

**RESERVED**  
**Court No 1**

**Form No. 4**  
**{See rule 11(1)}**  
**ORDER SHEET**  
**ARMED FORCES TRIBUNAL, REGIONAL BENCH,**  
**LUCKNOW**

**O.A. No. 520 of 2021**

**Lt Col Arun Belwal**  
By Legal Practitioner for the Applicant

Applicant

Versus

**Union of India & Ors**  
By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><b><u>13.09.2022</u></b> <b><u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u></b> <b><u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></b></p> <p>Judgment pronounced. O. A. No. 520 of 2021 is <b>dismissed</b>. For orders, see our judgment and order of date passed on separate sheets.</p> <p>(Vice Admiral Abhay Raghunath Karve) Member (A) <i>rathore</i></p> <p>(Justice Umesh Chandra Srivastava) Member (J)</p>

**Court No. 1**  
**RESERVED**

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

**ORIGINAL APPLICATION No. 520 of 2021**

Tuesday, this the 13<sup>th</sup> day of September, 2022

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

IC-61757Y LT COL Arun Belwal presently posted at GS  
Branch HQ Madhya UP Sub Area, C/o 56 APO.

..... Applicant

Ld. Counsel for the : **Shri Virat Anand Singh**, Advocate.  
Applicant

Versus

1. Union of India, through Secretary, Ministry of  
Defence (Army), South Block, New Delhi.
2. Chief of the Army Staff, Integrated HQ of MoD  
(Army) DHQ PO, New Delhi-110011.
3. Military Secretary Branch-19, IHQ of MoD, New  
Delhi-11.

.....Respondents

Ld. Counsel for the : **Shri Rajiv Naryan Pandey**, Advocate  
Respondents. Central Govt. Counsel

## **ORDER**

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

- (a) *To direct respondents to consider applicant SHAP-2E with COPE -1 medical category for promotion to the rank of COLONEL wef 03 Jan 2019.*
- (b) *To direct respondents to consider applicant to post for commanding a infantry battalion and consider his future appointments, promotion and courses/nominations at par with his batch mates and batch merit.*
- (c) *Any other relief as considered proper by the Hon'ble Tribunal be awarded in favour of the applicant.*
- (d) *Allow this Application with cost.*

2. Brief facts of the case are that the applicant was commissioned in 12 Garhwal Rifles of the Indian Army on 12.12.2001. During the course of his service he served at various locations i.e. field and peace areas - Operational Service in Op Parakram in Western Sector, High Altitude Area, Counter Insurgency in Assam Rifles in Eastern Sector, Line of Actual Control (LAC) and Active Counter Insurgency in J&K. He was also posted as instructor at Infantry School, Mhow. In May 2015 while posted at

Liemarkong, Manipur he was diagnosed to be suffering from 'Chronic Kidney Disease-Chronic Sclerosis Glomerulopathy'. On 08.08.2015, 183 Military Hospital, Liemarkong placed him in low medical category P3 (temp). Later, his renal transplant was done on 19.03.2016 and in subsequent re-categorization medical boards his medical category was re-assessed and finally he was placed in low medical category P3 (Permt) w.e.f. 03.01.2019 by medical board held at Base Hospital, Delhi Cantt. The applicant was approved by No 3 Selection Board (SB) for promotion to the next higher rank of Colonel vide Military Secretary's Branch letter dated 21.12.2016 but was not promoted being in non promotable medical category as per policy letter dated 14.12.2012. The applicant submitted statutory complaint dated 29.09.2020 which seems to have not been decided as yet. Applicant has filed this O.A. to consider his medical category with COPE-1 w.e.f. 03.01.2019, promote him to the rank of Colonel and post him as Commanding Officer of an Infantry Battalion and also consider his future appointments, promotion and courses/nominations at par with his batch mates and batch merit.

3. Learned counsel for the applicant submitted that the applicant was commissioned in the Army on 08.12.2001. He further submitted that the applicant served in different parts of the country which included High Altitude Area and Counter Insurgency Operations in Assam and J&K. It was further submitted that in the year 2015 he was placed in medical category P3 (temporary) for diagnosis 'Chronic Kidney Disease-Chronic Sclerosis Glomerulopathy' and in the subsequent re-categorization medical boards his medical category remained the same. Finally medical board held on 03.01.2019 at Base Hospital, Delhi Cantt placed him in P3 (Permt) medical category.

4. Learned counsel for the applicant further submitted that the applicant was approved by Selection Board No 3 for promotion to the rank of Colonel by order dated 21.12.2016 but he was denied promotion being placed in low medical category as per policy letter dated 14.12.2012. He further submitted that the applicant in the meantime was also downgraded to medical category COPE-2, which is a non promotable category, due to constraints of organization. He further submitted that applicant submitted a statutory complaint on 29.09.2020 which is still pending.

5. Submission has also been made by learned counsel for the applicant that applicant's disability being attributable to military service (@ 80%) should not be a hindrance to his further promotion as renal transplant being not a disability, he should be considered for promotion as a special case. It was further submitted that based on medical certificate dated 17.06.2019 issued by Base Hospital, Delhi Cantt applicant has been recommended for periodical review by specialist every three months instead of every month which indicates that his condition is stable and he is recovering from the disability. He submitted that COPE coding is not applicable in the case of applicant as he is serving in Lucknow having no hindrance in his service capability. His further submission is that promotion is his fundamental right as it ensures better social status.

6. Further contention of learned counsel for the applicant is that after renal transplant the applicant is properly working and restrictions imposed by the medical board are only precautionary and only posting to High Altitude Area is restricted. He pleaded that keeping in view of applicant's employability respondents ought to

consider his SHAP-2E as COPE-1 medical category for promotion to the rank of Colonel w.e.f. 03.01.2019.

7. Per contra, learned counsel for the respondents submitted that the applicant is 2001 batch Infantry officer. He was empanelled for promotion to the rank of Colonel by No 3 Selection Board held in December, 2016 as a fresh case and was approved for further promotion. However, the applicant being placed in low medical category P3 (permanent) with COPE-2 coding, being non promotable category, due to Chronic Kidney Disease (Renal Transplant) was not considered for further promotion as per policy letter dated 14.12.2012. He further submitted that the Army being employer has to consider the peculiarities of service as per medical status of an employee who has no right to claim promotion without meeting laid down acceptable medical criteria and continued satisfactory performance.

8. Respondents learned counsel further submitted that Army Order 9/2011/DGMS (Health Care System) was introduced for assessment of employment restriction in four factors denoted by COPE Coding from 0 to 2. Based on this Army Order, policy letter dated 14.12.2012 was promulgated shifting the functional capacity to that of

COPE Coding as per the extant instructions. It was further submitted that since the applicant is P3 (Permanent) with COPE-2 and is suffering from Chronic Kidney Disease (Renal Transplant) he could not be promoted to the higher rank being placed in non-promotable medical category as per policy letter dated 14.12.2012. He pleaded for dismissal of O.A.

9. Heard Shri Virat Anand Singh, learned counsel for the applicant and Shri Rajiv Narayan Pandey, learned counsel for the respondents assisted by Lt Col Suchitra C, AMC (Legal), IHQ of MoD (Army) and perused the records.

10. Applicant was commissioned in the Army on 08.12.2001 and he served at various locations in field and peace areas. In first of week of May 2015, while posted at Liemakong, Manipur he was found to be suffering from Chronic Kidney Disease and his medical category was downgraded to P3 (T-24) w.e.f. 08.08.2015. His re-categorization medical board was held on 21.01.2016 vide which he was placed in medical category SHAPE-3x with COPE Coding C2O2P2E0. Classified Specialist Medicine and Nephrologist recommended him not to be posted in High Altitude Area with further advice to be posted to a station where service of Nephrology was available. His



last medical board was held on 03.01.2019 which placed him in medical category P3 (Permanent) with COPE Coding C2O2P2E2 which is a non-promotable category. Result of No 3 Selection Board was declassified on 21.12.2016 and the applicant was approved for promotion to the rank of Colonel. Since the applicant was placed in non-promotable medical category, he was not promoted to the higher rank. Against non promotion, applicant submitted statutory complaint dated 29.09.2020 which has not been decided by the respondents.

11. The Medical Board gives the relevant employability for military duties on four factors i.e. C (Climate and Terrain restrictions, denoted by numerals 0 – 2) O (The degree of medical observation required during the period of officers placed in low medical category, denoted by numerals 0 – 2) P (Physical capability limitations placed on the officer by the medical board, denoted by numerals 0 – 2) and E (Exclusive limitations placed on the officer by the medical board, denoted by numerals 0 -2). The applicant is a case of Renal Transplant Recipient dated 19.03.2016 and that is the reason he was placed in medical category P3 (Permanent) with COPE Coding C2O2P2E2 which being

a non-promotable category, he was denied promotion to the rank of Colonel.

12. While filing rejoinder affidavit, learned counsel for the applicant has stated that Col TPS Hundal, an Infantry officer, having same disability and being placed in low medical category, was promoted to the rank of Colonel and commanded an Infantry Unit of Bihar Regiment and also he was posted to stations where no nephrology centre was available, therefore, the applicant deserves to be promoted to the next higher rank even being placed in P3 (Permanent) medical category on the ground that if he can work in the rank of Lt Col then why not in the rank of Colonel. We find that the said officer was in medical category P2 (Permanent) which is a promotable category whereas the applicant is in medical category P3 (Permanent) which is a non-promotable category.

13. The promotion of an officer to select rank through Selection Board follows the principle of merit cum seniority. Merit of the complete officers constituting the batch in the respective Arm/services against the limited number of vacancies are assessed by the Selection Board. For such consideration by the Selection Board, the medical category of the officer is not considered. Once an officer

is found fit by the Selection Board and approved for empanelment, the officers are promoted on occurrence of vacancy based on the medical fitness and continued satisfactory performance. The medical fitness for promotion to higher ranks is an important facet of the military service considering the nature of duties.

14. Medical classification of an officer is not a criterion at the time of consideration by a Selection Board. However, at the time of assumption of higher select rank, medical classification of an officer has to be within the acceptable limits as laid down in the MS Branch policy letter dated 14.12.2012 which specifies acceptable medical criteria for promotion as under:-

S No	Statement of Medical Classification	Implications
(a)	Overall medical classification of SHAPE-1 and SHAPE-1B, irrespective of number of medical disabilities, i.e. x,y,z or COPE Coding	Promotable medical categories, irrespective of COPE Coding:- SHAPE-1 SHAPE-1B
(b)	Overall medical classification of SHAPE-2 (irrespective of number of medical disabilities, i.e. x,y,z), with disability profile H2P2 (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 :- S1H2A1P1E1 S1H1A1P2E1 (dental only) S1H1A1P1E2
(c)	Overall medical classification of SHAPE-2 (irrespective of number of medical disabilities, i.e. 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:- S1H1A2P1E1 S1H1A1P2E1 (other than dental) S1H2A1P1E2

15. The applicant is 2001 batch Infantry officer who was empanelled for promotion to the rank of Colonel by No 3 Selection Board held in December 2016. Since the

applicant is P3 (Permanent) with COPE-2, which being a non promotable medical category, he is not entitled to be promoted to the next higher rank due to medical restrictions as per policy dated 14.12.2012. Medical fitness has always been a hallmark of growth of Army personnel especially Army officers and their consequent employment as they rise in ranks.

16. In view of what has been discussed herein above, we find that the applicant could not be promoted to the higher rank only because he was placed in non-promotable medical category. We are also of the view that in case the applicant is not satisfied with his present medical category, he is at liberty to approach the concerned authorities for holding his re-survey medical board to decide his medical disability. At this stage the O.A. is devoid of merit and liable to be dismissed.

17. Accordingly, O.A. is **dismissed**.

18. No order as to costs.

19. Miscellaneous applications, pending if any, stand disposed of.

(Vice Admiral Abhay Raghunath Karve)  
Member (A)

(Justice Umesh Chandra Srivastava)  
Member (J)

Dated : 13.09.2022

rathore