

AFR-
Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION NO 96 of 2017

Friday, this the 5th day of January, 2018

“Hon’ble Mr. Justice DP Singh, Member (J)
Hon’ble Air Marshal BBP Sinha, Member (A)”

MR-05644K Colonel Surajit Basu, son of late Dr. A.C. Basu, Senior Registrar, Base Hospital, Lucknow (UP)-226002

....Applicant

Ld. Counsel for the : **Shri R. Chandra, Advocate.**
Applicant

Verses

1. Union of India, Through, the Secretary, Ministry of Defence, Government of India, New Delhi/
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army), DHQ Post Office, New Delhi.
3. The Director General, Armed Forces Medical Services, Directorate General of Armed Forces Medical Services, Army Headquarter, DHQ Post Office, New Delhi.
4. The Director General, Medical Services (Army), Directorate General of Armed Forces Medical Services, Army Headquarter, DHQ Post Office, New Delhi.
5. Major General Rajan Chaudhry (Retired) General Manager Medical Services, Tata Main Hospital 1D Type B Road Eastern Northern Town, Jamshedpur (Jharkhand).
6. Brigadier R.K.Singh,(Retired) 518-519,5th Floor Galaxy Star, Opposite National Handloom, Central Spine Vidyadhar Nagar, Jaipur, Rajasthan.

.....Respondents

Ld. Counsel for the : Ms Appoli Shrivastava, Central
Respondents. Govt Counsel assisted by Maj Salen Xaxa,
OIC Legal Cell.

ORDER

1. The present Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 being aggrieved with the non-empanelment for the rank of Brigadier by the Selection Committee convened in the year 2016, the result of which was declared on 09.02.2017.
2. We have heard Shri R. Chandra, learned counsel for the applicant and have also permitted the applicant to argue the case in the ends of justice and Ms. Appoli Shrivastava, learned counsel for the respondents assisted by Lt Col Rupesh M, Additional Officer, DGMS (Legal) and perused the record.
3. Brief facts of the case are that the applicant was commissioned in the Indian Army in Army Medical Corps on 12.03.1987 as Captain. With the passage of time, on account of bright service career, the applicant was promoted to the rank of Colonel. A Selection Board was convened on 22.01.2016 to consider eligible Colonels of Army Medical Corps for promotion to the rank of Brigadier. The result of the Selection Board was communicated to the applicant to the effect that he was not found fit to be empanelled for promotion. Being aggrieved, the applicant submitted statutory complaint against his non-empanelment on 07.03.2016. It appears that during pendency of the statutory complaint, the Selection Board was further convened and applicant's case was considered for promotion by No. 2 Selection Board as 'first review case' on 02.11.2016. Once again, the applicant was not empanelled for promotion. The result of the Board was

declared on 09.02.2017 and was circulated to all concerned by respondent No. 4. Being aggrieved with non-empanelment, the applicant submitted another statutory complaint which too was rejected. Feeling aggrieved, the applicant has preferred the present Original Application.

4. Broadly, learned counsel for the applicant made three fold arguments; firstly, the Interim Confidential Report (ICR) could not have been sent by Reviewing Officer (RO) in the absence of Initiating Officer (IO). This has been done in violation of Para 3.8 read with Para 5.7.2 of Army Order 1/2010/DGMS. The second contention of learned counsel for the applicant is that Senior Reviewing Officer (SRO) himself was Higher Technical Officer (HTO) and as SRO he has reduced applicant's marks in the Annual Confidential Report (ACR) for the year 2011, but as HTO he has increased the same. Submission of learned counsel for the applicant is that grant of marks by HTO is contrary to the service career of the applicant indicated in the Pen Picture. It is submitted that since the SRO and HTO, were the same person, he could not have formed two opinions with regard to applicant's service career while awarding marks even if assessment was on different grounds. The reason assigned by learned counsel for the applicant is that the marks are granted keeping in view the over-all assessment of the incumbent in consonance with Army Order 1/2010/DGMS. The third submission of learned counsel for the applicant is that the grounds raised in the statutory complaint have not

been dealt with elaborately through reasoned order by the appellate authority.

5. It is further argued that the over-all assessment by the Selection Board is done on the basis of ACR entries of the previous five years. In the present case, it shall be from 2010 to 2014. Submission is that the grant of lesser marks by the SRO, even if marginally increased by the same person as HTO, shall reduce the over-all grading and assessment for the year 2011. It is also argued that in the pyramidal structure of the Army, even reduction of 0.1 mark makes a difference for selection and promotion to the next higher rank.

6. On the other hand, Ms. Appoli Shrivastava, learned counsel for the respondents opposed the arguments advanced by learned counsel for the applicant and relying upon Para 5.7.2 of Army Order 1/2010/DGMS (supra) submitted that in the present case, the RO was empowered to grant ICR entry of the year 2012. It is also submitted that the HTO has granted higher marks. As a 'moderator' he has awarded higher marks to the applicant, hence the question of moderation on allegation of lowering down the merit, does not arise in the present case. However, the fact remains that the applicant's marks in the ACR of 2011 has been reduced from 8.75 to 8 by the SRO.

7. On instructions of the Tribunal, the learned counsel for the respondents has provided two charts with regard to confidential reports of the applicant. The chart of confidential report of the applicant relating to the applicant for the applicant from 2010 to 2014 for convenience sake may be reproduced as under:

:

CONFIDENTIAL

PERSNO MR-05644K Rank COL Name S BASU, SM GENDER M Chance 1 S NO 109
 DOB 05-01-1964 DOC 12-03-1987 DOS 01-01-1988 DOR 02-09-2009 SENIORITY IN RANK 22-07-2009 RETIREMENT 31-01-2002
 QUALIFICATIONS MBBS, MS (SURG), MCh (PLASTIC SURG)-PUNE MED CAT & DIAG SHAPE-1
 COURSES ATMO-A MOBC B MOJC B MOSC B DECORATIONS SM(D) (2007), COAS (2000) COMMENDTION

DISCIPLINE REMARKS

PERIOD	OCCA	RANK	APPT HELD	UNIT	IO	RO	SRO	DGMS	DGAFMS	AVG	FTO	STO	HTO	AVG	AVG	PD	CR
SION								ACR	ACR			TR	TR	ACR	AVG	CT	
2014	ACR	4 COL	SR ADV (SURG)	CH(CC)	8.90	8.90	8.00			8.60	9.00	8.30	9.00	8.60	8.60		
Avg for 2014																	
																	8.60
2013	ACR	4 COL	SR ADV (SURG)	CH(CC)	8.65	8.90	9.00	8.00		8.60	8.60	9.00		8.80	8.71		
Avg for 2013																	
																	8.71
2012	ACR	4 COL	SR ADV (SURG)	CH(CC)	8.95	8.90	9.00			8.95	8.90	9.00		8.95	8.95		
2012	ICR	4 COL	SR ADV (SURG)	CH(EC)		8.10	8.00	8.00		8.03	8.00			8.10	8.06		
Avg for 2012																	
																	8.50
2011	ACR	4 COL	SR ADV (SURG)	CH(EC)	8.70	8.75	8.00	8.00		8.36	8.70	8.80	9.00	8.83	8.59		
Avg for 2011																	
																	8.59
2010	ACR	4 COL	SR ADV (SURG)	CH(EC)	8.70	8.55				8.67	8.60			8.65	8.63		
2010	ICR	4 COL	SR ADV (SURG)	CH(EC)	8.80	8.65	9.00			8.81	8.90	8.70	9.00	8.86	8.83		
Avg for 2010																	
																	8.73

Rank	AVG	CRS	Weightage	Weighted Product	SUMMARY : ACR AVG	8.64	QUALIFICATIONS	2
Col & Equiv	8.64	5	100	8.64 (100%)	89.15	DS & DECORATIONS	0.75	
Lt Col & Equiv	0.00	0	0	0.00				

Computer Generated Report

Authenticated By Air Cmde RK Ranyal, VSM, DY DGAFMS (HR)

CONFIDENTIAL

Similarly, the chart showing CR entries of the applicant for the year 2011 to 2015 is quoted as follows”

CONFIDENTIAL

PERSNO MR-05644K Rank COL Name S BASU, SM GENDER M Chance 2 S NO 39
 DOB 05-01-1964 DOC 12-03-1987 DOS 01-01-1988 DOR 02-09-2009 SENIORITY IN RANK 22-07-2009 RETIREMENT 31-01-2002
 QUALIFICATIONS MBBS, MS (SURG), MCh (PLASTIC SURG)-PUNE MED CAT & DIAG SHAPE-1
 COURSES ATMO-A MOBC B MOJC B MOSC B DECORATIONS SM(D) (2007), COAS (2000) COMMENDTION
 DISCIPLINE REMARKS

PERIOD	OCCA	RANK	APPT HELD	UNIT	IO	RO	SRO	DGMS	DGAFMS	AVG	FTO	STO	HTO	AVG	AVG
PD	CR								ACR					TR	ACR
AVG	CT														TR
2015	ACR	4 COL	SR ADV (SURG)	CH(CC)	8.65	8.75				8.70	8.80	9.00		8.90	8.80
															Avg for 2015
															8.80
2014	ACR	4 COL	SR ADV (SURG)	CH(CC)	8.90	8.90	8.00			8.60	9.60	8.30	9.00	8.76	8.68
															Avg for 2014
															8.68
2013	ACR	4 COL	SR ADV (SURG)	CH(CC)	8.65	8.90	9.00	8.00		8.63	8.60	9.00		8.80	8.71
															Avg for 2013
															8.71
2012	ACR	4 COL	SR ADV (SURG)	CH(CC)	8.95	8.90	9.00			8.95	8.90	9.00		8.95	8.95
2012	ICR	4 COL	SR ADV (SURG)	CH(EC)		8.10	8.00	8.00		8.03		8.20	8.00	8.10	8.06
															Avg for 2012
															8.50
2011	ACR	4 COL	SR ADV (SURG)	CH(EC)	8.70	8.75	8.00	8.00		8.36	8.70	8.80	9.00	8.83	8.59
															Avg for 2011
															8.59

Rank AVG CRS Weightage Weighted Product 8.65 ACR : ACR AVG 0

QUALIFICATIONS

Col & Equiv	8.65	5	100	8.65 (100%)	TOTAL	88.00	AWARDS & DECORATIONS	1.5
Lt Col & Equiv	0.00	0	0	0.00				

Computer Generated Report
(HR)

Authenticated By Air Cmde RK Ranyal, VSM, DY DGAFMS

CONFIDENTIAL

8. Before coming to the first limb of arguments advanced by learned counsel for the applicant, wish to add that the ACR entries are awarded to an employ containing over-all annual profile of the incumbent; that is why minimum period of 90 days has been provided by the Army Order (supra) so that the IO may make assessment of the work and conduct of the incumbent. It shall be appropriate to deal with

the relevant provisions contained in Army Order 1/2010/DGMs (supra) with regard to ACR entries and Pen Picture.

9. Assessment of overall service working of an officer is required to be assessed strictly objectively, fairly and dispassionately as has been held in the case of **S. Ramachandra Raju vs. State of Orissa, (1994) Supp 3 SCC 424** and reiterated in the case of **State of U.P. versus Yamuna Shankar Misra and another, (1997) 4 SCC 7**. Writing Confidential Report puts onerous responsibility on the Reporting Officer to eschew his subjectivity and personal prejudices and proclivity or predilections and to make objective assessment. Hon'ble Supreme Court in Yamuna Shanker Misra's case (supra), held that, in estimating or assessing the character, ability, integrity and responsibility displayed by the officer/employee concerned during the relevant period for the above objectives, if not strictly adhered to, in making an honest assessment, the purpose and career of the officer will be put to great jeopardy. Hon'ble Supreme Court in the case of **State Bank of India vs. Kashinath Kher (1996) 8 SCC 762** held that, object of writing the Confidential Report is two-fold, i.e. to give an opportunity to the officer to remove deficiency and to inculcate discipline. Secondly, it seeks to serve improvement of quality and excellence and efficiency of public service. The case of Kashinath Kher was also considered by the Hon'ble Supreme Court in the case of Yamuna Shanker Mishra.

10. We are of the considered opinion that the parameters given in Forms for evolution of Basic Qualities of an officer Part-II of Form Basic Assessment subsequently covers the various aspects of one officer

which individually is different subject for overall assessment of personality of the officer which depends upon the combination of or independent assessment value and thereafter assessment of “potential value” of the officer and other facets to be judged at the different level. An officer can be judged on the basis of initially, by addressing to the various gamut of the person’s personality and then by drawing objectively inference about his overall personality. This cannot be done mechanically or numerically and therefore, it is specifically provided in the instruction No.117 of the instructions of 1989 that, reporting officers are required to give overall figurative assessment of the officers in the box which is a box for grading.

11. Clause 117 clearly says that assessment is not a numerical average of the assessment made in other parts of the report but overall assessment which includes potential of the officer as well. The ‘potential of an officer’ is not any of the attributes mentioned in Form Part-II of Basic Assessment of the officer nor in Clause 12, 14 and 16 whereunder officers “regimental and command assignments” are assessed. Furthermore, we are of the considered opinion that any objective assessment of an officer guidelines gives them guidance to examine the officer and while doing so, the initiating officer is required to look into the aspects mentioned in the above Form and that Form alone is not the totality of the objective assessment and therefore, numerical calculation has not been made the criteria for objective assessment of the officer in “Box Grading” and for “potential assessment” of an officer is also required to be assessed though it is

not mentioned in Part-II of the Form whereunder personal qualities are assessed by the Initiating Officer.

12. The Hon'ble Supreme Court in the case reported in **S.T. Ramesh vs. State of Karnataka and Anr. (2007) 9 SCC 436** by expressing its opinion and observed that confidential report is an important document as it provides the basic and vital inputs for assessing the performance of an officer and further achievements in his career. The performance appraisal through CRs should be used as a tool for human resource development and should not be used as a fault-finding process but a developmental one.

13. It is well settled that assessment of overall service of an officer is to be assessed strictly objectively, fairly and dispassionately, keeping in view the service rendered by such officer, his/her commitment to the duty assigned to him/her. That is why Para 15 of the Army Order (supra) mandates for full signature indicating the date, so that in the event of any controversy or during the course of judicial review of the action, the Initiating Officer or others may be called upon to explain their conduct, keeping in view over all profile contained in the pen picture of the officer concerned.

14. The Military Secretary's Branch issued a Brochure under title "Guidelines for Rendering Confidential Reports". Foreword appended to the said Guidelines, contains the observations made by the Military Secretary on 05.04.2013, as follows:

*“1. Confidential Reports form the foundation of an efficient Human Resource Management System to ensure that only professionally competent and best officers are selected for promotion and tenant higher select ranks of Indian Army. It is the **shared and collective responsibility of all reporting officers** to further strengthen and appraisal system so as to assist the MS Branch in fulfilling its mandate.*

*2. It is the desire of COAS that the environment be continuously sensitized and educated on all important aspects of appraisal, from time to time. Towards that end the need was felt for a **publication that can be brief, handy and encompass all essential aspects of CR policy.** This is a nascent effort to provide such a publication to the environment.*

*3. In addition to the basic issue of technical correctness of CRs, responsibilities of ratee/reporting officers, detailed guidelines have been included for **reporting officers to enable them to render an objective assessment on the ratee.** A small brief on methodology of analysis of CRs at MS Branch and certain other misc aspects have also been covered to amplify the existing instructions.*

4. I am confident that these guidelines will assist all offrs both as ratee and reporting offrs to ensure correct, timely and objective rendition of confidential reports.”

15. In para 2 of the aforesaid guidelines, reference has been made to Army Order 45/2001/MS. With regard to Reporting Officer, it has been observed that the period for which the Reporting or Initiating Officer endorses his opinion is the period which the ratee has actually served under the IO. Para 9 (e), (f), (g), (h) and (i) of the said Guidelines relevant for adjudication of the present controversy are reproduced as under:

“(e) **Period Covered by Report.** This is the period which the ratee has actually served under the IO.(Para 17 of AO). Complete details of physical service of ratee under IO, RO and SRO are required to be provided as part of docus to be att with CR.

(f) **Reporting Offrs.** The details should be as per the **Channel of Reporting** applicable. The entitlement of Reporting Offr (Present/Previous) can be ascertained as per Appx F & H of AO. As a guiding principle the period served under RO/SRO should be concurrent with the period actually served under IO.

(g) **Reason for Initiation.** Mention the type of CR (eg. Annual CR/ Interim CR/ Early CR/ Delayed CR) and the reason for initiation of current CR (eg. ACR on due date/Posting out of Ratee/IO or Special CR as the case may be).

(h) **Appts Held.** Mention all appts held by ratee for the period of report. Appt should be same as reflected in IAFF 3008.

(i) **Correctness of details.** The ratee will authenticate the details given in Part I of the CR form. The ratee will be **personally responsible for the correct completion of details** in the CR form. **Certificate of correctness of details rendered by the ratee is irrevocable.”**

16. The aforesaid guidelines are in tune with Army Order 45/2001/MS. It seems to have been issued to fill up the vacuum to supplement the Army Order 45/2001/MS and Army Act, Rules and Regulations and has binding effect. Vide AIR 2008 SC 3, **Union of India versus Central Electrical & Mechanical Engineering Services.**

Pen-Picture

17. Pen-Picture has been provided under Para 36 of the Guidelines. It says that the quality of a pen-picture **provides valuable input for selection** of officers for

important and sensitive appointments, analysis of an assessment for objectivity during Internal Assessment and analysis of complaints. Different qualities which are required to be appreciated while writing pen-picture by IO, RO and SRO, is borne out from Para 36 of the Guidelines. For convenience para 36 of the Guidelines (supra) is reproduced as under:

“36. Pen Picture

*(a) **The purpose of the pen-picture is to give soul to the skeleton of figurative assessment.** The manner in which this is done is left to the indl style of the reporting offr. The same may be formatted under following heads:-*

(1) Personality and Leadership.

(11) Employment and performance.

(111) Any other Special Attributes and Achievements.

*(b) The quality of a pen-picture **provides valuable input for selection** of offr for important and sensitive appointments, analysis of an assessment for objectivity during Internal Assessment and analysis of complaints.*

*(c) Internal assessment in the MS Branch indicates that most reporting offr **concentrate on the figurative assessment and neglect the pen-picture**, which are cryptic and non-committal in nature.*

*(d) **Use of superlative adjectives should be avoided.** It is clarified that **no standard list of words or phrases** are expected in support of different grades of figurative awards.*

(e) Pen picture must highlight specific achievements by the ratee during the reporting period. This could be his contribution during ops, trg, ex, op discussion, adm, improvement

in stn, quality of instr, staff work etc as per the appt tenanted by the offr.

(f) Pen picture should **provide additional information over and above** what is implicit in **the figurative assessment**. A suggested list of qualities which may be commented upon in the pen picture is as under:-

(1) **Acceptance of Suggestions and Criticism.**

Attitude of the ratee towards suggestion and reaction to objective criticism/ corrective measures,

(11) **Conceptual Skill.** Demonstrated ability to conceive and comprehend plans/concepts. It may also include value additions carried out in discharge of duties.

(111) **Esprit-de-Corps.** Altruist behavior exhibited by the ratee.

(1V) **Emotional.** Capability to resist undesired agitation of the mind.

(V) **Employability.** This may include potential of the ratee for employment in various Important / specific appointments based on his ability, flair and talent. (eg. Media / I T / Foreign language / Financial Management / Project Management)

(V1) **Foresight and Planning.** Demonstrated ability to analyse / foresee a problem and formulate a plan for its solution.

(V11) **Man Management.** Efficient handling of troops/subordinates and specific activities aimed at maintenance of their morale and welfare.

(V111) **Self improvement.** Endeavour of the ratee to improve self in terms of acquiring knowledge and adjusting socially.

(1X) **Tact.** Skilful handling of men and sits which may include mention of specific instances.”

18. While writing pen-picture, recommendations are also to be made for promotional avenues keeping in view the merit of the ratee, as provided under Para 38 of the Guidelines, which is reproduced below:

“38. Recommendations for Promotion.

(a) Recommendations for promotion are required to be given in four shades, i.e., **Should Promote, May promote, Not yet Recommended and Not Recommended.**

(b) These shades are meant to provide requisite dispersal in the otherwise congested figurative grades. Amongst these, **only ‘Not Recommended’ is a definite negative recommendation** while the other three shades are meant to be positive, although on a reducing scale.

(c) Reporting offrs are required to base their Recommendations for Promotion based on the awards in QsAp.

(d) Reporting offrs must ensure that there is no mismatch between QsAP and Recommendations for promotion. **A quantified relationship between QsAP and Recommendation for Promotion has been specified.** However, in its absence a broad co-relationship can still be drawn.”

Keeping in view the Guidelines referred to hereinabove, there appears to be no room for doubt that pen-picture is the foundation to award Box Grading in a quantified system for figurative awards.

Box Grading

19. Army has introduced the quantified system for figurative awards since they contribute to overall merit of an officer. The purpose is that only deserving officers, who are competent, be promoted to the senior ranks of the Indian Army to meet out the requirement and challenges at Border during war as well as peace. Para 35 of the Guidelines (supra) deals with Figurative Awards and Box Grading. For convenience, the same is reproduced as under:

*“35. **Figurative Awards.** With the introduction of quantified system, the figurative awards have assumed greater significance as they contribute to the overall merit of an offr. It is the moral responsibility of all reporting offr to render an objective assessment to ensure that only deserving and professionally competent offr are promoted to senior ranks to tenant crucial command and staff appointments.*

(a) Figurative assessment in Box Grading, Personal Qualities (PQs), Demonstrated Performance Variables (DPVs) and Qualities to Assess Potential (QsAP) should be awarded.

Box Grading.

(i) Box grading represents overall assessment of performance as well as potential for promotion.

*(ii) Reporting offr must clearly differentiate between truly outstanding offr and others. Grading all offr outstanding would defeat the very purpose of appraisal system. Box grading reflects the **quality of interplay amongst indl characteristics being assessed.** It also reflects the **performance and potential which are not being separately assessed but hold value for the org.***

(iii) Box grading is **not meant to be a mathematical** average of the awards in indl qualities. However, **a total mismatch between awards in box-grade and indl qualities is also not in order.** For instance, award of predominantly '9' in PQs/DPVs/QsAP with an award '8' in box, may not be in order.

(iv) Award of '9' in box grading should be explicitly justified in the pen-picture, indicating specific achievements by the ratee.

(b) **QsAP.** The assessment of performance is **de-linked from potential** based on the rationale that it is **not necessary** that an offr who performs well in the present rank has the **capability to do well in higher ranks also.** While assessing QsAP, however, the following aspects should be kept in mind.

(i) **Low awards in QsAP affect the promotion prospects significantly** more as compared to similar awards in PQs/DPVs.

(ii) Reporting offr must be more deliberate while awarding QsAP and endorse the actual promotion aspects of the ratee.

(iii) **In order to guard against IOs harming ratee's "on the sly", discernable variations** between PQs/DPVs (open portion) on the one hand and QsAP (closed portion) on the other come under scrutiny at the MS Branch. However, elaboration of any such variations by the reporting offrs aid in acceptance of their assessment. Pen picture can be suitably endorsed to justify the assessment."

20. A plain reading of the aforesaid Guidelines shows that Box Grading is depending upon overall assessment and performance as well as potential for promotion and is broadly based on pen-picture. However, a total mismatch between awards in Box Grade and individual's qualities, like opinion expressed in Pen-Picture (Emphasis supplied) may not be in order.

21. There is one more thing which requires to be considered. In case Pen-Picture shows the outstanding performance, possessing different qualities required for an armed forces personnel and recommended for promotion to higher/superior post, then ordinarily Box Grading should be '9' i.e. outstanding.

22. Part IV of the Army Order 45/2001/MS deals with potential for promotion. The same is reproduced as under:

“PART-IV-POTENTIAL FOR PROMOTION

(NOT TO BE SHOWN TO THE OFFICER REPORTED UPON)

Qualities to Assess Potential (QAP). Mark each quality out of 9 as follows :-

Outstanding 9, Above Average 8 or 7, High Average 6 or 5, Average, Low Average 3 or 2, Below Average 1. (DO NOT USE FRACTIONS IN YOUR MARKING).

	IO	RO	SRO
(a) Professional Competence to Handle Higher Appointments			
(b) Vision and Conceptual Ability (Creativity, Clarity of Thought, Analysis and Decisive Approach to Arrive at Definite Course of Action. Understanding the Broader Picture and Grasp of Macro Issues).			
(c) Exhibition of Foresight, Depth of Understanding and Breadth of Perspective Beyond his Limit of Responsibilities.			
(d) Judicious Delegation of Responsibilities, Balanced Guidance and Supervision.			
(e) Tolerance for Ambiguity. (Ability to take Decision in the Absence of Clear Cut Mandate and in an Environment of Uncertainty).”			

A plain reading of the above quoted format indicates that every perspective of Part-IV Potential for Promotion is based on outstanding entries.

23. In view of above, the pen picture inhibits in itself the different qualities provided under Part-IV (supra) and recommends for promotion, then figurative assessment under Box Grading ordinarily be '9'. With regard to Box Grading, the **Full Bench** in the case of **Ranjit Singh** (supra) has observed as under :

*“18. Learned counsel for UOI then relied upon the judgment of **Hon’ble Supreme Court AVM SL Chabra (VSM) (Retd) vs. UOI reported in (1993) Supp 4 SCC 441** wherein Hon’ble Supreme Court held that, when argument was advanced that when adverse remarks in the ACR for the year 1986 have been expunged then the consequential moderating is required to be done in grading for the year 1987. Hon’ble Supreme Court held that neither the High Court nor the Supreme Court can moderate the appraisal grading of the officer for a particular year. The Hon’ble Supreme Court declared that, while exercising the power of judicial review, the Court shall not venture to assess and appraise the merit or grading of an officer. The Hon’ble Supreme Court, then maintained the grading of the appellant of that case and declared that appellant, in view of the grading, could not have been considered for extension. Learned counsel for UOI also elide upon the judgment of **Hon’ble Supreme Court delivered in the case of Sunil Shukla vs. UOI (2008) SCC 2 649**. One judgment of **Delhi High Court delivered in the WPC No.6575/2002 Lt Col (Time Scale) D.S. Pandey vs. UOI and others decided on 31.05.2005**. Another judgment of the **Delhi High Court delivered in writ petition (Civil) No.7074 of 2008 dated 17.07.2009 in the case of Major General V. S. Grewal vs. UOI & others**. Then relied upon the Bench judgment of the Principal Bench of the Tribunal delivered in **OA 217/2009 Brig. Rakesh Sharma vs. UOI dated 08.04.2010** and few other judgments. Reference of them may not be necessary because that will be multiplying the judgments on the same issue and the issue for consideration in the judgments was with respect to the award of the box mark for assessment of an officer.*

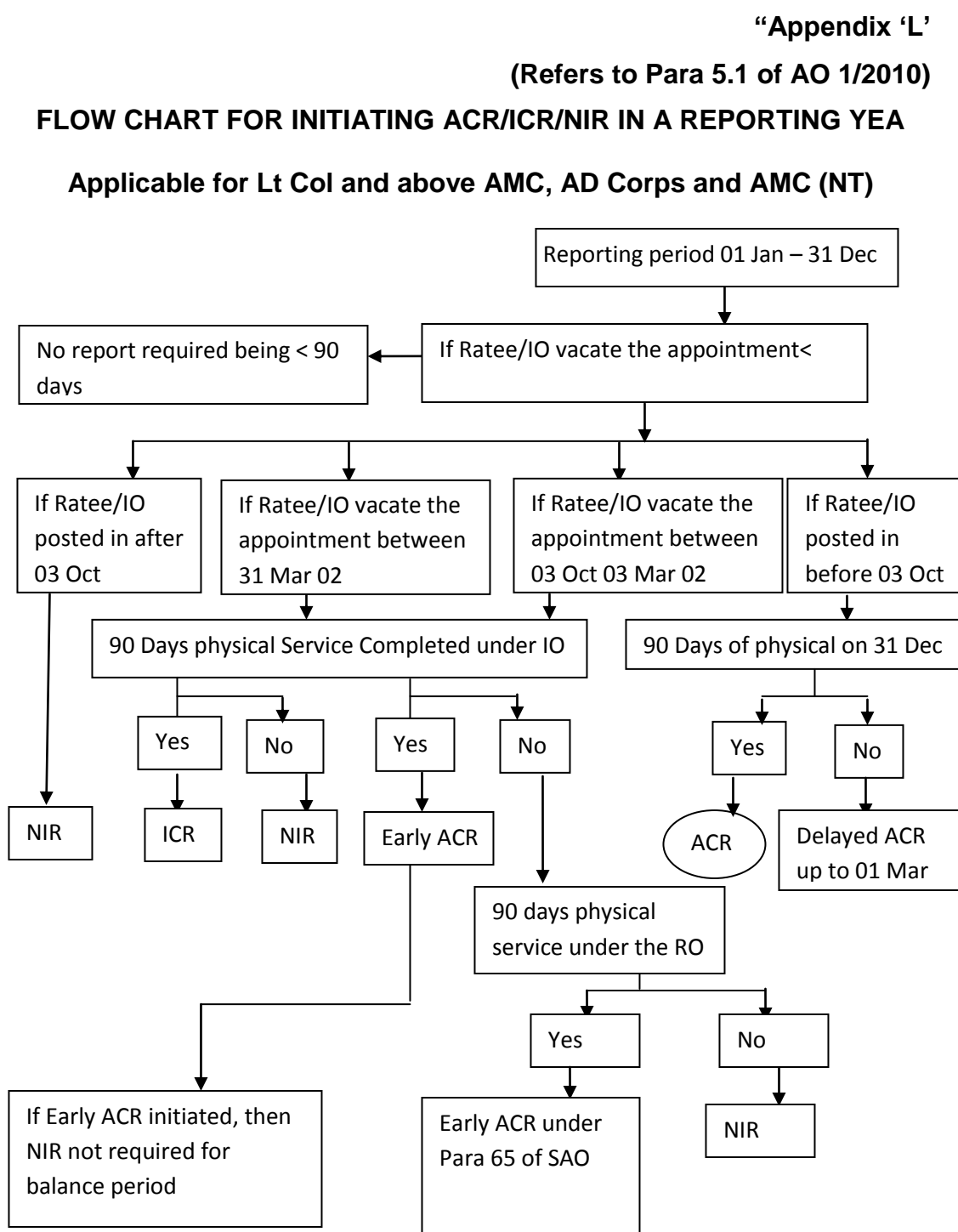
19. *Learned counsel for UOI vehemently submitted that admittedly as well as, as per the instructions of 1989, the "Box Grading" is not a numerical calculation of the marks given in various columns of attributes mentioned in (Part-II) of the Basic Assessment of ACR. The average of the marks given in the Part-II in Basic Assessment Form and marks given in "Box Grading" are 20 independent assessment of the ratee officers. If the arguments advanced by the learned counsel for the petitioner is accepted, then it will result in holding that the "Box Grading" which was not a result of numerical calculation of the marks given in (Part-II) of the ACR Form for basic assessment will become numerically affected because of deletion of some of the lower marks in the columns of Form of Basic Assessment (Part-II) and in that situation, it will be self contradictory. Learned counsel for UOI fairly submitted that there may be possibility that the adverse entries in the ACR may be set aside on the ground of bias and malafides of the reporting officer, which may have direct connection with objectivity of the rating officer, but this situation depends on the facts of each individual case. Even a pen picture which is the soul of the skeleton of assessment as per Clause 113 of the instructions 1989 also may be affected in different fact situation, but there cannot be a straightjacket formula to declare that in which act situation pen-picture can change.*

24. Para 35 of the Guide-lines (supra) deals with Quantified System and Figurative Awards. Under clause (b) (iii) while giving importance to award of "9" in Box Grading, it provides that award of predominantly '9s' in PQs/DPVs/QsAP with an award of '8' in box, may not be in order. Award of predominantly '9' in Box Grading must be higher in number than the award of '8'. Clause b (iv) further provides that award of '9' in box grading should be explicitly justified in the pen-picture, indicating specific achievements by the ratee. Box grading represents overall assessment of performance as well as potential for promotion. Para 35 of the Guidelines defines the award of '9' box grading as Outstanding.

25. Subject to aforesaid provisions contained in Army Order 1/2010 (supra), and interpretation given with regard to ACR entries by Hon'ble

Supreme Court in various case, we have to consider the present controversy in the light thereof.

26. Appendix-L of Army Order 1/2010/DGMS (supra) contains the hierarchy of assessment for grant of ACR entries. The same is reproduced as under:



* For leap year, 30 Mar – 02 Oct”

27 Para 3.8.1 of Army Order 1/2010/DGMS (supra), which is relevant to decide the present controversy is reproduced as under:

“3.8 Initiation of CRs by R.O. RO My initiate a CR as due and applicable, provided a ratee cannot earn a CR from his IO under the following circumstances.

3.8.1. IO posted but not entitled. RO may initiate a CR (Annual/Early), excluding Delayed CR whenever it becomes due (all cases where IO is posted but not entitled to initiate due to imitations of various provisions of this AO). Sanction of SRO will be obtained before initiation of CRs. However, no early CR/ICR on a ratee can be initiated by the RO on posting out of the IO, except in cases as covered under Paragraph 5.7 of this AO.

3.8.2 IO not posted. R.O. may initiate a CR which is due in case where IO is not posted on due date for the initiation of CRs, with prior sanction of the SRO, provided the CR cannot be initiated by Offg IO in terms of Para 5.7 above.

3.8.3. RO may initiate CR where IO is not posted and the RO is proceeding on Retirement/Posting.”

28. A plain reading of the aforesaid provisions indicate that in case the IO is posted but is not entitled to initiate ACR, then sanction may be obtained of SRO before initiation of CR. However, no early CR/ICR can be initiated on a ratee by the RO on posting out of the IO, except in cases as covered under Para 5.7 of AO 1/2010/DGMS. It is not disputed that during the relevant period the applicant was transferred from Kolkata to Command Hospital, Lucknow. Accordingly, in view of provisions contained in Para 3.8.1 of Army Order 1/2010/DGMS, the SRO does not seem to be entitled to record the ACR entry. However, both the side interpreted the provisions of para 5.7.2 of the Army Order 1/2010/DGMS and relied upon while defending and opposing the entry made by the SRO. For convenience sake, Para 5.7, 5.7.1,

5.7.2, 5.8, 5.8.1, 5.8.2 and 5.9 of Army Order 1/2010/DGMS are reproduced as under:

“5.7 Initiation of Early CR by RO. Early CRs may be initiated by the RO as under:

5.7.1. IO vacates the appointment. If IO vacates the appointment and it is not possible for the ratee to earn an Early CR from him, Early CR may be initiated by the RO after taking sanction of the SRO, subject to the following conditions being met.

5.7.1.1 IO not in a position to initiate due to eligibility constraints.

5.7.1.2 It is not possible for the ratee to earn a delayed CR from the new IO.

5.7.2 Ratee is posted out. An Early CR may also be initiated by RO under the provisions of Paragraph 3.8 (that is, RO may initiate a CR as due and applicable, provided a ratee cannot earn a CR/ICR from his IO), or when the ratee vacates his appointment and the IO cannot initiate Early CR due to eligibility constraints.

5.8 The position of Early ACR is further clarified as under:-

5.8.1 Initiating Officer vacating his appointment on or after 03 Mar or 03 Oct will initiate early ACR in respect of officers or rank of Major and below of AMC/AD Corps and AMC/NT and Lt Col and above of AMC/AD Corps and AMC/NT respectively.

5.8.2 An Officer (Major and below of AMC/AD Corps and AMC/NT and Lt Col of AMC/AD Corps and AMC (NT) vacating his appointment on or after 03 Mar or 03 Oct respectively but before 01 Jun and 01 Jan respectively will earn an early ACR. Details of the period are at Appendix 'P'.

5.9. Once an Early ACR has been rendered on an officer, the ratee is not entitled to any CR for the remaining period of the reporting year. Even NIR of the balance period of the reporting year, after the last date covered by the Early CR, is not required to be raised.

29. Much emphasis has been laid by Ms. Appoli Shrivastava, learned counsel for the respondents on Para 5.7.2 arguing that the RO has got a right to make entries in case ratee cannot earn CR/ICR from his IO. However, argument advanced by learned counsel for the respondents

is misconceived for the reason that provisions contained in the Act or the Statute should be looked into for giving meaning to each and every word contained therein. The Hon'ble Supreme Court has held that while interpretation, a provision, Act, Rule or Regulation should be read word to word, line to line, phrase to phrase and section to section.

30. According to Maxwell, any construction which may leave without affecting any part of the language of a statute should ordinarily be rejected. Relevant portion from Maxwell on the Interpretation of Statutes (12th edition page 36) is reproduced as under :-

“A construction which would leave without effect any part of the language of a statute will normally be rejected. Thus, where an Act plainly gave an appeal from one quarter sessions to another, it was observed that such a provision, through extraordinary and perhaps an oversight, could not be eliminated.”

31. In **AIR 2005 SC 1090, Manik Lal Majumdar and others Vs. Gouranga Chandra Dey and others**, Hon'ble Supreme Court reiterated that legislative intent must be found by reading the statute as a whole.

32. In **2006 (2) SCC 670, Vemareddy Kumaraswami and another Vs. State of Andhra Pradesh**, their Lordship of Hon'ble Supreme Court affirmed the principle of construction and when the language of the statute is clear and unambiguous court can not make any addition or subtraction of words.

33. In **AIR 2007 SC 2742, M.C.D. Vs. Keemat Rai Gupta and AIR 2007 SC 2625, Mohan Vs. State of Maharashtra**, their Lordship of

Hon'ble Supreme Court ruled that court should not add or delete the words in statute. Casus Omisus should not be supplied when the language of the statute is clear and unambiguous.

34. In **AIR 2008 SC 1797, Karnataka State Financial Corporation vs. N. Narasimahaiah and others**, Hon'ble Supreme Court held that while constructing a statute it cannot be extended to a situation not contemplated thereby. Entire statute must be first read as a whole then section by section, phrase by phrase and word by word. While discharging statutory obligation with regard to take action against a person in a particular manner that should be done in the same manner. Interpretation of statute should not depend upon contingency but it should be interpreted from its own word and language used.

35. It is also fairly well settled that in case the authorities want to do something, it shall be done in the manner provided in the statute, Regulation or alike Regulations, and not otherwise. When the statute provides for a particular procedure, the authority has to follow the same and cannot be permitted to act in contravention of the same. It has been hitherto uncontroverted legal position that where a statute requires to do a certain thing in a certain way, the thing must be done in that way and not contrary to that at all. Other methods or mode of performance are impliedly and necessarily forbidden. The aforesaid settled legal proposition is based on a legal maxim "*Expressio unius est exclusion alterius*", meaning thereby that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and

in no other manner and following other course is not permissible. Vide **Taylor vs Talyor**, (1876) 1 Ch D 426: 45 LJ Ch 393; **Nazir Ahmed vs. King Emperor**, AIR 1936 PC 253: 63 Ind App 372: 37 Cr.L.J 897; **Rao Shiv Bahadur Singh vs. State of Vindhya Pradesh**, AIR 1954 SC 322: 1954 SCR 1098; **Deep Chand vs. State of Rajasthan**, AIR 1961 SC 1527: (1962) 1 SCR 662: 1962 (2) SCJ 655; **Patna Improvement Trust vs. Smt. Lakshmi Devi and ors**, AIR 1963 SC 1077: 1965 1 SCJ 119: 1963 BLJR 790; **Chettiam Veettil Ammad vs. Taluk Land Board**, AIR 1979 SC 1573, **State of Bihar vs. J.A.C. Saldanna**, AIR 1980 SC 326, **State of Mizoram vs. Bikchhawna**, (1995) 1 SCC 156, **J.N. Ganatra vs. Morvi Municipality Morvi**, AIR 1996 SC 2520, **Haresh Dayaram Thakur vs. State of Maharashtra**, AIR 2000 SC 2281, **Dhananjay Reddy vs. State of Karnataka**, AIR 2001 SC 1512; **Commissioner of Income Tax, Mumbai vs. Anjum M.H. Ghaswala and others**, 2002 (1) SCC 633; **Prabha Shankar Dubey vs. State of M.P.**, AIR 2004 SC 486 and **Ram Phal Kundu vs. Kamal Sharma**, AIR 2004 SC 1657 and **Indian Bank's Association vs. Devkala Consultancy Service**, 2004 AIR SCW 2491: AIR 2004 SC 2615: 2005 Tax LR 79.

36. Hon'ble Supreme Court in the case reported in **Jaisinghani vs. Union of India and others**, AIR 1967 SC 1427 ruled that decision should be made by the application of known principles and rules and in general such decision should be predictable and a citizen should know where he is.

37. In ***State of Uttar Pradesh vs. Singhara Singh***, AIR 1964 SC 358, the Hon'ble Supreme Court held as under:

“The rule adopted in Taylor v. Taylor, (1876) 1 Ch D 426: (1875 (1) Ch D 426): 45 LJ Ch 393 is well recognized and is founded on sound principle. Its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted.”

38. In the present case, the legislature, i.e. the Chief of Army Staff while issuing Army Order exercising statutory power under Army Rule **13 (2) (a)** provided that early CR may also be initiated by the RO under the provision of Para 3.8 of Army Order 1/2010/DGMS but not ICR, i.e. Interim Confidential Report. This emphasis goes back to indicate RO may give CR entry but not ICR. However, the words used are ‘RO may initiate CR as due and applicable’. Here again the provision points out with regard to right of the RO to initiate CR and not ICR provided a ratee cannot earn a CR from his IO. One further condition has been added that ratee should not have earned CR or ICR both. It is beyond the jurisdiction of the Tribunal to add something which does not exist as settled by Hon'ble Supreme Court in a catena of judgments. It is within the right of the Legislature, i.e. the Chief of Army Staff, to provide appropriate provisions with regard to ACR entries or ICR entries. The Tribunal while exercising powers has to interpret the provisions contained in the Army Orders without literal additions or omissions.

39. Accordingly, a combined reading of Para 3.8 read with Para 5.7.2 of Army Order 1/2010/DGMS, since in the present case, the IO has not

initiated CR, it was not open for the RO to initiate ICR in the year 2012. We are of the view that RO acted beyond jurisdiction while initiating ICR entry in the year 2012.

40. One of the arguments advanced by learned counsel for the respondents is that the applicant raised the issued belatedly. This argument also appears to be misconceived for two reasons; firstly, only after non-empanelment, the Members of the Armed Forces come to know with regard to entries in question; and secondly, the decision taken by exceeding jurisdiction, or without jurisdiction, shall be nullity in law and can be challenged in any proceeding, including collateral proceedings. Undisputedly, it is a settled legal proposition that conferment of jurisdiction is a legislative function and it can neither be conferred with the consent of the parties nor by a superior Court, and if the Court passes a decree having no jurisdiction over the matter, it would amount to nullity as the matter goes to the roots of the cause. Such an issue can be raised even at a belated stage. The finding of a Court or Tribunal becomes irrelevant and unenforceable/unexecutable once the forum is found to have no jurisdiction. Similarly, if a Court/Tribunal inherently lacks jurisdiction, acquiescence or party equally should not be permitted to perpetuate and perpetrate, defeating the legislative animation. The Court cannot derive jurisdiction apart from the Statute, in Such eventuality, the doctrine of waiver also does not apply. Vide, **United Commercial Bank Ltd. Vs. Their Workmen**, AIR 1951 SC 230: 1951 SCJ 334: 1951 SCR 380; **Nai Natraj Studios Pvt Ltd vs. Navrang Studios**, AIR 1981 SC 537; (1981) 2 SCR 466;

and **Kondiba Dagadu Kadam vs. Savitribai Sopan Gujar**, AIR 1999 SC 2213: 1999 AIR SCW 2240: (1999) 2 SCC 722.

41. In **Sushil Kumar Mehta vs. Gobind Ram Bohra**, (1990) 1 SCC 193: (1990) 1 Rent LR 428: 1989 Supp (2) SCR 149, the apex Court, after placing reliance on large number of its earlier judgments particularly in **Premier Automobiles Ltd. v. Kamlakar Shantaram Wadke**, AIR 1975 Sc 2238: (1976) 1 SCC 496: (1976) 1 SCR 427; **Kiran Singh v. Chaman Paswan**, AIR 1954 Sc 340: 1954 SCJ 514: 1955 SCR 117; and **Chandrika Misir v. Bhaiyalal**, AIR 1973 SC 2391: (1973) 2 SCC 474: 1973 SCD 793 held, that a decree without jurisdiction is a nullity. It is a *coram non iudice*; when a special statute gives a right and also provides for a forum for adjudication of rights, remedy has to be sought only under the provisions of that Act and the Common Law Court has no jurisdiction; where an Act creates an obligation and enforces the performance in specified manner, “performance cannot be forced in any other manner.”

42. Law does not permit any court/tribunal/authority/forum to usurp jurisdiction on any ground whatsoever, in case, such an authority does not have jurisdiction on the subject matter. For the reasons that it is not an objection as to the place of suing ; it is an objection going to the nullity of the order on the ground of want of jurisdiction”. Thus, for assumption of jurisdiction by a court or a tribunal, existence of jurisdictional fact is a condition precedent. But once such jurisdictional fact is found to exist, the court or tribunal has power to decide on the

adjudicatory facts or facts in issue. (Vide ; **Setrucharla Ramabhadra Raju Bahadur v. Maharaja of Jeypore**, AIR 1919 PC 150: 42 Mad 813: 46 Ind App 151; **State of Gujarat v. Rajesh Kumar Chimanlal Barot**, (1996) 5 SCC 477: AIR 1996 SC 2664: 1996 AIR SCW 3327: **Harshad Chiman Lal Modi v. D.L.F. Universal Ltd.**, AIR 2005 SC 4446: 2005 AIR SCW 5369 (2005) 7 SCC 791; **Carona Ltd. v. Parvathy Swaminathan**, AIR 2008 SC 187: 2007 AIR SCW 6546: (2007) 8 SCC 559; **Jagmittar Sain Bhagat v. Dir., Health Services, Haryana**, AIR 2013 SC 3060: 2013 Lab IC 3412: 2013 AIR SCW 4387 and **Zuari Cement Ltd. v. Regional Director E.S.I.C. Hyderabad**, AIR 2015 SC 2764: 2015 (5) Supreme 415).

43. Since order or decision taken without jurisdiction is nullity in law, it can be raised at any stage at any time since goes to the root of the matter. Accordingly, we are of the view that the applicant is well within his power to challenge CR entries made by the RO without jurisdiction.

44. Coming to the second limb of arguments with regard of ACR entry of 2011, as we have seen (supra), in 2011 the SRO has given 8 marks but while working as HTO he has awarded 9 marks though the IO and the RO had given 8.7 and 8.75. The Pen Picture of the applicant given by the IO, RO and SRO are reproduced as under:

	8.70
<p>13. Remarks of IO</p> <p style="text-align: right;">(Average of para 12 upto Second decimal point)</p> <p>He is an innovative officer, who is exceptionally passionate about professional work and displays extraordinary initiative and ingenuity. He is remarkably hardworking and appropriately accomplishes an assigned task notwithstanding the</p>	

impediments.

Sd/-
AK Sarma
Brig
Consultant
Surg. & Neurosurgery

Date : 04 Jan 2012

8.75

14. Remarks of RO

(Average of para 12 upto
Second decimal point)

A tall & stockily built officer who is hard working, sincere & totally dependable. He has successfully treated various type of cases pertaining to reconstructive surgeries, some of the being quite complex and challenging. He taken part in all Regimental activities and contributes immensely towards family welfare and two activities. Col Basu has willingly shouldered addl responsibilities such as OI/c Research Cell, OI/C disaster mgt plan and presiding offr of various BOO. He is a good mix socially and a useful team member.

Sd/-
(R.K. Singh)
Brig
Dy Commandant & SEMO
CH (EC) Kolkata

Date : 07 Jan 2012

8.00

21. Comments of SRO

(Box grading in whole
number only)

A senior officer who has been involved in both professional and administrative duties of the unit. He carries out the tasks allotted to him.

Sd/-
R Chaudhary
Maj Gen
Commandant

Date : 22.01.2012

9.00

31. Reported by HTO

(Box grading in whole
number only)

A professionally sound and competent plastic surgeon who works well for his patients and is involved in teaching of his post graduates

Sd/-
R Chaudhary
Maj Gen
Commandant

Date : 22.01.2012

45. From the plain reading of aforesaid Pen Picture of the applicant, at the face of the record, it is borne out that the applicant has outstanding career and down grading of marks by marks by SRO does not contain any reason, though reduction from 8.75 to 8 is substantial in nature and in the pyramidal structure of the Indian Army, it affects service career of a person. Considering the overall profile of the applicant, two different discipline given in the ACR while awarding two entries; one down-grading the marks and on the other hand, increasing the marks, we fail to understand how such difference may take place in the marks granted by the SRO/HTO though they are the same person. It is well settled law that grading of an incumbent must be in consonance with the Pen Picture. In the Pen Picture recorded by the SRO/HTO no reason has been assigned or nothing has been mentioned why the applicant's marks should be down-graded or increased by same person holding two different offices.

46. It is well settled law that order or action without mentioning reason required under the Act with regard to Pen Picture shall be arbitrary exercise of power. It is further settled law that down-grading of entries may be done in certain cases, but it must reflect from Pen Picture the reason why and in what manner and for what reasons the SRO was compelled to down-grade the entries. Similarly, giving higher grading marks with difference of 1 mark in the Army pyramidal structure without a whisper in the Pen Picture also appears to be non application of mind under Army Order 1/2010/DGMS (supra), as discussed herein above. Such action on the part of the authorities of the Army affects the

applicant's career, which is protected by Articles 14, 16 and 21 of the Constitution of India. While holding higher post, a person gets higher salary, perks and status which is protected by Article 21 of the Constitution of India.

47. It shall not be out of place to mention that discretion given to the authorities of the Indian Army at different stages while awarding ACR entries cannot be exercised arbitrarily with cryptic and unreasoned decision since it relates to career of the members of the Armed Forces. In the present case, discretion while awarding entries must have been exercised judiciously with open mind keeping in view the overall profile of the applicant, as held by Hon'ble Supreme Court, discussed hereinabove. If we look into the matter, we do not find any material in the Pen Picture which may compel the SRO (Maj Gen Rajan Chaudhry) to substantially down-grade applicant's ACR profile and later to enhance the same working functioning as HTO. We have no manner of doubt in our mind that the entries awarded down-grading and enhancing is not judicious in nature and amounts to arbitrary exercise of power.

48. Coming to the third limb of arguments with regard to rejection of the statutory complaint submitted by the applicant vide order dated 28.11.2016 (Annexure A-3 to the OA), it may be mentioned that a perusal of order dated 28.11.2016 (supra) indicates that the appellent authority, i.e. Government of India while considering the statutory

complaint of the applicant has reject the same with three line observation, to quote”

“... The assessment by all reporting officers in the entire reckonable profile, including the impugned CRs for the year 2011 and 2012, are fair, objective, well corroborated, consistent, performance based and blend with the overall profile of the officer. There being no evidence of any bias or subjectivity, none of the CRs merit any interference. The officer could not be empanelled for promotion to the rank of Brig (& equi) on account of his overall profile and comparative merit, as assessed Promotion Board (Medical) No. 2, AMC.”

49. A lot of adjectives have been used by the Government while rejecting the statutory complaint of the applicant. There is not even a whisper of the grounds taken by the applicant in his statutory complaint and how those grounds are not substantiated. Thus, the impugned order dated 28.11.2016 also suffers from vice of arbitrariness being unreasoned and cryptic and is hit by Article 14 of the Constitution of India.

50. Now it is well settled proposition of law that every order, whether passed by an administrative authority, executive, quasi judicial or judicial, must be reasoned one vide ***K.R. Deb Vs. The Collector of Central Excise, Shillong***, AIR 1971 SC 1447; ***State of Assam & Anr. Vs. J.N. Roy Biswas***, AIR 1975 SC 2277; ***State of Punjab Vs. Kashmir Singh***, 1997 SCC (L&C) 88; ***Union of India & Ors. Vs. P. Thayagarajan***, AIR 1999 SC 449; and ***Union of India Vs. K.D. Pandey & Anr.***, (2002) 10 SCC 471, ***Assistant Commissioner, Commercial, Tax Department, Works, Contract and Leasing, Quota Vs. Shukla***

and brothers, (JT 2010 (4) SC 35, **CCT Vs. Shukla and Brothers**
2010 (4) SCC 785

51. In the case of **Shukla and Brothers** (supra), their Lordships held that the reason is the very life of law. When the reason of a law once ceases, the law itself generally ceases. Such is the significance of reasoning in any rule of law. Giving reasons furthers the cause of justice as well as avoids uncertainty, to quote :-

“Reasons are the soul of orders. Non-recording of reasons could lead to dual infirmities; firstly, it may cause prejudice to the affected party and secondly, more particularly, hamper the proper administration of justice. These principle are not only applicable to administrative or executive actions, but they apply with equal force and, in fact, with a greater degree of precision to judicial pronouncements. The concept of reasoned judgment has become an indispensable part of the basic rule of law and, in fact, is a mandatory requirement of the procedural law”.

52. In another case, reported in **JT (12010) (4) SC 35: Assistant Commissioner, Commercial, Tax Department, Works, Contract and Leasing, Quota. Vs. Shukla and Brothers** their lordships of Hon’ble Supreme Court held that it shall be obligatory on the part of the judicial or quasi judicial authority to pass a reasoned order while exercising statutory jurisdiction. Relevant portion from the judgment of Assistant Commissioner (Supra) is reproduced as under :-

*“The principle of natural justice has twin ingredients; firstly, the person who is likely to be adversely affected by the action of the authorities should be given notice to show cause thereof and granted an opportunity of hearing and secondly, the orders so passed by the authorities should give reason for arriving at any conclusion showing proper application of mind. Violation of either of them could in the given facts and circumstances of the case, vitiate the order itself. Such rule being applicable to the administrative authorities certainly requires that the judgment of the Court should meet with this requirement with high degree of satisfaction. **The order of an administrative authority may not***

provide reasons like a judgment but the order must be supported by the reasons of rationality. *The distinction between passing of an order by an administrative or quasi-judicial authority has practically extinguished and both are required to pass reasoned orders.*

(Emphasis Supplied)

53. In view of our observations (supra), we are of the considered opinion that the impugned order dated 28.11.2016 passed by the Government of India (Annexure A-3 to the O.A.) is unreasoned one and is not sustainable in law being hit by Article 14 of the Constitution of India.

54. Learned counsel for the respondents gave much emphasis to Appendix-J to the Army Order 1/2010/DGMS (supra). Appendix is meant to supplement the rules or the main provision but not to supplant them. Para 3.8.2 of the Army Order 1/2010/DGMS may have overriding effect and may not be interpreted to make the main rule redundant.

55. At this juncture, we would like to add that the Hon'ble Supreme Court and the Tribunals are repeatedly instructing the authorities to pass reasoned orders. In our judgments and orders passed in the previous years, we have consistently instructed the Army authorities including the appellate authorities to pass reasoned order while deciding statutory complaints or appeals. It appears that we have failed to achieve the objective to streamline function of the respondents in terms of democratic norms necessary for a civilized nation. In case the respondents fail to discharge their duties in true perspective of constitutional mandate, there shall be no option except to deal the

decisions of the respondents formally with punitive action and pass orders upholding majesty of law.

56. In view of discussions made hereinabove, the Original Application deserves to be allowed. Though the order is without jurisdiction while according Interim Confidential Report and action being arbitrary in nature, we feel it to be a fit case for award of costs, but we refrain to do so. It is for the respondents to follow the procedure prescribed by law since denial of promotional avenue by arbitrary action affects the career of the members of the Armed Forces and consequently demoralize them to continue to discharge arduous duties.

ORDER

The Original Application is allowed accordingly with all consequential benefits. Impugned order dated 28.11.2016 (Annexure A-3 to the O.A.) is hereby quashed. The ICR-2012 and ACR-2011 of the applicant are expunged. Let fresh Selection Board be convened for considering applicant's case in the changed circumstances. The entire exercise shall be completed by the respondents within three months.

O.A. allowed accordingly.

(Air Marshal BBP Sinha)
Member (A)

(Justice D.P. Singh)
Member (J)

Dated : 05.12. 2017

SB/anb