

**RESERVED****“A.F.R”**

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

COURT No. 2**Original Application No. 70 of 2013****Wednesday, this the 17th of December, 2014****Hon’ble Mr. Justice Virendra Kumar Dixit, Judicial Member  
Hon’ble Lt Gen Gyan Bhushan, Administrative Member**IC-38292X Brig L.C. Patnaik  
President, 14 SSB,  
Selection Centre East, Allahabad

.....Applicant

Versus

1. The Secretary, Ministry of Defence, South Block  
New Delhi-110011
2. Chief of the Army Staff, Integrated HQ of MoD(Army),  
DHQ PO, New Delhi-110011
3. Military Secretary, Integrated HQ of MoD(Army),  
DHQ PO, New Delhi-110011

....Respondents

- Ld. Counsels for the applicant** - Shri C L Pandey,  
Ld. Senior Counsel,  
Shri Rajiv Manglik and  
Shri Rakesh Johri, Ld. Counsels
- Ld. Counsels for the respondents** - Shri Mukund Tewari and  
Shri B.P.S. Chauhan,  
Ld. Sr. Standing Counsels  
assisted by Departmental  
Representative

**ORDER**

**“Per Justice Virendra Kumar DIXIT, Judicial Member”**

1. This Original Application has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby, the applicant has sought following reliefs:-

*“(i) To call for the records of the case and peruse the same; and*

*(ii) To quash and set aside the impugned order dated 03 Sep 2012 communicated to the applicant vide order dated 20 Sep 2012; and*

*(iii) To declare the action of the respondents specifically non-consideration of the allocation of marks for the HC/HDMC and NDC course in respect of the applicant who could not attend the course in the National interest; and*

*(iv) To direct the respondents to compensate the applicant towards the marks for HC/HDMC and NDC courses by extrapolating the marks otherwise obtained by the applicant and then arrived at the total marks and compare the applicant for promotion with his batch mates with the total marks so arrived; and*

*(v) To direct the respondents to moderate the ACR for the period 27 Dec 2007 to 31 May 2008; and*

*(vi) To direct the respondents to reflect the achievements of the applicant in the foreign assignment which is of national importance as mentioned in Para 4.28 of the OA; and*

*(vii) To direct the respondents to re-consider the applicant by the Special Review (Fresh) Board and in case the applicant is found fit grant him all consequential benefits including pay and allowances from the date his junior has been granted such benefits; and*

*(viii) To pass such other and further orders which their lordships may deem fit and proper in the existing facts and circumstances of the case.*

2. In brief, the facts of the case are that the applicant was commissioned in the Army in Maratha Light Infantry on 22 Dec 1979. He has been promoted upto the rank of Brigadier and was considered for promotion to the rank of Major General by No 1 Selection Board (SB) in Oct 2011 but was not empanelled. Aggrieved, the applicant submitted statutory complaint dated 24 Apr 2012 and was granted partial relief in his ACR. Applicant was considered by No 1 SB for promotion to the rank of Major General five times i.e. in Oct 2011, Sep 2012 (withdrawn), Oct 2012, Apr 2013 and Oct 2013 and was not approved. Being aggrieved, the applicant filed this Original Application.

3. Heard Shri C. L. Pandey, Ld. Sr. Counsel, Shri Rajiv Manglik and Shri Rakesh Johri, Ld. Counsels for the applicant and Shri Mukund Tewari, Ld. Sr. Standing Counsel assisted by Departmental Representative for the respondents at length and perused the relevant documents available on record.

4. Ld. Counsels for the applicant submitted that the applicant was commissioned on 22 Dec 1979 in the Army in Maratha Light Infantry. The applicant has done many Army as well as civil courses and has performed exceedingly well in all courses. He has also been posted to various prestigious appointments, such as Brigade Major, Colonel Military Secretary, Instructor at Indian Military Academy, Military & Air Attache at the Embassy of India at Iran. He has participated in various operations and has commanded, a Company in Siachen Glacier, a Battalion in Operation RAKSHAK and Operation VIJAY and Brigade on Line of Control in Operation RAKSHAK in J&K. He was Additional Officer at VI Pay Commission Cell and is presently posted as President of 14 Service Selection Board at Allahabad. Due to his hard work and dedication, the

applicant has been awarded General Officer Commanding-in-Chief's Northern Command Commendation Card in 1999 and Chief of the Army Staff Commendation Card in 2012.

5. It is submitted that the applicant was called for the interview for foreign appointments alongwith four other officers in Dec 2002 for being posted as Military and Air Attache at Embassy of India at Tehran (Iran) and the applicant was selected. However, before proceeding for such appointment the applicant had rendered willingness certificate dated 24 Dec 2002 wherein also accepting adverse effect on future career in respect of non-detailment on career/subsequent courses. Ld. Counsel submitted that the detailed guidelines for selection on foreign assignment brings out that best among the available officers are to be sent on foreign assignments as these officers represent the Army and the Country abroad, which clearly established that the applicant was one of the best officer. During the applicant's tenure as Military and Air Attache at Iran, the applicant was responsible for covering the situation in Iraq, Afghanistan and the Caucasus countries from 2004 to 2007, a period of high regional turbulence. During this tenure, his professional inputs on Iranian Nuclear Programme and Iran-Pakistan dynamics submitted to the National Security Advisor through the Embassy assisted in formulating India's stand on Iran's Nuclear Programme at the International Atomic Energy Agency in 2005 and also guided the progress of Indo-Iran gas pipeline project. However, such important achievement of the applicant was not recorded in the service profile/Master Data Sheet of the applicant placed before the selection board for correct assessment of the applicant for value judgement marks.

6. It is submitted that during the tenure of the applicant at Iran as a national representative, the applicant's course was considered for Higher Command Course (HCC)/Higher Defence Management Course (HDMC) and all other four officers who were screened for foreign assignment got selected for the HCC/HDMC course, barring one due to disciplinary reasons, underwent the said course. On return of the applicant from foreign assignment, he was posted to the Pay Commission Cell of the Army and his inputs and advice in the report of the Army Pay Commission was also appreciated by the Finance Minister while projecting the report of the Pay Commission in the Parliament.

7. Ld. Counsel submitted that the applicant was promoted to the rank of Brigadier and was posted to command in Operation RAKSHAK, an Infantry Brigade located at Line of Control during a period of high operational turbulence. The applicant earned two reports during the command of the Brigade for the period 27 Dec 2007 to 31 May 2008 and 01 Jun 2008 to 31 May 2009. During command, the applicant ensured zero infiltration despite repeated infiltration attempts under heavy enemy fire. The traditional infiltration gaps were fully closed, enabling a safer environment for the successful conduct of the Assembly and Parliamentary elections in J&K. The applicant substantially enhanced the operational preparedness of the Brigade. The applicant was able to have a Class-18 suspension bridge constructed within a record six months and laid the foundation for construction of 1.2 km RCC Bridge. The applicant also relocated the Brigade Headquarter and renovated it to one of the finest Headquarters in the Northern Command in a period of only 7-8 months. The achievements were appreciated by all the Commanders in the chain of command. The Reporting Officer (RO) and Senior Reporting Officer (SRO) were unhappy

with the applicant only on the occasion where one jawan belonging to 9 Rajputana Rifles attempted suicide and another jawan of 16 Rajput committed suicide wherein the Court of Inquiry pin pointed the reason to domestic issues. Subsequently, no other such incident had taken place but the possible damage was done in the Annual Confidential Report (ACR) of the applicant.

8. It is also submitted that first ACR of the applicant was written in this appointment for the period 27 Dec 2007 to 31 May 2008, barely for a period of 100 days after deducting the leave period and though the applicant had performed outstandingly with most '9s' but was not graded outstanding '9' in the box grading in view of the policy letter dated 19 Nov 2007 further modified vide policy letter dated 07 Nov 2008, wherein, it has been made mandatory to intimate the higher tier reporting officers, if an officer has to be graded outstanding and as such the IO of the applicant could not inform higher reporting officers of the grading of outstanding due to shortage of time.

9. Ld. Counsel for the applicant further submitted that the applicant also suffered on count of the non-detailment on the HCC/HDMC when his batchmates were so selected for the nomination for the National Defence College (NDC). By the time his turn for nomination for the NDC came, the policy for promotion was changed from 'Value Judgement' to 'Quantification Based' and the similar quantification system was adopted for selection for NDC course as well and the applicant lost marks for the HCC/HDMC, for nomination for NDC course. He submitted that as per new policy dated 04 Jan 2011, the marks were specified for the HCC/HDMC and NDC courses for consideration for promotion to the rank of Major General.

The HCC/HDMC has been allocated 0.50 marks and 0.75 for NDC course thus depriving the applicant of 1.25 marks when the applicant was among the best in his course and detailed to represent the Nation as Military & Air Attache and could not undergo HCC/HDMC only due to posting as Military & Air Attache in Iran in national interest. He submitted that respondents visualized the problem of detailment of one of the officers among the best officers on foreign assignments and their non-detailment on HC/HDMC course due to their non availability and thus changed the policy for detailment on such courses vide policy letter dated 11 Nov 2010 and 19 Jul 2011 protecting the career interest of such officers. He further submitted that an officer is eligible for a maximum of 3 considerations for nomination on HCC/HDMC. It is admitted position of the respondents that the applicant was given only two considerations, first time in 2001 and second time in 2002 when he was not detailed due to his selection for foreign assignment and has not been considered for the third time and thus grave injustice has been done to the applicant. He submitted that in an identical situation, **Hon'ble The Calcutta High Court**, in case of **Maj Gen Arun Roye vs. Union of India & Ors** reported in (2006) 3 CALLT 276 HC, decided on 25 Apr 2006, in Para 81 of the judgement has held as under :-

*“81. The respondent Military authorities are further directed to arrange a meeting of the Special Selection Board on or before 29<sup>th</sup> April, 2006 positively, in order to consider the claim of the petitioner for promotion to the rank of Lt Gen on the basis of the changed profile of the petitioner pursuant to the findings and observations mentioned hereinbefore. The members of the said Special Selection Board are specifically restrained from considering the NDC aspect as second mandatory look for NDC was illegally denied to the petitioner and also the figurative assessments of the CR's of the petitioner by the GOC-in-C, Eastern Command and COAS, while the said petitioner was posted as ADC, Assam Rifles, at the time of considering the relative assessments of the candidates for the purpose of granting promotion to the rank of Lt Gen.”*

10. It is further submitted that in the instant case also, the applicant has been wrongfully denied the detailment during second consideration and not considered during the third mandatory consideration and thus in terms of the ratio laid down by Hon'ble The High Court of Calcutta, the applicant be considered by a Special Selection Board without considering the weightage of HCC/HDMC marks as well as the NDC marks; since detailment for NDC is also directly affected due to HCC/HDMC marks.

11. It is submitted that the respondents had issued policy letter dated 07 Mar 2011, wherein the Chief of the Army Staff (COAS) has been authorized to moderate the ACR of an officer, if the same is not consistent with his past profile and as such the ACR can be upgraded upwards also and the applicant's ACR for the period 27 Dec 2007 to 31 May 2008 should have been upgraded upwards but the same was not done.

12. It is submitted that the applicant was considered by No 1 Selection Board held in the month of Oct 2011 for promotion to the rank of Major General. The result was declared on 23 Mar 2012 and the applicant was declared empanelled for the promotion to the rank of Major General. As per policy dated 04 Jan 2011, the selection is required to be done on the basis of quantification of ACRs, Courses, Honours and Awards and other quantified parameters and 'Value Judgement' marks awarded by the Board members. Ld. Counsel submitted that broad parameters for the 'Value Judgement' is also incorporated in the policy and includes operational experience, service in difficult field area, distinguished service awards, service in challenging environment and special achievements. The foreign assignment of the applicant during 2004-2007, the working conditions at Iran, Iraq and



Afghanistan was much more challenging than any other appointment in India specifically keeping in view, the diplomatic relations with countries those favouring and those who were against Iran. The applicant's profile/Master Data Sheet did not make any mention of the achievements, made by him as Military & Air Attache, which are of national importance such as conducting India's biggest international disaster management during BAM (Iran) earthquake, provide strategic inputs on Indo-Iran gas pipe line, his contribution towards the India's stand on Iran's Nuclear programme, monitoring the construction of 320 kms highway in Afghanistan (Zaranj-Delaram) as well as his contribution in the Pay Commission Cell which were appreciated by the Ministry of External Affairs and Finance Minister respectively. This all could not be assessed properly in the 'Value Judgement' marks for the applicant.

13. It is submitted that aggrieved by non-promotion, the applicant filed the Statutory Complaint dated 24 Apr 2012, which was considered by the respondents and the applicant was granted partial redressal vide letter dated 03 Sep 2012. However, the issue of moderation of ACR and compensation for the marks awarded for HCC/HDMC and NDC course was not adequately considered or rejected.

14. It is submitted that in the interest of justice, as respondents themselves have visualized the problem of non-detailment of officers for HCC/HDMC who are on foreign assignment in organizational/national interest, the officers such as applicant who could not be detailed on such courses due to reasons beyond their control and merits such detailment should be adequately compensated by assessing such officers for promotion out of the total marks less marks allocated for these courses and then extrapolating the

marks obtained to total marks, e.g. the applicant was assessed out of 100 and as such the assessment should be out of 98.75 (100 minus 1.25 marks for these courses) and then extrapolating the marks obtained out of 98.75 to 100.

15. It is further submitted that the Selection Board was again held in Sep 2012 but the applicant was withdrawn as intimated vide letter dated 31 Oct 2012 (Annexure A-10 to O.A.) .

16. It is submitted that suitable direction be issued to the respondents to compensate the applicant towards the marks for HCC/HDMC and NDC by extrapolating the marks otherwise obtained by the applicant and then arrived at the total marks and compare the applicant for promotion with his batchmates with the total marks so arrived and also to re-consider the applicant by Special Review (Fresh) Board and in case the applicant is found fit grant him all consequential benefits including pay and allowances from the date his juniors has been granted such benefits.

17. It is submitted that the applicant is due to superannuate in the present rank of Brigadier on 31 Dec 2014 and in case the applicant is considered, approved and promoted to the rank of Major General by the Special Review Selection Board, the date of superannuation shall be enhanced by two years. It is submitted that in case of any eventuality of applicant superannuating in the present rank prior to his promotion to the next rank of Major General, his interest may be protected by directing the respondents in the similar fashion as had been done by **Hon'ble The Delhi High Court** in the case of **WP No 9686/2007, Brig Sreedharan Vijay Kumar vs. Union of India**, decided on 23.04.2008, wherein in Para 17 of the judgement, it was held as under :

*“17. A writ of mandamus is issued in the aforesaid terms directing the respondents to put up the case of the petitioner before the next*

*Selection Board for consideration of promotion to the post of Major General without taking into consideration grading and notings of the RO for the period 03.06 to 07.06 and placing the order of the Chief of Staff and in case the petitioner is found meritorious on comparative merits, the petitioner would be entitled to all the consequential reliefs with continuity of service for the remaining period of service. The respondents would naturally pass all the necessary orders in this behalf in case such an eventuality arises.”*

18. On the other hand Ld. Counsels for the Respondents submitted that the applicant was commissioned on 22 Dec 1979 in the Army in Maratha Light Infantry. He is a Staff College and Senior Command qualified officer but is not qualified in HCC/HDMC and NDC. The applicant was considered five times by No 1 SB for promotion to the rank of Major General i.e. in Oct 2011, Sep 2012 (withdrawn), Oct 2012, Apr 2013 and Oct 2013 and was not approved.

19. It is submitted that against his non empanelment by No 1 Selection Board in Oct 2011, the applicant had submitted a Statutory Complaint dated 24 Apr 2012. The complaint was disposed of by the Central Government vide order dated 03 Sep 2012 wherein partial redressal was granted to the applicant by way of expunction of assessment of IO in the quality of ‘Tolerance for Ambiguity’ in ACR for the period 01/2000 – 08/2000 in the rank of Colonel. It was also ordered by the Central Government that ACR for the period 07/2010 – 06/2011 being performance based and well corroborated, should not be en faced as “Inflated”. Consequently, the applicant was given Special Review (Fresh) by No 1 Selection Board held in Oct 2012 but he was not empanelled on the basis of his overall profile and comparative batch merit.

20. It is submitted that the applicant once again preferred Non Statutory Complaint dated 04 Oct 2012 against his non empanelment by No 1 Selection Board held in Oct 2012. The said complaint after due examination, was rejected by the Chief of the Army Staff vide order dated 04 Apr 2013. In the instant Original Application the applicant has suppressed this material fact.

21. It is submitted that the applicant has challenged his non empanelment by No 1 Selection Board, primarily, on the ground that due to adverse career certificate given by him while proceeding abroad as Military and Air Attache in Iran during 2004, he was not considered for HCC/HDMC or equivalent courses and this has resulted in his subsequent non nomination for NDC and hence non grant of weightage in No. 1 Selection Board to him for HCC/HDMC and NDC. The above contention of the applicant is misconceived, false and misleading as the applicant was given two entitled considerations in the year 2001 and 2002 as per Special Army Order (SAO) 1/S/97 for nomination for HCC/HDMC, much prior to his selection for foreign assignment, but was not nominated based on lower comparative merit amongst his batchmates. Para 7 (a) & (c) of SAO 1/S/97 was referred to substantiate the point. Hence, the adverse career certificate rendered by the applicant or his foreign assignment did not, in any manner, affect his consideration for HCC/HDMC. Further, the applicant was considered for nomination for NDC-50 and NDC-51 in Oct 2009 and Oct 2010 respectively, but was not nominated being lower in comparative merit. The applicant cannot claim weightage in No 1 Selection Board (SB) for these courses as he was not nominated on basis of his comparative merit.

22. Ld counsel for the Respondents has also submitted that the guidelines for selection of officers for foreign assignment states that only the best among the available officers are to be sent for foreign assignment. The selection procedure involves calling officers for interview who are not under any ban for foreign assignments and are available for nomination. These officers need not be the first in merit but the first available in merit. It may be also noted that the Qualitative Requirements for selection for a foreign assignment are different from nomination on a career course like HCC/HDMC or NDC. He further submitted that policy guidelines for selection of the officers for foreign assignments, provides for selecting best amongst the available officers and suitability for appointment, nevertheless, Para 24 of the guidelines states that, "Selection for foreign assignments does not mean that the individual is cleared for promotion to the next rank. Promotion of officers will be subject to approval by respective selection boards".

23. It is further submitted that the contention of the applicant about his performance during his tenure as Military and Air Attache at Iran is self laudatory and perceptions and is not borne out from the ACRs earned during that period. The assessment of the applicant in ACRs during his appointment as Military and Air Attache is close to "Above Average" grading and does not support the assertions of the applicant. The applicant is unduly taking credit for issues relating to foreign affairs or trade having no bearing to Military/Defence aspects. The Confidential Record Dossier (CRD) and Member Data Sheet (MDS) of the applicant was placed before the Selection Board covered all important aspects of the applicant and it was carefully perused by the Board Members while assessing the applicant for promotion to the rank of Major General. He further submitted that Board

Members are the senior most officers of Army (Chief of the Army Staff, Vice Chief of the Army Staff and Army Commanders) and they are at a liberty to call for all available record of the officer concerned during the Promotion Board.

24. Ld. Counsel for the respondents has further submitted that promotions in the Armed Forces are vacancy based and the selection is based on comparative merit. Officers placed higher in merit are selected for empanelment for promotion. He further reiterated that no officer has any fundamental right to promotion, but has only the right to be considered for promotion, when it arises, in accordance with the relevant rules. The structure of the Armed Forces is pyramidal and the number of vacancies after the rank of Colonel are few and limited. Hence, it is natural that only a select few would be able to make it to the next rank. Ld. Counsel for the respondents submitted the applicant had not been empanelled for promotion to the rank of Major General on account of his overall profile, comparative merit within the Batch and limited number of vacancies. He submitted that the O.A. is devoid of merit and substance and is liable to be dismissed. In support of his arguments, Ld. Counsel for the Respondents has relied upon the judgements of Hon'ble The Apex Court in the cases of :-

- (a) Lt. Gen Rajendra Singh Kadyan vs. Union of India and others reported in (2000) 6 SCC 698.
- (b) Hardev Singh vs. Union of India & another reported in (2011) 10 SCC 121
- (c) Surinder Shukla vs. Union of India reported in (2008) 2 SCC 649.

25. We have bestowed our best of the consideration on rival submissions made by both sides and perused all relevant documents available on record.

26. In the instant case the applicant was commissioned in the Army on 22 Dec 1979 and was considered for promotion to the rank of Major General by No 1 Selection Board but was not empanelled due to comparative merit. Main issues raised by Ld. Counsel for the applicant are non grant of marks of HCC/HDMC/NDC for promotion, not getting Outstanding ACR in the rank of Brigadier for the period from 27 Dec 2007 to 31 May 2008 earned during command of Brigade due to policy constraints, non moderation of this ACR as per policy and no input to promotion board about achievement of the applicant during tenure as Defence Attache and Pay Commission Cell during promotion board for value judgement by the board members.

27. Relevant Policy letters and guidelines on ACRs, promotion and selection of officers for foreign assignments/courses are reproduced as under:-

(a) **POLICY GUIDELINES : SELECTION OF OFFICERS FOR FOREIGN ASSIGNMENTS/COURSES**

(Auth :\_04526/MS Policy dated 21 Dec 99,  
03 Jan 2000, 09 Mar 2000, 27 Apr 2000  
& 13 May 2002.)

1. x x x x x x x x x x

**Selection**

2. **Philosophy.** *Only the best among available officers are to be sent on foreign assignments, as these officers represent the Army and the country abroad and it is essential that the right image of the nation is projected. Officers selected for foreign assignments/courses, including diplomatic assignments, will not be selected purely on the basis of their order of merit but more on their suitability for that particular assignment/course/deputation. The personality aspect of the officers will be given due weightage in selection with particular regard to obesity.*

3. to 12.      x x x x              x x x x              x x x x

### **Undertaking**

13. Officers selected for foreign assignments will give a written undertaking to continue to serve for a minimum period of five years after the termination of such assignments. This will incl deputation to UN Msns with tp to contingents. Officers selected for foreign courses will give undertakings as follows :-

- (a) Courses upto six months      -      Three years
- (b) Courses above six months      -      Five years

14.      x x x                                      x x x                                      x x x

15. All Offrs deputed abroad on foreign assignment and courses, incl offrs proceeding abroad with tp contingents are reqd to submit Willingness Certificate and Undertaking. The relevant formats are as follows :

- (a) Foreign Assignment.
  - (i) Willingness Certificate      -      Appx B
  - (ii) Undertaking      -      Appx C
- (b)      x x x                                      x x x                                      x x x

16. to 20.      x x x                                      x x x                                      x x x

### **ACRs**

22. ACRs will continue to be initiated in respect of officers serving abroad, as per channels laid down separately for each assignment/course. Provisions of AO 45/2001 will also be applicable to these officers. ....

23.      x x x                                      x x x                                      x x x

### **Promotion**

24. **SELECTION FOR FOREIGN ASSIGNMENTS DOES NOT MEAN THAT THE INDIVIDUAL IS CLEARED FOR PROMOTION TO THE NEXT RANK.** Promotion of officers will be subject to their approval by respective selection boards.

**(Superseded letters No 04526/MS 9B dated 21 Aug 91 and  
04526/MS:Policy dated 17 Sep 93)**



(b) **MODERATION OF CRs AT MS BRANCH**

(Auth : MS Branch, Army Headquarters, DHQ PO New  
Delhi letter No A/17157/MS-4CR(Policy)Dated 07 Mar 2011.)

1. x x x x x x x x x
2. All CRs which are received at the MS Branch are scrutinized in details for technical and assessment defects. Corrective action is applied to CRs which are found to be grossly inconsistent with the past profile of the ratee or contain inflationary/deflationary/subjective reporting vide Paragraphs 134 to 138 of AO 45/2001/MS.
3. Presently the corrective action in CRs at MS Branch is limited to 'Expunction' and 'Enfacement' of CRs. In addition to the above 'Moderation' of CRs has been approved by the COAS and introduced since Nov 2010. 'Moderation' of CRs has the following implications :-
  - (a) It implies change of Box/figurative to a lower or higher value.
  - (b) Moderated value is amended in the CR and data base.
  - (c) Moderation is approved by COAS and is irrevocable.
4. In view of the above the following amendments may be made to Paragraph 137 of AO 45/2001/MS :-

**FOR**

137. The CR when checked for objectivity in reporting will also be analyzed for consistency of the performance of the ratee. Depending upon variation from past profile of the ratee against parameters defined in SOP of MS Branch, the CR may be accepted as it is, or with enfacement for Inflated/Deflated report to be reflected on the MDS for SBs/Panels. However, CR identified as grossly inconsistent or with inflationary/deflationary/subjective reporting, after due examination at appropriate level, may be expunged by the COAS. Expunctions approved by the COAS will be irrevocable. No re-initiation or review is permissible.

**READ**

137. The CR when checked for objectivity in reporting will also be analyzed for consistency of the performance of the ratee. Depending upon variation from past profile of the ratee against parameters defined in SOP of MS Branch, the CR may be accepted as it is, or with enfacement for Inflated/Deflated report, to be elected on the MDS for SBs/Panels. However, CR identified as grossly inconsistent or with inflationary/deflationary/subjective reporting, after due examination at appropriate level, may be either moderated or expunged in part or full by the COAS. Expunctions and moderations approved by the COAS will be irrevocable. No re-initiation or review is permissible.

1. x x x x x x x x x x  
sd/x  
(Rajiv Bhatia)  
Maj Gen  
Dy MS

(c) **CONDUCT OF SELECTION BOARDS BY QANATIFICATION SYSTEM**

(Auth : MS Branch, IHQ of MoD (Army) New Delhi letter No 04502/MS/Policy dated 04 Jan 2011.)

1. x x x x x x x x x

**General**

2. *The Quantification System for Selection Boards was adopted with effect from 01 Jan 2009. The policy envisaged evaluation and refinement of the system over a period of three years from implementation, till the system stabilizes. A detailed review of the existing Quantified Model was carried out based on feedback from the environment. The revised weightages have been approved by the competent authority. The revised policy on conduct of Selection Boards (SBs) by Quantification System is contained in succeeding paras.*

**Overall Distribution of Marks in the Quantified Model**

3. *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 (SB) 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 on courses, honours and awards has been maintained.*

(b) **Comd vis-à-vis other CRs.** *Greater weightage has been given for Comd/Criteria Appts as compared to Staff/Instructional/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 1 SB as hither to fore. 'Look Three Down' principle by taking into consideration all CRs in previous to previous rank (i.e. Cols rk) will be adopted for SSB only.*

(d) **War Reports/Op Reports Earned Outside Reckonable Profile (Op Meghdoot/Op Vijay (Kargil)/Op Pawan/Any other specified operations).** *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 offrs, 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/Instructional appointments. This ensured 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 3 SB	No 2 SB	No 1 SB	SSB
Criteria (Maj/Lt Col)	50	15	-	-
Staff/Instr/Others (Maj/Lt Col)	39	07	-	-
Criteria (Col)	-	45	19	04
Staff/Instr/Others (Cols)	-	23	08	02
Criteria (Brig)	-	-	46	20
Staff/Instr/Others (Brig)	-	-	18	06
Criteria (Maj Gen)	-	-	-	46
Others (Maj Gen)	-	-	-	14
<b>CR TOTAL</b>	<b>89</b>	<b>90</b>	<b>91</b>	<b>92</b>
Courses	04	03	02	01
Honours and Awards (Gallantry Awards only)	02	02	02	02
<b>Quantified Total</b>	<b>95</b>	<b>95</b>	<b>95</b>	<b>95</b>
Value Judgement	05	05	05	05
<b>Grand Total</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>

### Performance on Courses

6. The weightages of courses are based on the category of course i.e. competitive courses, mandatory courses and other courses. Weightages assigned for courses in various SBs are as follows :-

Courses	No 3SB	No 2 SB	No 1 SB	SSB
JC/Mandatory Course	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/0.70xAPPA	-	-	0.75	0.45
Other courses	1.75	1	-	-
<b>Total</b>	<b>4</b>	<b>3</b>	<b>2</b>	<b>1</b>

\*0.50 for Q(I) and 0.40 for Q Grading in 2 SB

0.25 for Q(I) and 0.20 for Q Grading in 1 SB

7. **DSSC/TSOC and JC.** Marks for DSSC/TSOC and JC are allotted on a sliding scale based on the grading obtained as given at Appendix A.

8. x x x x x x x x x x x

**Honours and Awards (H&A)**

9 & 10. x x x x x x x x x x x

**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 PAWAN, OP MEGHDOOT, OP VIJAY (KARGIL)/or Subsequent Operations in future**) through the career.

(b) Consistency in overall performance.

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

13. **Potential.** Suitability for being employed in higher ranks.

14. **Recommendations for Promotion.** Officer should have been consistently recommended for promotion to the next rank.

15. **Honours and Awards.** Distinguished Service Awards will be Value judged based on the achievement for which the award is earned, service at which earned and appointment held. Gallantry awards after being given weightage in two SBs will be value judged by subsequent SBs.

16. **Special Achievements.** Any special achievements e.g. in sports, adventure activity, grant of civil awards etc. will be highlighted for award of Value Judgement marks.

17. x x x x x x x x x x

18. **Weak Remarks.** The weaknesses reflected in CRs, course reports and other documents filed in CRD will be value judged.

**Review**

19. The revised Quantified Model for Selection Boards will be reviewed after a period of five years from implementation. This policy supersedes all earlier policies on the Conduct of Selection Boards by Quantification System.

Sd/- x x

(GM Nair)

Lt Gen

MS

(d) **OBJECTIVITY IN REPORTING AND GAPS IN CR PROFILE**

(Auth : MS Branch, IHQ of MoD (Army) New Delhi  
letter No A/17151/MS4Coord) dated 19.11.2007

1. & 2. x x x x x x x x x

3. *Towards this end, certain guidelines have been formulated, to be followed by all reporting offrs :-*

(a) **Prior Intimation of Outstanding Grade.** *Any reporting offr intending to grade an offr 'Outstanding' must give a min 90 days notice to the higher tier reporting offrs to enable them to gauge the performance of the ratee. However, under certain circumstances, when it is not possible to do so, 'adequate notice' must still be given to the reporting chain. Eg, if the IO or the ratee receives his posting order or the period of report is the mandatory min (90 days), the IO should info the higher tier reporting offrs immediately, for it to be considered 'adequate notice'.*

(b) to (e) x x x x x x x x

4. to 7. x x x x x x x x x

Sd/-xxx  
(Rakesh Nandan)  
Brig  
Dy MS (P,CM&CR)  
For MS

(e) **HIGHER COMMAND (HC), LONG DEFENCE MANAGEMENT COURSE (LDMC), HIGHER AIR COMMAND COURSE (HACC) AND NAVAL HIGHER COMMAND COURSE (NHCC)**

(Auth : SAO 1/S/97)

1. to 6. x x x x x x x x x

7. **Qualitative Requirements for Selection**

(a) **Mandatory Qualifications**

(i) *Officers should have earned criteria reports in command appointment for minimum period of 20 months.*

(ii) x x x x x x

(iii) *The officers should be psc/ptsc or should have held an all Arms/Corps staff or instructional appointment successfully.*

(iv) *Officers should have minimum five years residual service on termination of the course.*

(v) *Officers should be in acceptable Medical Category as given in SAO 6/S/89 and as specified from time to time.*

(b) Selection Criteria. The following are considered :-

- (i) Order of merit based on overall performance which includes performance in command appointment as specified at para 7 (a), other reports, honours and awards, performance on courses and field service
- (ii) War and operational reports.
- (iii) Recommendations, for the courses.
- (iv) Discipline and Disciplinary Ban.
- (v) Weaknesses reported in ACRs.

(c) Two Looks Concept. All officers of a batch will generally get a maximum of two chances for screening for the courses after being adequately exercised (AE) in a command appointment. Those officers who make the selection but are not available for detailment on both occasions will not be considered any further. The repeating of slab seniorities will be determined by consideration of the following factors :-

- (i) Number of officers left to be AE in command and their caliber to make the grade.
- (ii) Residual service that would be available to the officers.
- (iii) The organizational requirement to ensure that officers are put through the courses in the right time frame.

8. to 13.        x        x        x        x        x        x        x

28. On going through the averments made in the O.A. and also keeping in mind the submissions made by the Ld. Counsels, we find that the applicant is aggrieved by the following issues :-

- (a) Non detailment for HCC/HDMC.
- (b) Not being graded as outstanding in the first ACR as Brigade Commander because of policy constraints and non moderation of this ACR.
- (c) Non detailment for NDC Course.
- (d) Non empanelment as Major General and Value Judgement marks during No 1 Selection Board.

29. In this context, we have gone through following judgments of Hon'ble The Apex Court, the relevant paras of which are as under :-

(a) In the case of **Lt Gen Rajendra Singh Kadyan and another vs. Union of India and others**, reported in **(2000) 6 Supreme Court Cases 698**, at Para 29, Hon'ble The Apex Court has observed : –

*“29. The contention put forth before us is that there are factual inaccuracies in the statement recorded by the Cabinet Secretary in his note and, therefore, it must be deemed to be vitiated so as to reach a conclusion that the decision of the Government in this regard is not based on proper material. The learned Attorney General, therefore, took great pains to bring the entire records relating to the relevant period which were considered by the Cabinet Secretary and sought to point out that there were notings available on those files which justify these remarks. Prima facie, we cannot say, having gone through those records, that these notings are baseless. Critical analysis or appraisal of the file by the Court may neither be conducive to the interests of the officers concerned or for the morale of the entire force. May be one may emphasize one aspect rather than the other but in the appraisal of the total profile, the entire service profile has been taken care of by the authorities concerned and we cannot substitute our view to that of the authorities. It is a well-known principle of administrative law that when relevant considerations have been taken note of and irrelevant aspects have been eschewed from consideration and that no relevant aspect has been ignored and the administrative decisions have nexus with the facts on record, the same cannot be attacked on merits. Judicial review is permissible only to the extent of finding whether the process in reaching decision has been observed correctly and not the decision as such. In that view of the matter we think there is no justification for the High Court to have interfered with the order made by the Government.”*

(b) In the case of **Hardev Singh vs. Union of India and others**, reported in (2011) 10 Supreme Court Cases 121, at Paras 17 and 25, Hon'ble The Apex Court has observed that :-

*“17. It cannot be disputed that no employee has a right to get promotion; so the appellant had no right to get promotion to the rank of Lieutenant General but he had a right to be considered for promotion to the rank of Lieutenant General and if as per the prevailing policy, he was eligible to be promoted to the said rank, he ought to have been considered. In the instant case, there is no dispute to the fact that the appellant's case was duly considered by the SSB for his promotion to the rank of Lieutenant General.*

*25. In our opinion, it is always open to an employer to change its policy in relation to giving promotion to the employees. This Court would normally not interfere in such policy decisions. We would like to quote the decision of this Court in **Virender S. Hooda v. State of Haryana** where this Court had held in para 4 of the judgement that : (SCC p. 699) “4.... When a policy has been declared by the State as to the manner of filling up the post and that policy is declared in terms of rules and instructions issued to the Public Service Commission from time to time and so long as these instructions are not contrary to the rules, the respondents ought to follow the same”.*

(c) In the case of **Surinder Shukla vs. Union of India** reported in (2008) 2 SCC 649, at Para 1, Hon'ble The Apex Court has observed :-

*“11. Considering the comparative batch merit, if the Selection Board did not recommend the name of the appellant for promotion to the rank of Colonel which appears to have been approved by the Chief of Army Staff, it is not for the court exercising power of judicial review to enter into the merit of the decision. The Selection Board was constituted by senior officers presided over by an officer of the rank of Lt General. It has been contended before us that the Selection Board was not even aware of the identity of the candidates considered by them because only in the member data sheet all the information of the candidates required to be considered by the Selection Board are state, but the identity of the officer is not disclosed. The appellant moreover did not allege any mala fide against the*



*members of the Selection Board. What impelled the Selection Board not to recommend his case but the names of other two officers is not known.”*

(d) In the case of **Lt Col K.D. Gupta vs, Union of India and others**, reported in **AIR 1989 SC 1993**, Hon’ble The Apex Court has observed that :-

*“ The defence services have their own peculiarities and special requirements. The considerations which apply to other Government Servants in the matter of promotion cannot as a matter of course be applied to defence personnel of the petitioner’s category and rank. Requisite experience, consequent exposure and appropriate review are indispensable for according promotion and the petitioner, therefore cannot be given promotions as claimed by him on the basis that his batch mates have earned such promotions. Individual capacity and special qualities on the basis of assessment have to be found but in the case of the petitioner these are not available.”*

30. Ld. Counsel for the applicant has submitted that the applicant is aggrieved by his non detailment for Higher Command Course (HCC)/Higher Defence Management Course (HDMC). He has not been empanelled for promotion due to adverse career certificate given by him while proceeding abroad as Military and Air Attache to Iran during 2004, as such he was not considered for HCC/HDMC or equivalent courses. This resulted in his subsequent non nomination for National Defence College (NDC) and hence non grant of weightage to him for HCC/HDMC and NDC in No 1 Selection Board (SB). We have gone through the documents produced by the respondents and found that the applicant was first screened for HCC/HDMC in 2001 i.e. before his selection as Military and Air Attache to Iran. He was again screened for HCC/HDMC in 2002 and was not nominated. Thus, the applicant was considered on two occasions for detailment on HCC/HDMC prior to his selection for foreign assignment as per policy laid down in

Special Army Order (SAO) 1/S/97 and was not nominated due to low comparative merit among his batchmates. As such, the issue raised by the applicant about non detailment for HCC/HDMC affecting his career is not appropriate.

In view of the discussions made above, we do not find any substance or merit in the contention of the applicant for non allocation of marks for the HCC/HDMC in the No 1 Selection Board.

31. Another issue for which the applicant is aggrieved is about not being graded 'Outstanding' as Brigade Commander in the first Annual Confidential Report (ACR) because of policy constraints. Submission of Ld. Counsel for the applicant is that he had earned two reports during command of the Brigade for the period 27 Dec 2007 to 31 May 2008 and 01 Jun 2008 to 31 May 2009. The first report was barely for a period of 100 days after deducting the leave period. Though he had performed outstandingly and got ACR with most '9s' but was not graded outstanding '9' in the box grading in view of the policy letter dated 19 Nov 2007 and 07 Nov 2008, wherein, it is mandatory to intimate the higher tier reporting officers if an officer has to be graded outstanding. Initiating Officer (IO) of the applicant could not inform higher reporting officers of the grading of outstanding due to shortage of time and as such he was not given '9' in the box grading. Whereas, Ld. Counsel for the Respondents has submitted that the first ACR of the officer covers the period of 27 Dec 2007 to 31 May 2008 i.e, period of over five months. As per Army Order (AO) 45/2001 (MS), period of leave is counted for initiation of ACR in such cases. It is, therefore, evident that adequate time was available to Initiating Officer (IO)

to give prior intimation of outstanding grade to Reviewing Officer (RO) and Senior Reviewing Officer (SRO).

The provisions of the policy letter dated 19 Nov 2007 and 07 Nov 2008 as far as it relates to giving advance intimation by IO for initiation of an outstanding ACR are only to act as guidelines as is clear from Para 3 (a) of the policy letter dated 19.11.2007 which is reproduced as under :-

*“3. Towards this end, certain guidelines have been formulated, to be followed by all reporting offrs :-*

- (a) ***Prior Intimation of Outstanding Grade.*** *Any reporting offr intending to grade an offr ‘Outstanding’ must give a min of 90 days notice to the higher tier reporting offrs to enable them to gauge the performance of the ratee. However, under certain circumstances, when it is not possible to do so, ‘adequate notice’ must still be given to the reporting chain. Eg, if the IO or the ratee receives his posting order or the period of report is the mandatory min (90 days), the IO should info the higher tier reporting offrs immediately, for it to be considered ‘adequate notice’.*”

We have gone through the provisions of the policy letters as far as it relates to time period for initiation of ACR and also about giving prior intimation of outstanding grade by the IO. We have perused the records and find that non grant of outstanding in the said ACR is not due to policy constraints. The applicant has not alleged any bias in the assessment of this ACR. We also observe that generally similar ACR has also been earned by the applicant as Brigade Commander in the subsequent year.

32. Another issue pertains to moderation of ACR of the applicant earned during the command of the Brigade. Submission of the Ld. Counsel for the applicant is that the Chief of the Army Staff (COAS) has been authorized to moderate the ACR of the officer if the same is not consistent with his past profile and as such the ACR can also be upgraded upwards and the

applicant's ACR for the period 27 Dec 2007 to 31 May 2008 should have been upgraded. Whereas, Ld. Counsel for the respondents has submitted that ACR for the aforesaid period was analyzed as part of internal assessment in terms policy in vogue and accepted as it is by the competent authority as the said ACR was found to be consistent, performance based and free from any aberration.

Para 137 of the policy dated 07 Mar 2011 on moderation of ACRs by COAS is reproduced as under :-

*“137. The CR when checked for objectivity in reporting will also be analyzed for consistency of the performance of the ratee. Depending upon variation from past profile of the ratee against parameters defined in SOP of MS Branch, the CR may be accepted as it is, or with enfacement for Inflated/Deflated report, to be reflected on the MDS for SBs/Panels. However, CR identified as grossly inconsistent or with inflationary/deflationary/subjective reporting, after due examination at appropriate level, may be either moderated or expunged in part or full by the COAS. Expunctions and moderations approved by the COAS will be irrevocable. No re-initiation or review is permissible.”*

We have perused the ACR for the period 27 Dec 2007 to 31 May 2008 in light of the policy and observed that the said ACR is consistent with his past profile and there are no major variations from past profile which necessitate moderation of the ACR. We have also perused the ACR profile of the applicant, as Brigade Commander, which reveals that in the reports earned by the applicant as Brigade Commander, he has been consistently graded with figurative assessment '8' and '9' by the reporting officers in chain. The two reports earned by the applicant during the command of the Brigade are generally consistent and similar. The applicant has also not alleged any malafide or any bias in the assessment of ACRs for the period 27 Dec 2007 to 31 May 2008 and 01 Jun 2008 to 31 May 2009.

33. The applicant is also aggrieved about non detailment for NDC. Ld. Counsel for the applicant has submitted that the applicant had suffered on account of non detailment on HCC/HDMC, vis-a-vis his batchmates. By the time his turn for nomination for NDC came, the policy for promotion as well as the policy for nomination for NDC were changed from 'Value Judgement' to 'Quantification Based'. Quantification was adopted for selection for NDC where marks were allotted for HCC/HDMC as well, and the applicant lost marks for the HCC/HDMC course for being nominated for NDC. Whereas, Ld. Counsel for the respondents has submitted that the applicant was given due consideration in the year 2001 and 2002 for nomination for HCC/HDMC, prior to his selection for foreign assignment, but was not nominated based on comparative merit among his batchmates. As such contention of the applicant that he lost out on detailment for NDC because he was not considered for HCC/HDMC because of his selection for foreign assignment is not correct. He also submitted that selection for NDC was based on quantification system where marks were allotted for HCC/HDMC even prior to introduction of system of quantification.

We have gone through the relevant documents made available by the respondents and found that the applicant was considered for NDC as per policy and was not nominated being lower in comparative merit. It is also observed that even prior to introduction of quantification system, selection for NDC was based on quantification system in which HCC/HDMC carried marks. Policy letter dated 23 May 95 regarding selection system for NDC was applicable before introduction of quantification system. We have perused the Internal Circulation letter i.e, part of this policy letter dated 23 May 95 and found that contention of the applicant is not correct as points

were allocated for HCC/HDMC earlier also. In view of the above, we are of the view that the applicant has been considered appropriately, as per policy, for HCC/HDMC and subsequently, for NDC and has not been detailed for these courses because of comparative merit. As such allocation of marks for these courses during Selection Board does not merit consideration.

34. The applicant is aggrieved that despite his selection as Military and Air Attache in Iran, he has not been approved by No 1 Selection Board.

The guidelines for selection of officers for foreign assignment/course states that only the best among available officers are to be selected for foreign assignments. Para 2 & 3 of the policy guidelines for selection of officers for foreign assignments/courses, as quoted above in Para 27 (a), is reproduced as under :-

*“2. **Philosophy.** Only the best among available officers are to be sent on foreign assignments, as these officers represent the Army and the country abroad and it is essential that the right image of the nation is projected. Officers selected for foreign assignments/courses, including diplomatic assignments, will not be selected purely on the basis of their order of merit but more on their suitability for that particular assignment/course/deputation. The personality aspect of the officers will be given due weightage in selection with particular regard to obesity.”*

Policy on selection of officers for foreign assignments/courses provides that only the best among available officers to be selected for foreign assignment as they represent the Army and the Country abroad and it is essential that the right image of the nation is projected. It also provides that officers selected for foreign assignment will not be selected purely on the basis of their order of merit but more on their suitability for that particular assignment. It also provides that selection for foreign assignments

does not mean that the individual is cleared for promotion to the next rank as promotion of officers are subject to approval by respective selection boards.

In view of the aforesaid policy, we are of the view that only on the basis of selection for foreign assignment, the applicant was not entitled for promotion to the next rank. As per policy, promotion of officers will be subject to their approval by respective Selection Boards.

35. The applicant is also aggrieved from system/procedure of Value Judgement marks during No 1 Selection Board. Submission of Ld. Counsel for the applicant is that a total of 5 marks are earmarked for 'Value Judgement', which keeps in consideration the operational experience/consistency in overall performance/service in challenging and difficult areas/suitability for being employed in higher ranks, honours and awards and special achievements. He submitted that the applicant has always been deployed in much challenging environment. Further, he was Military and Air Attache to Iran when the atmosphere in the region was totally disturbed. He also submitted that the Applicant was graded 'Very Outstanding' by the IO, i.e. Indian Ambassador, but the said assessment of the IO was neither incorporated into the figurative assessment for the ACR for the said year nor was it reflected as special achievement. Whereas, Ld. Counsel for the Respondents has submitted that Confidential Record Dossier (CRD) and Member Data Sheet (MDS) placed before the Selection Board covers all important aspects of an officers' service/career profile which, in turn, are carefully perused by Board Members while assessing the officer for promotion to the higher rank. He has further submitted that Board Members are the senior most officers of Army (Chief of the Army Staff (COAS), Vice Chief of the Army Staff (VCOAS) and Army Commanders) and they are at a

liberty to call for all available record of the officer concerned during the Promotion Board.

**Hon'ble The Apex Court** in the case of **Hardev Singh** (supra) has observed that it cannot be disputed that no employee has a right to get promotion; so the appellant had no right to get promotion to the rank of Lieutenant General but he had a right to be considered for promotion to the rank of Lieutenant General and if as per the prevailing policy, he was eligible to be promoted to the said rank, he ought to have been considered.

In the instant case, there is no dispute to the fact that the applicant's case was duly considered by the Selection Board for his promotion to the rank of Major General. In the case of **Surinder Shukla** (supra), **Hon'ble The Apex Court** has observed that it is not for the Court exercising power of judicial review to enter into merit of the decision.

We have perused the Confidential Record Dossier (CRD) and Member Data Sheet (MDS) of the applicant. It reveals that as per policy/norm all relevant documents about the officer including reports of the applicant as Military and Air Attache in Iran were available for the Board Members for perusal and consideration. In view of aforesaid discussions we are of the view that the grievance of the applicant about system/procedure of 'Value Judgement' marks observed by No. 1 Selection Board has no substance and cannot stand in the eyes of law. The 'Value Judgement' marks awarded to the applicant is as per policy in vogue, which is uniformly applied to all the officers.

36. The applicant is aggrieved with the impugned order dated 03 Sep 2012 communicated to him vide order dated 20 Sep 2012 (Annexure



A-1 & A-2 of O.A.). We have perused the impugned order. It reveals that the applicant submitted a Statutory Complaint dated 24 Apr 2012 against his non empanelment by No 1 Selection Board held in Oct 2011 which was considered and decided by the respondents and the applicant was granted partial redressal. The impugned order is detailed, reasoned and well discussed order. We do not find any merit to interfere in it.

37. We have gone through all the documents on record and find that in higher ranks, the number of vacancies decrease. From the broad base of pyramid only those officers of a particular batch whose record of service merits promotion are selected to fill the vacancies available in higher ranks. For selection to select ranks, all the officers of a particular batch are considered together with cut of ACR and inputs on the basis of individual career profile and batch merit and thereafter empanelled or not empanelled for promotion. Seniority in itself is not the only consideration before the Selection Board for empanelment or non empanelment. In the case of **Lt Gen Rajendra Singh Kadyan** (supra) , Hon'ble The Apex Court has observed that critical analysis or appraisal of the file by the Court may neither be conducive to the interests of the officers concerned or for the morale of the entire force. Hon'ble The Apex Court has further observed that it is a well known principle of administrative law that when relevant considerations have been taken note of and irrelevant aspects have been eschewed from consideration and that no relevant aspect has been ignored and the administrative decisions have nexus with the facts on record; the same cannot be attached on merits.

38. Having heard both sides and gone through Master Data Sheet (MDS) of the promotion board and other relevant documents, it is revealed that the

applicant did not make to HCC/HDMC and NDC because of lower merit among the officers considered. We also find that officer has quite number of '9' & '8' marks in ACRs particularly, in command criteria reports as Brigade Commander but he lacked in overall performance and comparative merit with his batchmates.

In the case of **Lt Col K. D. Gupta** (supra), Hon'ble The Apex Court has observed that the Defence Services have their own peculiarities and special requirements. The considerations which apply to other Government Servants in the matter of promotion cannot, as a matter of course, be applied to Defence Personnel of the petitioner's category and rank. Hon'ble The Apex Court has also observed that requisite experience, consequent exposure and appropriate review are indispensable for according promotion and the petitioner, therefore, cannot be given promotions as claimed by him on the basis that his batchmates have earned such promotions.

The applicant has an excellent record of service. He has served and commanded in challenging and difficult areas but did not get empanelled for promotion to the rank of Major General because of overall performance and comparative merit with his batchmates.

These days promotions in the Army are extremely competitive and competition is so tough that fraction of marks decide the fate of an officer. Courses, Awards/Honour, profile of appointments, postings and ACR profile are all examined in totality for promotion.

39. We have bestowed our best of the consideration on rival submission made by both sides and perused all relevant records minutely. In view of the facts and circumstances of the case and the case law discussed above, we are of the considered view that there is no illegality or irregularity in the

selection process for promotion to the rank of Major General and that it has been observed correctly as per policy in vogue. The applicant has also did not allege any malafide against the members of the Selection Board. The applicant could not be empanelled for promotion to the rank of Major General as he lacked in overall performance and comparative merit with his batchmates. We do not find any reason to interfere with the selection process. We are also of the considered view that no injustice has been done with the applicant. The Original Application being devoid of merit deserves to be dismissed.

40. In the result, the Original Application is dismissed. There shall be however no order as to costs.

(Lt Gen Gyan Bhushan)  
Administrative Member

(Justice Virendra Kumar DIXIT)  
Judicial Member

Dated : .12. 2014