

RESERVED
Court No.3

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

Original Application No. 49 of 2013

Tuesday, this the 5th day of January 2016

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

Lt Col Ravindra Mann S/O Shri Mahipal Singh
R/O 168/1 Naidu Enclave, near Commissioner
resident Allahabad-21100.

...Applicant

Ld. Counsel for the : **Col (Retd) BP Singh, Advocate**
Applicant

Versus

1. Union of India through Secretary, Ministry of Defence, New Delhi-110011.
2. Chief of Army Staff, IHQ of Min of Def (Army) South Block, New Delhi-110001.
3. Military Secretary, Military Secretary's Branch, Integrated Headquarters of Ministry of Defence (Army), South Block, New Delhi.

...Respondents

Ld. Counsel for the : **Shri Virendra Singh, Central**
Respondents. **Govt Counsel assisted by**
Capt PritiTyagi, OIC, Legal Cell.

ORDER**Per Hon'ble Air Marshal Anil Chopra, Member (A)**

1. This is an application under Section 14 of the Armed Forces Tribunal Act 2007 read with Section 3 (o) of the Said Act. The applicant was commissioned in the army as short service commissioned officer in the year 1989. He was promoted as Major and later on as Lt Col. He has served at various locations as per his posting. He was superseded for promotion for the next rank. He preferred Statutory and Non Statutory Complaints which have been disposed of by the respondents. Being aggrieved the applicant has filed the present Original Application with following reliefs:-

(i) The impugned ACR for the year 2002 be set aside in totality.

(ii) The impugned ACR for the year 2005 be set aside in totality.

(iii) Applicant be considered afresh for the No. 3 Service Board with retrospective seniority.

2. Brief facts of the case are that applicant was commissioned in the Indian Army in the year 1989 in the Regiment of Army Air Defence. He successfully completed 13 months' duration Gunnery Staff Course as well as Combat Group Commanders Course. The applicant was nominated as Group Testing Officer at Service Selection Board (SSB) and throughout his career the applicant always had very high Annual Confidential Report (ACR) gradings (mix of nines). The

applicant, while being posted to 34 SSB witnessed certain irregularity in the period 1998 to 2002. The applicant also came to know about certain financial mis-appropriation which he brought to the notice of Major General Satbir Singh, Commandant Selection Centre (East), Allahabad. The enquiry ordered by the Commandant alerted all seniors of the SSB Centre. Thereafter, they got somewhat reserved with the applicant.

3. The applicant's ACR was due on 30.04.2002 which was initiated on 16.07.2002 i.e. two and a half months' gap. The Initiating Officer (IO) at the instant of Reviewing Officer (RO) seems to have been responsible for the delay due to malafide intentions. Initiating Officer, Col VAM Hussain at the insistence of RO, Brig AK Dutta delayed initiation of ACR which harmed the applicant. His tenure during this period was under only Brig AK Dutta who was applicant's RO. Applicant claims that his ACRs in the reckonable profile were above average to outstanding. Applicant feels that the ACRs were not upheld by his RO which got reflected by his non empanelment for promotion to the rank of Colonel as it was inconsistent with his overall career performance and profile.

4. Despite being from Regiment of Air Defence Artillery, applicant accepted the challenge of moving into Infantry by taking command of a Rashtriya Rifles Company Commander. During his tenure the applicant got relocated and was deployed

as Company Commander in Budhal (District Rajouri) in July 2005. Within two months of their deployment, massive earthquake struck valley on 08.10.2005. Applicant's Company got committed in relief and rehabilitation work for earthquake victims. Taking advantage of the chaotic situation, terrorists struck and killed 10 Hindus in applicant's area of responsibility on 10.10.2005. The incident was well flashed by media and so invited a lot of attention. The General Officer Commanding Counter Insurgency Force 'U' Major General Soli N Pavri alongwith several dignitaries visited applicant's company on 10.10.2005. The Commanding Officer of the unit had several differences on operational matters which got even worse after this incident. Applicant's ACR was reviewed by General Officer Commanding on 10.10.2005 itself bringing another lower ACR into his record. Applicant's non empanelment for next higher rank is based on overall profile of every officer. Applicant was next posted to 24 SSB Centre as Senior Group Testing Officer in second such appointment. Against non empanelment, the applicant submitted a Non Statutory Complaint praying for his entire profile to be reviewed and aberrations or inconsistencies, if any, be expunged. However, the applicant was informed vide letter dated 14.10.2008 that he was considered by Selection Board but not empanelled for promotion to next higher rank, based on Overall Assessment Profile and the comparative batch merit. Thereafter the applicant preferred a statutory representation against this non empanelment which

was again rejected and the outcome was conveyed vide letter dated 07.09.2009. Because of the injustice meted out the applicant has approached the Hon'ble Tribunal.

5. Through Counter Affidavit, the Respondents have contended that the army has a pyramidal rank structure. Thus the number of vacancies in higher ranks are limited. Only officers whose records of service within a particular batch are better are selected. As per the promotion policy which was applicable till 15.12.2004, the promotions in the army up to the rank of Major were by time scale. Promotions from Major to Lt Col and above were decided through Selection Boards (policy contained in Para 108 of the Regulations for the Army, 1987 (Revised Edition), Army HQ letter dated 06.05.1987 and IHQ of MoD (Army) letter dated 31.12.2008.

6. After the implementation of AVSC-I recommendations, promotions up to Lt Col became time scale. All officers of a particular batch are considered together with same cut off ACR and inputs and on the basis of individual profile of the officer and the comparative batch merit; they are approved/not approved. In case, any officer gets any relief through complaint etc in any Confidential Report, after the Selection Board has been held, he is entitled to a special consideration by Selection Board with his changed profile, and in case, he is approved by such special consideration, his original seniority remains protected. As per the applicable policy, each officer is entitled

to only three considerations for promotion to the selection ranks i.e. Fresh Consideration, First Review and Final Review. In case, an officer is not approved as a Fresh case, but approved as a First Review or Final Review case, he loses seniority accordingly vis-à-vis his original batch. After three considerations, if an officer is not approved, he is deemed to be finally superseded.

7. It was up to the Selection Board to assess the suitability of the applicant for promotion. The assessment of the Selection Board is recommendatory in nature and not binding until approved by the competent authority; viz, Chief of the Army Staff or the Central Government as the case may be. The Hon'ble Supreme Court has held that the courts should not substitute the findings of the Selection Boards by its own judgments. In this context the respondents place reliance on the following :-

(a) Union of India Vs. Lt Gen RS Kadyan, 2000 AIR SCW 2692.

(b) Maj Gen IPS Dewan Vs. UOI and Others, JT 1995 (II), Part 15, SC 654.

(c) AVM SL Chhabra, VSM Vs. UOI, JT 1993 (3) SC 359.

(d) Dalpat Appa Sahib Solunke Vs. BS Mahajan, JT 1989 (4) 487.

(e) Lt Col Amrik Singh Vs. UOI, (2001) 10 SCC 424.

(f) Major Surinder Shukla Vs. Union of India and others, (2008) 2 SCC 649.

8. The applicant was commissioned into Army Air Defence (AAD) in the year 1989 and his performance in the courses was just 'Average' with grading of 'C' or 'Q'. The applicant has been given the following considerations by No 3 Selection Board for promotion to the rank of 'Col' and its results are as under :-

S. No.	Consideration	No 3 held	Result
1.	1989 Fresh	Jun 2007	Not Empanelled
2.	1989 First Review	Jun 2008	Not Empanelled
3.	1989 Final Review	Sep 2008	Not Empanelled

9. The applicant submitted a Non Statutory Complaint dated 23.06.2007 against non empanelment by No 3 Selection Board (Fresh) held in May 2007. The complaint was examined by the Chief of the Army Staff against his overall Confidential Report profile and other relevant documents. After consideration of all aspects of the complaint, it had emerged that all Confidential Reports of the applicant including the impugned Confidential Reports earned as Group Testing Officer (GTO) and in Rashtriya Rifles Battalion were well corroborated, consistent, objective, performance based and in tune with the overall profile. There being no evidence of any bias/subjectivity, none of Confidential Reports merited any interference. The applicant

was not empanelled to the rank of 'Col' on account of his overall profile as assessed by the No 3 Selection Board. The Chief of the Army Staff, therefore, rejected the Non Statutory Complaint of the applicant. The order of the Chief of the Army Staff was communicated to the applicant vide Military Secretary's Branch, Army Headquarters letter dated 29.10.2007. The copy of Military Secretary's Branch letter dated 29.10.2007 is annexed as **Annexure R-1**. The applicant submitted statutory complaint dated 11.04.2008 against his non empanelment by No. 3 Selection Board held in January 2008 as First Review 1989 Batch AAD. The Statutory Complaint was duly considered by the Central Government in the light of his career profile and relevant records alongwith recommendation of Army Headquarters. The said complaint after 'due consideration was rejected by the Central Government vide its order dated 23.12.2008. The copy of Central Government order dated 23.12.2008 is enclosed herewith as **Annexure R-2**.

10. After his non empanelment as Final Review 1989 Batch AAD by No 3 Selection Board held in September 2008, the applicant submitted another Statutory Complaint dated 16.03.2009 against Non empanelment by No. 3 Selection Board (Final Review) held in September 2008. The complaint was examined by the Central Government in light of his career profile and relevant records. After consideration all aspects of the complaint and viewing it against redress sought, it emerged

that assessments by all reporting officers in entire Confidential Reports including the impugned Confidential Reports were fair, objective and performance based. There was no discernible subjectivity or inconsistency in any of the Confidential Reports and hence Central Govt did not interfere in any of the CRs. The applicant had not been placed in an acceptable grade for promotion to the next rank due to his overall profile and comparative merit. The Central Govt, therefore, rejected the complaint vide their order dated 07.09.2009 (**Annexure A1 (II)**).

11. The applicant earlier in his Non Statutory Complaint dated 23.06.2007 and Statutory Complaint dated 11.04.2008 never alleged that during his tenure from 1998 to 2002 at 24 SSB, he brought to the notice of Commandant, 24 SSB irregularities pertaining to soliciting of marks awarded to candidates undergoing SSB interview by the Board President from the assessors a day prior to the board conference, which apparently antagonized his seniors; particularly IO and RO and same was reflected in his early Confidential Report for the period 06/2001 – 04/2002. This allegation was made by the applicant first time only in his Statutory Complaint dated 16.03.2009 as an afterthought after lapse of 6 years.

12. The applicant is seeking Judicial Review of his ACRs, for the period 1999 to 2005 after a lapse of 7 years. The applicant was finally non empanelled by No. 3 Selection Board as final Review in September 2008 and his last Statutory Complaint

dated 16.03.2009 against his non empanelment was rejected by the Central Govt on 07.09.2009. The applicant should have challenged the decision of Statutory Complaint within a period of six months in accordance with Section 22 (1) (a) of AFT Act 2007 latest by March 2010, but the applicant has now filed the application before this Tribunal after a lapse of almost three years.

13. Applicant did not qualify the courses with distinction. On the contrary, it is submitted that his performance in various mandatory courses has been just "Average" with "C" grading. The applicant has above average overall profile with grading on 8 and 7 and sprinklings of grading '9' in his reckonable profile. The allegations of financial misappropriation in 24 SSB have never been made by him earlier in any of his complaints and these vague allegations have been made for the first time before this Tribunal after a lapse of almost 12 years. The early ACR of the applicant for the period Jun 01 to Apr 02 due on 30 Apr 2002 was initiated by IO on 16.07.2002. The said CR during internal assessment in Military Secretary Branch was found to be correct in all respects and technically valid. The figurative assessments of reporting officers were found to be well corroborated, consistent and in tune with the overall profile of the applicant and hence merited no interference. Mere some delay in initiation of ACR does not in any manner raise presumptions of being moderated or affects its technical

validity. Though the applicant has made allegations of bias towards Col VAM Hussain, IO and Brig AK Dutta, RO but chose not to implead them as party to bring on record the true version of these two officers. The assessment in the CR for the period Jun 01 to Apr 02 was found to be above average with figurative assessments of '8' and '7' and the same was well corroborated, consistent and in tune with his overall profile. Both the CR's of the applicant for the period Sep 03 to May 04 and Jun 04 to Aug 05 were 'above average' reports of both IO and RO. His box grading and assessment in Quantified to Assess Potential (QAPs) were found to be well matched and consistent with his overall profile. Both the Statutory Complaints dated 11.04.2008 and 16.03.2009 were decided by the Central Govt in the light of overall profile and rejected. The applicant does not have a case and O.A. deserves to be dismissed.

14. Heard Ld. Counsels of both sides and perused the records.

15. The only issues that need adjudication is that were the ACR assessments of periods in contention consistent with the applicant's over all profile. Was there any malafide as alleged by the applicant? Was he given adequate opportunity to redress his grievances?

16. The Govt of India reply dated 07.09.2009 to the second Statutory Complaint of the applicant dated 16.03.2009 is reproduced below :-

“No. 36501/11382/AAD/2007/MS-19/219/SC/2009-D (MS)

Government of India, Ministry of Defence

New Delhi, dated 7th September, 2009

ORDER

1. IC-46405K Lt Col Ravindra Mann, AAD, has submitted a Statutory Complaint dated 16 March 2009 against non empanelment for promotion to the rank of Col by No. 3 Selection Board (Final Review) held in Sep 2008. The officer has highlighted his career profile, operational experience and achievements which include medals for writing award winning essays in COAS easy competition. He states that he has done numerous editorial assignments. He was also involved in ideating a new concept for standardization of officer's selection process at Selection Centre (South), Bangalore. He has also elaborated on his achievements as Company Commander in Rashtriya Rifles. The officer has impugned early ACR which was due on 30 Apr 2002 but initiated on 16 Jul 2002. The officer alleges that the IO, at the instance of the RO, was responsible for delay due to malafide intentions. The officer states that the delay was circumstantially motivated in order to penalize him because he had brought to the notice of the Commandant, Selection Centre (East), Allahabad about certain irregularities in vogue in 34 Services Selection Board. He has further elaborated on the malaise prevalent in 34 Services Selection Board at that point of time and he feels that he has been penalized for being upright and loyal to service norms and procedure.

2. The officer has requested for the following :-

(a) His entire CR profile be reviewed and aberrations or inconsistencies be set aside.

(b) An endeavour be made to restore his seniority.

3. The Statutory Complaint of the officer has been examined in the light of his career profile, relevant records and analysis/recommendations of Army HQs. After consideration of all aspects of the complaint and viewing it against the redress sought, it emerges that the assessments by all the reporting officers in the entire reckonable CRs including the impugned CR are fair, objective and performance based. There is no discernible subjectivity/inconsistency in any of the CRs. Hence, none of the CRs merit any interference by the Central Government.

4. The officer has not been placed in an acceptable grade for promotion to the next rank due to his overall profile and comparative merit.

5. The Central Government therefore, rejects the Statutory Complaint dated 16 March 2009 submitted by IC-46405K Lt Col Ravindra Mann, AAD, against non empanelment, being devoid of merit.

By order and in the name of the President
Sd/- x x x x x x x
Balram Verma
(Under Secretary to the Government of India)

To

The Chief of the Army Staff (in quadruplicate) :- For further communications to the officer through staff channels with the necessary administrative instructions and for action in accordance with the existing procedure”.

17. It is clear from the aforesaid that the applicant's second Statutory Complaint has adequately addressed the fairness and

objectivity of the ACRs. The Govt of India has not considered any need to interfere in the ACRs.

18. The applicant's allegation of intentional delay in completing the ACR of 2002 which was due on 30.04.2002 but actually initiated on 16.07.2002 with a malafide intention to harm the applicant is not born by any facts. Also the applicant has not chosen to implead the I.O. or R.O. in the case, if he so alleges. The court has seen the ACR dossier and we find the ACR for that year is consistent with ACRs of other years. His second concern is about the delayed ACR of 2005. Once again the court finds that ACR for this year consistent and matching the overall profile.

19. The applicant had filed one Non-Statutory and two Statutory complaints for not being impaneled for promotion. All these were addressed and replied at appropriate levels and applicant given a detailed reply. He has thus been given adequate opportunity to redress his grievances.

20. The court finds no reason to interfere in the ACRs of 2002 or 2005. The applicant has not been able to make out a case. The Original Application lacks merit and is liable to be dismissed.

21. O.A. No 49 of 2013 is dismissed being devoid of merit.

No order to costs.

(Air Marshal Anil Chopra)
Member (A)

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

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