

**RESERVED**  
**Court No. 2**

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,**  
**LUCKNOW**

**ORIGINAL APPLICATION No 53 of 2015**

Tuesday, this the 12<sup>th</sup> day of April 2016

**Hon'ble Mr. Justice D.P. Singh, Member (J)**  
**Hon'ble Air Marshal Anil Chopra, Member (A)**

IC-50797A Lt Col Laxmi Kant Yadav, s/o Late Shri Indra Pal Yadav, Sainik School Rewa (MP)-486001.

...Applicant

Ld. Counsel for the: **In person**  
Applicant

Versus

1. Union of India through The Secretary, Ministry of Defence, South Block, DHQ PO New Delhi-110011.
2. The Chief of the Army Staff, Integrated HQ of Ministry of Defence (Army) DHQ PO New Delhi-110011.
3. Military Secretary's Branch, Integrated HQ of Ministry of Defence (Army), DHQ PO New Delhi-110011.

.....Respondents

Ld. Counsel for the : **Mrs Deepti Prasad Bajpai,**  
Respondents Central Govt Counsel assisted by  
Lt Col Subodh Verma, OIC Legal Cell  
and Col Rajiv Menon, Col MS (Legal).

**ORDER****“Per Air Marshal Anil Chopra, Member (A)”**

1. This is an application under Section 14 of Armed Forces Tribunal Act, 2007 wherein the applicant is seeking that his Special Review Selection Board be held with his original batch (1991) on the basis of the new system of evaluation i.e. Quantification System.

2. Heard Ld. Counsel for the parties and perused the records.

3. Facts of the case are that the applicant had submitted O.A. No. 110 of 2012 (**Annexure A-2**) to the Hon'ble Armed Forces Tribunal, Regional Bench Lucknow on 27.03.2012 after his non statutory and statutory complaints regarding inconsistent ACRs had been turned down. The Hon'ble Tribunal had set aside impugned CR for the period Jun 2000 to May 2001 on the ground of inconsistency and directed to consider the applicant for promotion to the rank of Col in accordance with Rules and Regulations vide order dated 17.01.2014.

4. The applicant has pleaded that due to lapse of the respondents the applicant had suffered for six years till his CR for Jun 2000 to May 2001 was finally expunged by the Hon'ble Tribunal. The respondents considered the applicant finally for

promotion only in Jun 2014. Despite the observation made by the Hon'ble Tribunal, on perusal of the MDS during hearing of O.A. No. 110 of 2012, that the applicant had an excellent record, he was not empanelled for promotion as a Special Review (fresh case) after comparing his profile with the last officer promoted from his batch (1991).

5. The applicant's grievance is that he was assessed as per the value judgment system of evaluation which had been done away with effect from 01 Jan 2009. The value judgment system of evaluation had 85% marks for the profile of the officer and 15% marks for the assessment by the board whereas the new quantification system of evaluation had 95% marks for the profile of the officer and 05% marks for the assessment by the board. Since the Special Review Board was held in 2014 the applicant should have been assessed based on quantified system as the value judgment system had already been discontinued due to the inherent drawbacks with regard to its fairness in evaluation.

6. During the hearing of the earlier O.A. No 110 of 2012 the respondents had indicated to the Hon'ble Tribunal that the applicant had a lower profile being a non psc (passed staff college) officer and having 'C' grading in JC course. However, out of 34 officers of the applicant's batch (1991) promoted to the rank of Colonel, only 12 had psc and 22 officers were non

psc. The respondents had also indicated that the last officer promoted for the 1991 batch was psc which implies that 22 non psc officers of the applicant's batch had a better profile than a psc officer and mere qualification on staff course does not make a better officer.

7. The JC course was not mandatory qualification for 1991 batch officers yet the applicant was qualified in JC course and there have been officers from the 1991 batch who have been promoted and not even qualified on JC course. There are at least 16 officers who have been promoted with 'C' grading or even without being qualified on JC course.

8. The applicant had already suffered for six years in seeking justice from the date of his first consideration, as a fresh case in April 2008. He finally got justice from the Hon'ble Tribunal by expunging the inconsistent ACR. The applicant has now approached the Hon'ble Tribunal for consideration of promotion with his original batch (1991) and on the basis of the current evaluation system i.e. quantification system.

9. The respondents' case is that the applicant was commissioned in Army Service Corps (ASC) on 14.12.1991. He is not qualified in competitive courses such as Junior Command, Defence Service Staff College (DSSC)/Technical Staff Officers Courses (TSOC) and Senior Command Course. His course profile ranges from 'Average' to 'High Average'. The

reckonable Confidential Report profile of the applicant is 'Above Average' to 'Outstanding'. The applicant was considered by the No 3 Selection Board for promotion to the rank of Colonel in Apr 2008, Dec 2009 and May 2011 as 1991 Fresh, First Review and Final Review respectively and was not empanelled on the basis of his overall profile and comparative batch merit. Aggrieved by his non empanelment, the applicant submitted the following complaints wherein he had repeatedly impugned his Confidential Report of Jun 2000-May 2001:-

<u>Ser No</u>	<u>Type of Complaint</u>	<u>Date of Complaint</u>	<u>Disposal</u>
(a)	Non Statutory	19.05.2008	Rejected by COAS on 02 Sep 2008.
(b)	Statutory	01.01.2009	Rejected by Central Govt on 12 May 2009.
(c)	Statutory	03.08.2011	Rejected by Central Govt on 14 Dec 2011.
(d)	Statutory	30.06.2014	Rejected by Central Govt on 22 Jan 2015.

10. The applicant filed O.A. No 110 of 2012 before this Hon'ble Tribunal challenging his non empanelment by No 3 Selection Board and the Confidential Report for the period 01.06.2000 to 31.05.2001, which he had earned as Rifle Company Commander in 16 Rashtriya Rifles Battalion.

Hon'ble Tribunal vide judgment dated 17.01.2014 **(Annexure A-2 to O.A)** partly allowed the Original Application whereby the complete assessment of Initiating Officer (IO), Reviewing Officer (RO), Senior Reviewing Officer (SRO) in the said Confidential Report was expunged. Hon'ble Tribunal also directed the respondents to consider the applicant for promotion to the rank of Colonel in accordance with Rules/Regulations and law within four months from the date a certified copy of this order is served. The judgment of the Hon'ble Armed Forces Tribunal was implemented, and thereby the impugned Confidential Report was expunged and the applicant was considered afresh with his changed profile as Special Review (Fresh) in Dec 2014 strictly in accordance with policy. However, the applicant was not empanelled for promotion to the rank of Colonel based on comparative batch merit and overall profile.

11. As per MS Policy letter dated 07.10.2002 and 03.05.2013, an officer when being considered as a Special Review case consequent to redressal granted, he will be considered as per policy in vogue at the time of consideration of the earlier batch he was being considered against i.e. Value Judgment, Quantified System or revised Quantified System for Selection. In the instant case, when the applicant was considered as Fresh case, 1991 Batch in Apr 2008, he was considered as per

Value Judgment System for Selection provided in Military Secretary Branch policy letter dated 06.05.1987. Hence, when being considered as Special Review (Fresh) case, the applicant was required to be considered based on Value Judgment system of selection under which he was originally considered with his batch. The copies of following Military Secretary Branch policy letters have been placed on record as under:-

(a) *Army HQ, Military Secretary Branch policy letter No 31525/P/MS B dated 06 May 1987 (Annexure R-1).*

(b) *Military Secretary Branch policy letter No 04502/MS Policy dated 17 Sep 2011 (Annexure R-2).*

(c) *Military Secretary Branch policy letter Nos 04477/MS Policy dated 07 Oct 2002 and 03 May 2013 (Annexure R-3) (colli).*

12. The applicant is now seeking direction from the Hon'ble Tribunal to consider him as Special Review (Fresh) 1991 Batch on the basis of existing (new) system of selection i.e. Quantification system. It is submitted that such a prayer is not maintainable under law. The applicant was considered as Fresh Case 1991 Batch by No 3 Selection Board in Apr 2008 in terms of Military Secretary Branch policy letter dated 06.05.1987 (**Annexure R-1**) under Value Judgment system and First Review and Final Review in Dec 2009 and May 2011

under quantification system of selection. That consequent to grant of redressal by setting aside of Confidential Report for the period 06/00-05/01, by this Hon'ble Tribunal vide order dated 17.01.2014, the applicant was entitled to corresponding Special Review considerations for each normal consideration in terms of policy letter dated 17.09.2010 (**Annexure R-2**).

13. In accordance with policy letters dated 07.10.2002 and 03.05.2013 (**Annexure R-3**) the Special Review considerations based on amended profile will be in terms of policy in vogue at the time of consideration of the earlier original batch. Since the original consideration of the applicant in 2008 was as per erstwhile Value Judgment system under policy letter dated 06.05.1987, the corresponding Special Review (Fresh) on the applicant in Jun 2014 was held with his amended file as per the applicable policy for consideration held in Apr 2008. The applicant cannot claim Special Review consideration dehors policy governing such consideration. Hence the instant application is not maintainable on above account and contrary to policy letter on the subject.

14. The only issue that needs adjudication is whether the applicant should have been considered in the Special Review Selection Board based on Value Judgment System or Quantified System. The policy on consideration for Selection Board dated 07.10.2002 (**Annexure R-3**) was applicable to the



applicant during his first consideration in 2008. The relevant portion of that policy is reproduced below:-

*“4. **Spl Review (Fresh Cases)**. An officer being considered by a Selection Board as a fresh case, based on redressal consequent to a complaint or for any other reason, will be considered as per the policy in vogue at the time of consideration of his original batch”.*

15. Before this Hon'ble Tribunal judgment dated 17.01.2014 the Army had changed over from Value Judgment System to Quantified System of selection. Selection Boards were being governed by letter dated 03.05.2013. Relevant portion of this policy letter regarding Special Review is reproduced below:-

**“Special Review and Deferred/Withdrawn cases.**

*An officer being considered by a SB, as a Special Review case based on redress granted consequent to a complaint or for any other reason or as a Deferred/Withdrawn case, will be considered as per policy in vogue at the time of consideration of the earlier Batch they are being considered against, i.e. Value Judgment, Quantified System for Selection or Revised Quantified System for selection”.*

16. From these two above quoted policy letters it is clear that the applicant, during his Special Review Selection Board, had

to be considered by the same policy in vogue at the time of consideration of his batch mates. The applicant's batch had first been considered in 2008 when the system of selection was by Value Judgment and therefore he had to be considered in the Special Review following the Value Judgment System. Respondents have followed the policy in letter and spirit and we find no reason to interfere with the procedures followed in the Selection Board of the Special Review consideration of the applicant.

17. The applicant has not been able to make out a case. O.A. is likely to be rejected.

18. As such O.A. No. 53 of 2015 is **rejected** being devoid of merit.

No order as to costs.

**(Air Marshal Anil Chopra)**  
**Member (A)**

GSR

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