

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A. No. 123 of 2014

Monday, the 8th day of June, 2015

The Honourable Justice V.Periya Karuppiah
(Member-Judicial)
and
The Honourable Lt Gen K Surendra Nath
(Member-Administrative)

Lt Col Sanjeet S Sahai (IC-52649N)
Son of Air Commodore Ajit Sahai (Retd)
Presently posted as Training Officer
NCC Group Headquarters, Group 'B'
161, EVR Periyar High Road
Kilpauk, Chennai – 600 010

...Applicant

By Legal Practitioner:
Mr.Lalit Kumar

vs

1. Union of India
Through The Secretary
Ministry of Defence, New Delhi – 110 011
2. The Chief of Army Staff
Integrated HQ of MoD (Army)
South Block, New Delhi
3. Military Secretary
Army HQ, Sena Bhavan, New Delhi
4. Brigadier Devendra Singh
DJAG, HQ Central Command
Lucknow (UP)
(Ex-Col MS (Legal) at the IHQ of
MOD (Army)
5. Col Ajay Kumar
(Ex CO 9 Punjab)
Attending Higher Command Course
Army War College, Mhow (MP)

Proforma respondents. No
reliefs claimed. No notice
required.

...Respondents

Mr.S.Haja Mohideen Gisthi, SCGSC

ORDER

[Order of the Tribunal made by
Hon'ble Lt Gen K Surendra Nath, Member (Administrative)]

The applicant, Lt Col S.Sanjeet Sahai has filed this Original Application against the order dated 28 March 2014 by the respondents through which the applicant was declared unfit for promotion to the rank of Colonel by the Special Review Selection Board, constituted by the respondents in compliance of this Tribunal's order dated 02.01.2014 in TA No.02 of 2013; and to direct the respondents to produce the relevant documents concerning the proceedings of the Special Review Selection Board and to quash the same, being biased and arbitrary.

2. In brief, the applicant would submit that he had approached this Tribunal vide TA 02/13 for setting aside the ICR for the period 01.06.2007 to 27.10.2007. The Tribunal, vide its order dated 02.01.2014 was pleased to quash and set aside the said ICR in its entirety for the period 01.06.2007 to 27.10.2007 and also directed the respondents to constitute a Special Review Selection Board within a period of 3 months and to consider the case of the applicant afresh for promotion to the rank of Colonel. The applicant would state that in view of the above order of the Tribunal, the respondents ought to have completely set aside the concerned ICR for the period 01.06.2007 to 27.10.2007 and removed all negative inputs from the applicant's CRD which had been entered and he ought to have been considered with a revised profile as it would have obtained in May 2009 after removing all negative inputs

which accompanied the said ICR. The applicant would state that the order of the Tribunal was not implemented in its entirety and in its true spirit. Negative inputs and negative recommendations arising from the said ICR were not removed from the records as ordered by this Tribunal. These negative remarks have impacted the minds of the Special Review Selection Board held on 28.03.2014 and was the chief reason for his not being found fit for promotion. He would, therefore, request that all documents pertaining to the said Special Review Selection Board proceedings including the applicant's Confidential Report Dossier (CRD), Master Data Sheet (MDS) placed before the Original Selection Board of May 2009 as well as the Review Selection Board of March 2014 be produced before the Tribunal for judicial scrutiny and to quash the said proceedings being biased and arbitrary and having been done without application of mind.

3. The respondents, in their reply statement, would state that the instant application is highly misconceived and based on mere presumptions. They would state that the Tribunal, in its order dated 02.01.2014 in TA No.02/13, had given the following directions in para 22 of the judgment.

"In view of the findings reached in the aforesaid points, we are inclined to grant relief of Special Review as asked for by the applicant after setting aside the impugned Annual Confidential Report (ACR) for the period Jun 2007 to Oct 2007 and to consider the applicant by Special Review Selection Board to be constituted as to pass orders in accordance with law."

In accordance with the above directions of the Tribunal, the Confidential Report for the period 01.06.2007 to 27.10.2007 was set aside. This constituted a change in the profile of the applicant and the applicant was entitled to a Special Review Selection Board in terms of Army Headquarters, Military Secretary's Branch letter of 17 September 2010. Accordingly, the applicant was given a fresh consideration as Special Review (Fresh) in terms of procedures laid down in para 8 of MS Branch policy letter stated above. They would further submit that the Special Review (Fresh) by No.3 Selection Board was held on 28.03.2014 strictly in terms of compliance of the order of the Tribunal dated 02.01.2014. The Selection Board found that the applicant was not empanelled on account of his overall profile and low quantified merit in comparison to the last empanelled officer of his batch in No.3 Selection Board held in May 2009. On setting aside the impugned ICR for the period 01.06.07 to 27.10.2007 from the profile of the applicant in its entirety, the quantitative merit was worked out afresh for consideration of Special Review Selection Board. A fresh MDS of the applicant was prepared which did not contain any portion of the assessment of the impugned Confidential Report and the said MDS was placed before No.3 Selection Board on 24.03.2014. The members of the said Board awarded value judgment made in the light of the laid down parameters and on the basis of the fresh MDS of the applicant. They would also state that as per the policy, the identity of the officer was not disclosed nor his earlier quantified merit or total merit nor present quantified merit was

disclosed to the members of the Selection Board. The members assessed and awarded the value judgment of 5 marks purely based on amended fresh MDS of the applicant. They would also submit that the applicant was not empanelled as, even after the amended profile, he could not cross the benchmark of the total quantified merit of the last empanelled officer of his batch considered by No.3 Selection Board in May 2009. The proceedings of the Selection Board were duly approved by the competent authority, i.e., Chief of Army Staff. In view of the foregoing, the respondents would submit that the extant application is misconceived and based on mere presumptions and the same may be dismissed being devoid of any merit.

4. We have heard the arguments of Mr.Lalit Kumar, learned counsel for the applicant and Mr.S.Haja Mohideen Gisthi, learned SCGSC assisted by Maj Suchithra Chellappan, learned JAG Officer (Army) and perused all the records made available to us.

5. Based on the pleadings, the following questions emerge for consideration:

- (a) *Were the directions of the Tribunal have been implemented in toto including the removal of negative inputs, if any, in the impugned ICR while preparing the MDS for the Special Review Selection Board?*
- (b) *Whether the proceedings of the Special Review Selection Board were in order?*
- (c) *What relief, if any, the applicant is entitled to?*

6. We have examined all the documents that were placed including relevant documents pertaining to the proceedings of the Special Review Selection Board for examination. We have also scrutinized the officer's MDS placed before the Selection Board of May 2009 as well as fresh MDS in respect of the officer placed before the Special Review (Fresh) Board of 24.03.2014. For a better understanding of the case, the operative part of this Tribunal's order dated 02.01.2014 on TA 02 of 2013 is reproduced below:

"1 – 20 xx xx xx

21. When we cannot interfere with the proceedings of the Selection Board and the impugned ACR for the period commencing from June 2007 to 27th October 2007 is expunged, what would be the remedy available to the applicant is the moot question. The applicant had asked for the relief of Special Review when all his chances have been over for considering him promotion to the rank of Colonel. The applicant should not go remediless. We therefore find it justifiable to order constitution of a Special Review Selection Board since the impugned CR for the period June 2007 to October 2007 has been set aside and the Selection Board has to consider the case of the applicant with the available revised profile along with his batch mates and to pass necessary orders regarding promotion. Accordingly, Point Nos.1 to 4 are answered.

22. In view of the findings reached in the aforesaid points, we are inclined to grant relief of Special Review as asked for by the applicant after setting aside the impugned Annual Confidential Report (ACR) for the period Jun 2007 to Oct 2007 and to consider the applicant by Special Review Selection Board to be constituted as to pass orders in accordance with law.

23. xx xx xx"

7. From the above, it is evident that this Bench, in its earlier Order, had granted relief to the applicant by firstly, setting aside the impugned ICR for the period June 07 to October 07 and, thereafter, to consider the applicant for promotion by a Special Review Selection Board within three months from the date of that order. This would imply that the

impugned ICR is set aside *in toto* and all remarks including adverse/negative remarks, if any, are deemed to be taken off the record. Thereafter, the respondents were required to prepare a fresh MDS in respect of the applicant for the reckonable period of promotion with the available revised profile and place it before the Special Review Selection Board for its consideration.

8. The contention of the learned counsel for the applicant is that the perceived cause of the applicant's rejection by the Special Review Selection Board was the continued existence of adverse remarks in the applicant's CRD, contrary to this Tribunal's order and its subsequent reflection in the freshly prepared Master Data Sheet (MDS). The other apprehension of his client, the applicant, not being approved for promotion is that the respondents have wrongly calculated the marks obtained by the applicant after setting aside the impugned CR. The learned counsel for the applicant would further contend that after setting aside the impugned CR, the applicant's overall quantified marks ought to have improved in relation to the original Master Data Sheet of May 2009 and, therefore, considering his otherwise overall performance of above-average and outstanding reports he ought to have made the merit for promotion. Therefore, he apprehends that either of the two, or both the causes should be the real reason for the applicant not being found fit for promotion to the next rank.

9. Per contra, the respondents would state that in accordance with the directions of the Tribunal, the impugned CR was set aside *in toto* and that no remarks of any kind from the said CR were entered in the revised MDS. Further, they would state that the revised MDS was prepared in accordance with the existing rules on the subject and, there were no errors in calculation. To buttress their claim, they would submit the original MDS placed before the Selection Board of May 2009 and the fresh revised MDS placed before the Special Review Selection Board of March 2014 and would point out that there is an upward revision of the quantitative marks obtained by the applicant in the original MDS of May 2014. They would further claim that only the fresh revised MDS was placed before the said Board and, in accordance with the regulations on the subject, the name of the candidate was not revealed to the members of the Board to avoid any subjectivity nor quantified marks obtained in the revised MDS placed before the Board. The Board was required to only assess the performance of the candidate on the MDS placed before the Board and give value judgment marks out of a total of 5. Thereafter, the value judgment marks obtained were added to the quantified marks to calculate the total number of marks obtained out of a maximum of 100. Since the total marks obtained by the applicant based on the revised MDS and the value judgment marks was below the last empanelled officer of his batch in comparison to the Selection Board for May 2009, the Board had recommended that the applicant was not fit to be promoted. The Board proceedings were

placed before the Chief of Army Staff who is the approving authority and, accordingly, the impugned order dated 28.03.2014 was issued after the approval of the COAS. To support their claim, they have also placed the relevant documents of the Board proceedings as well as the MDS of the last 5 empanelled officers approved for promotion in his batch and the marks obtained by them.

10. We have carefully examined the above documents placed before us. The impugned ICR has been enfaced as cancelled in the CRD of the officer. The revised MDS prepared by the MS Branch and placed before the Selection Board does not contain any aspects of the impugned ICR, either adverse or otherwise. We also note that consequent to the preparation of fresh / revised MDS, there was an upward increase in quantified marks obtained by him in relation to the original MDS of May 2009. Therefore, we do not find any merit in the apprehension expressed by the learned counsel for the applicant that there has been a miscalculation of the marks obtained by the applicant. The apprehension of the applicant that the reason for his not being promoted was due to adverse remarks from the impugned CRs which was set aside is also unfounded. The only reason for the applicant not being found fit for promotion is that the marks obtained by the applicant are still below the marks obtained by the last approved officer of his batch.

11. From our findings and conclusions in the preceding paragraphs, we find that the applicant had not been empanelled for promotion by

the No.3 Selection Board by the Special Selection Board (Fresh) on 24.03.2014 being lower in merit is factually correct. Further, we find no fault either in the procedures adopted by the said Selection Board or in the Proceedings of the said Selection Board.

13. In view of the above, we find no infirmity in the impugned order passed by the respondents dated 28.03.2014. Accordingly, the O.A. is dismissed. No costs.

Sd/-

Lt Gen K Surendra Nath
Member (Administrative)

Sd/-

Justice V.Periya Karuppiah
Member (Judicial)

08.06.2015
[True copy]

Member (J) – Index : Yes/No

Internet : Yes/No

Member (A) – Index : Yes/No
ap

Internet : Yes/No

To

1. The Secretary
Ministry of Defence, New Delhi – 110 011
2. The Chief of Army Staff
Integrated HQ of MoD (Army)
South Block, New Delhi
3. Military Secretary
Army HQ, Sena Bhavan, New Delhi
4. Mr.Lalit Kumar
Counsel for the applicant
5. Mr.S.Haja Mohideen Gisthi
Counsel for the respondents
6. Officer in-Charge, Legal Cell
ATNK & K Area,
Chennai-600009.
7. Library, AFT, RB, Chennai.

Hon'ble Justice V.Periya Karuppiah
(Member-Judicial)

and

Hon'ble Lt Gen K Surendra Nath
(Member-Administrative)

O.A.No.123 of 2014

Dated : 08.06.2015