

Reserved
Court No. 2

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

Original Application No 297 of 2015

Thursday, this the 17th day of March 2016

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

IC-47432A Colonel Vikramaditya Gupta,
Son of Late Dr. Vishwanath Gupta,
National Cadet Corps Directorate, UP 16,
Ashok Marg Lucknow - 226001

.....Applicant

Ld. Counsel for the : **Col (Retd) Y.R. Sharma, Advocate**
Applicant

Versus

1. Union of India, Through Secretary, Ministry of Defence,
South Block, New Delhi- 110011.
2. Chief of Army Staff, Army Headquarters,
South Block, New Delhi – 110011
3. Military secretary, Military secretary's Branch, IHQ of
MOD (Army), Army Headquarters, New Delhi – 110011

...Respondents

Ld. Counsel for the : **Shri Yogesh Kesarwani, Central**
Respondents. **Govt Counsel assisted by**
Lt Col Subodh Verma,
OIC, Legal Cell

ORDER**“Hon’ble Air Marshal Anil Chopra, Member (A)”**

1. This Original Application has been preferred by the applicant under Section 14 of the Armed Forces Tribunal Act 2007 with a prayer to scrutinize confidential report of 2008 and quash the order dated 28.05.2013 of Chief of the Army Staff rejecting the Non Statutory Complaint. The other prayers are:-

(a) to quash/set aside the rejection order passed by the Central Government rejecting the Statutory Complaint of the applicant vide order dated 21.07.2014 communicated on 24.07.2014.

(b) to quash/set aside the rejection order passed by the Chief of the Army staff rejecting the Non Statutory Complaint of the applicant vide order dated 03.09.2014.

(c) to quash/set aside the orders of Military Secretary’s Branch letter dated 02.07.2014 communicating the result of Final Review case.

(d) to quash/set aside the rejection order passed by the Central Government rejecting the Statutory Complaint of the applicant vide order dated 02.07.2015 communicated on 07.07.2015.

2. The brief facts of the case are that the applicant was commissioned in the Infantry on 19.12.1987. During his service

career of 28 years he took part in various operations, held various instructional, operational and staff appointments. The applicant was posted to Rashtriya Rifles in Field/Counter Insurgency Area in Northern Sector as Coy Commander and as Second in Command. He took over the command of 2 Kumaon Regiment as Commanding Officer in High Altitude Area in J & K on 01.06.2005 and earned 4 Confidential Reports for the period from 01.09.2005 to 26.06.2008. While initiating last Confidential Report for the period from 01.09.2007 to 26.06.2008 the applicant received his posting order as Colonel General Staff Planning HQ 12 Corps which was considered a high profile appointment tenanted by officers qualified on Higher Command Course/Higher Defence Management Course.

3. The applicant while relinquishing command in 2008, was given lukewarm Confidential Report wherein he has been awarded more eights and less nines in the open portion of box grading and he apprehended that the box grading in the hidden portion might have been 8 and 7 and that would have affected his career and resulted in non empanelment for promotion to the rank of Brigadier by promotion board. In the subsequent years as Colonel General Staff Planning in Headquarters 12 Corps and Colonel General Staff (Intelligence) in Headquarters 9 Corps, the applicant has earned six Confidential Reports and the applicant was graded outstanding in 4 Confidential Reports.

Further, he was awarded Commendation Card by General Officer Commanding in Chief on 15.08.2013. He was first considered for promotion to the rank of Brigadier in October 2012 but he was not empanelled for the rank of Brigadier as a fresh case.

4. Aggrieved by the result of non empanelment, the applicant preferred a Non Statutory Complaint dated 09.01.2013 to Chief of Army Staff. The same was rejected vide order dated 28.05.2013 (**Annexure A1**). Thereafter the applicant was posted out as Dy Cdr in Mountain Brigade on 10.07.2013. Aggrieved with the order of Chief of the Army Staff, the applicant preferred Statutory Complaint to Government of India on 04.12.2013. The same was rejected by Government of India vide order dated 21.07.2014 (**Annexure A-2**). Meanwhile the applicant was considered by Number 2 Selection Board as a first review case held in September 2013 and was again not empanelled to the rank of Brigadier. Being aggrieved by the same, the applicant preferred another Non Statutory Complaint to Chief of Army Staff on 01.01.2014. The same was rejected by Chief of the Army Staff vide order dated 03.09.2014 (**Annexure A-3**). Non Statutory Complaint was decided by Chief of Army Staff after 9 months. Statutory Complaint was decided by Government of India vide order dated 21.07.2014. Meanwhile Military Secretary's Branch, Army Headquarters vide letter dated 02.07.2014 informed the applicant that he has

not been empanelled to the rank of Brigadier as a Final Review case held in March 2014 (**Annexure A-4**).

5. Aggrieved by Chief of the Army Staff reply on his second Non Statutory Complaint, the applicant submitted another Statutory Complaint to Government of India on 22.09.2014. The same was rejected by the Government of India on 02.07.2015 (**Annexure A-5**).

6. The applicant apprehended that while he was graded Above Average by Initiating Officer in open portion, it is possible that he was given luke warm reports of more 8 and less 9 and box grading of 8 in the hidden portion and therefore this O.A.

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

8. The respondent's contention is that the Army has pyramidal rank structure and thus the number of vacancies in higher ranks is limited. Entire assessment of an officer in any Annual Confidential Report consists of assessment by 3 different officers i.e. Initiating Officer, Reviewing Officer and Senior Reviewing Officer whose assessments are independent of each other. For promotion to a selected rank the selection board takes into consideration a number of factors such as war/ operational reports, Course Reports, Annual Confidential Report performance in command and staff appointments,

honors and awards, disciplinary background and the selection/rejection is based upon over all profile of an officer compared with his batch mates.

9. Applicant is qualified in Defence Service Staff College (DSSC) and Senior Command (SC) Course but not qualified in Higher Command Course/ Higher Defence Management Course (HDMC) and equivalent Courses. His Course of Instructions profile is 'High Average' to 'Above Average'. In the reckonable profile, the applicant has earned 18 Confidential Reports which includes 07 Confidential Reports in the rank of Major, 02 in the rank of Lieutenant Colonel and nine in the rank of Colonel. The Confidential Report for the period September 2007 to June 2008 is clear 'Above Average' to 'Outstanding' with no aberration. All criteria reports are 'Above Average' and he has earned 'Outstanding' reports in Staff (non Criteria appointments) only. The applicant in the garb of his non empanelment has challenged Confidential Report for the period September 2007 to June 2008 only in his Non Statutory Complaint dated 09.01.2013. In subsequent complaints applicant has never challenged any Confidential Report including the Confidential Report for the period September 2007 to June 2008. He has challenged his non empanelment by No. 2 Selection Board on same facts and issues in all the complaints.

10. The applicant's prayers are tantamount to asking to sit over the assessment of reporting officer and substitute the assessment of reporting officers. All the Confidential Reports including the impugned confidential reports are well corroborated, balanced, objective, performance based, technically valid with complementary pen picture and performance. The applicant was not empanelled for promotion to the rank of brigadier on account of overall profile, relative merit and comparative evaluation by the selection board. The applicant has availed adequate opportunities to address his grievances. All the Confidential Reports of the applicant in the reckonable profile are 'Above Average/ Outstanding with no 7s. The applicant was considered thrice for nomination in HCC/HDMC and equivalent courses in 2009, 2010 and 2011 strictly as per laid down policy and not nominated on account of being lower in merit. In no case the applicant sought any relief for non nomination in these courses. The application is based on mere apprehensions and does not bear valid ground for the interference by the Tribunal.

11. The applicant's two Non Statutory Complaints have been rejected by Chief of Army Staff and two Statutory Complaints have been rejected by Government of India. The order of Government of India dated 02.07.2015 is reproduced as under:-

*"No. PC-36501/14507/Inf/2013/MS-19/101/SC
/2015-D (MS)*

Government of India
Ministry of Defence

New Delhi, dated 2nd ;July 2015

ORDER

IC-47432A Col Vikramaditya Gupta, Infantry has submitted a Statutory Complaint dated 22 Sep 2014 against not empanelment for promotion by the No. 2 Selection Board (First Review) held in Sep 2013. The main points of the complaint are:-

(a) The officer highlights his career profile in brief stating that he is Psc and Senior Command Course qualified and has also tenanted the appointments of Instructor at Infantry School, Mhow, DAA&QMG of an Infantry Brigade during OP PARAKRAM, Col GS (Ops) and Col GS (Inf) in a Corps. ;he avers to his current assignment as Deputy Commander of a Brigade in a Counter Insurgency environment.

(b) The officer then specifically avers to his command tenure and the four CRs earned therein. He states that ;just prior to the last CR earned in this appointment he was posted as Col GS (Plg) of a Corps which indicated that his merit/profile was high. He states that the last report earned as CO has been deliberately graded in a lukewarm manner due to differences other than professional. He feels that he has been given '7's in the hidden portion of his CR. He draws this inference from the fact that the CR was dispatched to the RO after a period of one month thereby influencing and ensuring that similar remarks are endorsed along the chain of command. This, he feels, is a

deliberate attempt to harm his career. He wants the CR initiated in Jun 2008 to be evaluated against the overall rating/average of other reports.

(c) He feels that the overall aspect of a block grading of '8' should be considered as an aberration and expunged in case there are variations in the CR by the impugned IO vis a vis other reports endorsed by him and if it has affected his overall profile.

The officer has requested that:-

(a) His entire reckonable profile considered by No. 2 Selection Board be analysed; especially concerning his confidential report which was initiated in Jun 2008. Other confidential report initiated by same Initiating Officer be analysed in terms of gradings given by Reviewing Officer and Senior Review Officer. Inconsistencies may please be expunged.

(b) Aberrations/lower grading in any Annual Confidential Reports wherein he may have been given less eights in the open and seven in hidden portion in comparison of other confidential reports thereby lowering and affecting his merit in his reckonable service profile, should be treated as inconsistencies not commensurating with his overall profile and be expunged.

(c) He be reconsidered as a fresh case in No 2 Selection Board for promotion to the rank of brigadier.

3. The Statutory Complaint of the officer has been examined in the light of his overall profile, relevant

records and analysis/recommendations of Army Headquarters. After consideration of all aspects of the complaint and viewing it against the redress sought, it emerges that all CRs, including impugned CR 09/07 – 06/08, in reckonable profile of the officer are well corroborated, objective, performance based and technically valid. There being no evidence of any bias or subjectivity, none of the CRs merit any interference.

4. The officer has not been empanelled for promotion to the rank of Brig because of his overall profile, relative merit and comparative evaluation as assessed by No 2 Selection Board.

5. The Central Government, therefore, rejects the Statutory Complaint dated 22 Sep 2014 submitted by IC-47432A Col Vikramaditya Gupta, Infantry against no empanelment for promotion, being devoid of merit.

By order and in the name of the President

Sd/- x x

(Revati Raman)

Under Secretary to the Government of India

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

12. Original records of the promotion board and Confidential Report profile of the officer was produced before the Tribunal. In the Confidential Report of September 2007 to Jun 2008 all the assessments are between 8 to 9. In a few cases the

Reviewing Officer has actually increased the grading compared to Initiating Officer. In most cases the Reviewing Officer and Senior Reviewing Officer's grading are same as the Initiating Officer. We find no bias or anomaly in the Confidential Report grading of Initiating Officer, Reviewing Officer and senior Reviewing officer in the year September 2007 to Jun 2008. After seeing the Confidential Report profile of the officer it is clear that the applicant is a good officer. However due to pyramidal structure and merit based courses and promotion, he could not initially go to Higher Command and equivalent courses and also could not make it in merit for promotion to the rank of Brigadier. Armed Forces have an elaborate grievance redressal mechanism. The grievance redressal system was used by the applicant to the full extent. His Statutory/Non Statutory Complaints have been considered at the level of Chief of the Army Staff and Government of India and reasoned and speaking orders have been passed while rejecting the same.

13. Relief sought by the applicant tantamount to the Tribunal being asked to sit in judgment over various reports written by different reporting officers which is not the jurisdiction of this Tribunal. The respondents have relied on the judgment of Hon'ble Supreme Court in the case of ***Lt Col Amrik Singh Vs Union of India*** (2001 (1) SCC 424). Para 21 of the judgment is reproduced as under:-

“..... But the scope of the jurisdiction of the High Court being very limited, we cannot go into the correctness of the adverse remarks nor into the assessment made by the Selection Board on the two occasions.”

14. Hon'ble Supreme Court in the case of **AVM SL Chhabra Vs Union of India and Others** (1993) Supp (4) SCC (4) 41 has held as under:

“It was neither possible for the High Court, nor is possible for this Court to act as a court of appeal against the decision of the Selection Board, which has been vested with the power of selection of an officer for being promote to the rank of Air Vice Marshal. No oblique motive has been suggested on behalf of the appellant against any of the members of the Selection Board and there is no reason or occasion for us to inter such motive on the part of the members of the Selection Board for denying the promotion to the appellant with reference to the year 1987. Public interest should be the primary consideration of all Selection Boards, constituted for selecting candidates, for promotion to the higher posts, but it is all the more important in respect of Selection Boards, meant for selecting officers for higher posts in the Indian Air Force. The court cannot encroach over this power, by substituting its own view and opinion. According to us, there is no scope to interfere with the decision of the Selection Board of 1987, merely on the ground that adverse remarks, in the Appraisal Report of 1986, which were placed before the Selection Board in the year 1987, were later expunged”. (B)

15. In view of the aforesaid, we are of the considered opinion that no injustice has been done with the applicant. The

Confidential Reports are well corroborated and performance based. We find no reason to interfere with any Confidential Report or Promotion Board. The applicant has not been able to make out a case.

16. The O.A. is devoid of merit and is liable to be dismissed hence **dismissed**.

No order as to cost.

(Air Marshal Anil Chopra)
(Member A)

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