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ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 619 of 2021

Friday, this the 07th day of January, 2022

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Brigadier Javed Iqbal (IC-46244M), S/o Shri Iqbal Ahmed, Deputy Judge Advocate General, Central Command, Headquarters Central Command, Lucknow (U.P.).

.... Applicant

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

Versus

1. Union of India, through the Secretary, Ministry of Defence, Government of India, New Delhi.
2. Chief of Army Staff, Army Headquarters, DHQ, PO-New Delhi.
3. The Military Secretary, Military Secretaries Branch, Army Headquarters, DHQ, PO-New Delhi.
4. The Director General Armed Forces Medical Services, Directorate General of DGAFMS, Army Headquarters, DHQ, PO-New Delhi.
5. The Director General, Medical Services (Army), Adjutant General's Branch, Army Headquarters, DHQ, PO-New Delhi.

... Respondents

Ld. Counsel for the: **Dr. Shailendra Sharma Atal**, Advocate
Respondents. Central Govt Standing Counsel
assisted by Col Sachidananda Prabhu, Col MS Legal,
Col Puja Dudeja, Col Med Professional Services,
DGMS (Army) and Lt Col Sandeep Singh, GSO-1
DGMS (Army).

ORDER

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

(a) The Hon'ble Tribunal may be pleased to direct the respondents to permit the applicant to assume the rank of Major General pursuant to the letter dated 05.05.2021 issued by respondent No. 1 declassifying the result of number 1 Selection Board in respect of empanelment of the applicant to the rank of Major General and post him as Additional Judge Advocate General (Litigation) in view of the upgradation of his medical category to SHAPE-I by the re-categorization medical board held on 21.09.2021 with all consequential benefits on such promotion such as seniority, continuity, arrears of pay and allowances etc.

OR ALTERNATIVELY

(b) The Hon'ble Tribunal may be pleased to quash para 4 (a) of Appx 'A' annexed to the policy dated 16.02.2018 issued by respondent No. 5 (Annexure-A/6) so far it makes COPE coding C1 inapplicable in cases of hypertension and direct the respondents to treat the COPE Coding grade of the applicant as C1. They may be further directed to promote the applicant to the rank of Major General with all consequential benefits.

(c) Any other order or direction which the Hon'ble Tribunal may deem just and proper in the nature and circumstances of the case.

2. Facts giving rise to application in brief are that IC-46244M Javed Iqbal is a 1989 batch JAG (Judge Advocate General) officer presently working in the rank of Brigadier and posted as Deputy Judge Advocate General, Central Command, Headquarters Central Command, Lucknow (UP). While posted at Headquarters Eastern Command, Kolkata, his annual medical examination was held on 14.08.2018 in which he was found suffering with 'Primary Hypertension' and his medical category was

downgraded to P2 (P) with COPE Coding C2O1P1E1 which is a non promotable category in view of Army Order 9/2011 read with Military Secretary's Branch letter No 04548/MS Policy dated 14.12.2012 and Adjutant General's Branch, Army HQ letter No 76086/Policy/DGMS-5A dated 16.02.2018. He was advised to take two drugs daily. While posted at HQ Central Command, Lucknow he underwent Re-categorization Medical Board on 12.02.2021 where his blood pressure was found to be 140/90 mm/hg which was within the permissible parameters. However, his medical category remained unchanged which meant that he was unfit for posting in High Altitude Areas between 9000ft to 14000ft, despite being fit in all other respects. He was advised to take one drug Telmisartan 40 mg twice daily.

3. There are two posts of Major General i.e. Major General and Additional Major General (Litigation) in Judge Advocate General's Branch in Indian Army and both posts are tenable in New Delhi. Considering that one post of Major General (i.e. Additional Major General, Litigation) had fallen vacant on 01.12.2020 due to superannuation of Major General (Retd) Umesh Gupta on 30.11.2020, No 1 Selection Board, which comprised Chief of the Army Staff and seven Army Commanders, was held on 26.10.2020 to select the name of one eligible officer from JAG Branch to be promoted to the said post. Applicant being the sole candidate of 1989 batch, his name was considered by the No 1 Selection Board, and being found fit in all respects, he was recommended for promotion to the post. The recommendation made by No 1 Selection Board was also approved by the Government of India. The result of No 1

Selection Board was declassified vide Military Secretary's Branch/MS(X), Integrated Headquarters of MoD (Army), New Delhi-110011, letter No A/47053/15B/JAG/MS(X) dated 05.05.2021, i.e. Annexure A/7. Para 2 of the letter relevant for disposal of this application reads as under:-

“2. The Competent Authority has approved the empanelment of IC-46244 Brig Javed Iqbal as a Fresh case of 1989 Batch for promotion to the acting rank of Maj Gen in JAG (promotion will be subject to meeting medical criteria as per MS Branch policy letters No 04548/MS Policy dated 14 Dec 12 and dated 07 Sep 16, availability of vacancy and continued satisfactory performance).”

4. When despite result of No 1 Selection Board being declassified applicant was not called to assume the charge of the higher rank (Additional Major General, Litigation) he made verbal queries about the same and then he was informed that he being placed in Non Promotable Category due to 'Primary Hypertension' was not eligible for promotion, in view of Military Secretary's policy letter dated 14.12.2012. Applicant then filed an appeal dated 07.05.2021, against the findings of Re-categorization Medical Board dated 12.02.2021, stating therein that although he was a patient of Essential Hypertension (Grade-I) with no evidence of dyslipidemia, diabetes mellitus, obesity or larger involvement and with administration of two drugs, requiring follow up, he could be considered fit for all military duties, and therefore, he should be granted COPE Coding C1O1P1E1. He also submitted a representation dated 17.05.2021 seeking waiver of condition that debarred an officer with COPE Coding C2O1P1E1 for promotion in higher rank. He pleaded that both posts of Major General in Judge Advocate General's Branch are

located in New Delhi, an area much below 9000ft altitude, and in case of promotion the officer will be required to serve in New Delhi and not in an area with altitude between 9000ft to 14000ft. However, his appeal was dismissed by the competent authority vide order dated 17.06.2021.

5. After appeal being dismissed the applicant submitted a representation dated 31.08.2021 to the Chief of the Army staff requesting him to convene a Re-medical Board in his matter, and to upgrade his medical category, if found fit. This representation was allowed and Re-medical Board held on 20.09.2021 upgraded the applicant's medical category to SHAPE-I which is a promotable category. However, when despite being upgraded applicant was not promoted to the next higher rank and on the contrary respondents issued a notification for a fresh Selection Board to be held in October, 2021 in respect of promotion to the post of Major General in JAG Branch, he took steps to file this application, seeking an order not to hold No 1 Selection Board afresh and to direct the respondents to allow the applicant to assume the charge of Additional Major General in the Judge Advocate General's Branch.

6. During course of hearing on interim relief (on holding of No 1 Selection Board afresh), an undertaking was given from the side of the respondents that the notification for fresh No 1 Selection Board was not in respect of the post for which applicant was empanelled, but for the fresh vacancy of Major General which was likely to arise in 2022. Therefore, applicant having got relief in this regard, is now pressing the application for the remaining reliefs only.

7. Heard Shri KC Ghildiyal, learned counsel for the applicant and Dr. Shailendra Sharma Atal, learned counsel for the respondents assisted by Col Sachidananda Prabhu (Col MS Legal), Col Puja Dudeja [Col Med Professional Services, DGMS (Army)] and Lt Col Sandeep Singh [GSO-1, DGMS (Army)].
8. Learned counsel for the applicant submitted that there is a set procedure for promotion to rank of General Officer in the Indian Army. As per procedure, dossier of the officer(s) to be considered for promotion is prepared, which contains all details such as ACR record, courses attended, discipline record, awards, medical status etc. The entire career profile of the officer capturing above details is prepared by the Military Secretary (MS) who is also the Member-Secretary of the No 1 Selection Board, and this is available to every member of the Selection Board for perusal. Members of the Board, after considering all aspects of the officer(s), including his medical status, and finding him fit in all respects, recommend her/his name for promotion to the higher rank. The said recommendation is ultimately approved by the Govt of India (in case of No 1 Selection Board) when it attains finality. However, if an officer does not meet any of the promotion criteria, the Board may not recommend his name and this non recommendation is also approved by the Government of India, whereupon it attains finality. Only when recommendation made by the Board is approved by the Govt of India can an officer be promoted to the next higher rank.
9. Learned counsel for the applicant submitted that in the applicant's case, when No 1 Selection Board considered him for promotion to the

rank of Major General in JAG Branch, the Board was aware that because of 'Primary Hypertension' he was placed in medical category P2(P) with COPE Coding C2O1P1E1, which is a non promotable category. He would submit that notwithstanding applicant's non promotable category, if No 1 Selection Board considered his name and recommended him for promotion and the said recommendation was approved by the Competent Authority in Govt of India there could be no reason to withhold his promotion thereafter. He would further submit that if the applicant's disability was to be a debarment for promotion in any manner, then No 1 Selection Board would never have recommended him for promotion to the rank of Major General nor would the Competent Authority approve the same. He would further submit that when No 1 Selection Board did not attach any conditionalities or riders regarding his medical fitness for promotion to the rank of Major General in JAG Branch, the authority issuing the declassified promotion letter (dated 05.05.2021) cannot on its own introduce any such rider which allows applicant's promotion to the acting rank of Major General in JAG Branch, only subject to meeting medical criteria as mentioned in para 2 of Annexure A/7 (i.e. the promotion letter).

10. Learned counsel for the applicant would further submit that even after being empanelled for promotion to the rank of Major General in JAG Branch respondents did not allow applicant to assume the charge of the post of Additional Major General (Litigation) citing his non promotable category, he moved an application addressed to the Chief of the Army Staff, seeking convening of a Re-medical Board in his case, as he was

confident that he had controlled his disability with life style changes such as diet control, exercise etc. The applicant's request was conceded by the Chief of the Army Staff and Re-medical Board, headed by a Senior Cardiologist, was held at Army Hospital (Research & Referral), New Delhi on 21.09.2021 which after thorough investigations had found applicant's blood pressure to be within the permissible parameters, and had therefore upgraded his medical category to SHAPE-I which is a promotable category. However, the higher formation i.e. Directorate General Medical Services (Army) of the Integrated Headquarters of Ministry of Defence (Army) refused to clear the report, despite report being approved by the Competent Authority, citing petty reasons which are not acceptable, being insignificant. He would submit that after applicant's medical category being upgraded by Re-medical Board he cannot be denied promotion on reasons given in Military Secretary's Branch letter No 04548/MS Policy dated 14.12.2012, more so, when after promotion applicant has to work in New Delhi, an area much below 9000ft, altitude and not in an area above 9000ft, as the post of Additional Major General (Litigation) to which he has to be appointed is located in New Delhi. The above mentioned letter of the Military Secretary's Branch reads as below:-

"Tele : 23018826/35671

*Military Secretary's Branch
Integrated HQ of MoD (Army)
New Delhi-110011
14 Dec'12*

04548 /MS Policy

Headquarters

*Southern Command (MS)
Eastern Command (MS)
Western Command (MS)
Central Command (MS)
Northern Command (MS)
ARTRAC (MS)*

South Western Command (MS)

IDS (MS & SD)

ANC (MS & SD)

SDC (MS & SD)

**SYSTEM OF MEDICAL CLASSIFICATION OF ARMY OFFICERS AND
CONSEQUENT ELIGIBILITY FOR PROMOTION TO SELECT
RANKS.**

1. Refer the following:-

- (a) MS Branch letter No 04502/MS Policy dated 17 Nov 2005.
- (b) MS Branch letter No 04502/MS Policy dated 24 Aug 2009.
- (c) AO 9/2011/DGMS.

System of Medical Classification

2. The aim of medical classification of serving officers is to enable better cadre/ career management, especially of officers placed in Low Medical Classification, as regards their treatment, employment, promotion and financial emoluments.

3. The system of medical classification of officers, as earlier stated in AO 1/2004/DGMS, has now been revised vide AO 9/2011/DGMS. Major aspects of the extant medical classification system are as covered in subsequent paras.

4. **Medical Classification.**

(a) Medical classification of serving officers is indicated by the code letters SHAPE, which represent the factors of Psychological and cognitive function abnormalities (S), Hearing (H), Appendages (A), Physical Capacity (P) and Eye Sight (E)

(b) **Functional Capacity:** Functional Capacity for military duties under each of the above factors is denoted by numerals 1 to 5 indicating declining functional efficiency. Functional capacities indicated by numeral denote the following:-

- (i) 1A. Fit for all duties anywhere.
- (ii) 1B. Fit for all duties anywhere under medical observation and has no employability restrictions.
- (iii) 2. Fit for all duties but some may have limitations regarding duties which involve severe physical and mental stress and require perfect acuity of vision and hearing.
- (iv) 3. Except 'S' Factor, fit for routine or sedentary duties but have limitations of employability both job wise and terrain wise as spelt out in Employment Management Index.
- (v) 4. Temporarily unfit for military duties on account of Hospitalization / sick leave.
- (vi) 5. Permanently unfit for military duties.

(c) **Multiple Medical Disabilities:** The number of disabilities afflicting the officer will be denoted by a suffix alphabet against the overall medical classification and indicated by code letters as under:-

- (i) X. For a single disease
- (ii) Y. For two separate disease entities.
- (iii) Z. For three or more disease entities.

5. **Employment Restrictions.** Over and above medical classification of an officer terms of SHAPE factors, related functional capacity in terms of numerals 1 to 5 and indication of multiple medical disabilities in terms of alphabets x to z, Employment Restrictions indicate fitness of the officer for military employment, Erstwhile concept of Employment Restrictions in terms of Employment Management Indices of F1A/F1B/F2/F3/F4, has been replaced in revised AO 9/2011/DGMS with the COPE Coding System as under:-

- (a) C - Climate and terrain restrictions.
- (d) O - Degree of medical observation required.
- (a) P - Physical capacity limitation.
- (d) E - Exclusive limitations as per Disease.

6. Each of the COPE factors are assigned a numeral between 0 and 2 and overall COPE coding will be indicated by the highest numeral awarded in any of the individual COPE factors. A comparative chart of erstwhile Employment Management Indices and present COPE Coding System is placed at Appendix A to this letter. The comparative chart has been prepared only to indicate equivalence during the transitory period. Once all medical board proceedings start reflecting employment restrictions only under the COPE Coding system, this equivalence will be considered redundant.

7. In brief equation of the two types of Employment Restrictions, ie erstwhile Employment management Indices and present Cope Coding System is as under:-

Ser No.	Employment Management	Equivalent overall COPE Coding
(a)	F1A	COPE-0
(b)	F1B	COPE-1
(c)	F2/F3/F4	COPE-2

Medical Status in which Officers are Eligible for Promotion

8. For promotion purposes, medical status of an officer is considered in two parts as under:-

- (a) Medical Classification: Functional capacity in each of the SHAPE factors as indicated by a numeral between 1 and 5.
- (b) Employment Restrictions: Overall COPE coding indicated by the highest numeral awarded in individual COPE factors.

9. Promotion to select Ranks of Colonel and Above . Subject to meeting all other laid down conditions, officers in following **permanent** medical categories are eligible for promotion to select ranks of Colonel and above:-

Ser No	Statement of Medical Classification	Implications
(a)	Overall medical classification of SHAPE-1 and SHAPE -1B irrespective of number of medical disabilities, ie, X,Y,Z or COPE Coding.	Promotable medical categories irrespective of COPE Coding:- (a) SHAPE-1 (b) SHAPE-1B
(b)	Overall medical classification of SHAPE-2 (irrespective of number of medical disabilities, ie, X,Y,Z) with disability profile H2 or P2 (for dental condition only) or E2 which will be considered at par with SHAPE -1 for promotion purposes, irrespective of the overall COPE Coding.	Promotable medical categories irrespective of COPE Coding:- (a) S1H2A1P1E1 (b) S1H1A1P2E1 (dental only) (C) S1H1A1P1E2
(C)	Overall medical classification of SHAPE -2 (irrespective of number of medial disabilities ie, X,Y,Z) with disability profile A2 or P2 (Other than for dental condition only) or H2E2, if overall COPE coding is COPE-0 or COPE-1.	Promotable medical categories only if overall COPE Coding is COPE -0 or COPE-1 (a) S1H1A2P1E1 (b) S1H1A1P2E1 (other than dental) (C) S1H2A1P1E2

10. Implications of the above will be that officers, in medical classifications as stated above, will be eligible to be posted to all appointments, in any type of terrain, in consonance with their employment restrictions. It therefore implies that on promotion, such officers will NOT be able to seek any preferred appointment / posting, due to their medical category.

11. Annexure IV to Appendix E of Army Order 9/2011 /DGMS, further specifies the procedure, format for undertaking and general list of disabilities which may be considered under SHAPE-1B. Types of disabilities which may require follow up but can be considered under A2/P2, and are considered fit for all military duties have been specified in the same Annexure. The relevant portions of Annexure IV to Appendix E of Army Order 9/2011 DGMS have been reproduced as Appendix B to this letter. Attention of Officers, who is not satisfied with the opinion of a Medical Board may submit a representation against findings of the Board within one week of the officer receiving the perused copy of medical board proceedings.

12. Officers in permanent medical classifications other than those mentioned in Para 9 above, are NOT eligible for Promotion to select ranks, less those eligible for considered by Special Review Medical Board or granted battle Casualty (War Wounded) status as covered subsequently.

13. Special Review Medical Board. Only for promotion to the select rank of Colonel, officers who are in permanent low medical classification of S1H1A2P1E1, S1H1A1P2E1(other than for dental condition) or S1H2A1P1E2 with overall COPE coding of COPE-2, will be considered by

special Review Medical Board for Physical promotion to the rank of Colonel, subject to the following.

(a) They are approved for promotion to the rank of Colonel on initial assessment by No 3 Selection Board.

(b) It is possible to employ them in suitable appointment in the rank of Colonel, commensurate with their low medical classification.

14. **Battle Casualty (War Wounded)**. Officers who are granted BC (WW) Status are eligible for promotion to select ranks, subject to terms and conditions laid down in MS Branch Letter No 04517/MS Policy dated 13 Jan 2012 (as amended). Officers granted BC (War Wounded) status and in the following low medical categories irrespective of the COPE Coding) are eligible for promotion to select ranks of Colonel and above:-

(a) **Individual Low Medical Factors.**

(i) S1H2A1P1E1 or S1H1A1P2E1 (for dental condition only) or S1H1A1P1E2, which will be considered at par with SHAPE-1.

(ii) S1H1A2P1E1 or S1H1A1P2E1 (other than for dental condition only) or S1H1A3P1E1.

(b) **Combined Low Medical Factors.**

(i) S1H2A1P1E2.

(ii) S1H2A1P1E1 or S1H1A1P1E2 combined with S1H1A2P1E1 or S1H1A3P1E1 or S1H1A1P2E1.

15. **Temporary Medical Classifications**, Officers placed in temporary medical classifications will be considered for promotion to select ranks, only after their medical categories have stabilized and depending on whether the permanent medical classification they have been placed in is eligible for the same.

Miscellaneous Instructions.

It is envisaged that there will be a transition period in which medical authorities start reflecting the revised medical classification system under the COPE Coding in all medical board proceedings, as also for capture of medical category of the officers in Confidential Reports. However, it may be appreciated that the overall system of medical classification of officers, as earlier stated in AO 1/2004/DGMS and now revised vide AO 9/2011/DGMS, has not resulted in any major changes which impinge on career management of officers. All officers are however advised to thoroughly study revised AO 9/2011/DGMS and be conversant with all aspects related to the issue of medical classification of officers. Staff officers at A and MS Branches at various HQ are also similarly advised to make themselves fully conversant with all provisions of this letter.

17, For quick reference a 'Ready Reckoner', on Implications of Medical Categories on Career Management, has been included as Appendix C to this letter.

18. MS Branch letters referred at Paras 1 (a) and (b) above are hereby superseded.
19. Contents of this letter may be disseminated to unit level.

Sd/-
 (Ashok Singh)
 Col
 Col MS (P, CM & C)
 For Military Secretary

Copy to:-

DGAR DGBR DGNCC RRDte DGQA HQSFF HQNSG Internal Distr.
 List 'B' 'C' & 'D'.

Appendix A

(Refers to Para 6 of MS Branch
 letterNo.04548/MSPolicy
 datedDec12.

COMPARATIVE CHART

<u>Cope Coding</u>	<u>Employment Management Index</u>
<p>C- Climate and terrain restriction - 0/1/2</p> <p>O- Degree of medical Observation required - 0/1/2</p> <p>P- Physical capability limitation -0/1/2</p> <p>Overall COPE coding will indicate the highest number in any of the COPE factors. Eg. (a) C0 O0 P0 E0 - COPE-0 (b) C0 O1 P0 E1 - COPE-1 (c) C1 O1 P2 E0 - COPE-2</p>	<p>F1A. Fit for military duties anywhere.</p> <p>F1B. Fit for military duties anywhere, under medical observation and has no employability restrictions.</p> <p>F2. Fit for military duties anywhere. However at the discretion of medical Board, following restriction may be imposed:- (a) Unfit for posting to HAA (above 2700m/9000ft) and or (b) Places that have sub -zero temp for more than three months in a year.</p> <p>F3. Fit for military duties with restrictions as advised by medical authorities.</p> <p>F4. Fit for normal military duties not involving strenuous exertions.</p> <p>F5. Unfit for military duties.</p>

Appendix B
 (Refers to para 11 of
 MS Branch letter
 No 04548/MS Policy
 dt Dec 2012)

**DISABILITIES TO BE CONSIDERED UNDER GRADE IB/A2/P2
 WITHOUT EMPLOYABILITY RESTRICTIONS**

1. Common examples of disabilities for which SHAPE-1Bx can be considered, are as given below:-
- (a) Asymptomatic Dyslipidemia.

- (i) *Abnormal lipid profile detected incidentally or during routine evaluation.*
 - (ii) *No cardiovascular risk factors or obesity.*
 - (iii) *Normal thyroid hormone levels.*
 - (iv) *No indication for drug therapy.*
- (b) *Asymptomatic Hyperuricemia.*
- (i) *Serum uric acid levels more than 7 mg/dl.*
 - (ii) *No symptoms of gout.*
 - (iii) *Patient has modifiable food habits.*
 - (iv) *No indication for drug therapy.*
- (c) *Impaired Glucose Tolerance*
- (i) *Glucose tolerance test confirms impaired glucose tolerance.*
 - (ii) *No Cardiovascular risk factors or target organ involvement related to hyperglycemia.*
- (d) *Simple Obesity.* *As defined in para 63 of AO 9/2011/DGMS.*
- (e) *Asymptomatic ECG Abnormality.*
- (i) *Detected incidentally or during routine examination.*
 - (ii) *Absence of cardiovascular symptoms or risks factors.*
 - (iii) *No underlying cause detected after evaluation by a cardiologist.*
 - (iv) *Diagnosis must be re-confirmed every two years or earlier, if indicated.*
- (f) *Supraventricular or Ventricular Ectopics.*
- (i) *Detected incidentally or on routine medical examination.*
 - (ii) *Absence of cardiovascular symptoms or risk factors.*
 - (iii) *No abnormality on evaluation by cardiologist.*
- (g) *Cervical Spondylosis.*
- (i) *Asymptomatic.*
 - (ii) *No neurovascular deficit.*
 - (iii) *Spinal movement normal.*
- (h) *Low Backache.*

- (i) *No Sciatica.*
- (ii) *No Neurological deficit.*
- (iii) *Spinal movement normal.*
- (j) *Choleithiasis.*
 - (i) *Asymptomatic.*
 - (ii) *No complication of gallstone diseases.*
- (k) *Benign Prostatic Hyperplasia.*
 - (i) *Symptoms controlled with drugs.*
 - (ii) *No complications of BPH surgery.*
- (l) *Varicose Veins.*
 - (i) *No significant pain/swelling.*
 - (ii) *No complications.*
 - (m) *Cataract (Operated) with Corrected Vision upto 6/9 Both Eyes.*
Uncomplicated with IOL. Corrective glasses not exceeding +3.50D.
- (n) *Fracture of Non Weight Bearing Bones/Sprains/Stress Fractures.* *No significant pain/joint mobility restrictions.*
- (o) *Tubercular Peripheral Lymphadenitis and Tubercular Arthritis.*
 - (i) *Asymptomatic.*
 - (ii) *Offr may be placed in med classification SHAPE-1Bx while on antitubercular treatment, however, facilities for liver function tests should be available at nearest hospital.*
- (p) *Non Toxic Diffuse Goitrse and Non Toxic Goitre Unspecified.*
 - (i) *Asymptomatic.*
 - (ii) *Offr has undergone minimally invasive cosmetic surgery.*
- (q) *Non Toxic Single Thyroid Nodule.*
 - (i) *Asymptomatic.*
 - (m) *Investigations reveal no malignancy.*
- (r) *Acute Appendicitis Unspecified.*
 - (i) *Three months after undergoing an uneventful appendicectomy, with the classical Mc Arthur's muscle splitting incision.*

- (ii) *Proven to be appendicitis by histopathological examination.*
- (iii) *Asymptomatic.*
- (iv) *Surgery scar is well healed, without hypertrophic scar tissue formation.*
- (s) *Inguinal Hernia after having Undergone Mesh Repair.*
 - (i) *Asymptomatic.*
 - (ii) *The offr may be upgraded to SHAPE-1Bx after sick leave.*
- (t) *Other Abdominal Hernias (Epigastric Hernia, Paraumbilical Hernia).*
 - (i) *After undergoing an uneventful surgical repair.*
 - (ii) *Asymptomatic.*
 - (iii) *Surgery scar is well healed, without hypertrophic scar tissue formation.*
- (u) *Cholecystitis.*
 - (i) *Three months after undergoing an uneventful laparoscopic cholecystectomy.*
 - (ii) *Asymptomatic.*
- (v) *Calculus Kidney pending surgery/extracorporeal shock wave lithotripsy or small urseteric stones which are likely to pass of with increased water intake, provided there are no back pressure changes.*
 - (i) *Asymptomatic.*
 - (ii) *No obstructive changes in Intra Venous Urogram.*
- (w) *Encysted Hydrocele, Primary Hydrocele or Varicocoele.*
 - (i) *Asymptomatic.*
 - (ii) *Conditions might be detected during AME/PME.*
 - (iii) *If the offr has refused surgery.*

Note:-It is reiterated that the Specialist will form his opinion based on totality of the clinical picture including genetic predispositions, risk factors, patient's abilities and motivation to decrease such risks by modification of life style etc.

2. *Guidelines for disabilities which require follow up, but are considered fit for all military duties (in med cl A2/P2) are as follows:-*

- (a) *Essential Hypertension (Grade-I).*

- (i) *BP 140-159 mm of Hg systolic and 90-99 mm of Hg diastolic.*
- (ii) *With no evidence of dyslipidemia, DM, Obesity or target organ involvement.*
- (iii) *Administrations of two drugs to control BP permitted.*
- (b) *Primary Hypothyroidism.*
 - (i) *T3, T4 and TSH levels confirm diagnosis of hypothyroidism.*
 - (ii) *No underlying cause for hypothyroidism is found.*
 - (iii) *Officer is euthyroid with thyroxine hormone replacement.*
 - (iv) *T3, T4 and TSH levels are within normal limits for six months.*
- (c) *Non-ulcer Dyspepsia.* *No abnormality is detected on evaluation by Gastroenterologist.*
- (d) *NIDDM (Diabetes Mellitus Type 2.*
 - (i) *Blood sugar levels (fasting and two hours post prandial) are within normal limits for at least six months with diet modification alone or with oral medications.*
 - (ii) *There is no evidence of target organ involvement which will include:-*
 - (aa) *No evidence of retinopathy on fundoscopy.*
 - (ab) *No clinical or electrophysiological evidence of neuropathy.*
 - (ac) *No evidence of nephropathy by clinical, biochemical or imaging criteria.*
 - (ad) *Normal lipid profile.*
 - (ae) *Normal electrocardiogram.*
 - (af) *No history or evidence of cerebro-vascular or peripheral vascular disease."*

11. Learned counsel for the applicant would submit that applicant's Re-categorization Medical Board was held on 12.02.2021 and his next Re-medical Board was due in February, 2023 and his superannuation in the rank of Brigadier was due in end February, 2022. The Military Secretary's

Branch which processed the applicant's application for Re-medical Board knew these facts. The office of Directorate General Medical Services (Army) which perused the Re-medical Board held on 21.09.2021 after order of the Chief of the Army Staff, observed that the applicant cannot be upgraded to SHAPE-I medical category and therefore he cannot be promoted to the higher rank, as the fact stated by him in his appeal dated 07.05.2021 (preferred against the findings of Re-categorization Medical Board held on 12.02.2021) that he was on one medicine (Tab Telmisartan 40 mg twice daily), was in contradiction of his statement made before the Medical Specialist who examined him in his Re-medical Board on 21.09.2021. This observation by the office of Directorate General of Medical Services (Army) was uncalled for, and was made merely because the category of the applicant had been upgraded.

12. Learned counsel for the applicant would lastly submit that applicant is a JAG officer whose duty is to give legal opinion and advice to the higher formation of the Indian Army. He is not an officer of the Combat Arms and Services who may be posted in High Altitude Area between 9000ft to 14000ft. The post to which he is to be promoted is the highest rank in his Branch. It is located in New Delhi which is an area much below 9000ft. He has unblemished record of 31 years. He has served the Indian Army with utmost sincerity, honesty and hard work. He has controlled his blood pressure within the permissible limits with life style changes. He is fully medically, mentally and physically fit to perform the duties to the post he has been empanelled for promotion. He cannot be denied promotion to the higher rank at the fag end of his service career

citing disability of Hypertension, which was in any case a promotable category. He would submit that considering the entire facts and circumstances of the case, this Tribunal should issue direction to the respondents to allow the applicant to assume the charge of the post to which he is empanelled else applicant would be deprived of the achievement he has earned with hard work, sincerity, honesty and devotion after having puting in a long years of service.

13. Per contra, learned counsel for the respondents would submit that in the Indian Army every selection, whether it be a case of fresh appointment or promotion, is done through a prescribed procedure under rules and is always subject to meeting medical criteria. If an individual in the Indian Army is selected for a higher post her/his selection always remains subject to medical fitness irrespective of her/his branch and she/he cannot claim exemption of medical fitness for any reason. He would submit that after selection the individual is given promotion only when she/he meets medical criteria, otherwise not.

14. In regard to applicant's promotion to the post of Additional Major General in Judge Advocate General's Branch, the learned counsel would submit that when No 1 Selection Board considered the name of the applicant he was already placed in low medical category for 'Hypertension' P2 (P) with COPE Coding C2O1P1E1 (in accordance with Adjutant General's Branch policy letter of 16.02.2018) which is a non promotable category. However, the Board considered him and recommended him also for promotion, keeping in view that he was placed in low medical category on 14.08.2018, during annual medical

examination, and his next medical board which was due in August, 2020 could not be held due to COVID-19. Applicant's recommendation for promotion to the higher rank was subject to meeting medical criteria and it was approved with the same note. Applicant is therefore incorrect in saying that his empanelment for promotion to the higher rank is unconditional. The true fact is that his empanelment for promotion to higher rank is subject to meeting medical criteria as mentioned in letter dated 05.05.2021 (Annexure A/7).

15. Learned counsel for the respondents would further submit that when applicant was found suffering with 'Hypertension' in his Annual Medical Board in 2018 he was advised to take two drugs daily to control his blood pressure within the permissible parameters. Although Re-categorization Medical Board held on 12.02.2021 (After the No 1 Selection Board), found applicant's blood pressure within the permissible parameters (130/90), his medical category remained the same, i.e. P2(P) with COPE Coding C2O1P1E1 as he was still on medication, and he was advised to continue on only one drug Telmisartan 40 mg taken twice daily. He would submit that medical category P2(P) with COPE Coding C2O1P1E1 is a non promotable category, therefore, despite being empanelled for promotion the applicant was not promoted.

16. Regarding applicant's early Re-medical Board, learned respondents counsel would submit that it was held under order of the Chief of the Army Staff after the applicant requested for the same. In Re-medical Board the applicant's blood pressure was found within the permissible parameters, and, his medical category was approved for upgrade to SHAPE-I as he

had informed the Medical Specialist that he was not on any drug, which was not correct, as he had himself stated in his appeal dated 07.05.2021 that he was 'only on one drug medication'. Had he stated the correct facts to the Medical Specialist the Re-medical Board would never have upgraded his medical category nor would the next higher formation peruse/accept the upgradation in view of para 4 of Adjutant General's Branch letter dated 16.02.2018. However, when Re-medical examination report came up for perusal before the higher formation [DGMS (Army)] it refused to accept the Re-medical Board report citing various reasons which are quite pertinent. Thus, learned counsel would submit that applicant's Re-medical Board is still incomplete and since he was called upon to appear once again before the Re-medical Board, to put his signature over the second report but he did not turn up. Further, he would submit that applicant's medical category still being P2(P) with COPE Coding C2O1P1E1, he is not fit for promotion despite the empanelment.

17. Learned counsel for the respondents would next submit that Army Order 9/2011/DGMS along with letter dated 14.12.2012 issued by the Military Secretary's Branch and letter dated 16.02.2018 issued by the Adjutant General's Branch, Army HQ deal with health care system in the Army. These contain "*Instructions for Medical Examination and Classification of Serving Officers*" and "*Consequent Eligibility for Promotion to Select Ranks*" and "*Revision of Guidelines for COPE Coding and Hypertension*" respectively. The Army Order is applicable to all irrespective of Corps and Branch. No one can claim exemption from it saying she/he belongs to a particular Corps/Branch and is not supposed

to be posted in High Altitude Areas between 9000ft to 14000ft, therefore, she/he may be promoted to higher rank despite having Hypertension, which is a non promotable category.

18. Learned counsel for the respondents would further submit that in a similarly situated case a Brigadier rank officer i.e. Brigadier AK Tewari belonging to Army Education Corps (AEC) was recommended for promotion to the next higher rank of Major General by No 1 Selection Board while placed in medical category P2(P) with COPE Coding C1O1P1E1, as at that time for disability hypertension the awardable COPE Coding was C1O1P1P1 (and not C2O1P1E1), which was a promotable category, and recommendation for promotion was approved also. However, later his COPE Coding was changed to C2O1P1E1 (from C1O1P1E1) in view of Adjutant General's Branch, Army HQ letter dated 16.02.2018. After applicant's COPE Coding being changed from C1O1P1E1 to C2O1P1E1 when he was not promoted to the empanelled post he filed an application in the Armed Forces Tribunal, Principal Bench, New Delhi seeking Adjutant General's Branch letter dated 16.02.2018 to be declared null and void being violative of Article 14 of the Constitution of India. He would submit that Armed Forces Tribunal, Principal Bench, New Delhi after analysing the Army Order 9/2011/DGMS along with Military Secretary's Branch letter dated 14.12.2012 and Adjutant General's Branch letter dated 16.02.2018 and not finding any wrong therein upheld the same. Brigadier Tewari being aggrieved with the decision of the Armed Forces Tribunal, Principal Bench, New Delhi had filed a Civil Appeal against it in the Hon'ble Apex Court which he later

withdrew with the result the Armed Forces Tribunal, Principal Bench decision upholding validity of Army Order 9/2011/DGMS along with Military Secretary's Branch letter dated 14.12.2012 and Adjutant General's Branch letter dated 16.02.2018 became final. He would submit that facts of the case on hand being exactly the same, the Original Application should be dismissed.

19. Upon hearing submissions of learned counsel of the parties and analysing the facts of the case the following factual position is emerging:-

(i) Applicant is a 1989 Batch JAG officer, presently posted in Command HQ, Central Command in the rank of Brigadier. He is to superannuate in this rank on 28.02.2022.

(ii) On 14.08.2018 the applicant was placed in low medical category P2(P) for Hypertension with COPE Coding C2O1P1E1 which is a non promotable category in view of Army Order 9/2011/DGMS read with Military Secretary's Branch letter dated 14.12.2012 and Adjutant General's Branch letter dated 16.02.2018. He was advised to take two medicines daily for controlling hypertension.

(iii) There are two posts of Major General in JAG Branch of Indian Army i.e. Major General and Additional Major General (Litigation). Both posts are located in New Delhi.

(iv) On 26.10.2020 applicant was considered by No 1 Selection Board for promotion to the post of Additional Major General (Litigation), against vacancy that was to arise on 01.12.2020, on

superannuation of the then Additional Major General (Litigation) Major General Umesh Gupta, and being found fit was recommended for promotion by No 1 Selection Board.

(v) No 1 Selection Board comprises the Chief of the Army Staff (as Chairman) and Vice Chief of the Army Staff + 06 Army Commanders (as Members) + the Military Secretary (as Member Secretary).

(vi) The recommendation made by No 1 Selection Board was approved by the Competent Authority of Govt of India and result was declassified on 05.05.2021.

(vii) In the delayed Re-categorization Medical Board held on 12.02.2021 the blood pressure of the applicant was found within the permissible parameters (130/90). However, his medical category P2(P) with COPE Coding C1O1P1E1 was retained and not upgraded. He was advised only one drug Tab Telmisartan 40 mg BD.

(viii) Re-medical Board held on 20.09.2021 under order of the Chief of the Army Staff, upgraded applicant's medical category to SHAPE-I and this was also approved by the competent medical authority. However, the next higher formation i.e. [Director General of Medical Services (Army)], upon perusal of the Medical Board, did not accept the upgradation to SHAPE-I citing various reasons, but the principal reason being that the applicant had not stated correct facts regarding his intake of medication before the Medical

Specialist who examined him. Accordingly, applicant was re-called to appear again before the Re-medical Board, for another Re-medical yet again.

20. During the course of hearing, in reply to a query made by us whether No 1 Selection Board had recommended the applicant for promotion to the post of Additional Major General (Litigation) in JAG Branch *subject to meeting medical criteria*, Col Sachidananda Prabhu, Col MS (Legal), who was present in the Court room, assisting the learned Central Govt standing counsel, said was not aware about it. He also said he could answer the query only after going through the records. Respondents were therefore directed by us to produce original records i.e. the file containing No 1 Selection Board Proceedings, including approval of Competent Authority of the said proceedings. Consequently, Col Prabhu produced the file in sealed cover on 21.12.2021 for our perusal. We have gone through the Board Proceedings, Records, files and file noting sheets of Army, DMA and MoD and observed as below:-

- (i) No 1 Selection Board considered the applicant for promotion to the post of Additional Major General (Litigation) in JAG Branch. His complete details, including medical status, and restrictions arising from this medical status were available to the Board.
- (ii) The Military Secretary's policy letter on medical category restrictions dated 14.12.2012 was available to the Board.
- (iii) No 1 Selection Board recommended applicant for the rank of Additional Major General in JAG Branch after him being found fit in

all respects for the rank. When Board recommended the applicant for promotion it was aware that he was placed in low medical category P2(P) for Hypertension with COPE Coding C2O1P1E1.

(iv) No 1 Selection Board recommended the applicant for empanelment to the higher rank of Major General without any rider.

(v) After applicant being recommended by the No 1 Selection Board the file was processed in Department of Military Affairs and perused at the level of the then Chief of the Defence Staff (CDS)/Secretary DMA. The then CDS, had, after going through the file raised two queries. The first query on 19.11.2020 was the “case needs to be bench marked with past boards”. It was answered in the negative stating that there was no such bench mark. While answering the query it was also stated that when Brig Umesh Gupta, Brig Devendra Singh and Brig Rakesh were considered for promotion in their turn to Major General in JAG Branch the “cut off” marks were 91 and now the same was 93.5 whereas applicant has scored 94.482 marks. This shows that applicant is on a better footing than those officers who had been promoted earlier to the post in the past.

(vi) After the first query being replied the then CDS had raised another query on 12.02.2021 regarding medical status of the applicant, and in response to that query the CDS was informed on file that in the re-categorization medical board report dated 12.02.2021 his medical category was the same as that which existed on 14.08.2018 during his Annual Medical Examination, i.e.

P2 (P) for Hypertension with COPE Coding C2O1P1E1. It was informed by Army HQ that “the officer has become low medical category (LMC) for Primary Hypertension on 15.04.2018 and the officer was performing the duties of DJAG at HQ Eastern Command, which involved heavy work load of all legal and HQ cases of the entire Command. In spite of LMC the officer continues to perform the duties of DJAG of the Command”. The then CDS, after considering all aspects and finding applicant’s medical category P2 (P) with COPE Coding C2O1P1E1 would not be a hurdle in his promotion, had cleared the file for approval by the Competent Authority of MoD/Govt of India. There was nothing on file to infer from any corner that applicant’s approval for promotion to the rank of Major General was subject to meeting medical criteria.

(vii) After No 1 Selection Board’s decision recommending applicant for promotion to the rank of Major General being cleared by the then CDS/Secy DMA without any rider, the same was also approved by the Competent Authority of Govt of India.

21. From the aforementioned observations it is crystal clear that applicant’s selection for promotion to the post of Major General in JAG Branch by No 1 Selection Board has been made knowing fully well his medical status P2 (P) for Hypertension with COPE Coding C2O1P1E1, in view of Army Order 9/2011/DGMS read along with Military Secretary’s Branch letter dated 14.02.2012 and Adjutant General’s Branch letter dated 16.02.2018. It is also clear that applicant’s selection for promotion was not subject to meeting medical criteria, as mentioned in Army HQ

letter dated 05.05.2021 (Annexure A/7). If applicant's selection for promotion to higher rank was indeed to be subject to any medical pre-condition then it would certainly have been mentioned on file notings that was prepared for approval, and, in that case, respondents' plea that appointment/selection is always subject to meeting medical criteria would have stood validated. However, when applicant's selection for promotion to the post of Major General has been approved without any rider, and knowing fully his medical category, it only suggests that his disability was accepted while recommending/approving him for promotion.

22. When applicant's selection for promotion has been approved without any rider of specific medical criteria, the respondents are now not supposed to interfere with the approval of the Competent Authority by suo moto introducing a rider of meeting medical criteria, and they are only supposed to give effect to the approval by allowing applicant to assume the rank of Major General, instead of sitting over the matter. This action of the respondents is not appreciable at all, more so, when applicant is not only approved for promotion but is fully fit for the post from all corners. He (applicant) is an officer who has served the nation (through Indian Army) with utmost devotion, honesty and sincerity. He has unblemished record who earned promotion on merit, not by mercy. He cannot be forced to retire in the rank of Brigadier when a post of higher rank [Major General (Litigation)] is lying vacant since 01.12.2020 and he has been approved by the Competent Authority for the said post being fit in all respects.

23. Respondents cannot deny promotion to the applicant on the ground of disability of Hypertension, more so, when he has controlled the ailment and his medical category has been upgraded to SHAPE-I in Re-medical Board held on 20.09.2021 under order of Chief of the Army Staff. The Re-medical Board which upgraded the medical category of the applicant consisted of three doctors, including a senior cardiologist. The report cannot be discarded citing some discrepancies and quoting provisions of the Adjutant General's Branch letter dated 16.02.2018, more so, when the highest Selection Board in the Indian Army has already selected/recommended the applicant for promotion to the higher rank knowing fully well the applicant's disability and also the provisions of the Army Order along with Military Secretary's Branch and Adjutant General's Branch letters in this regard. The respondents, keeping in view these facts, ought to have respected the decision of the No 1 Selection Board rather than pointing the short comings in the Re-medical Board report. The act of the respondents in not allowing the applicant to assume the charge of higher rank, despite being properly selected, without any rider, cannot be justified in any manner, as it breaches the trust between organisation like Indian Army and its officers which is not in the interest of organisation or the nation. One who serves the organisation with integrity, sincerity and devotion also expects that her/his interests will not be unnecessarily sacrificed when it comes to promotion, without valid reason. It is the duty of every organisation/institution to stand with its employees/officers with full support and to protect them, if deserved. With this view of mind, we earnestly feel that respondents should have come

forward and protected the applicant's interest by allowing him to assume the higher rank.

24. We do not agree with respondents' plea that applicant's case is covered under the judgment of AFT, Principal Bench, New Delhi in O.A. No. 1634/2018 titled **Brig AK Tewari vs Union of India & Ors** decided on 19.03.2019. In that case it was Army Order 9/2011/DGMS along with Adjutant General's Branch, Army HQ letter dated 16.02.2018 which were challenged, whereas they are not in challenge in the present case. The facts in the case of Brig AK Tewari were different, as in that case, when Brig AK Tewari was approved for promotion to the higher rank of Major General he was placed in medical category P2(P) for Hypertension with COPE Coding C1O1P1E1, **which is a promotable category**, which was subsequently changed to P2 (P) with COPE Coding C2O1P1E1, while in the present case, when his case was approved, applicant was already in non promotable category P2 (P) with COPE Coding C2O1P1E1 and his recommendation/approval was made knowing his medical category. In the present case there is one more difference that the applicant's medical category was upgraded to SHAPE-I by Re-medical Board held on 21.09.2021, after the blood pressure being found within the permissible parameters, whereas in Brig Tewari's case his medical category remained the same i.e. P2(P) with COPE Coding C2O1P1E1. Thus, facts in the present case being not the same, rather different from the facts in the case of Brig AK Tewari, this case cannot be said to be covered under the judgment quoted above nor the O.A. can be dismissed on this plea.

25. In view of what we have said above, it is concluded that applicant's selection for promotion to the post of acting rank of Major General in JAG Branch has been recommended by the No 1 Selection Board keeping in view his medical status i.e. P2(P) with COPE Coding C2O1P1E1 and the same has been duly approved by the Competent Authority of the Govt of India without any rider. Applicant's empanelment to higher rank, while keeping in view his medical status, being once approved by the Govt of India, without any rider, now respondents have no authority to suo moto introduce any rider stating that his promotion to the acting rank of Major General in JAG Branch will be subject to meeting medical criteria as per Military Secretary's Branch letters No 04548/MS Policy dated 14.12.2012 and dated 07.09.2016. This rider introduced in para 2 of MS Branch letter No A/47053/15B/JAG/MS(X) dated 05.05.2021 is wholly unjust and uncalled for and, therefore, deserves to be quashed being ultravires. Accordingly, the above rider in the MS Branch letter dated 05.05.2021 (Annexure A/7) is hereby quashed.

26. We also conclude that applicant's selection for promotion to the acting rank of Major General in JAG Branch being without any rider there was no need for applicant to seek Re-medical Board in his case to get his medical category upgraded, if found fit. However, applicant's request being once conceded by the Chief of the Army Staff and applicant's medical category being upgraded to SHAPE-I by the Re-medical Board, after blood pressure being found within the permissible parameters in medical examination, the Director General Medical Services Branch should not have rejected the Re-medical Board's duly approved report by

referring to applicant's statement made in appeal dated 07.05.2021, which is not aligned with the findings recorded in Re-categorization Medical Board's proceedings dated 20.09.2021, wherein he had stated that he was not on any medicines since a year. More over there was no requirement for Director General Medical Services (Army) to have processed the Re-medical Board Proceedings of 21.09.2021 as this is required only in the case of downgradation of medical category, not in the case of upgradation (Reference para 20 of Army Order 9/2011/DGMS). The other cited reasons for not accepting the report being insignificant are liable to be discarded.

27. In the result, Original Application deserves to be allowed, hence **allowed**. Applicant is held entitled to promotion to the post of Additional Major General (Litigation) in Judge Advocate General's Branch with all consequential benefits from the date of declassification of No 1 Selection Board's result which is (05 May 2021). Respondents are directed to promote applicant to the post of Additional Major General in JAG Branch with all consequential benefits w.e.f. 05 May 2021. They are further directed to give effect to this order forthwith.

28. No order as to costs.

29. Pending application (s), if any, shall stand disposed of.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 07th January, 2022
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