

O R D E R**Per Hon'ble Lt. Gen. K. P. D. Samanta, Member (A) :**

The applicant, who is a serving Colonel in the Indian Army, has filed this Original Application being aggrieved by his non-empanelment for promotion to the rank of Brigadier. According to the applicant, his non-empanelment is the outcome of adverse/inadequate ACRs for the reporting periods September 2005 to February 2006 and February 2006 to August 2006, as also due to non-updating of his service profile in his paramount card and in the Member Data Sheet (MDS), which are seen by the members of the promotion boards.

2. The applicant joined the Indian Military Academy (IMA) as technical graduate and was commissioned in the Indian Army as Lieutenant on 14.6.1986 with ante-dated seniority from 14.6.1984. He was allotted to the Corps of Engineers. According to the applicant, he did various other courses during the course of his service and participated in various operations such as 'Op Rakshak', 'Op Vijay', 'Op Orchid', 'Op Parakram'. He was also awarded various commendation cards by the GOC-In-Cs of different Commands which carry marks for promotion. He was also awarded the "Harkirat Singh Gold Medal" in 1998, which is awarded to the CO of the best engineer regiment or organization of that year. Because of his commendable service, he was also deputed as Commanding Officer of 42 Strategic Task Force, which is a very special Force, during the year 2003. He was promoted to the rank of Colonel and posted at Ambala as Commander Works Engineer (CWE) on 16-2-2004. While posted as such, he performed rescue operations and damage control work during the Cyclone and Flash floods in August 2004 which devastated Ambala. According to the applicant, he took many other

major steps to improve the functioning of CWE Office and functioning of MES resulting in huge savings in extra expenditure of the Government.

3. The applicant was assessed for his performance during his tenure as CWE and the last report of the applicant was for the period 1st September 2005 to 14th February 2006, which was initiated by the Initiating Officer (IO), who was also the First Technical Officer (FTO); he in this case was a civilian officer. Therefore, the applicant has contented that being a civilian IO, he was not required to endorse the remarks at para 10 of the said ACR, because the civilian IO is not in a position to know the attributes of para 10, which is specifically related to combat related attributes specific to the Army. The civilian IO and FTO graded the applicant in a casual and routine manner, which did not corroborate with the pen picture in respect of the applicant and some of the remarks were also inconsistent with the report of the RO and SRO. The IO forwarded the ACR of the applicant in the channel of reporting to the civilian officers of the MES because of his lack of knowledge in the Army's functioning and channel of reporting of army officers. The applicant has also stated that he had no interaction with the Higher Technical reporting Officer (HTO) during the said period and the HTO awarded his appraisal totally guided by what the FTO had awarded and in conformity with the report of the said FTO. No independent mind was applied by the HTO since he had no personal interaction with him. Therefore the HTO's report would lack objectivity. It is also alleged that the then HTO, Maj Gen A.K. Bedi was in a disturbed state of mind due of some incidents in his family and all officers, who were assessed by him, did not get any promotion.

4. Subsequently, the applicant was posted as Colonel General Staff (Col G.S.) responsible for training and air efforts of HQ 3 Corps on 25-3-2006. The said Corps has

requirements of helicopters for use by the GOC, Formation and Sector Commanders for operational purposes. According to the applicant, before his joining the said Corps there was many incidents of helicopter mishaps. Due to such mishaps, stringent safety norms were adopted by the Army HQ and very often requests for providing sorties were rejected by the HQ Eastern Command. The applicant submits that as Col GS he was responsible for making arrangement for such sorties for Chief Of Staff (COS) and the General Officer Commanding (GOC) of the Corps, but despite his best efforts, sometimes such requests were not accepted by the higher authorities; this may have been viewed by the said authorities as his deficiency and would have found mention in his ACRs.

5. The applicant submits that even though he was medically fit and in sound health in SHAPEI, in his ACR for the period February 2006 to August 2006 the GOC as SRO endorsed a remark in the pen picture as 'rotund' meaning that the applicant was weak, even though subsequently it was clarified by the MS Branch vide their letter dated 22-5-2007 that this was not a weak remark. Although the said remark was technically not taken as weak remark, but according to the applicant in all eventualities the said remarks was considered as an adverse one and affected objective assessment by the SRO which ultimately would have a repercussion in the No.2 Selection Board while considering his case for empanelment for promotion to Brigadier.

6. The applicant was initially considered by the said No.2 Selection Board held in September 2010 but he was not empanelled as communicated to him on 9-1-2010. He was again considered as first review case in April 2011 and on this occasion also he was not empanelled. The applicant submitted a non-statutory complaint on 7-1-2011 against his non empanelment (Annexure A6), but the same was rejected vide order dated 7-4-

2011 (Annex A1). Subsequently, the applicant filed a statutory complaint on 2-9-2011 (Annexure A7) which was also rejected on 8-6-2011 (Annexure A1). The applicant submitted a further representation on 15-2-2011 (Annexure A8) along with a Posting Self Analysis (PPSA form) wherein the applicant explained that there were many entries which were incomplete with respect to his educational qualifications, his service profile in field and operational area as also the awards that he received in recognition of his dedicated and sincere service. Non inclusion of such achievements and qualifications in the applicants record being maintained by the Military Secretary (MS) branch would definitely have had some effect on the promotion board specially upon the board members while they awarded their 'value judgment' marks. As per policy letter dated 31-12-2008 some marks for "value judgement" in the promotion boards, were to be awarded by board members. In view of incomplete personal data sheet in respect of the applicant, the Promotion Board could not possibly have fully judged the applicant. As a result of the ibid he could not perhaps get empanelled in a highly competitive merit environment where candidates are rejected for being in low merit by decimals. The applicant has submitted that he was intimated by the letter dated 14-11-2011 (Annexure A10) that an exercise to update certain data had been made and forwarded to MS Branch for necessary action. According to the applicant, this clearly proves that his full and complete data were not placed before the selection board. Making such averments the applicant has prayed for following reliefs:

- a) To quash and set aside the reports of the IO and FTO and HTO from the ACR covering the period 09/05 to 02/06; and
- b) To quash and set aside the reports of the RO and SRO from the ACR covering the period 02/06 to 08/06 and

c) To quash and set aside the result of the No.2 Selection Board qua the applicant held in September 2010 and April 2011 and any other subsequent board held during the pendency of this OA.

d) To direct the respondents to update the complete profile of the applicant in the records to be placed before the selection board.

e) To quash and set aside the order dated 07 Apr 2011 and 08 Jun 2012 rejecting the non-statutory and statutory complaint respectively of the applicant.

f) To direct the respondents to reconsider the petitioner for promotion to the post of Brigadier through No.2 selection Board as a fresh candidate with the changed profile and

g) To award exemplary costs in favour of the applicant.

7. The respondents have contested the application by filing a reply affidavit in which, apart from dealing with merit of the case, they have also taken the point of limitation.

8. The respondents have stated that the applicant was commissioned in the Army on 16-6-1986 under Technical Graduate Entry Scheme and was granted two years' ante-dated seniority from 14-6-1984. It is also stated that the applicant was approved to the first select rank of Lt Col in his turn. Thereafter for his promotion to the rank of Colonel by a No3 Selection Board, he was initially not approved as a fresh case of 1984 batch. However, after obtaining relief through a non-statutory complaint, he was put through a special review board in Sept 2003 and was approved. It is stated that the applicant was posted in Ambala as CWE with effect from 16-2-2004. It is stated by the respondents that whatever work was done by the applicant at Ambala, it was a team effort and the applicant could not claim personal credit of the same. He earned four confidential reports for the period from February 2004 to August 2004, September 2004 to January 2005, February 2005 to August 2005, September 2005 to February 2006. The performance of

the applicant during these periods had been duly reflected in the respective CRs and he was assessed as “above average” / “outstanding” by different reporting officers. It is submitted by the respondents that the Interim Confidential Report (ICR) for the period September 2005 to February 2006 was initiated by Mr. A.K. Jain, Chief Engineer, and an IDES Officer. Civilian Reporting Officers in MES are required to make all entries in the CRs as applicable to serving Army Reporting Officers vide policy letter dated 27-11-2003 (Annexure R1) (this annexure was not initially filed with the reply affidavit but subsequently, it was filed by the respondents on our direction). It is denied that the said Civilian Reporting Officer, Shri A.K. Jain was not entitled to endorse the entry in para 10 of the CR as alleged by the applicant. It is also submitted that in the three preceding CRs earned by the applicant assessment was done by the Civilian Officers endorsing para 10 of the CR, which is in respect of “Demonstrated Performance Variables “(DPV). The applicant never raised any objection against those ACRs.

9. It is stated that the applicant was assessed as “above average” by the IO with complementary pen picture and positive recommendation for promotion. The respondents have denied that IO’s assessment was lukewarm and inconsistent with the assessment of the Reviewing Officer and Superior Reviewing Officer, i.e. RO and SRO. The said assessment of RO and SRO was never communicated to the applicant, and therefore, he could not have had any first hand knowledge about the same. It is submitted that in the army there is a three tier system of reporting system, i.e. by IO (Initiating Officer), RO (Reviewing Officer) and SRO (Superior Reviewing Officer) and these assessments are done by the above authorities independent of each other’s assessment. The assessment of

the applicant for the period September 2005 to February 2006 by all the reporting officers were objective, performance based and mutually corroborative.

10. It is further submitted by the respondents that in accordance with para 65(a) of Army Order 45/2001/MS, Higher Technical Officer (HTO) is entitled to endorse CR if the Ratee and HTO have served together for 75 days or more. This period need not necessarily mean physical service. The pen picture rendered by the HTO shows that the assessment was performance based and he knew the applicant well and was aware of his technical performance. Therefore, the allegation of the applicant made in respect of HTO is not justified. The respondents have therefore denied the allegation against the Maj Gen A.K. Bedi who was acting as HTO. It is further submitted that during the period February 2006 to July 2006 when the applicant was posted as Col GS (Training/Air) at HQ 3 Corps, in his ACR for the period from 02/06 to 08/06, the word "rotund" was written in the pen picture by the SRO, depicted only the physical characteristics of the applicant and it was not intended to be treated as adverse or weak remark and this had no effect on the selection board. It is further submitted that the applicant was considered for promotion under the policy of 'quantification system'. The applicant while holding the appointment as Col G.S. (TRG/AIR) earned 5 ACRs including ACR for the period February 2006 and August 2006. It is stated that the said appointment as Col G.S. was a non-criteria appointment and all ACRs in respect of this appointment is quantified as per policy. The respondents have denied that there was any illegality or irregularity in respect of the selection board or there was any malice or bias so far as the impugned ACRs of the applicant are concerned.

11. The applicant has filed a rejoinder in which he has reiterated the contentions raised in the main application. Apart from that he has submitted that it was not correct that he did not raise any objection in respect of earlier CRs during the period of his service as CWE. In fact, he submitted statutory complaints in 2008 and 2009 against those ACRs but those were not considered and returned with technical reasons with remarks, “complaint too long and not tenable”. It is reiterated that his paramount card was not updated for which he might have been awarded lesser points in the “value judgement” as per the ‘quantified system’ in the selection board.

12. We have heard the learned counsel for both the parties at length and perused the documents placed on record. We have also gone through the ACR dossier of the applicant as also the departmental record dealing with his statutory complaint and the selection board proceedings, which were submitted by the respondents after being called for by the court.

13. Although the respondents have raised the point of limitation, we are of the considered opinion that the application is within time because the applicant has challenged his non-empanelment and rejection of his statutory complaints filed thereon. Such rejection orders are dated 7th April 2011 and 8th June 2012, whereas the application was filed in August 2012. Therefore, it cannot be said that the application is barred by limitation. It is true that the applicant has also challenged his ACRs for the period 2005-2006, but since the applicant has alleged that these ACRs were the root cause of his non-empanelment, and his cause of action arose only when he was deprived of and denied promotion in 2010 or 2011 when his case for promotion was considered/reconsidered and eventually turned down, against which he had filed the above statutory complaints; we

are of the view that only because of such challenge of the ACRs of 2005-06 vintage, that would not make the application time barred. We, therefore, are not inclined to reject the application on the ground of limitation, rather, we consider it fit and proper to decide the matter on merit.

14. Mr. Rajiv Manglik, the learned counsel for the applicant has raised mainly four points. His first contention is that the complete profile of the applicant so far as his qualifications and different course done by him, was not placed before the No.2 Selection Board for which he was prejudiced. The second contention of the ld. adv. for the applicant is that while he was posted as CWE at Ambala, his ACR was initiated by civilian IO, who was not competent to endorse para 10 of the ACR for which was meant for assessment of demonstrative performance variable related to military duties. Therefore, such ACR should be treated as 'defective' and the IO ought to have left blank para 10 to be considered by appropriate army authority. The third contention of the ld. adv. is that even though in the impugned ACR, the pen picture was written about his commendable work, but while awarding grading, this has not been reflected. In other words, according to the ld. adv., there was inconsistency in the award of numeric grading. The fourth contention of the ld. adv. is that the remark "rotund officer" given in his case while he was posted in HQ 3 Corps, even though clarified by MS Branch as not to be an adverse entry, but eventually, this might have affected his career prospects.

15. The Ld. Advocate for the respondents categorically stated that the paramount card in respect of the applicant was updated and his complete bio-data was placed before the selection board. In reply to the statutory complaint filed by the applicant vide order dated 8-6-2012, the competent authority has clearly stated in para 5 that the details given

in the paramount card of the officer had been checked and confirmed as correct. The officer was considered with his actual profile and due consideration had been given to the officer for his profile/performance/qualifications as per the policy on the subject. The learned counsel for the applicant has however, drawn our attention to Annexure A10 dated 14-11-2011 wherein it was stated that the record of the applicant have been endorsed in the paramount card in respect of certain items/qualifications and action was being taken in respect of certain other courses. The learned counsel for the applicant has contended that this would make crystal clear that full and complete data of the applicant was not updated in the paramount card at the time when the selection board considered his case in 2010 or 2011. However, the reply to the statutory complaint was given in June 2012 by which time, in all probability, the paramount card was upgraded. So far as endorsement of para 10 of the ACR by civilian IO, it is clarified by the Id. adv. for the respondents that as per extant policy, a civilian IO is absolutely entitled to endorse all columns in the ACR in respect of army officers as well, when posted in MES; in the instant case the applicant was posted as a CWE in the MES. So far as other grievance relating to the remark 'rotund', it was clarified by the Id, counsel of the respondent that the applicant had already been informed by the MS branch, that such remark was not to be taken as an adverse entry and it meant only about physical characteristic of the applicant and nothing else. This had no bearing on the selection board.

16. In order to adjudicate the matter properly, we directed the respondents to file an additional reply statement clarifying the qualifications that are entered in the paramount card, the procedure for selection and policy on quantification system. Such an additional reply statement was filed by the MS Branch vide which they have enclosed the policy

letter of 10-6-2004 (annexure-R2 to the addl. Reply) issued by the MS Branch in respect of updating of basic data concerning inter-services courses/civil qualifications attained by an officer. It is submitted by the respondents that all the courses done by the applicant which are recordable in his paramount card were duly updated and quantified for the purpose of consideration by selection board. It is stated that M.Tech degree possessed by the applicant has been quantified for weightage but the applicant is not entitled to quantified weightage for his civil qualifications. However, every civil academic qualification is not entered/ edited in MDS of officers to be placed before selection board. The Id. Counsel for the respondents and the officer from the MS Branch therefore find that the apprehension of the learned counsel for the applicant in this regard was not appropriate.

17. To sum up various rival contentions, we find that the main issues that need our attention and analysis with reference to the provisions of relevant rules and regulations and also our observation from the original records of the Member's Data Sheet (MDS) for the promotion board and the concerned ACRs, in order to adjudicate the matter objectively, are:

- i) The applicant has alleged that para 10 of the ACR form was not required to be endorsed by the IO who was a civilian officer at the time when the applicant was posted as Commanding Works Engineer (CWE) at Amabala Cantt. He has specifically referred to endorsement at para 10 made by his IO in the ACR for the period Sept. 2005 to Feb 2006.
- ii) The applicant's contention is that he was awarded certain commendations by higher authorities which have not been included in his service profile thereby the

applicant's perceived conception is that the value of such awards were not made known to the members of the promotion board. He could have thus suffered because the board was not aware of his complete profile. Besides numeric value for such awards/ achievements, they also would provide useful inputs to the promotion board members for awarding points on 'value judgment' objectively.

- iii) The remark of "rotund officer" that was endorsed by the SRO in the pen picture of the CR earned by him for the period from Feb '06 to Aug '06; the applicant perceived that such remarks though not 'adverse' or 'weak' might have been perceived as a deficiency by the MS Branch which could have prejudiced the selection board.
- iv) The numeric grades and remarks of the RO and SRO in the CR for the period Feb '06 to Aug '06 were considered by the applicant as not commensurate with the grading of the IO. Moreover, the applicant has submitted that the RO and the SRO have perhaps downgraded his figurative assessment grading in the ACR for the ibid period without any justifiable reasons. On that account, the applicant has prayed for setting aside the report of the RO and SRO from the ACR covering the period Feb '06 to Aug '06.
- v) Consequentially having raised the issues as above, the applicant's prayer primarily relate to, firstly, to set aside the report of IO and FTO and HTO from the ACR for the period Sept. '05 to Feb '06 and to set aside the report of RO and SRO from the ACR for the period Feb '06 to Aug '06. Secondly, having obtained the ibid relief, the applicant has prayed that the decisions taken on his non-statutory and statutory complaints with respect to the ibid ACRs be quashed. Thirdly, after having obtained the reliefs as above, the applicant also has prayed

that his revised profile be put up to the special review No. 2 selection board and he should be reconsidered for promotion to the rank of Brigadier.

18. As regards the first point, we have analysed the relevant rules on the subject and have also noted that during the period in question, the applicant was serving in the MES organization as CWE. As per the policy letter dated 27.11.2003 (Annexure R1 of supplementary affidavit filed by the respondents) wherein in Para 3(b) it has been clearly provided that "Civilian Reporting Officers in MES, BRO, Military Farm, CME, MCTE & MCEME will render all endorsements in the CRs as applicable to serving Army Reporting Officers". Therefore, his immediate superior, who was a civilian in the post of Chief Engineer, was well within his authority to endorse the entire ACR as IO including para 10. We do not find any technical defect in such endorsement. Moreover, we also found on perusal of the original documents of the applicant's MDS that numerical assessment given in para 10 in the ACR form for the period Sep '05 to Feb '06 are quite positive and in consonance with his overall profile to the extent that none of the remarks was any way damaging for the applicant's profile for promotion. Moreover, the figurative rating of para 10 in the ibid ACR is found to be on the higher side of 'Above Average' to 'Outstanding'. Therefore, in this regard, the applicant's apprehensions are quite unfounded.

19. As regards the question of updating the profile of the applicant before the promotion board, we have observed that the officer's career profile has been adequately updated and all commendations and awards taken into account in accordance with rules on the subject. Therefore, on this account, the applicant's apprehension of being prejudiced by the board is totally unfounded.

20. The applicant's apprehension that the specific remark of 'rotund officer' could have been taken amiss as adverse or weak by the promotion board is again an imaginative perception of the applicant. The MS Branch while putting up the applicant's profile along with his ACR gradation in the form of MDS has not considered such remarks as weak or adverse. We also find from the original records that this aspect was adequately considered and dealt with when the applicant's non-statutory and statutory complaints were analysed. The COAS and the concerned authority in the Ministry of Defence have very clearly observed that such remark was not adverse or weak, as was clarified by the SRO at that point of time. Therefore, there is no evidence for us to believe that such comment was taken adversely by the promotion board.

21. We have considered the entire MDS of the officer (applicant) when he was considered by the No. 2 Promotion Board for promotion from Col. to Brigadier. We have perused the entire ACR profile for the period Sep 05 to Feb 06 while the applicant was serving in the MES at Ambala Cnt in the post of CWE, which was a criteria appointment in the rank of Colonel and also the ACR for the period from Feb 06 to Aug 06 when the applicant was serving at HQ 3 Corps as Col GS (Trg/Air), which was a staff assignment in the rank of Col. We find from the original records that the applicant in his ACR as CWE (Sep 05 to Feb 06) has earned "Above Average" to "Outstanding" points ranging between 8 and 9 by the IO, RO, SRO and HTO. It also appears that the IO, against whom the applicant had certain apprehension, has never graded him below 8 in any of his attributes and objectives- personal and demonstrative.

22. As regards the 2nd impugned ACR earned in Staff posting (Col. GS (Trg)), the applicant's specific grievance is with regard to the numerical assessment made by the RO

and SRO. While analyzing this ACR covering the period from 14th Feb to 31st Aug 2006, we observe that the overall box grading given by the IO and RO is '8'; whereas the SRO has downgraded the box grading to '7' without any corroborative remarks in the pen picture. We also observe from the ibid ACR that SRO has termed the assessments endorsed by the IO and RO to be 'liberal'. However, in the pen picture or anywhere else in the ACR this aspect has not been justified as to how the SRO considered the remarks of IO/RO to be 'liberal'. Moreover, we find that the pen picture given by the IO/RO largely match their figurative assessment awarded by them. To the contrary, the SRO has not given any detail assessment in the pen picture to justify the down gradation of figurative assessment of '7'. In fact it is the SRO who has differed with the assessment made by the IO and the RO without assigning any justification nor substantiating in the ratee's pen picture. Under such circumstances, the benefit of doubt be given to the applicant and the box assessment/grading given by the SRO as '7' be expunged being inconsistent with the grading obtained by the applicant from IO/RO.

23. We also observe from ACR for the above period (14 Feb to 31st Aug 2006) in part IV of the ACR at para 24(e), while endorsing the figurative assessment for the potential quality of "professional competence to handle higher appointments" the RO has awarded 6 points whereas the IO and SRO have both awarded him '7' points. '6' denotes 'high average' whereas '7' denotes 'above average'. We are of the view that the RO's assessment is not consistent with what has been awarded by the IO/SRO for the same qualities. Although the variation is just one point in this case as also in the earlier case, mentioned in the above paragraph, we are of the view that such variation would be enough to pull down the overall profile of the officer where promotions are decided with

a difference up to second place decimal points on merit. Under such circumstances, we are of the view that such variation should always need to be justified by the reviewing officer. It would, therefore, be judicious that the RO's figurative assessment of '6' in part IV, para 24(e) of the ACR should be expunged not being consistent with overall profile.

24. Except for the above two points that have been discussed above, we are of the view that the remainder part of the ACR for the above period i.e. 14 Feb to 31st Aug 2006 of the ACR is absolutely in order and in consonance with the officer's overall performance. There is no further significant variation except the variations that have been pointed out above. The assessment and remarks of the RO/SRO cannot be considered as bias or prejudiced, as has been perceived by the applicant. There is no evidence to suggest such perceived bias/prejudice. We also find from the MDS that except for the two points that have discussed above, there is a great deal of corroboration between the assessment of RO and SRO. Therefore, the performance of the officer for the ibid period appears to have been generally endorsed objectively and there is no scope to set aside in any other portion of the numerical assessment than what has been analysed and observed in the above two paragraphs.

25. It is a figment of imagination of the applicant to think that RO/SRO, who are of the rank of General Officers holding the post of COS/GOC to hold the applicant responsible for not enabling the desired helicopter air efforts for their own travel. Therefore, such ACR for the period 14 Feb 2006 to 31st Aug 2006 is absolutely in order once the aberrations as pointed out above are removed.

26. In this connection it will be pertinent to refer to the unreported decision of the Hon'ble Delhi High Court in WP© 6575/2002 (**Lt. Col. (time Scale) D.S.Pandey –vs- UOI**) deeded on 31.5.2005, as relied upon by the respondents, wherein it has been held as under : –

“Petitioner's apprehension that the Reviewing Officer/Senior Reviewing Officer had also been misguided by the alleged subjective ACR of Initiating Officer is also unfounded. A reviewing authority may grade the performance/conduct etc. higher than the initiating authority or vice versa but all this is a part of the process. So long as a reviewing authority enjoys the power to vary/review the grading/rating, it cannot be said or held that he must have been misguided by the allegedly subjective ACR. It may be a different matter where it is proved that even the reviewing officer had acted with mala fide or his grading was perverse for some reason. To presume that the reviewing authority must have signed on the dotted line and must have been misguided by the alleged subjectivity in the ACRs would be stretching the argument of the petitioner a bit too far and would fall within the realm of surmise. A reviewing officer is also entrusted with an onerous duty to review the ACR recorded by the initiating authority. His responsibility is, therefore, more and he is presumed to have discharged it unless contrary is proved. The petitioner's pleas are rather assumptive lacking in material substance. His claim that it was only during the years 1993 to 1995 that his grading did not correspond to his pen picture is also not borne out from his overall profile produced by the respondent before us. The grading as given in 1993 to 1995 is not confined to those years but even during the earlier years also he had been awarded similar grading by the initiating officer and the reviewing officer.”

27. Promotion, especially, at that higher rank (Colonel to Brigadier) is always extremely competitive. Therefore, the officer could have missed out for promotion purely on competitive and comparative merit based selection but definitely not on account of adverse remarks or due to any major aberrations in grading which could be otherwise damaging or subjective. On the whole, we are of the considered view that the applicant

would be considered to be graded quite objectively once the aberrations as mentioned above are removed; however, no bias or prejudice by any of the reporting officers has been established.

28. We have also gone through the selection board file and we find that actually the applicant could not get empanelled only because of merit and not for any other reason. Admittedly, Brigadier is a senior selection post and therefore, merit is the main criteria for promotion.

29. We have also carefully gone through the original records wherein the non-statutory and statutory complaints of the applicant relating to the same aspects that have been brought in this OA, were analysed. Having gone through the entire office noting and orders thereon by the competent authority, we are of the view that the respondents have very objectively analysed every issue and have rejected both the ibid complaints in a fair, judicious and transparent manner without any bias or prejudice except for the two aspects of inconsistency reported in the ACR for the period from 14 Feb to 31st Dec 2006 as discussed in paras 22-25 above. Therefore, rejection order of the respondents in respect of the statutory and non-statutory complaints of the applicant be modified to the extent that the aberrations as pointed in the above paragraphs 22-25 be considered as expunged.

30. In view of our foregoing discussion, the application stands partially allowed on contest by issuing the following directions:-

i) The box grading '7' given by the SRO in respect of ACR of the applicant for the period 14 Feb to 31st Aug 2006 be expunged for being inconsistent and not matching with pen picture.

ii) The numerical grading of '6' given by the RO in the potential quality at Part IV para 24(e) for the aforesaid period, be also expunged being inconsistency with profile.

iii) The impugned rejection order of the respondents upon the applicant's non-statutory/statutory complaints with regard to aforesaid ACR be reconsidered and modified in the light of observations made by us in para 22 to 25 above.

iv) The applicant be given one more chance to be considered as a special review fresh case for promotion to the rank of Brigadier after expunging the remarks as indicated in sub-para (i) and (ii) above in the changed profile. All further considerations, if any, shall be done as per rules.

v) The entire exercise shall be completed within three months from the date of communication of this order.

vi) There will be no order as to costs.

31. Let the Original records be returned to the respondents on proper receipt. Since they are confidential in nature, they will be returned back to the officer rep of the MS Branch personally on receipt.

32. Let a plain copy of the order duly countersigned by the Tribunal Officer be furnished to both parties on observance of due formalities.

I agree

(LT. GEN. K.P.D.SAMANTA)
Member (Administrative)

(JUSTICE RAGHUNATH RAY)
Member (Judicial)