

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

O.A. No. 2716 of 2022

In the matter of :

Wg Cdr Kanak Mukherjee **... Applicant**

Versus

Union of India & Ors. **... Respondents**

For Applicants : Shri Ajit Kakkar, Advocate

For Respondents : Dr. Vijendra Singh Mahndiyan, Advocate

CORAM :

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

ORDER

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 respondents to bring all service documents of the Applicant on record including MPAC and ARs with advance copies of the Applicant.***
- b. To Set Aside AFO 06 of 2012 and HRP 03/2013.***

- c. To direct the respondents to expunge the AR rating being adverse AR for Period 2016 To 2017 and 2017 To 2018.**
- d. To direct the respondents to promote the Applicant to the Rank of Gp Capt (TS) W.E.F. 17.06.2021 with Consequential Benefits.”**

BRIEF FACTS

2. The applicant was commissioned in the Indian Air Force on 17.06.1995. The applicant was considered for promotion of Select Grade Gp Capt by the three Selection Boards from 17.06.2016 but he was not selected for the same. Aggrieved thereby, the applicant made a representation through letter No. CAC/5220/1/Air II to ACAS (PO) dated 19.11.2020 for expungement of the negative remarks in ARs for the period 01.07.2016 to 30.06.2017 and 01.04.2017 to 30.06.2018. The said representation of the applicant was replied to and was closed vide Air HQ letter dated 05.02.2021 with the remarks to the effect that due cognizance of his apprehension had been given during the review of his ARs at every stage of processing. Thereafter, the applicant along with all his course-mates were considered for

the promotion to the rank of Group Captain (Time Scale) ['Gp Capt (TS)' for short] with effect from 17.06.2021 and the applicant was not granted promotion as per Gp Capt (TS) list published vide PO 344 dated 25.05.2021.

3. Thereafter, the applicant represented through letters dated 01.06.2021 and 17.06.2021 requesting for expungement of ARs which were adversely impacting on his case for promotion to the rank of Gp Capt (TS). However, the applications filed by the applicant were closed by the respondents stating that there is no provision of expungement of ARs in AFO 06/2012.

4. Feeling aggrieved, the applicant filed a Statutory Complaint dated 21.12.2021, which was replied to by the respondents vide letter No. Air HQ/C.98972/29/PO-3(D)(I)BM-1 dated 03.03.2022 citing reasons for not promoting the applicant to the rank of Gp Capt (TS) as he was not meeting Minimum Performance Assessment Criteria (MPAC) in accordance with HRP 03/13. The applicant submitted another Statutory Complaint dated 30.05.2022 against non-grant of promotion to the rank of Gp Capt (TS). (The respondents stated in their counter affidavit that a draft

speaking order on the said statutory complaint was approved by AOP and forwarded to MoD for further processing). The applicant again submitted a complaint for further pursuance of the Central Government under IAF Regulations Chapter XII Sec-2 Para 622(j). In the meantime, aggrieved by the non-grant of promotion to the rank of Gp Capt (TS), the applicant has filed the present OA seeking aforesaid reliefs.

CONTENTIONS OF THE PARTIES

5. The learned counsel for the applicant submitted 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 applicant's advice as subordinate for use of his personal vehicle on leave to his IO on 13.12.2017, are unjustified and the respondents have acted partially in not granting the applicant his due promotion. It is also submitted by the learned counsel that the applicant's initial engagement was for 26 years and the HRP 03/2013, based on which, the applicant's case was rejected, was implemented after 20 years of service rendered by the applicant and thus it should not have been applied in his

case. The learned counsel further submitted that the applicant was not given any feedback verbally or otherwise in last six times and only numerical grading was informed and he was never briefed, advised or counselled for making good MPAC as mandated by AFO 06/2012 and HRP 03/2013; that the AFO 06/2012 is a guiding and binding for HRP 03/2013 and the latter is contravention of the former.

6. The learned counsel submitted that as per the provisions of AFO 06/2012 and HRP 03/2013, the criteria of MPAC was laid down vide Part III of Performance Review in Para 24, 30 and 34 and it provides that advisory remarks and adverse comments in the pen-picture of the appraisee should have been communicated to him during the performance counselling sessions and recorded accordingly, but the applicant was never advised or counselled for not meeting MPAC ever during his service; especially in last five years by IO, RO, SRO or even DPO Air HQ (VB) when the same was going to impact adversely in his career; that as per Para 52 of AFO 06/2012, if a rectifiable weakness not mentioned by IO through RO, the SRO would be required to record, if considered as adverse by him, giving numerical assessment

on any attribute at below satisfactory level. 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.

7. It is pertinent to mention that 'Adverse' grading mandates counselling of the officer so as to bring out the shortcomings, thereby giving the individual a chance to improve upon; since grading between 5 and 6.5 is not considered 'Adverse', counselling is not done generally beyond 16 years of service; that in the 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 rank of Gp Capt (TS) or the next higher rank which makes it adverse factually.

8. 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. The learned counsel further relied upon the judgment of Hon’ble Supreme Court in Dev Dutt Vs. Union of India & Ors. [Civil Appeal No. 7631 of 2002], wherein it was held that ‘every entry must be communicated to the employee concerned, so that he may have an opportunity of making a representation against it if he is aggrieved.’”

9. The learned counsel for the applicant 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 AFO 06/2012 and HRP 03/2013 by downplaying his AR in a manner by grading him low enough for MPAC but keeping his marks above the required to raise an 'Adverse' remark, which is grave deficiency and error on the part of the respondents. The learned counsel thus submitted that the HRP 03/2013 warrants for review or change to the effect that either 'Adverse' grading be increased to '6.5' or the minimum grading for MPAC be reduced to '5'. The learned counsel submitting 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.

10. The respondents, through their counter affidavit, submitted that the applicant and all his course-mates were considered for the promotion to the rank of Group Captain (Time Scale) with effect from 17.06.2021 in accordance with

HRP 03/2013 but the applicant was not granted the same either due to invalid medical category or not meeting Minimum Performance Assessment Criteria (MPAC) which are requisite QRs for the said promotion, hence there is no unjustified or unfair act on the part of the respondents and that the reason for non-grant of promotion to the rank of Gp Capt (TS) was intimated to the applicant through a Speaking Order dated 03.03.2022.

11. It has further been submitted on behalf of the respondents that the AFO 06/2012 does not have any provision regarding expungement of AR, however, as per Para 56 of the said AFO, in the event of representation by an appraiser, an AR can be reopened, scrutinised and raised before the competent authority for review; that this provision has been exercised by the applicant and his contested AR has already been reopened, scrutinised and reviewed at the Air HQ based on his earlier representations.

12. The learned counsel for the respondents further submitted that with regard to 'Adverse' AR, 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 and low graded AR is baseless and misplaced.

13. It has been clarified by the respondents that the ARs for period from 01.07.2016 to 30.06.2017 and 01.04.2017 to 30.06.2018 were initiated, processed and reviewed as per AFO 06/2012; that analysis of applicant's ARs for the aforesaid periods reveal that the performance *qua* the duties carried out by the officer was appropriately commented upon by various reporting officers in his ARs and the numerical assessment awarded to the applicant in the AR is in consonance with demonstrated performance and manifested behaviour during the period reported on. The learned counsel reiterated that appraisal involves assessment on multiple attributes and that adequate checks and balances are in place through review mechanism to ensure objectivity and fairness in appraisal of the officers and the applicant's ARs have been reviewed at Air HQ as per the well-established

mechanism that has stood the scrutiny by Apex Courts of justice and, therefore, multi-tier system of assessment has ensured that final assessment earned by the applicant is well considered one and is bereft of anomalies.

14. 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 further referred to 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.

15. The learned counsel further submitted that as per provision of AFO 06/2012, a written communication is mandatory in case of either an Adverse AR (Assessment of 1 or 2 in any of the traits) or when awarding a grading of 5 or less in any of the mandatory qualities on nine points rating scale or an overall grading of 'Below Average' i.e., numerically 3-4.99 and that there is no provision stipulated in the AFO for mandatory communication in writing by reporting officers to appraisee if the overall /aggregate grading is falling below MPAC criteria; that Para 47 of AFO 06/12 lays down functions and responsibilities of RO/SRO and not the criteria for MPAC and Paras 48 and 49 of AFO las down the procedure for review of ARs at Air HQs /Command HQ and

not on processing of 'Adverse' AR. It has been added that there is no provision in DIGITAR to send back a digitally signed AR to the previous reviewing officer and that as per AFO 06/2012, when RO or SRO finds that a report has procedural errors or in cases of appraisal inconsistencies, the DIGITAR has to be cancelled and has to be raised again by the appraisee and thus the same procedure was correctly followed in case of the applicant.

16. 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 respondents stated that the 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. The performance vis-à-vis duties carried out by the applicant has been appropriately commented upon by various reporting officers in the ARs; good work done has also found mention in the pen-picture by various reporting officers along with various developmental remarks; the applicant's ARs have been assessed as per demonstrated performance, manifested behaviour and appraised potential; that the assessments were reviewed by ROs up in the appraisal chain in accordance with AFO on subject and this review had provided address of all anomalies and contradictions during the process of appraisal at various levels and the said review process has been justly followed in the applicant's case in

accordance with the policy and thus, the ARs are bereft of any anomalies and contradictions.

17. 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; that the HRP 03/2013 does not state that getting AR marks below 6.5 (as an average of last five year) and AR grading of below 7 in last two ARs will be considered as an 'Adverse' report. The criteria of adverse ARs has been explained in AFO 06/2012; that the requirement of counselling is required when adverse report is raised and if it has not been raised in case of the applicant, it means that he has not been adversely assessed and promotion to Gp Capt (TS) rank on account of non-meeting the MPAC does not require raising an adverse report; therefore, the provision of raising adverse report on non-meeting the MPAC has not been mentioned in the HRP 03/2013.

18. In response to the applicant's averments regarding need of Article 21 of the Constitution, the learned counsel for the respondents referred to judgment of the Hon'ble Apex Court in Ganga Ram Vs Union of India [AIR SC 2178], wherein it was observed that 'Mere production of inequality is not enough to attract the constitutional inhabitation because every classification is likely in some degree to produce some inequality. The state is legitimately empowered to frame rules of classification for securing the requisite standards of efficiency in service and the classification need not be scientifically perfect or logically complete'. The learned counsel stated that the orders of the CAT relied upon by the applicant may not be taken into consideration as the same are decided on completely different subject and context.

19. 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

20. 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.

21. 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 10/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...”

22. The applicant has raised the following three issues through the OA :-

- (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.

23. 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.

24. 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.

25. 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.

26. 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 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.

27. 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.	(i) <u>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.

Thereafter, the applicant's case for promotion to the rank of Gp Capt (TS) was also considered as per HRP 08/2021 also, Appendix 'A' of which prescribes MPAC with regard to grant of promotion of the rank of Gp Capt (TS) as under :

"MINIMUM PERFORMANCE ASSESSMENT CRITERIA
FOR GRANT OF TIME BOUND SUBSTANTIVE
PROMOTIONS

Rank	<u>ARs for consideration</u>	<u>Minimum Performance Assessment Criteria</u>
Wg Cdr to Gp Capt (TS)	Last 5 yrs	(i) An aggregate total of 34 with a min grading of 6.5 in each AR and min 7 in two of the ARs. (ii) The last AR is not an adverse AR.

28. We have also perused the promotion proceedings in respect of the applicant for the rank of Gp Capt (TS). The applicant has been considered wherein five attempts were made, which are detailed in a tabulated form below :

ATTEMPT-1 JUNE 2021 (AR 2016-2020) (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)
Not met (Aggregate 32.43)	AR gradings for 2017 (6.05) and 2018 (5.94) not upto the mark	Not met (7.00 only one year's ACR of 2019)	OK (last AR is not Adverse)	Invalid medical category (due to non-completion of medicals on date)
ATTEMPT-II : On receipt of AR of year 2021(2017-2021) (As per HRP 03/2013)				
Not met (Aggregate 32.98)	AR gradings for 2017 (6.05) and 2018 (5.94) not upto the mark	OK	OK (last AR is not Adverse)	OK
ATTEMPT-III : On receipt of AR of year 2022 (2018-2022) (As per HRP 08/2021)				
Condition 1 An aggregate of 34 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 34.20)	AR gradings for 2018 (5.94) not upto the mark	OK	OK (last AR is not Adverse)	OK
ATTEMPT-IV : On receipt of AR of year 2022 (2018-2023) (As per HRP 08/2021)				
OK (Aggregate 34.59)	AR gradings for 2023 (6.33) not upto the mark	OK	OK (last AR is not Adverse)	OK
ATTEMPT-V : On receipt of AR of year 2024 (2020-2024) (As per HRP 08/2021)				
Not met (Aggregate 33.97)	AR gradings for 2023 (6.33) and 2024 (6.38) not upto the mark	OK (2021 - 7.27 and 2022- 7.27)	OK (last AR is not Adverse)	OK

29. 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 and also the subsequent HRP 08/2021. Since the applicant was not meeting one or more of the criteria as per HRP 03/2013 or HRP 08/2021, 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).

30. 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 OA is thus dismissed being devoid of merit.

31. 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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