

**Court No.1**

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

**ORIGINAL APPLICATION No. 246 of 2020**

**Friday, this the 25<sup>th</sup> day of March, 2022**

**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**

**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

Lt. Col. Devender Singh Rohilla S/o Shri Krishan Rohilla,  
resident of 141-C, P.B. Marg, Bareilly, Cantonment Bareilly-  
243001.

..... Applicant

Learned counsel for the : **Shri Himanshu Bora, Advocate**  
Applicant

Versus

1. Union of India through Secretary Ministry of Defence  
South Block New Delhi-110011.
2. Under Secretary, Government of India, Ministry of  
Defence, South Block, New Delhi-110011.
3. Deputy Director, for Military Secretary, Military Secretary's  
Branch, Integrated Headquarter, Ministry of Defence  
(Army), DHQ PO New Delhi-110011.

..... Respondents

Learned counsel for the : **Shri Amit Jaiswal,**  
Respondents. **Central Govt. Counsel**

ORDER

**“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”**

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

- (i) To quash / set aside the order dated 15.02.2018, passed by the respondent No.2 as contained in Annexure No.1 to the Application.
- (ii) To quash / set aside the order dated 24.03.2017, passed by respondent No.3 as contained in Annexure no.3 to the Application.
- (iii) To set aside / expunge all three Adequately Exercised Reports of the applicant for his tenure at 72 Armoured Workshop (Artillery) between 20.07.2006 to 21.11.2007.
- (iv) To direct the respondents to consider the Application’s case a fresh in the next No. 3SB for empanelment for the rank of Colonel and maintain his original seniority.
- (v) To direct the respondents to grant waiver of the balance Adequately Exercised period to the applicant taking into consideration the Military Secretary –Policy dated 15.02.2018 and Integrated Head Quarter of Ministry of Defence (Army) Military Secretary Branch, Compendium of Channels of Reporting Vol-1 signed on 07.01.2016 by military Secretary.

(vi) Any other order or direction that this Hon'ble Tribunal may deem fit just and proper in the circumstances of the case may also be passed favouring the applicant.

(vii) Cost of the application be awarded to the applicant.

2. Brief facts of the case giving rise to this application are that the applicant was commissioned in the army on 04.03.2000. He was not empanelled for promotion to the rank of Colonel (Col). He submitted Non Statutory and Statutory complaint against non empanelment for promotion to the rank of Col which were rejected. Being aggrieved, applicant has filed instant Original Application to quash the order dated 24.03.2017 and 15.02.2018 and to grant promotion to the rank of Col to applicant.

3. Learned counsel for the applicant submitted that the applicant was commissioned in the army on 04.03.2000. He was granted ante date seniority of two years being an Engineering Graduate selected through Technical Entry Scheme and his date of seniority was 08.05.1998. He performed his duties with devotion and dedication. Applicant was awarded Sena Medal (Gallantry) while serving with 14 Rashtriya Rifles Battalion at J&K. When the officer was posted as Joint Director, Electronics

and Mechanical Engineering (EME) at Integrated Headquarters of Ministry of Defence (Army) he was conferred with 'COAS Commendation Card'. Applicant performed well in courses during service and completed M.Tech in 2009. Applicant successfully conducted trials of HMV 8 x 8 both in Deserts and Plains for induction into Indian Army.

4. Learned counsel for the applicant submitted that applicant being a 1998 batch officer of Corps of EME was considered by No 3 Selection Board (SB) in April 2016 for promotion to the rank of Colonel (Col) but he was not empanelled for promotion. Being aggrieved by non empanelment, applicant filed Non Statutory Complaint on 09.06.2016 against non empanelment for promotion on the rank of Col which was rejected vide letter dated 24.03.2017. Applicant filed Statutory Complaint which was also rejected vide letter dated 15.02.2018. The applicant was posted at 72 Armoured Workshop (Artillery) located at Faridkote (Punjab) during the period 20.07.2006 to 21.11.2007 and was part of 633 EME Bn which was located at Hissar (Haryana) and was 220 kms away from Workshop. Applicant's assessments in Criteria Reports between 20.07.2008 to 21.11.2006 were not commensurate to his contribution to the Armed Forces. The applicant's three Criteria Reports for the period 20.07.2006 to

31.12.2006, 01.01.2007 to 21.06.2007 and 22.06.2007 to 21.11.2007 were wrongly assessed. The Commanding Officer (CO) of 633 EME Bn was Initiating Officer (IO) of Annual Confidential Report (ACR) of both, the Officer Commanding (OC) 72 Armoured Workshop and also of Workshop Officer who works under Officer Commanding (OC) Workshop. The Workshop Officer has a limited mandate and is required to work as per directions of OC Workshop and he cannot bypass this channel and therefore he cannot report directly to the CO and this resulted in very limited contact between the applicant and the CO. Hence the applicant's superior officer could not assess the applicant's work properly. Applicant performed duty of Officiating Officer Commanding when OC was detailed for Senior Command Course and was out of unit for almost four months.

5. Learned counsel for the applicant submitted that in the month of February 2007, Exercise With Troops (EWT) was conducted in deserts of Rajasthan in which the applicant was Officiating OC of the workshop. During the exercise, then CO of 633 EME Bn, Col Sanjay Gangwar, could not witness the applicant's performance as he was member of a General Court

Martial being held at Faridkote and could not join the Bn in Exercise With Troops.

6. Learned counsel for the applicant submitted that as per para 2 of MS Branch letter dated 14.02.1997, Officer Commanding (OC) Armoured Workshop, not below the rank of Lt Col was made the Initiating Officer (IO) for Workshop Officer working directly under him where in the Officer Commanding (OC) (Lt Col) was not in Criteria Appointment. After implementation of AVSC-1 another policy letter on change of reporting channel was issued by Military Secretary (MS) Branch vide letter dated 17.09.2003, wherein Commanding Officer (CO) EME Battalion was made the Initiating Officer (IO) for all officers but list of Criteria Appointments was not amended and Armoured Brigade Workshop Officer continued to be placed in Criteria Appointment. Vide MS Branch policy letter dated 19.05.2005, the OC Armoured Workshop (Lt Col) was also categorized as a Criteria Appointment, thereby putting Workshop Officer at disadvantage. Now Military Secretary's Branch has removed the 'Workshop Officer' from the Criteria Appointment list for EME Officers vide letter dated 15.02.2017. The inherent disadvantage of placing officers in Criteria Appointments while posted as Workshop Officer has been

identified by the authorities and correctly deleted. From 07.01.2019 the Initiating Officer (IO) of Workshop Officer has been rightly changed from Commanding Officer (CO) EME Bn to OC Workshop under whom the Workshop Officer directly functions and who can truly assess the Workshop Officer's performance and grade him accordingly in his Annual Confidential Report. The new change has been informed to the environment vide Integrated Head Quarter of Ministry of Defence (Army), Military Secretary Branch, Compendium of Channels of Reporting Vol- 1. Learned counsel for the applicant pleaded that respondents have realised that categorizing the post of Workshop Officer as Criteria Appointment was incorrect and they rectified the mistake which had caused prejudice to the applicant and resulted in applicant not being empanelled for promotion to the rank of Col. The place where applicant worked was not Armoured Brigade and therefore the applicant's ACR should have been assessed by the Officer Commanding, as is done in case of non Armoured Brigade. Learned counsel for the applicant pleaded that impugned orders dated 24.03.2017 and 15.02.2018 rejecting Non Statutory Complain and Statutory Complain of the officer be quashed and applicant be granted promotion to the rank of Col.

7. **Per contra**, learned counsel for the respondents submits that Army has a pyramidal rank structure. Number of vacancies in higher ranks are limited and only those officers whose record of service within a particular batch are better are selected to fill up the vacancies available in the higher ranks. Seniority in itself cannot be criteria before the Selection Board for empanelment or non empanelment. In case any officer gets any relief through complaint in any Confidential Report (CR), 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 empanelled by such special consideration, his original seniority remains protected. As per 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 empanelled as a fresh case, but empanelled 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 empanelled, he is deemed to be finally superseded. The entire assessment of an officer in any ACR consists of assessment by three different Reporting Officers i.e. Initiating Officer (IO), Reviewing Officer (RO) and Senior Reviewing Officer (SRO) whose assessments are independent of each

other. No officer has any right to claim an 'Outstanding' assessment in the CR. Such assessments fall outside the purview of judicial scrutiny unless it is a case where the CR is technically invalid for contravention of any rule or procedure or the applicant through positive averments and supporting facts/evidence establish bias/ malafide against the reporting officers to the satisfaction of the Court and importantly after arraying them as a party and being heard. While considering an officer for promotion to a selection rank, the Selection Board takes into consideration a number of factors such as war/ operational reports, Course Reports, ACR, performance in command and staff appointments, honours and awards, disciplinary background etc and not just the ACR or one/few ACRs. Empanelment/ non empanelment is based upon the overall profile of an officer and comparative merit within the Batch as evaluated by the Selection Board. Selection Board assess the suitability of the applicant for promotion. The assessment of Selection Board is recommendatory in nature and not binding until approved by the competent authority. Hon'ble Apex Court in number of cases has held that courts should not substitute the findings of Selection Boards by its own judgments.

8. Learned counsel for the respondents submitted that applicant was not empanelled for promotion to the rank of Col in No 3 Selection Board held in Apr 2016. Aggrieved by non empanelment to the rank of Col by No 3 Selection Board, the applicant submitted Non Statutory Complaint dated 07.06.2016. The complaint was examined by the competent authority in detail along with his overall profile. After considering all aspects of the complaint, it was emerged that all CRs including impugned CRs 07/06- 12/06, 01/07- 06/07 and 06/09- 11/09, in the reckonable profile were well corroborated, performance based and technically valid except RO's assessment in CR 02/09- 12/09, which merited limited interference on grounds of inconsistency. Accordingly, the competent authority vide a detailed speaking order dated 24.03.2017 granted redressal to the applicant by way of expunging of RO's assessment at Para 9 (a)- 'Physical attributes' in CR 02/09-12/09.

9. Learned counsel for the respondents further submitted that the applicant submitted Statutory Complaint against non empanelment. Upon detailed examination of the complaint along with his overall profile and other relevant documents and after consideration all aspects of the complaint, it emerged that all CRs in reckonable profile were fair, well corroborated, objective,

performance based, technically valid and in tune with the overall profile of the applicant. There being no evidence of any bias, none of the CRs merited any interference. The contention of the applicant that the superior officer of the applicant could not assess his work properly is denied being mere unsubstantiated presumption of the applicant. The officer was posted to 633 EME Bn and was performing the duties of Workshop Officer, 72 Armd Workshop which was as per policy in vogue. The officer submitted his ACR form dully filled for initiation to his IO, wherein he had mentioned his appointment as Workshop Officer. The officer has certified the said details to be true and correct. The CR was thoroughly analysed by Military Secretary Branch and the same was found to be technically correct. The policy provisions and amendments are made after due deliberations with all stakeholders and prior approval of Ministry of Defence. The officer was not empanelled for promotion to the rank of Col on account of his overall profile, relative merit and comparative evaluation as assessed by No 3 Selection Board. Accordingly, Statutory Complaint of the officer was rejected by a speaking and reasoned order dated 15.02.2018.

10. We have heard learned counsel for the parties and perused the policy on the subject and gone through the documents available on record.

11. The question before us to decide is 'whether the impugned orders rejecting the claim of the officer are liable to be quashed and applicant is entitled for promotion to the rank of Col?

12. In the instant case, applicant submitted Non Statutory Complaint being aggrieved with non promotion to the rank of Col. The applicant was considered for promotion as Col as a Fresh Case in Apr 2016 and was not empanelled. In Dec 2016, applicant was considered as a case of First Review but he was not empanelled. In Sep 2017, applicant was considered as a case of Spl Review (Fresh) but applicant was not empanelled. On Oct 2018, applicant was considered as a case of Spl Review (First) but applicant was not empanelled and finally on Mar 2019 Final Review of the applicant was held but applicant was not empanelled. Non Statutory Complaint filed by the applicant was considered by the competent authority and competent authority vide a detailed speaking order dated 24.03.2017 granted redressal to the applicant by way of expunction of RO's

assessment at Para 9 (a)- 'Physical attributes' in CR 02/09-12/09 of the officer. The applicant further filed a Statutory Complaint dated 15.05.2017 against his non empanelment to the rank of Col. Upon detailed examination of the complaint along with his overall profile and other relevant documents and after consideration of all facts of the complaint, it was found that all CRs in the reckonable profile including impugned CRs 07/06 – 12/06, 01/07 – 07/07 and 06/07 – 11/07 were fair, well corroborated, objective, performance based, technically valid and in tune with the overall profile of the applicant. There being no evidence of any bias or subjectivity, none of the CRs merited any interference. The applicant was not empanelled for promotion to the rank of Col on account of his overall profile, relative merit and comparative evaluation as assessed by Board. We have also perused the CRs of the officer for the above periods and find that there is no bias, much less malafide infact, in the numerical assessment of the applicant by the IO. The assessment is also fair and consistent.

13. Further the channel of reporting in the applicant's case is also in accordance with the policy on the subject. Integrated HQ of MoD, Military Secretary's Branch MS 4D (Channels) Compendium of Channels of Reporting Vol- 1 Page 50, states

*O.A. No. 246 of 2020 Lt. Col. Devender Singh Rohilla*

that channel of reporting applicable to officers posted to Div EME Bn (Inf/ Mtn/Armd/Arty Div) are as under:-

CO Unit	- Col Selection grade. IO & FTO for all offr.
Bde Cdr	- Where applicable. RO for offr of affiliated Wksp Coy.
GOC Div	- IO for CO and RO/SRO for other offr.
Brig EME, HQ Corps	- Where applicable. FTO for CO & HTO for Others.
GOC Corps.	- Where applicable. RO & HTO for others.
MGEME Comd	- HTO for CO/*FTO for CO & HTO for others.
GOC in C	- SRO for CO/*RO for CO and SRO for others.

14. In conspectus we are not inclined to agree with the argument regarding biased ACR and non following of channel of reporting advanced by the learned counsel for the applicant.

15. Subsequently, in 2017 the Workshop Officer post was no longer categorized as a Criteria Appointment and in 2019 the IO of the Workshop Officer has been amended from CO of the Bn to OC, Workshop. These are policy provisions and such amendments to policy are made after due deliberations with all stakeholders and with prior approval of Ministry of Defence, if necessary. Hence, the officer cannot claim the benefit of this new policy for himself as he was governed by an earlier policy in the year 2006-2007. The officer was not empanelled for promotion to the rank of Col on account of his overall profile,

relative merit and comparative evaluation as assessed by No 3 Selection Board.

16. As a result of foregoing discussions, we do not find any irregularity or illegality in not granting rank of Col to applicant. The instant O.A. lacks merit and is liable to be dismissed and is accordingly **dismissed**.

17. No order as to costs.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)  
Member (A) Member (J)

Dated: 25 March 2022  
UKT/-