

SEE RULE 102(1))**ARMED FORCES TRIBUNAL, KOLKATA BENCH****O. A. NO.54/2013****THIS 29th DAY OF FEBRUARY, 2016****CORAM****HON'BLE JUSTICE N. K. AGARWAL, MEMBER (JUDICIAL)****HON'BLE LT GEN GAUTAM MOORTHY, MEMBER (ADMINISTRATIVE)****APPLICANT(S)**

Lt. Col Anirudh Negi
 Son of Shri Ragu Nath Singh,
 Presently Post at 1401, Pioneer Unit
 C/o 99 APO

-versus-**RESPONDENT(S)**

1. The Union of India,
 service through Secretary,
 Ministry of Defence, DHQ PO
 South Block New Delhi, Pin -110 011.
2. The Chief of the Army Staff
 Integrated HQ of Ministry of
 Defence (Army)
 DHQ PO, New Delhi – 110 011.
3. The Military Secretary
 Integrated HQ of Ministry of
 Defence (Army)
 DHQ PO, New Delhi – 110 011.

For the petitioner(s) : Mr. S. S. Pandey, Advocate
 Miss Manika Roy, Advocate

For the respondent(s) : Mr. B. K. Das, Advocate

ORDER**PER HON'BLE JUSTICE N. K. AGARWAL, MEMBER (JUDICIAL)**

This application has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 seeking relief for setting aside the order dated 25.02.2008 wherein his statutory complaint was rejected and for consideration of his promotion to the rank of Colonel by first available Selection Board treating him a Special Review (Fresh) after expunging CRs for the period from 01.06.2000 to 20.04.2001.

2. Briefly, the relevant facts leading to this case, according to the applicant, are enumerated hereunder : The applicant was commissioned in the Army on 10.06.1989. He held various appointments including GSO-2, HQ Northern Command (Adventure) etc. in peace, field and high altitude areas as well as was recipients of various decorations and medals. The applicant was considered for promotion to the rank of Colonel by Selection Board No.3 held in May 2006, but he was not empanelled. Being dissatisfied with the non-empanelment, he preferred a non-statutory complaint on 08.07.2006 before the respondents authority. The said non-statutory complaint was rejected by the respondents 27.11.2006. In June 2007 a review selection board was held, but again the applicant was not empanelled. Being aggrieved thereby he submitted a statutory complaint on 29.08.2007 for expunging his CR for the period from 01.06.2000 to 20.04.2001 on the ground of inconsistency, which was also rejected by the respondents on 25.02.2008. Being aggrieved by the non-empanelment the applicant has filed the instant O.A.

2.1 As the applicant has already deleted the names of Respondent No. 4 and 5 while, not pressing the allegations of bias and mala fide made against them, the Id. counsel for the applicant would submit that the impugned CR is inconsistent with other CRs and, therefore, the same may be expunged on the ground of inconsistency and the applicant may be considered for promotion to the rank of Colonel by first available selection board treating him a Special Review (Fresh) case.

3. The respondents have contested the case by filing affidavit-in-opposition. According to the respondents the applicant was commissioned in Infantry on 10.06.1989. His parent unit was 3/11 Gorkha Rifles. The applicant is a recipient of only COAS Commendation Card during 1996, which was considered by the Selection Board. While he was posted at 11 GRC, he earned three CRs for the period from June, 1998 to May, 1999; January 2000 to June 2000 and Jun 2000 to April 2001. In each of the three CRs he was assessed as per his demonstrated performance. The assessment of the

impugned CR was communicated to the applicant, but he was silent till his non-empanelment. The respondents further submitted that the applicant did not assail the impugned CR for the period 01.06.2000 to 20.04.2001 on the ground of inconsistency or otherwise in his non-statutory complaint. It is only the statutory complaint wherein applicant has assailed the impugned CR. The non-statutory as well as statutory complaints were thoroughly examined by the higher authorities including Chief of the Army Staff. The authorities felt that there was no reason to interfere with the CRs which were objective and technically correct. In fact the applicant was assessed "Above Average" with box grading of '8' out of '9' with complimentary pen picture and positive recommendation for promotion by both the reporting officers. The applicant has been assessed with similar assessment in three other CRs in his reckonable profile and two other CRs prior to reckonable profile. No inconsistency was found in the CR for the period from 01.06.2000 to 20.04.2001. As a fresh case the applicant was considered in April 2006; first review in September 2006, first review (withdrawn) May 2007 and final review in December 2007, but was not empanelled on account of his overall profile and comparative batch merit.

4. While explaining the procedure prescribed in the policy documents and relevant guidelines laid down for promotion, the respondents have further submitted that the applicant was not empanelled on account of his overall profile and comparative batch merit as further highlighted which is quoted hereunder :

"(i) The Army has a pyramidal rank structure. Thus the number of vacancies in higher ranks are limited. From the board based of the pyramid, only those officers whose record of service within a particular batch are better and selected to fill up the vacancies available in the higher ranks. As per the promotion policy which was applicable till 15 December 04, promotions in the Army till to the rank of Major were by time-scale. Promotions from Major to Lt Col and above were decided through Selection Board (policy contained in para 108 of the Regulation for the Army 1987 [Revised Edition, Army HQ Letter No. 31525/P/MS-5B dated 06 May 1987 and IHQ of MOD (Army letter No. 04502/MS Policy dated 31.12.2008.

After the implementation of AVSC/1 recommendations, promotions till Lt Col are by time scale. All officers of a particular batch are considered together with same cut off ACR and input and on the basis of individual profile of the officer and the comparative batch merit, they are approved/ not approved. Seniority in itself is no consideration before the selection board for approval or

non-approval. In case any officer gets any relief through complaint etc. in any CR, after the selection board has been held, he is entitled to a special corresponding consideration by Selection Board with his changed profile, and in case he is approved by such special consideration his original seniority remains protected.

ii) As per the applicable policy, each officer is entitled to only three considerations for promotion to the selection ranks i.e. Fresh Consideration, First Review and Final Review. In case, an officer is not approved as a Fresh Case, but approved as a First Review or Final Review case, he loses seniority accordingly vis-à-vis his original batch. After three considerations, if an officer is not approved, he is deemed to be finally superseded.

iii) The assessment of officers in ACR was regulated by SAO 3/S/89 (which has now been replaced by Army Order 45/2001/MS) and other relevant policies at any given time. The gradings are numerical from 1 to 9 (overall as well as in Personal Qualities and Performance Variables in different qualities) and in the form of pen picture also. The entire assessment of an officer in any ACR consists of assessment by three different Reporting Officers i.e. Initiating Officer (IO), Reviewing Officer (RO) and Senior Reviewing Officer (SRO) whose assessments are independent of each other.

iv) While considering an officer for promotion to a selection rank, the Selection Board takes into consideration a number of factors such as war/operational reports, Course Reports, ACR performance in command and staff appointments, honours and awards, disciplinary background, etc and not just the ACRs. Empanelment or non-empanelment is based upon the overall profile of an officer and comparative merit within the batch as evaluated by the Selection Board.

v) It was up to the Selection Board to assess the suitability of the applicant for promotion. The assessment of the Selection Board is recommendatory in nature and not binding until approved by the competent authority viz. the Central Government as the case may be."

5. Ld. counsel for the respondents has contended that the administrative authority has thoroughly examined applicant's CRs and they did not find any inconsistency in the CRs. We have also perused the records and we do not find any inconsistency in the CR. Considering the above aspect of the matter we are of the opinion that while considering the case of the applicant the administrative authority have thoroughly considered the complaints both non-statutory and statutory preferred by the applicant and there was no inconsistency and the same have been rightly rejected. The applicant was considered for empanelment in the rank of Colonel by the Selection Board and he was not successful due to more meritorious performance shown by other officers of his batch. Therefore, applicant's challenge on this ground is not tenable. The application is misconceived, devoid of merit and deserves to be dismissed with exemplary cost.

6. We have given our anxious consideration to the rival contentions, have gone through all averments and perused various documents and citations that have been produced and referred before us.

7. The controversy involved in the present application is now confined to the issue as to whether or not the impugned CR for the period from 01.06.2000 to 20.04.2001 is consistent with his other CRs and as to whether the respondents were obliged to rectify the error or not.

8. In order to resolve the aforementioned issue we have perused the CR dossier of the applicant in detail. We find that in the reckonable profile of the officer there are a number of 7s in PQs, DPs as well as in the QsAP and hence the impugned CR is in tune with his profile.

9. From the above, it is clear that there is no inconsistency in the impugned CR when examined in the light of other CRs. The applicant himself has not challenged the impugned CR at the time of filing his non-statutory complaint, meaning thereby at that time he was satisfied with the above CR. It is only when he filed statutory complaint, the same was challenged. It is thus clear that the apprehension of the applicant with regard to the impugned CR was without any basis.

10. Moreover, Hon'ble Apex Court in Amrik Singh Vs. Union of India & Ors reported in 2001 (10) SCC 424 has held as under :

"18. So far as the very adverse remark itself is concerned, our attention was invited to the letter written by Lt. Colonel Patwardhan on 25.2.1991 making certain allegations against the R.O. who gave the said adverse remarks to the appellant. But inasmuch as no specific allegations of mala fide have been made in the writ petition and the R.O. was not impleaded as a party to the case. It could not be said that the adverse remarks in the ACR of the year 1985-86 by the R.O. was mala fide."

11. Respondents have circulated MOD, MS Branch, DHQ New Delhi guidelines No. 04502/MS Policy dated 04.11.2011 regarding conduct of selection Boards by quantification system had been issued. For the sake of convenience the same is quoted below :

Overall Distribution of Marks in the Quantified Model

The overall distribution of marks of the quantified system will remain the same as earlier and are as follows :

- (a) 95 marks will be given for quantified parameters to include confidential reports (CRs), Courses, Honours and Awards.
- (b) Five marks are earmarked for Value Judgement (VJ) by the Selection Board members for aspects that cannot be quantified.

CR Profile

4. The allocation of marks for CR profile is based on the following considerations :

- a) Primacy of CR – Primacy of the CR vis-à-vis other criteria like performance of courses, honours and awards has been maintained.
- b) Comd vis-à-vis other CRs – Greater weightage has been given for Command / Criteria Appts as compared to Staff / Instructions / Extra Regimental Employment. While ensuring greater weightage to criteria reports, a minimum of 50% of the total weightage for the CRs is allotted to criteria reports earned in present rank.

c) Reckonable Profile – All CRs in reckonable profile being considered will be quantified 'Look Two Down' principle, by taking into consideration all CRs earned in the present rank and previous rank, will continue for No.3SB, No. 2SB and No.1SB as hitherto. 'Look Three Down' principle by taking into consideration all CRs in previous to previous rank will be adopted for SSB only.

d) War Reports / Op Reports Earned outside reckonable profile – These CRs will be reflected in MDS for the purpose of Value Judgement of SB Members in all SBs and will not be quantified, if out of reckonable profile.

e) Derivation of weightage for officers not holding criteria / non criteria appointments - In case an officer does not get exposure in staff / instr/ other non criteria appointment in a particular rank, the quantified total marks earned in Criteria reports in that rank will be taken into consideration to derive weightage for the non criteria reports in the required proportion. In special circumstances such as 100% AE waiver for war wounded officers, extrapolation from non-criteria to criteria reports will be carried out for non general cadre officers, the value for Command / Criteria Reports will be derived from reports earned in staff / ERE / Institutional appointments. This ensures that laid down percentage of weightages for current rank vis-à-vis previous rank(s) is not violated.

Distribution of Marks

5. The revised distribution of marks for various SBs is as under:

Type of CR	No.3SB	No. 2SB	No.1SB	SSB
Criteria (Maj/Lt Col)	50	15		
Staff / Instr/others (Maj/LtCol)	39	07		
Criteria (Col)	-	45	19	04
Staff / Inst / Others (Cols)	-	23	08	02
Criteria (Brg)	-	-	46	20
Staff / Instr / others (Brg)	-	-	18	06
Criteria (Maj Gen)	-	-	-	46
Others (Maj Gen)	-	-	-	14
CR Total	89	90	91	92
Courses	04	03	02	01
Honours & Awards (Gallantry awards only)	02	02	02	02
Quantified total	95	95	95	95
Value judgement	05	05	05	05
Grand total	100	100	100	100

Performance of courses

6. The weightage of courses are based on the category of course that is competitive courses, mandatory courses and other courses weightages assigned for courses in various SBs are as follows :

Courses	No. 3 SB	No. 2 SB	No. 1 SB	SSB
JC/Mandatory courses	0.75	-	-	-
DSSC/TSOC	1.50	0.75	0.50	0.25

SC*	-	0.50	0.25	-
HC/LDMC/HACC/0.50XNHCC	-	0.75	0.50	0.30
NDC/0.70 X APPA	-	-	0.75	0.45
Others courses	1.75	1	-	-
Total	4	3	2	1

7. DSSC/TSOC & JC - Marks for DSSC / TSOC and JC are allotted on sliding scale based on the grading obtained as given in Appendix A.

8. M.Tech - The weightages for M Tech assigned for various SBs are as follows :

SBs	M.Tech through competitive selection by MT Dte (Cat I)	M. Tech other than by Competitive Selection by MT Dte (Incl. Advance course) Cat-II	M. Tech while on study leave / others Cat III
No.3 SB	1.00	0.75	0.50
No. 2 SB	0.65	0.50	0.35
No.1 SB	0.30	0.20	0.15
SSB	0.15	0.10	0.07

Notes

- The above are maximum marks in each category. Marks will be awarded based on CGPA / Grading obtained as given in Appendix B
- The above marks will be applicable for all Arms / Services.
- In case the offr has done DSSC/TOC and M Tech / Advance course the better of the two aggregates will be awarded.
- Advance courses will be form part of other courses in No.3 SB and No.2 SB.

Honours and Awards (H & A)

9. Gallantry Awards (Mention-in-Despatches and above) have been given maximum of two marks which will be applicable for two SBs after the awards. Thereafter the Gallantry awards shall be value judged by subsequent SBs. The Distinguished service awards will be value judged for all SBs.

10. The weightages assigned for gallantry awards are as follows

Sl. No.	Type of awards	Marks
(a)	PVC	2.00
(b)	AC	1.75
(c)	MVC	1.25
(d)	KC	1.2
(e)	VrC	0.9
(f)	SC	0.8
(g)	SM(G)	0.5
(h)	Mention-in-despatches	0.3

Value judgement

11. Five marks have been earmarked for value judgement by Selection Board. The selection parameters that cannot be quantified will be considered by the Selection Board members for value judgement as given in succeeding paragraphs.

12. Performance

(a) Operational experience / battle performance reports (OP PWAN, OP MEGHDOOT, OP VIJAT (KARGIL) / or subsequent operation in future throughout the career.

(b) Consistently in overall performance.

(c) Service in difficult field areas and relatively challenging environment.

13. Potential – Suitability for being employed in higher ranks.”

12. From the aforesaid guidelines it is manifestly clear that while considering an officer for promotion to a selection rank the Selection Board takes into consideration a number of factors such as war/operational reports, Course Reports, ACR performance in command and staff appointments,

honours and awards, disciplinary background, etc and not just the ACRs. Empanelment or non-empanelment is based upon the overall profile of an officer and comparative merit within the batch as evaluated by the Selection Board even when there was no quantification system at that time.

13. Considering every aspect of the matter, we are of the opinion that applicant is not entitled for the relief for consideration of his promotion to the rank of Colonel by first available Selection Board treating him a Special Review (Fresh) case. The application is deserves to be and is hereby dismissed. No order as to costs.

14. Original records produced by the respondents be returned to the representative of the respondents on proper receipt, till such time the records be kept in safe custody of the Registry.

14. Plain copy of this order duly counter signed by the Tribunal Officer be supplied to the parties.

(Lt Gen Gautam Moorthy)
Member (Administrative)

(Justice N. K. Agarwal)
Member (Judicial)

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