

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

OA 995/2019

Lt. Col Ajay Kumar Pundkar Applicant
Versus
Union of India and Ors. Respondents

For Applicant : Mr. Indra Sen Singh, Advocate
For Respondents : Dr. V.S. Mahndiyan for R 1-3
None for R-4

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER

This application has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, seeking following reliefs:-

- a) Call for the original record held by the Respondents leading to rejection of the Applicant's statutory complaint and after perusal thereof set aside the impugned order dated 13.03.3019;*
- b) Call for the Applicant's complete CR-Dossier and, after making necessary comparison, set aside the complete assessments of the IO, RO, SRO and HTO in the Applicant's impugned CR for the period Sept 2007 to Jan 2008, being technically invalid, biased, arbitrary, inconsistent and non-objective;*
- c) Set-aside the complete assessments of the IO, RO, SRO and HTO in the Applicant's impugned CR for the period May 2009 to Dec 2009, being a false report, arbitrary, inconsistent and non-objective;*
- d) Set aside the result of No.3 Selection Board (SB) only in respect of the Applicant, whereby the Applicant has been non- empanelled for promotion to the rank of Colonel by No.3 SB held in December 2016, October 2017 and October 2018;*

e) Direct the respondents to consider the Applicant afresh, as a Special Review Fresh Case, by No. 3 Selection Board for promotion to the rank of Colonel, as per the norms applicable to the Applicant's original 2018 with the Applicant's changed/modified profile after setting aside the impugned CR as prayed for herein above; and

f) Pass such other order(s) and direction(s) as deemed appropriate by this Hon'ble Tribunal in the facts and circumstances of the case.

FACTS OF THE CASE

2. The applicant was commissioned in the Army Ordnance Corps on 11.12.1999, reckoning seniority from that date, and is a non-PSC/PTSC/SC officer qualified in Junior Command Course with 'C'/Average grading. He was considered for promotion to Colonel by No. 3 Selection Board as fresh case in December 2016 but was declared non-empanelled. Subsequently he was considered for promotion by No. 3 SB as first review in September 2017 and as Final Review in October 2018, however was again marked as not empanelled.

3. The applicant filed a non-statutory complaint dated 15.02.2017 against fresh non-empanelment (Dec 2016) and impugned CRs for the period 09/07-01/08 and 05/09-12/09, which was rejected by COAS on 08.12.2017, followed by a statutory complaint dated 19.07.2018, which was rejected by MoD on 13.03.2019, communicated via letter dated 15.03.2019. Aggrieved by the same, the applicant has filed the present OA.

SUBMISSIONS ON BEHALF OF THE APPLICANT

4. It is the case of the applicant that the impugned CR, from Sept 2007 to Jan 2008, covering a period of 116 days during the applicant's posting at Ordnance Transit Group (OTG) Pathankot, was wrongly classified as a Command Criteria or Annual Evaluation (AE) report, despite being explicitly initiated by the Initiating Officer as a Non-Command/Non-AE report and that under the Para 4 of Army HQ AE Policy dated 19 November 2008, AE reports are valid only from the ninth year of commissioned service; whereas the the applicant completed his eighth year of service on 11 December 2007. Therefore, of the 116 days covered by this CR, only 42 days from 11 December 2007 to 22 January 2008 fall within the reckonable AE period, whilst 74 days fall in the non-reckonable eighth year of service.

5. Elaborating further, it is submitted by the applicant that the policy further mandates a minimum of 90 continuous days in a criteria appointment for an assessment to be technically valid and as the CR fails to meet this threshold, it cannot legally be treated as an AE report, but MS Branch arbitrarily reclassified this CR as an AE report, thereby distorting the applicant's quantified merit score used by the No. 3 Selection Board in its promotion consideration, and therefore, this procedural violation alone constitutes a material defect rendering the

CR and the subsequent selection board decision invalid. Furthermore, the applicant argues that the personal bias of the IO manifestly influenced the impugned CR.

6. It is the contention of the applicant that the Reviewing Officer and the Senior Reviewing Officer lacked any direct knowledge or interaction with the applicant during the relevant period, resulting in these officers endorsing the downgraded assessment mechanically, merely accepting the Initiating Officer's biased report without independent scrutiny or objective evaluation, and that such endorsement without direct knowledge or substantive engagement violates principles of fair evaluation and renders the entire assessment chain compromised by the initial bias.

7. Contending on the second impugned CR, covering the period from 18 May 2009 to 31 December 2009, it is submitted by the applicant that this CR was recorded as an AE/Command Criteria report for the applicant's role as Commander 4/2 Ammunition Company at 19 Field Ammunition Depot, whereas this description is factually incorrect and does not reflect the applicant's actual duties during the majority of this period and the same is reflected in the official documents, specifically the handover note dated 24 May 2009, confirms that the applicant took over duties as Control Officer, Depot Accounts Officer, Officer-in-Charge Automated Data Processing Section, and Stock

Taking Officer and that the applicant's command responsibilities were assumed only as additional duty for an aggregate period of approximately 25 days due to shortage of officers at the unit, during which he simultaneously maintained his primary non-command roles.

8. Elaborating further, the applicant asserts that the second impugned CR contains an inherent contradiction between its narrative description and its assigned grades and that the IO's pen picture provides a highly laudatory assessment of the applicant's performance, describing his traits and achievements in superlative terms and acknowledging his excellence in critical technical functions, and yet, when assigning the numerical box-grading, the officer awarded a grade of '8' (Above Average), which is manifestly inconsistent with a superlative narrative assessment.

9. As per applicant, it is his contention that according to established guidelines for rendering Confidential Reports (Para 35(b)(iv), Appx F), the numerical rating must align with the descriptive narrative; however, this inconsistency demonstrates either subjective judgment or deliberate downgrading and cannot be reconciled with objective evaluation principles. Therefore, the applicant contends that a truly objective assessment, consistent with the acknowledged excellence captured in the narrative, would have warranted an 'Outstanding' (9-

point) rating, thereby significantly altering the applicant's quantified merit.

10. It is argued by the applicant that these two flawed and biased CRs, mis-captured as AE reports and downgraded contrary to objective evaluation standards, materially and adversely affected his quantified merit score. The No.3 Selection Board, in its December 2016 fresh consideration, October 2017 first review, and October 2018 final review, considered these reports as part of the applicant's overall record of service and that the applicant's quantified merit, in turn, was calculated with reference to these invalid CRs.

11. The applicant drew attention towards CRs from 2014-2015 onward wherein he earned consistently 'Outstanding' (9-point) CRs, yet was non-empanelled in all three selection board sittings, and therefore, the applicant verily believes that his quantified merit, excluding the impugned CRs, matches or exceeds that of fellow 1999-batch officers who were ultimately empanelled and promoted to Colonel.

12. With respect to the Value Judgement marks, it is submitted by the applicant that in the October 2018 final review, the Selection Board awarded depleted or lowered Value Judgment marks to the applicant, despite his post-cutoff CRs being 'Outstanding,' thereby, compounding the adverse impact. This non-empanelment was, thus, a direct

consequence of the inclusion of these two flawed CRs in the merit computation, and conjoint lowered Value Judgement marks.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

13. Per contra, it is submitted by the respondents that the Indian Army operates under a pyramidal rank structure with limited vacancies in higher ranks, filled selectively from batch officers based on superior service records, as promotion to Colonel and above remain board-driven, evaluating all batch officers uniformly on cut-off Annual Confidential Reports (CRs), individual profiles, and comparative merit without regard to raw seniority. Special post-board considerations for upgraded CRs via complaints preserve original seniority if approved, ensuring fairness in a meritocratic system designed for leadership roles in the Armed Forces.

14. It is the case of the respondents that the applicant's profile including impugned CRs are all above average/outstanding, however, he was non-empanelled by No. 3 Selection Board as a fresh case in Dec 2016, and as a First Review in Sep 2017 and Final Review Oct 2018 on overall relative merit, and that the CRs in challenged in this OA are technically valid.

CONSIDERATION

15. Having concluded a comprehensive hearing with the learned counsel representing both the parties, this Tribunal has undertaken a

meticulous examination of the extensive evidentiary record presented for adjudication. The respondents have produced, the entirety of the relevant service documentation, including but not limited to the applicant's Confidential Report (CR) dossiers and the complete files originating from the Complaint Advisory Board, necessary to render a final determination on the merits of the case. Furthermore, the records include the internal proceedings of No. 3 Selection Board as they pertain specifically to the applicant's professional standing and career progression.

16. At the outset, we have considered the applicant's submissions regarding the invalidity of his report for the period 09/07-01/08 which he alleges is technically invalid, biased, arbitrary, and contrary to the policy letter issued by the MS Branch dated 19.11.2008. It is essential to reproduce Para 4 of the said policy letter, which reads as under:

"4. The basic tenets of the new AE policy are as follows:-

(a) AE period to commence wef completion of nine years of reckonable commissioned service till 1993 Batch. From 1994 Batch onwards, AE period will commence wef completion of eight years of reckonable commissioned service. From 2002 batch onwards AE period will commence wef completion of seven years of service.

(b) An offr is reqd to earn a min of two CRs in a criteria appointment for 20 months. In case an offr tenants criteria and part- criteria appointment, the offr will earn a min of two CRs for 24 months with the following stipulations:-

(i) *Min of 12 months must be tenanted in a criteria appointment. The balance period could be in the combination of criteria and part- criteria appointment.*

(ii) *The tenure of 24 months could be tenanted either in the rank of Major or Lt Col or a combination of both.*

(iii) *In case the CRs for the criteria/part-criteria appointment have been earned in the rank of Major only, then the offr should learn at least one report in the rank of Lt Col in any appointment and should also have held the rank of Lt Col for at least 11 months.*

(c) *The provisions of Para 4 (b) above will be applicable upto 2002 Batch. Wef 2003 batch, an offr will be reqd to earn a min of two CRs in a criteria appt for 24 months. In case an offr tenants a mix of criteria and Part Criteria appointment, the offr will require to have completed min 12 months in a criteria appt.*

(d) *If the above period is tenanted in one continuous stretch, the offr must earn min one CR in each reporting year.*

(e) *Where an offr is competing AE in two separate tenures, it is mandatory to have atleast one CR in each tenure.*

(f) Period Contributing Towards AE. *The period for calculation of AE will commence from the time an offr is initially placed on the criteria appt and will terminate when the offr relinquishes the appt irrespective of service under the reporting offr. The min period spent in each tenure should be three months.*

(g) NIR. *Offrs will be given benefit of NIRs, initiated on a criteria/part-criteria appointment towards calculation of AE tenure provided the NIR succeeds or precedes a valid CR on a criteria/ part-criteria appointment in the same unit."*

17. On a bare perusal of the aforesaid letter, it is clear that the applicant, being an officer of the 2019 Batch, is governed by the policy applicable to officers from the 1994 Batch onwards wherein the AE period commences on completion of eight years of reckonable commissioned service. Therefore, in our considered view, the applicant was well within the period required for earning AE.

18. We have examined the records contained in the CR dossiers. As has been consistently held, the entries reflected in the CR form are

the responsibility of the ratee, i.e., the applicant. The applicant has shown his appointment as OO (Major), HQ Ammunition Company from 29.09.2007 to 22.01.2008 and has further reflected his AE period in the same appointment from 07.02.2007 to 22.01.2008. In addition, he submitted a record of service personally signed by him on 23.01.2008 wherein he admitted that he was holding the appointment of OO (Major), HQ Ammunition Company. At this belated stage, therefore, challenging the report on grounds of technical invalidity on the basis that he did not hold the appointment reflected in the CR is technically and legally untenable.

19. As far as the quality of the report is concerned, we find that the applicant was awarded a clear Above Average report by all reporting officers. The FTO graded him Outstanding (9-box grading) and he received a fair mix of 9s and 8s in all qualities. The pen pictures are complementary and he was recommended for foreign assignments and career courses. We also observe that the impugned report is consistent with subsequent CRs earned by the applicant in the same environment; hence, we do not find any inconsistency or bias in the assessments.

20. The applicant's contention that only 42 out of 120 days were tenanted in a reckonable appointment and the remaining 74 days fell in a non-AE period and therefore, the CR does not reflect a

typical criteria report is misplaced. We uphold the respondents' decision to treat the impugned CR as a criteria report considering the ratee's own certification as well as the principles laid down in the policy letter dated 19.11.2008. Furthermore, in light of MS Branch policy letter dated 18.08.2005, CR periods initiated after commencement of the base year are required to be counted towards AE if initiated in a criteria or part-criteria appointment. The policy applies uniformly; therefore, we find no reason to set aside the CR on technical grounds.

21. The applicant has also challenged the second CR for the period 05/09–12/09, earned in the rank of Major as Controlling Officer and Commander of Four Ammunition Company in 14 FAD. The report is graded as Above Average by the IO, RO, FTO, and HTO. The applicant received a fair mix of 9s and 8s in all PQs/TPVs/QSAP along with complementary pen pictures and recommendations for foreign assignments and career courses. The report is consistent with those earned earlier and later in his career and we find no inconsistency in the assessments.

22. The applicant's claim that a laudatory pen picture entitles him to outstanding box gradings is incorrect; box gradings are based on overall performance as assessed by the reporting officers. He has further claimed that the report should be re-edited as a non-criteria

report because he was performing the duties of Controlling Officer, 19 FAD, for most of the period. However, the records, as certified by the applicant himself, clearly show that he was performing the duties of Ammunition Company Commander with other appointments held additionally for certain periods. We therefore, find no error in initiating the report as a criteria report.

23. Even though the applicant has submitted a handing/taking-over report to contest his appointment as Ammunition Company Commander, the Daily Order Part-I at page 27 of the OA records that the applicant was to take over the duties of Controlling Officer, OIC/DAO/STO, SMO, and OIC ADP in addition to his duties as Commander, Four Ammunition Company. His appointment as Ammunition Company Commander is reflected not only in the CR but also in the IAFF-3008 (Strength Return). Therefore, we find he was correctly assessed in that appointment. As per Para 16(c) of AO 45/2001/MS, a CR is technically valid if the officer is posted and the directory of appointment matches the IAFF-3008. Accordingly, we find the CR has been correctly initiated.

24. Having considered the fact that the report is duly substantiated by the gradings in various qualities as well as in the box grading, we do not find any reason to set aside the CR or to upgrade the CR to an "Outstanding" grading in all the boxes as averred by the applicant.

We have also taken note of the turnaround document personally signed by the applicant which is placed in his CR dossier wherein his appointment is shown as Controlled Officer, Commander, 4 Ammunition Company. Therefore, we have no hesitation in holding that, in terms of both the technical validity and the quality of the report, there is no reason to interfere with either of the CRs.

25. With respect to the contention of the applicant that the Reviewing Officer and the Senior Reviewing Officer lacked any direct knowledge or interaction with the applicant during the relevant period, we find our resonance in the views expressed by this very Bench while passing orders in the case of Brig Vishal Mohanlal Murada Vs. Union of India & Ors. in OA 1256/2022 which reads to the effect:

"16. It is our considered opinion that the courts are not in a position to assess the competence of the employee and over ride the assessment of the reporting officers to upgrade for Above Average (8) to Outstanding (9). We are neither privy to the performance of the employee nor the inter personal aspects of the organizational health. This aspect has been adequately answered by Honorable Supreme Court in the case of Union of India Vs Lieutenant General RS Kadyan (2000) 6 SCC 698 and Major General IPS Dewan Vs Union of India and Ors (1995) 3 SCC 383 (Supra). If the courts were to upgrade all above average (8) Confidential Reports to Outstanding (9), we will be swarmed by applicants seeking the intervention of courts for upgradation of their CR ratings which would cause gravious injury to the overall health of the Armed Forces and render the entire system of Confidential Report and Quantification System of Selection redundant. Thus we do not consider it prudent to upgrade the Confidential Report ratings through our judgment. For this, case of Brigadier Mandeep Singh Vs Union of India (OA No 905/2015) deserves mention wherein the Armed Forces Tribunal has noted :-

"Firstly, we would like to reiterate that the guidelines have no statutory effect. Thus it is clear that box gradings are assessments to be made by the Reporting

officers who are in the best position to assess the officer in his individual qualities and also his performance when compared to his peers. They are legally entitled to do so and being responsible officers senior in the chain of Command to the applicant, are eminently competent to do so. Unless any clear infraction of rules, orders, regulations or instructions in the recording of the impugned CRS are brought to our notice, we would not be in a position to interfere in the matter in any way".

17. In a similar case of *Union of India Vs SK Goel and Ors 2007; 14 SCC 641*, the Hon'ble Apex Court has observed :-

"It has to be held that the Tribunal was in error in going into the question whether the applicant had been rightly graded as 'outstanding' in ACR for the years 1990-91 and 1991-92. The observations of the Tribunal that of the two 'outstanding grading' does not flow from various parameters given and the reports entered there in, cannot thereof, be upheld and are accordingly set aside".

Commenting further on the issue, the Apex Court held :

"Evaluation made by an expert committee should not be easily interfered with by the Courts which do not have the necessary expertise to undertake the exercise that is necessary for such purpose".

18. Dwelling further on the aspect of examination of the other Confidential Reports of the applicant in the rank of Brigadier, we have once again observed that there is no bias or arbitrariness in any of the four reports examined and thus there is no cause of action therein. Similar impressions have also resonated in the disposal of the second statutory complaint by the Respondents. The entire CR profile of applicant has mix of Above Average (8) and Outstanding (9) box gradings by reporting officers. Since the ratee officer is not privy to the entire contents of the Confidential Report except for the part which he/she signs as read, most rating being Outstanding as perceived by the applicant are not true. In conclusion, we do not find any cause for us to affect an upgradation in the subject Confidential Report."

26. This Tribunal, in a consistent line of reasoning, previously observed in *Brig Mandeep Singh v. Union of India (OA 905/2015)* about the scope of judicial review concerning Confidential Reports (CRs) of which the relevant excerpts, are reproduced as follows:

*9. As far as adjudicating on the grading given in a CR is concerned, we would like to emphasize that the role of the courts on this account is restricted within a very narrow compass confined to bias, arbitrariness or illegality, Hon'ble Apex the case of *UOI v. S.K. Goel, 2007: 14 sec. 641* has held as follows:-*

"It has to be held that the Tribunal was in error in going into the question whether the applicant had been rightly graded as 'outstanding' in ACR for the years 1990-1991 and 1991-1992. The observations of the Tribunal that of the two outstanding grading' does not flow from various parameters given and the reports entered there in cannot therefore, be upheld and are accordingly set aside".

Commenting further on the issue, the Apex Court held:

"Evaluation made by an expert committee should not be easily interfered with by the Courts which do not have the necessary expertise to undertake the exercise that is necessary for such purpose".

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12. As regards the issue of following the guidelines and the claim of the applicant that getting seven '9's in the individual qualities out of 11 would amount to predominance and the box grading should have been '9', we find no legal mandate to support the claim of the applicant. Firstly, we would like to reiterate that the guidelines have no statutory effect. Be that as it may, para 35(b)(1) of the box grading specifically states that box grading represents overall assessment of performance as well as potential for promotion. Para 35(b)(ii) states that the reporting officer must clearly differentiate between truly outstanding officers and others. Grading all officers outstanding would defeat the very purpose of appraisal system. Para 35(b)(ii) states that the box grading is not meant to be a mathematical average of the awards in individual qualities. The word 'predominance' heavily relied upon by the learned counsel for the applicant. It has no legal definition. The dictionary meaning of 'predominant' is 'present as the strongest or main element; having or exerting greater control or power'. On the other hand Oxford English Dictionary clarifies 'Outstanding' as 'exceptionally good' or 'clearly noticeable'. Box grading of seven '9' was predominant in the gradings made but only that each grading numbered more than the lesser gradings. Predominance demands eclipsing of the lesser gradings as insignificant, and it can be so only in a case where lesser grading is limited to one or two. Thus it is clear that box gradings are assessments to be made by the Reporting Officers who are in the best position to assess the officer in his individual qualities and also his performance when compared to his peers. They are legally entitled to do so and being responsible officers senior in the chain of Command to the applicant, are eminently competent to do so. Unless any clear Infraction of rules, orders, regulations or instructions in the recording of the impugned CRs. are brought to our notice, we would not be in a position to interfere in the matter in any way. Neither has the applicant brought any such infraction to our notice nor has he made out a case of malice or bias against any of the respondents. On the power of the courts to interfere in such matters, the Hon'ble Supreme Court in the case of Air Vice Marshal S.L. Chhabra v. UOI (1993 Supp (4) SCC 441 has stipulated as follows:

"According to us, neither the High Court nor this Court can moderate the appraisal and the grading of the appellant for a particular year. While exercising the power of judicial review, a Court shall not venture to assess and appraise the merit or grading of an officer".

In view of the above, we find no reason to interfere in the box grading of '8' given to the applicant in the impugned CRs."

27. In view of the findings recorded hereinabove, this Tribunal finds no reason to interfere with the decision of the Ministry of Defence, and we hereby uphold the legality and validity of the Order dated 13.03.2019, whereby the Central Government, upon due consideration, rejected the applicant's statutory complaint dated 19.07.2018. The said complaint, preferred against the applicant's non-empanelment for promotion to the rank of Colonel by the No. 3 Selection Board convened in December 2016, is found to be devoid of merit. The impugned administrative action is sustained, and the prayers sought by the applicant in this regard are hereby declined.

28. While it was further submitted on behalf of the applicant that he has done exceedingly well in all courses and has also qualified in the Higher Munitions Course (HM Course), on the contrary, we find that the applicant has performed only satisfactorily in all Armed Forces courses such as the JC Course and that he has not qualified in any of the Career Management Courses such as TSSC/DSSC which

would have fetched him additional marks for the purpose of consideration by No.3 Selection Board.

29. Moving to examine the proceedings of No.3 Selection Board produced before us by the respondents, we observe that the applicant was considered as a fresh case of his original batch, i.e., the 1999 batch, in December 2016. His order of merit was '30' as against the total number of vacancies allotted to his batch, which was 16, and therefore, he was not empanelled for promotion.

30. The applicant was subsequently considered for empanelment for the second time in September 2017 as a First Review case. On this occasion, he was evaluated alongside the 2000 batch, for which a total of 17 vacancies had been allocated. Upon a comparative merit assessment, the applicant secured the 22nd position in the order of merit, thereby falling outside the zone of selection and resulting in his non-empanelment.

31. In his third and final review consideration held in October 2018, the applicant was considered for promotion along with officers of the 2001 batch. Although 18 vacancies were available for the said batch, the applicant was placed at Serial No. 25 in the overall order of merit. Consequently, as the applicant failed to fall within the sanctioned vacancy strength for the third consecutive time, he was not empanelled for promotion to the rank of Colonel.

32. In the light of the policy letters issued by the MS Branch from time to time governing the Quantified System of Selection, it is pertinent to note that the inter se merit of officers considered by a Selection Board for promotion to higher ranks is not determined solely on the basis of the gradings recorded in their Confidential Reports. Marks are also awarded for various other parameters, including performance in professional military courses, qualifications obtained through competitive examination-based courses such as the Defence Services Staff College (DSSC) and the Technical Staff Officer Course (TSOC), as well as Honours and Awards. The absence of such qualifications and distinctions in the applicant's profile has had a bearing on his overall merit, resulting in his non-empanelment for promotion.

33. Upon examining the Value Judgment Marks awarded by all the three Selection Boards, we find the same to be consistent with those awarded to officers possessing a comparable service profile. We do not discern any element of bias, arbitrariness, subjectivity, or inconsistency in the assessment process that could be said to have adversely affected the applicant's placement in the order of merit. In view thereof, we find no justification to interfere with the proceedings or the outcome of any of the three Selection Boards in which the applicant was considered.

34. Consequently, this OA 995/2019 is dismissed as devoid of merit.

35. Pending miscellaneous application(s), if any, stands closed.

36. No order as to costs.

Pronounced in the open Court on 22 day of January, 2026.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

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

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