

**Court No.3****ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW****ORIGINAL APPLICATION NO 162 of 2015**Friday, this the 19<sup>th</sup> day of February 2016**Hon'ble Mr. Justice D.P. Singh, Member (J)**  
**Hon'ble Air Marshal Anil Chopra, Member (A)**Lt Col Jose KK (SL-4263W) son of late Shri Kuriakose K.C.,  
presently posted as Additional Officer, Station HQ Cell, HQ  
Madhya UP Sub Area, Lucknow.

.....Applicant

Ld. Counsel for the: **Shri P.N. Chaturvedi, Advocate**  
Advocate

Versus

1. Union of India through the Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarters of the Ministry of Defence (Army) South Block, New Delhi-110011.
3. Military Secretary, IGHQ of MoD (Army), South Block, New Delhi-110011.
4. General Officer Commanding-in-C, Central Command, Lucknow.
5. Commandant 44 Coy ASC (Sup) Type-E, C/O 56 APO

.....Respondents

Ld. Counsel for the : **Dr. Shailendra Sharma Atal, Central**  
Respondents. **Govt Counsel assisted by Lt Col**  
**Subodh Verma, OIC Legal Cell.**

**ORDER (ORAL)**

1. Aggrieved by non declaration of result of No. 3 Selection Board and consequential non promotion of the applicant to the rank of Col, the applicant has approached this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007.
2. Heard Ld. Counsel for the parties and perused the records.
3. The applicant was not considered for selection to the post of Col on account of DV Ban in view of decision of Hon'ble Supreme Court ***Union of India & ors vs. K.V. Jankiraman & ors***, (1991) 4 SCC 109 on account of adoption of "sealed cover procedure". Statutory complaint submitted by the applicant has been rejected by order dated 28.10.2015, a copy of which has been annexed as **Annexure RA-1** to the rejoinder affidavit filed by the applicant.
4. Ld. counsel for the applicant submitted that since movement order was issued and the applicant was posted elsewhere, DV Ban shall be deemed to be nullified on 02.02.2014. Arguments advanced by Ld. counsel for the applicant is not sustainable for the reason that any decision taken on order passed unless set aside by the competent authority by subsequent order there shall be no reason to draw inference that the order is not subsisting. Since the respondents have categorically said that on account of DV Ban "sealed cover procedure" was adopted and later on the

applicant has been punished on 10.03.2015, there appears to be no reason to interfere with the decision taken by the respondents at this stage till decision communicated by order dated 28.10.2015 is annulled by the competent authority.

5. Ld. counsel for the applicant vehemently submitted that no decision has been communicated to the applicant with regard to DV Ban.

6. With the consent of Ld. counsel for the parties we dispose of the O.A. with direction to the respondents to communicate the applicant decision taken for imposing DV Ban and further the applicant is granted liberty to prefer a fresh O.A. challenging order dated 28.10.2015 as well as other decisions, if any, taken by the respondents before this Tribunal.

7. Let copy of the DV Ban and such other records on the basis of which the applicant was not found to be fit for promotion be provided to the applicant by the respondents within three weeks from today.

8. Subject to aforesaid directions, O.A. is disposed of finally.

No order as to costs.

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

anb

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