, last five years are being considered wherein an aggregate total of

33 marks in last 5 years' ARs with minimum grading of at least 6.5 in each year's AR and minimum 7 in two of the ARs in last 5 years were required with the condition that the last AR is not an adverse AR. The learned counsel further submitted that the respondents have acted arbitrarily and maliciously in concluding that the MPAC and ARs of the applicant are not upto the mark for granting promotion and even the MPAC which the applicant could not meet and ARs were never provided to the applicant with the sole purpose of bringing harm to the applicant's career and not granting promotion when due. It has been further submitted that through his RoG dated 30.07.2019, the applicant brought out that the RO had harboured a grudge against him and had deliberately lowered his performance gradings with the malafide intention of retaliating against the applicant for opposing his unlawful and arbitrary proposals; however, the RoG was denied by the respondents arbitrarily and without due application of mind.

5. The learned counsel contended that as per the provisions of the policy HRP 03/2013, the criteria of MPAC was laid down vide Part III of Performance Review, however,

the applicant was never advised or counselled for not meeting MPAC. The learned counsel referred to Para-28 of AFO 06/2012 which provides that Performance Review (PR) is the backbone of the appraisal system as it is most important provision which lends strength to the developmental system that the IAF has laid down for itself to follow and the PR is an appraisee's right and he/she can ask for it from his/her IO/RO as applicable. It has been submitted that although there are no adverse remarks in the AR of the applicant, however, in cases when the grading between 5 and 6.5, the officer may not be aware that he/she will not even make good MPAC grading for promotion to the rank of Gp Capt (TS) or the next higher rank which makes it adverse factually.

6. The learned counsel for the applicant submits that respondents have violated the law as laid down by the Hon'ble Central Administrative Tribunal in the case of Devendra Swaroop Saksena Vs. Union of India Through Its Secretary [OA No. 4258/2013] whereby it was held that "ACR is not to be used as an instrument of vendetta or as a platform for settling old scores". The learned counsel also relied upon the order of the Central Administrative Tribunal

in Smt. Bonani Ghosh Vs. Secretary [OA No. 3987/2013] wherein it was observed that one of the important aspects of the confidential reports is that of its objectivity and the man with a bias cannot be just, proper and fair and consequently the ACR of the applicant therein was not to be taken into consideration for the purpose of promotion etc.

7. The learned counsel for the applicant, during the hearing, submitted that Para 4(b) of HRP 03/2013 Part-I, links AR numerical grading to MPAC for TS promotion wherein 'last five years' reports would be considered for promotions from 01.04.2016 onwards for Gp Capt (TS) promotion thus making it more of select promotion and as per his knowledge, the applicant's AR grading was kept at a level requiring no counselling but low enough to deny him the promotion, and hence the applicant has been victimised for non-adherence to the policy by downplaying his AR in a manner by grading him low enough for MPAC but keeping his marks above the required grading, which in a way adversely affect the AR, which is an error on the part of the respondents. The learned counsel submitted that the applicant who has rendered 26 years of long tenure of service

to the nation is now at a disadvantageous position as he is suffering because of the non-grant of promotion and, therefore, prayed that the reliefs as prayed for by the applicant in this OA be granted.

8. The respondents, through their counter affidavit, submitted that the applicant was considered for the promotion to the rank of Gp Capt (TS) with effect from 21.06.2019 but he was not granted the same either due to not meeting Minimum Performance Assessment Criteria (MPAC) after taking into consideration ARs from 2014 to 2018 in accordance with HRP 03/2013, hence there is no unjustified or unfair act on the part of the respondents. It has also been submitted on behalf of the respondents that the applicant submitted his RoG dated 30.07.2019 seeking promotion to the rank of Gp Capt (TS); thereafter, on receipt of the AR for the year 2019, he was again considered for promotion to the aforesaid rank, however, he was again not selected for promotion due to not meeting MPAC after taking into consideration of his ARs from 2015 to 2019.

9. The learned counsel further submitted that the applicant's RoG was considered and after taking into

consideration all the relevant documents and policy on the subject, stating that the contentions of the applicant were not agreed to, the respondents disposed of the RoG of the applicant by a speaking order dated 17.06.2000. The learned counsel denied any illegality or any prejudice caused to the applicant in any manner in not granting the promotion as sought for and that all the actions were taken by the Air HQ as per the policies in vogue.

10. The learned counsel further submitted that the application referred to the policy HRP 01/2009 for consideration of the three ARs, however, the said policy was superseded by the HRP 03/2013 vide which the QRs were revised and 5 ARs were required to be considered w.e.f. 01.06.2015 and that the reason for non-grant of promotion to the rank of Gp Capt (TS) was intimated to the applicant; that all the AR Dossier of the applicant was thoroughly perused and the grading have been analysed in detail; the assessment has been reviewed by various ROs as per AFO 6/2012 in view of the performance, manifested behaviour and appraisal potential.

11. The learned counsel for the respondents further submitted that Paras 29 and 30 of AFO 06/2012 clearly stipulate the criterion of Adverse AR and the same also highlight that mere numerical downgradation in AR grading for a particular assessment period as compared to the numerical AR grading of the previous assessment period does not amount to an adverse report, unless it meets the criteria laid down at Para 29 of the AFO and, therefore, the applicant's understanding of adverse or low graded AR is baseless and misplaced.

12. The learned counsel further referring to Para 62 of AFO 06/2012, stated that it provides that 'Feedback on AR status is important as it increases transparency while providing valuable periodic inputs to the appraisee for self-development', Appraisal Report Feedback (ARF) is provided to officers to help them in self-analysis and personal development; the ARF is limited in its scope and the feedback provided to the officers clearly stipulates that the ARF only gives the average numerical assessment during the last five years and it should not be construed as the only input for promotional prospects/career advancement. The learned

counsel argued that as per Para 24 of AFO 06/2012, according to which, Performance Review (PR) for officers beyond 16 years of service could be resorted to on an 'as required basis'; PR is an appraisee's right and can be sought for even for officers of more than 16 years of service where it is not mandatory and then he submitted that on perusal of the applicant's ARs for this period, there are no records found to validate the fact that a PR was demanded by the officer from any set of IOs during his consideration period and in fact, no PR was carried out by any of his IOs during this period which is in accordance with policy on subject for officers having rendered more than 16 years of service as the criteria for mandatory communication was not met anytime during the years of communication.

13. The respondents denied that HRP 03/2013 has made promotion to the rank of Gp Capt (TS) as a selection based promotion and explained that in PB-2 (select), an individual officer will get Gp Capt rank only on qualifying the merit subject to available vacancies in a particular branch, whereas, for Gp Capt (TS) promotion, as per HRP 03/2013, all officers who have not been granted select promotion and

have completed 26 years of commissioned service will be considered for promotion to the rank of Gp Capt (TS) subject to their meeting Minimum Performance Assessment Criteria (MPAC). It has been further submitted on behalf of the respondents that annual appraisal of every employee of the organization is carried out on his/her professional and behavioural attributes during the AR period; the appraisal report is assessed at three levels as per the provisions of AFO 06/2012 before submission and, hence, the applicant's claim that his AR has been intentionally kept low and because of the same he could not get Gp Capt (TS) rank, is completely baseless and unwarranted. The learned counsel for the respondents submitted that HRP 03/2013 has been upheld by the AFT (RB), Lucknow in the case of Gp Capt Ajay Gaur Vs. Union of India [OA No. 219/2016] vide its order dated 21.12.2021. He further submitted that no one can claim the promotion as a right and the applicant's right to be considered has been adequately meted out; that the ARs of the applicant have been raised by his superiors by following the provisions of the relevant AFO which have been examined thoroughly by the competent authority and found the same

in accordance with the policy and thus, the ARs are bereft of any anomalies and contradictions. The learned counsel submitted that Para 4(b) of HRP No. 03/2013 deals with MPAC required for grant of Gp Capt (TS) rank; an aggregate of 33 AR marks is required to be achieved in the last five year's report with a minimum grading of at least 6.5 in each year's AR and minimum 7 in two of the ARs in the last five years, with last AR not being an adverse AR.

14. In view of the submissions made, the learned counsel for the respondents submits that the applicant is presenting his case based on apprehensions and not on facts and thus prayed that the reliefs prayed for by the applicant are not admissible and hence the OA is liable to be dismissed.

ANALYSIS

15. We have heard the submissions made by the learned counsel for the parties and have also perused the records including ARs, policies etc. produced before us.

16. On perusal of the records, it has come about that while disposing of the Statutory Complaint of the applicant, the respondents vide letter dated 03.02.2022, made the following observations/remarks :

“(a) You were considered for substantive promotion to the rank of Gp Capt (TS) wef 17 Jun 21 in F(P) branch as per HRP 03/13. However, the same was not granted to you due to not meeting MPAC in accordance with HRP 03/13;

(b) The said occurrence was communicated in HQ CAC, IAF vid this HQ letter of even reference dated 25 May 21;

(c) xxx xxx

(d) The impugned ARs were again studied in light of allegations made by you. The performance vis-à-vis duties carried out by you, has been appropriately commented upon by various reporting officers in the ARs. Your ARs have been assessed as per demonstrated performance, manifested behaviour and appraised potential. The assessments were reviewed by Reporting Officers up in the appraisal chain in accordance with AFO. This review had catered for addressing all anomalies and contradictions during the process of appraisal at various levels. The said review process has been justly followed in subject your case in accordance with the policy. Thus, the ARs are bereft of any anomalies and contradictions;

(e) Para 29 and 30 of AFO 06/2012 clearly stipulates the criteria of ‘Adverse’ AR. It also highlights that mere numerical down gradation in AR grading for a particular assessment period as compared to the numerical AR grading of the previous assessment period, does not amount to an Adverse Report, unless the said AR meets the criteria laid down at para 29. Further, as stated by you, AR feedbacks were provided at regular interval

with an aim to help in self-analysis and personal development;

(f) xxx xxx

(g) IAF appraisal philosophy is based on multiple level assessments namely IO/RO/SRO/Command review/Air HQ review. This well-established review system is robust, effective and proven. The system is not dependent on single level of assessment i.e. IO as alleged you. Para 24 of AFO 06/2012 specifies the aim of Performance Reviews (PR) in AR system. It is a developmental tool available in the hands of the appraiser to harness the full potential of the appraisee. As per para 24 of AFO 06/12, PR for officers beyond 16 years of service could be resorted to on an 'as required basis'. PR is an appraisee's right and can be sought even for officers > 16 years of service where it is not mandatory. On perusal of your ARs for this period, there are no records found to validate the fact that a PR was demanded by you from any set of IOs during his consideration period. However, it is true that no PR was carried out by any of your IOs during this period which is in accordance with policy on subject for officers > 16 yrs of service as the criteria for mandatory communication was not met anytime during the years of communication. Further, AFOs are revised once every ten years whereas, HRPs are reviewed on time to time basis depending on dynamic operational requirement of the organisation;

(h) Wrt your representations regarding expungement of negatively marked ARs for the period 2016 to 2017 and 2017 to 2018, you have represented and raised the similar issues at

regular intervals of time through personal applications and RoGs. As brought out by you, an appropriate reply addressing the issues raised was provided at every instance;

(i) Comments submitted at Sl number 3(e) to 3(g) is reiterated. Additionally, you have wrongly construed the provisions of AFO 06/2012. As per AFO, a written communication is mandatory in following conditions:-

(i) Para 32 of AFO 06/2012. In case of an Adverse AR (i.e. assessment of 1 or 2 in any of the traits);

(ii) Para 36 of AFO 06/2012. In case awarding a grading of 5 or less in any of the mandatory qualities in the AR and an overall grading of 'Below Average' i.e. numerically 3-4.99;

(k) In the instant case, neither of the above condition has been met to invoke the above mentioned provisions of AFO 06/2012. Para 62 of AFO highlights various provision of AR Feedback (ARF). ARF is provided to officers to help them in self-analysis and personal development. ARF Increases transparency while providing valuable periodic inputs to the appraisee for self-development. ARF is limited in its scope and the feedback letter provided to the officers clearly states that the ARF only gives the average numerical assessment during the last five years and it should not be construed as the only input for promotional prospects/career advancement;

(l) Wrt your attempt to improve your numerical grading, you have repeated the same issue. Comments submitted above are reiterated. Further, you have admitted that you are aware of your performance which is less than the average for MPAC and Gp Capt (TS) promotion. The information furnished in the ARF are the average AR grading of an officer in the last 5 years vis-à-vis his / her peer group average. Further, as per para 62 of the AFO, Appraisal Report Feedback (ARF) will be provided to officers of the rank of Gp Capt (Select) & below of all branches on completion of 6, 9, 12, 15, 17, 20 & 23 years of service thereby providing ample opportunities for self-analysis and 2013, 2016, and 2019. Your allegation of mandated counselling by AFO is development. You were provided with ARF in year 2001, 2004, 2008, 2011, factually incorrect and is amply explained in reply at para 3(g) above...”

17. The applicant has raised the following issues :-
- (a) Expunction of ACR 2016-2017 and 2017-2018 as there is bias in writing these ACRs;
 - (b) Non-communication of ARF (Appraisal Report Feedback) to the applicant;
 - (c) Award of lower ACR marks leading to not meeting the MPAC criteria amounts to reporting ‘Adverse’ ACR.

18. We have carefully perused and scrutinised the applicant's ACRs for the years 2016–2017 and 2017–2018. We find no adverse gradings or adverse remarks in the impugned ACRs. The assessments recorded therein are well-corroborated and consistent with the applicant's general profile and we find no bias in the writing/recording of these ACRs by the IO/RO/SRO. The applicant has also not been able to show any remarks to be adverse which warrants expunction thereof.

19. With regard to the second issue, Para 62 of AFO 06/2012 provides that feedback on AR status is important as it increases transparency while providing valuable periodic inputs to the appraisee for self-development. In this regard, Appraisal Report Feedback (ARF) is provided to officers to help them in self-analysis and personal development. However, the scope of ARF is limited and the feedback clearly explain to the officers that the ARF only gives the average numerical assessment during the last five years and it is not to be construed as the sole input or decisive input for promotional prospects or career advancement. As regards Performance

Review, as per Para 24 of AFO 06/2012 regarding Performance Review (PR), it is provided :

“Performance Review

24. Performance Review (PR) referred earlier as 'Performance Counselling' of an appraisee is a developmental tool available in the hands of the appraiser to harness the full potential of the appraisee. The PR sessions should also be used to communicate the goals and targets for the appraisee. These PR sessions should be utilized to bring out the appraisee's strengths and shortcomings/developmental areas and to review the progress made in achieving the set goals and targets. While the IO may carry out PR as per requirement, it is mandatory to be carried out at least once every six months. PR for officers beyond 16 years of service could be resorted to on an 'as required basis'. It is mandatory to attach photocopies of relevant pages of PR register/record sheets with the ARs if the pen picture contains any negative/adverse comments/remarks.”

Perusal of the above indicates that PR is intended as counselling mechanism for bringing out strengths and shortcomings/developmental areas and to review the progress made in achieving the set goals and targets in respect of the appraisee. However, it also specifically provides that the PR for officers having rendered more than 16 years of service, could be conducted only on 'as required basis' and that the requirement to attach PR records with the

ARs arises only when the pen-picture contains any negative or adverse comments/remarks.

20. On perusal of the applicant's ARs for the relevant period, no record or material is found on record to establish that any PR was considered necessary by any of the IOs during the relevant period of consideration. In this case, the applicant having rendered more than 16 years of service by that time, the provisions of the AFO were duly complied with. Further, AFO 06/2012 does not provide for mandatory communication of ARs in all cases and it is required only in cases of an 'Adverse AR', where an assessment of 1 or 2 is awarded in any of the traits, or where a grading of '5 or less' is awarded in any of the mandatory quality(s) on nine points rating scale or any overall grading of 'Below Average' i.e. 3-4.99. Since the perusal of the ARs reveals that the applicant was not awarded any adverse grading or remarks in the ARs in question i.e. 2016-17 and 2017-18 or thereafter even beyond that i.e. till 2022, and that his gradings were consistently above '**5**' in his ARs, the applicant's contention that non-communication of the ARs constitutes a violation of

the provisions of AFO 06/2012 has no merit and unsustainable.

21. In so far as the non-empanelment of the applicant for selection to the rank of Gp Capt (TS) is concerned, we have carefully examined the promotion policy in vogue and the proceedings of the Promotion Board and other connected records. The HRP 03/2013 was promulgated with revised QRs subsequent to the govt. approval of AVSC report as it was found that in earlier policy of 2009, the QRs stipulated for grant of time-bound promotions resulted in officers getting promoted even after being awarded punishment/censures for acts related to grave misconduct, moral turpitude or lack of integrity and despite negative marks, certain officers were getting promoted due to increased average AR gradings and there was no clause for delaying/deferring promotions of such Flag Officers. The provisions of the HRP 03/2013 are applicable to all Permanent Commissioned Officers, Short Service Commissioned Officers, Branch Commissioned Officers and Service Entry Commission Officers of all the branches except Medical and Dental Branches.

22. The applicant has not been promoted to the rank of Gp Capt (TS) as he has not met the MPAC criteria as laid down in HRP 03/2013 and Para 4(b) of the HRP 03/2013 clearly stipulates the laid down QRs for promotion of officers to the rank of Gp Capt (TS). The laid down criteria reads as follows:

“4. Qualitative Requirements (QRs). The BoO would consider the following QRs prior to clearing the promotion to an officer :-

(a) Qualitative years of Service xxx xxx

(b) AR Grading and Performance Assessment Criteria

(i) The minimum performance assessment criteria for grant of substantive promotions as follows :

Rank	<u>ARs for consideration</u>	<u>Minimum Assessment Criteria</u>
Wg Cdr to Gp Capt (TS)	Last three years' reports would be considered for promotions till 31 May 2015.	<u>(i) Must have an aggregate grading of 18 in the last three years report with a grading of at least 6 in each years' report.</u> (ii) The last AR is not an adverse AR. (iii) Requirement of latest AR, if due, is mandatory.
	Last five years' reports would be considered for promotions from 01 Jun 2015 onwards.	<u>(i) An aggregate total of 33 in the last five years' report with a min grading of at least 6.5 in each year's AR and min 7 in two of the Ars in the last five years.</u> (ii) The last AR is not an adverse AR. (iii) Requirement of latest AR, if due, is mandatory.

23. We have also perused the promotion proceedings in respect of the applicant for the rank of Gp Capt (TS). The

applicant has been considered on two occasions, which are detailed in a tabulated form below :

ATTEMPT-1 JUNE 2019 (AR 2014-2018) (As per HRP 03/2013)				
Condition 1 An aggregate of 33 in last five years' report	Condition-2 Minimum grading of 6.5 in each year's AR (last 5 years)	Condition-3 Minimum 7 in two of the ARs in last five years	Condition-4 The last AR is not an adverse AR	Condition-5 Medical Category must be A4G3(P/T)
OK (Aggregate 34.31)	Not met [AR gradings for 2018 (6.22) not upto the mark]	OK	OK (last AR is not Adverse)	OK
ATTEMPT-1 JUNE 2019 (AR 2015-2019) (As per HRP 03/2013)				
Not met (Aggregate 34.34)	Not met [AR gradings for 2018 (6.22) not upto the mark]	OK	OK (last AR is not Adverse)	OK

24. From the above, it is evident that the applicant has not been successful in meeting the MPAC requirements fully as stipulated in the HRP 03/2013. Since the applicant was not meeting one or more of the criteria as per HRP 03/2013, he was not promoted to the rank of Gp Capt (TS). We find that the respondents have duly followed the procedures prescribed under the relevant policies in the case of the applicant. The applicant was not promoted to the rank in question on account of his not being able to meet the MPAC criteria and not due to any bias or adverse remarks in the

ARs; it only indicates that the applicant did not meet the stipulated MPAC criteria for promotion to the rank of Gp Capt (TS). Moreover, while disposing of the complaint of the applicant, the respondents have replied in detail to the grievances made by the applicant. We, therefore, do not find fault with the action of the respondents and no illegality is committed by the respondents in denial of the promotion to the applicant in the rank of Gp Capt (TS).

25. In view of the above consideration and judicial considerations, we do not find any irregularity on the part of the respondents and thus there is no ground to interfere with the matter. The O.A. No. 134 of 2022 is thus dismissed being devoid of merit. M.A. No. 204 of 2022 also stands closed accordingly.

26. There is no order as to costs.

Pronounced in open Court on this 3rd day of March, 2026.

**[JUSTICE RAJENDRA MENON]
CHAIRPERSON**

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

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