

RESESRVED
COURT No.1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No 315 of 2019

Friday, this the 29th day of April, 2022

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

No: IC-49611Y Colonel Balraj Sharma, Shaurya Chakra, Central Command Provost Unit, Opposite PCDA Office, Near Jadunath Chowk, Carriappa Marg, Lucknow Cantt, Lucknow-226002.

..... Applicant

Learned counsel for the : Applicant in person.
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of Army Staff, Integrated HQ of Ministry of Defence (Army), South Block, DHQ Po-New Delhi-110011.
3. The Military Secretary, MS Branch, Integrated HQ of Ministry of Defence (Army), South Block, DHQ, PO, New Delhi-110011.
4. Additional Director General, Complaint Advisory Board, Integrated HQ of Ministry of Defence (Army), South Block, DHQ, PO, New Delhi-110011.

.....Respondents

Learned counsel for:**Dr. Shailendra Sharma Atal**, Advocate
the Respondents. Central Govt. Standing Counsel assisted by
Lt Col Suchithra C, AMS (Legal) and
Lt Col D Ranjith, AMS-5, IHQ of MoD (Army)

ORDER

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

- (a) *Quash Government of India Order No.36501/16159/Armed/2016/MS-19/257/SC/2018-D(MS) dt 28 Sep 2018.*
- (b) *All Annual Confidential Reports (ACRs) of the applicant in the reckonable profile be placed before the Hon'ble Bench and a review of applicant's ACRs in the reckonable period be carried and figurative assessment of '7' or lower grading be expunged.*
- (c) *A review of applicant's ACRs in the reckonable period be carried and any, adverse remarks which adversely affected the applicant's merit to get recommended in the Higher Command Course or to get empanelled for promotion be expunged.*
- (d) *Applicant's merit for nomination to Higher Command and its equivalent courses, be reconsidered in view of redress granted to him vide MS Br, IHQ of MoD(Army) letter No. 36501 / 16159 /Armd/2016/MS-19 dt.03 Aug 2016 and also in anticipation of a favourable decision to his prayers in the present application. The applicant be detailed to attend the course or notional marks be allotted for the same, in case he makes it in the merit.*
- (e) *The applicant be given a weightage of 0.8 marks for the gallantry award of 'Shaurya Chakra' in number 2 Selection Board. All Board proceeding of Number 2 Selection Board for the Armoured Corps for 1990, 1991 and 1992 batches be placed before the Hon'ble bench to ensure correct application of weightage as per Quantitative Selection System Policy dated 04 Jan 2011.*
- (f) *Upward moderation in the marks allotted in value judgment in three selection boards in which the applicant was considered for promotion, in case it is found that the value judgement marks have been deliberately reduced to adversely affect the applicant's comparative merit.*
- (g) *The applicant be considered as a 'Fresh Case' for promotion in Number 2 Selection Board in view of redress granted on the present application.*
- (h) *All board proceedings of Number 2 Selection Board for the Infantry for 1990, 1991 and 1992 batches be placed before the Hon'ble bench to compare the applicant's merit with the last officer empanelled for the rank of Brigadier and the applicant be promoted in case his merit is better.*
- (i) *Reversion to a common pool of vacancies, as it existed till 2001, in respect of Armoured Corps, Mechanised Infantry and Infantry, to eradicate discrimination on promotional prospects, in the existing system of vacancy allotment for the general cadre. The above reversion be ordered retrospectively from the 1990 batch. As **an interim measure**, allotment of additional vacancies for Armoured Corps for 1990, 1991 and 1992 batches be given to bring the pro rata for the armoured corps at par with the infantry.*

(j) *Any other remedy as deemed appropriate by the Honourable Tribunal.*

2. Brief facts of the case giving rise to this application are that the applicant was commissioned into the Armoured Corps on 09.06.1990. He was awarded GOC-in-C Commendation Card in the year 2012, and in the year 1996 he was awarded 'Shaurya Chakra' which is awarded for valour, courageous action or self-sacrifice while not engaged in direct action with the enemy. He has also been deputed to the Botswana Defence Forces for three years. The applicant had submitted a statutory complaint dated 26.02.2014 (Annexure A-4) against policy that withdrew weightage for gallantry awards for preparing comparative merit for Higher Command Course and equivalent courses. This complaint was rejected by the Central Govt vide order dated 10.06.2015 (Annexure A-5). In Nov 2015, No 2 Selection Board (fresh) (Col to Brig) was held in which the applicant was not empanelled. Against non empanelment by No 2 Selection Board, applicant submitted a non statutory complaint dated 21.12.2015 (Annexure A-6) in which Chief of the Army Staff (COAS) granted partial redress vide order dated 03.08.2016 (Annexure A-7) but despite granting partial redress he was not empanelled in subsequent Special Review Selection Board (fresh) held in Feb, 2017. In November, 2017 First Review Selection Board was held in which he was not empanelled. Being aggrieved with his non empanelment, he submitted a statutory complaint dated

08.03.2018 (Annexure A-2) which was rejected by the Central Govt vide order dated 28.09.2018 (Annexure A-1). He was also not empanelled by the final review Selection Board held in July, 2018. Applicant has filed this O.A. to quash order dated 28.09.2018, expunction of lower gradings in all CRs, expunction of adverse remarks which would have affected the applicant's merit for selection to the Higher Command Course in view of redressal granted vide order dated 03.08.2016, award of weightage of 0.80 marks for the gallantry award and that he be considered as a fresh case for promotion by No 2 Selection Board.

3. Applicant's version is that he is a 1990 batch Armoured Corps Officer with a distinguished career. He was awarded 'Shaurya Chakra' by the President of India on 15.08.1995 for an act of gallantry. He is also two times awardee of Army Commander's Commendation Card and scored A1 grading in Technical Staff Course. Besides the above he is an MBA (HR), possesses LLB (Hons) degree from Faculty of Law, University of Delhi, Masters in Business Law from National Law School, University of Bangalore and has served with the Botswana Defence Force on deputation as an Armour Advisor. His further submission is that he was considered for nomination to Higher Command Course but he could not make it in the merit due to non inclusion of weightage points of Shaurya Chakra. As a result, in the year 2014, when he was due to be considered for the Higher

Command Course for the second time, an amendment to policy was issued vide letter dated 27.01.2014 withdrawing inclusion of weightage for gallantry awards for preparing the merit list, about a week prior to declaration of results. Consequently, he was deprived a chance for nomination to the course. Applicant submitted a statutory complaint dated 26.02.2014 against amendment in the said policy which was rejected vide order dated 10.06.2015 (Annexure A-5). He further submitted that in the year, 2015 he was considered for promotion to the rank of Brigadier by No 2 Selection Board and he was hopeful that he would make it to the merit as he was having 0.80 marks for his gallantry award as against the weightage of 0.75 marks for those who successfully completed Higher Command Course, which he could not attend. The result of Selection Board was declassified in Dec, 2015 and he was not empanelled for promotion. Consequent to his non empanelment in No 2 Selection Board he submitted a non statutory complaint dated 21.12.2015 (Annexure A-6) for expunction of figurative assessment '7' or below, including adverse remarks, in his Confidential Reports initiated during his deputation with the Botswana Defence Force. He was granted partial redressal vide order dated 03.08.2016 (Annexure A-7) and six of such low figurative assessments were expunged. He further submitted that even after expunction of his confidential report he was not empanelled in further Selection Boards. He then

submitted a statutory complaint dated 08.03.2018 but the same was rejected vide Govt order dated 28.09.2018. The applicant apprehends that issues raised in his statutory complaint dated 08.03.2018 were not given due consideration, therefore, he is seeking intervention of this Tribunal to set aside order dated 28.09.2018. In support of his contention the applicant has cited following judgments:-

- (i) Order dated 29.06.2017 passed by AFT Lucknow in O.A. No 264 of 2014, *Col Mahesh Kumar Singh vs UOI & Ors.*
- (ii) Order dated 02.03.2017 passed by AFT, Chennai in T.A. No. 4 of 2016, *Col SK Sharma vs UOI & Ors.*
- (iii) Order dated 02.11.2018 passed by AFT, Jabalpur in O.A. No. 144 of 2018, *Col Ajay Verma vs UOI & Ors.*
- (iv) Hon'ble Apex Court judgment in the case of *Mathura Prasad Bajoo Jaiswal & Ors vs Dossibal N.B. Jeejeebhoy*, reported in 1970 (1) SCC 613.
- (v) Order dated 15.02.2016 passed by the Hon'ble Apex Court in Civil Appeal No 3208 of 2015, *UOI & Ors vs PK Choudhary & Ors.*

4. Per contra, learned counsel for the respondents submitted that the applicant is qualified in Technical Staff Officer Course (TSOC) and has not done the Defence Services Staff College Course, which has higher weightage over TSOC. Learned counsel for the respondents further submitted that after grant of partial redressal, the applicant could not be nominated for Higher Command Course based on merit. With regard to claim for weightage of 'Shaurya Chakra', submission of learned counsel for the respondents is that the applicant was given the permissible

weightage for the gallantry award in No 3 Selection Board for promotion to the rank of Colonel and in No 2 Selection Board for Brigadier. It was also stated that while considering an officer for promotion to a selection rank, the Selection Board takes into consideration a number of factors like war/operational reports, course reports, Annual Confidential Reports (ACR), performance in command and staff appointments, honours and awards, disciplinary background etc. and not only ACRs and empanelment/non empanelment is based upon the overall profile of an officer and comparative merit within the batch vis-a-vis available vacancies. Thus, the assessment of Selection Board is recommendatory in nature and not binding until approved by the competent authority i.e. COAS/Central Govt. In this regard learned counsel for the respondents has relied upon the following judgments of the Hon'ble Apex Court which lay down that it is not for the Courts to substitute the findings of the Selection Board by its own judgments:-

- (i) Union of India vs Lt Gen RS Kadyan, (2000) 6 SCC 698.
- (ii) Maj Gen IPS Dewan vs UOI & Ors, (1995) 3 SCC 383.
- (iii) AVM SI Chhabra, VSM vs UOI & Ors, 1993, supp(4) SCC 441.
- (iv) Dalpat Abasaheb Solunke vs BS Mahajan, (1990), 1 SCC 305.
- (v) Lt Col Amrik Singh vs UOI & Ors, (2001) 10 SCC 424.
- (vi) Major Surinder Shukla vs UOI & Ors, (2008) 2 SCC 649.

5. Further submission of learned counsel for the respondents is that applicant had submitted a statutory complaint dated 08.03.2018 against his non empanelment for promotion to the rank of Brigadier by No 2 Selection Board (first review) held in Nov 2017. The complaint was rejected by the competent authority vide order dated 28.09.2018 in light of applicant's overall profile, which was found to be well corroborated, performance based, objective and technically valid. The learned counsel further stated that there was no anomaly with regard to distribution of vacancies by No 2 Selection Board and permissible weightage was given for the gallantry award of the applicant. The applicant was not considered for Higher Command Course post the redressal of his non statutory complaint due to being in promotion zone ban. This policy is applied uniformly for all similarly placed officers and no injustice has been done to him on this account. The applicant has not been empanelled for the promotion to the rank of Brigadier on account of his overall profile, relative merit and comparative evaluation as assessed by the No 2 Selection Board. He further stated that the applicant was considered for nomination to Higher Command Course in the year 2013, 2014 and 2015. The nomination for the year 2013 was guided by policy letter dated 11.11.2010 (Annexure A-8 of the O.A.) while nomination for the year 2014 and 2015 was guided by the policy letter dated 28.06.2013 (Annexure R-1) which was subsequently

amended on 27.01.2014 (Annexure A-3 of the O.A.). It was further submitted that the non statutory complaint dated 21.12.2015 against non empanelment for promotion to the rank of Brigadier by No 2 Selection Board held in Nov 2015 was examined by the COAS and partial redress was granted in that six low figurative assessments were indeed expugned. Statutory complaint dated 08.03.2018 against non empanelment for promotion to the rank of Brigadier by No 2 Selection Board was rejected by the Central Govt vide order dated 28.09.2018 in light of the applicant's overall profile, which was found to be well corroborated, performance based, objective and technically valid. Learned counsel for the respondents further submitted that there is no provision of a special screening board for Higher Command Course in the extant policy. Moreover, the contention of the applicant that he be considered for courses in 2017 under the policy dated 11.11.2010, wherein he would be granted marks for Honours and Awards, is untenable. It was further submitted that the applicant is ineligible for nomination to subsequent HCC in terms of para 8 (a) of the extant policy dated 10.12.2018 on residual service clause. It was further submitted that all policy decisions of the Indian Army are presented, discussed and ratified in the Army Commander's Conference which is held bi-annually. This conference is chaired by the Chief of Army Staff wherein all Army Commanders and Principal Staff Officers of the rank of Lt

Gen are present. These decisions are taken for betterment of the organisation and to maintain uniformity and not to discriminate between Arms/services which is an impression that is being created by the applicant. He submitted that promotion based on pro-rata share of arms in overall cadre strength is fair and transparent, as it gives an equal chance to the officers of all arms to higher ranks. Respondents' learned counsel further submitted that decision relating to trifurcation of General Cadre was taken in Army Commander's Conference held in 2001 and since then a number of batches have been considered for promotion to the rank of Brig (General Cadre) and Selection Board results have been duly approved by the Ministry of Defence. His further contention is that the decision to trifurcate the General Cadre into separate vacancies of the three Combat Arms i.e. Armoured, Mechanised Infantry and Infantry, was based on the fact that Colonels in consideration zone for promotion to the rank of Brigadier earn their criteria CRs in different environment and therefore considering all of them together for promotion to the rank of Brigadier was not in organisational interest. Relying upon Hon'ble AFT, Principal Bench, New Delhi order dated 26.04.2013 in the case of **Col LC Dahiya vs Union of India & Ors**, O.A. No. 331/2012, learned counsel for the respondents submitted that a similar controversy was raised in aforesaid case which was rejected. He pleaded for dismissal of O.A.

6. Heard applicant in person and Dr Shailendra Sharma Atal, learned counsel for the respondents assisted by Lt Col Suchithra C, AMS (Legal) and Lt Col D Ranjith, AMS-5, IHQ of MoD (Army) and perused the original records brought by AMS (Legal).

7. Col Balraj Sharma, SC is a 1990 batch officer. He is qualified in TSOC, but he has not done DSSC course which in the Army has an edge over TSOC in the gradation scale for allotting quantified marks. Against confidential reports earned in Botswana, the applicant submitted a non statutory complaint in which partial redress was granted. After grant of partial redress vide order dated 03.08.2016 the applicant was considered for HCC Course afresh but due to not meeting mandatory eligibility criteria (i.e. he was in the promotion zone ban), he was not nominated to the said course based on merit. The applicant had already been considered for promotion by the fresh No 2 SB in Nov, 2015 prior to grant of redress and thus he came under promotion zone ban and was therefore, ineligible, as per policy, for fresh consideration for HCC Course.

8. Weightage for Shaurya Chakra is governed by the policy on quantification system of selection. From the records produced before us we have seen that the applicant was awarded laid down weightage for the gallantry award in No 3 SB for promotion to the

rank of Colonel and in No 2 SB for promotion to the rank of Brigadier also.

9. On 26.08.2021 while virtual hearing we had directed the respondents to produce the following records:-

(a) What would have been the applicant's position in the merit list prepared for selection to HCC/HDMC/HACC/NHCC for the year 2013 and 2014, after expunging certain numerical grades of the RO given in his ACR earned during his deputation to Botswana.

(b) Produce all original records in which weightage for gallantry award (Shaurya Chakra) was taken into consideration for applicant's promotion board and course selection.

(c) Approval of Ministry of Defence accorded to the policy on 'trifurcation' of vacancies in General Cadre for Armd/Mech Inf/Infantry.

10. The case was heard physically on 05.04.2022 at length and required original records were produced. We have scrutinised the same in detail and found that the applicant could not be selected/nominated for the Higher Command Courses in 2013, 2014 and 2015, due to his low merit.

11. From the merit list of Armed Corps Officers for consideration in HCC course/equivalent courses in 2013 we find that on 28.01.2013 there were only 11 vacancies available for Armoured Corps officers whereas the applicant was placed at serial number

19. In the year 2014 as the policy with regard to honours and awards was changed on 28.01.2014 the applicant was placed low in merit and vacancies were still only 11. As far as selection for HCC in 2015 is concerned, the number of vacancies for the course were 12 and the officer's position still remained below available vacancies. Thus, he could not make it to the merit list for selection to HCC in 2013, 2014 and 2015 due to his low merit.

12. We have observed that the officer was granted partial redress in July, 2015 for ACRs earned in Botswana. As such with this redress there was a possibility that the overall quantified marks of this officer in the merit list for HCC for 2013, 2014 and 2015, would have undergone change in his favour. We are informed that this change would be of the order of 0.013 marks. When we hypothetically apply this to the merit list of 2013, 2014 and 2015, we observe that even then the officer's merit position does not change substantially and he still remains below the cut off list of the last officer selected for the HCC.

13. Coming to the officer's non empanelment in the No 2 SB the table below indicates the number of times he was considered:-

Ser No	Look	Month & Year	Quantified marks of the applicant	Quantified marks of the last empanelled officer
(a)	Fresh	Nov 2015	87.881	89.101
(b)	Special Review (fresh)	Feb 2017	87.894	89.101 (compared with last empanelled officer of his own batch of 1990)

(c)	First Review	Nov 2017	87.947	88.070(compared with last empanelled officer of 1991 batch)
(d)	Final Review	Jul 2018	87.922	88.046(compared with last empanelled officer of 1992 batch)

14. From the aforesaid we find that in the fresh look November 2015 (1990 batch) the applicant was placed at merit position 10 having quantified marks of 87.881 as against the last empanelled officer placed at merit 8 having quantified marks of 89.101. Further, in the Special Review (Fresh) held in February 2017 (1991 batch) the applicant (with 87.494 marks) was well below the last empanelled officer placed at merit position 8 having quantified marks as 89.101. Further, in the First Review held in Nov, 2017 (fresh 1992) the applicant having quantified marks of 87.947 was again well below the last empanelled officer at merit position 7 having quantified marks 88.070. Finally in the Final Review held in Jul, 2018 (Fresh 1993) the applicant with quantified marks of 87.922 was well below last empanelled officer of 1992 batch placed at merit position 7 having quantified marks 88.046. Therefore, the applicant would not be empanelled in all the No 2 SBs being low in merit.

15. The applicant had submitted a statutory complaint dated 08.03.2018 against non empanelment for promotion to the rank of Brigadier by No 2 SB (First Review) held in November, 2017. The complaint was examined by the Central Govt which rejected it

vide order dated 28.09.2018 in light of applicant's overall profile, which was found to be well corroborated, performance based, objective and technically valid. For convenience sake, letter dated 28.09.2018 is reproduced as under:-

"1. IC-49611Y Col Balraj Sharma, SC, Armed, has submitted a Statutory Complaint dated 08 Mar 2018 against non empanelment for promotion to the rank of Brig by No 2 Selection Board (First Review) held in Nov 2017. The main points of his complaint are :-

(a) The officer has highlighted his service profile to include honours and awards received by him and his performance on various courses. He has highlighted his performance during command of 90 Armd Regt to include measures taken by him to improve operational efficiency of the Regt, winning of overall championship after a gap of seven years and performance of all ranks in various courses. He avers that in spite of the overall excellent performance of the Regt in all spheres, he was graded '8' in the reports initiated by his IO who himself commented in the pen picture that he had commanded the Regiment with 'DISTINCTION'. He states that the following extraneous factors have been the reasons for the lower assessment:-

(i) Letters from MS Branch restraining IOs from giving 'Outstanding' reports to check the inflationary trend.

(ii) The 'Cols of the Regiment' of the two Commanding Officers with whom he was serving were Army Cdrs and at a position to influence the ACR gradings of these two Commanding Officers favourably.

(b) He states that in the previous non statutory complaint he was given a partial redress vide which six figurative assessments were expunged. He avers that his obvious aberration in his CR should have been noticed earlier at the level of MS Branch. He states that this particular CR adversely affected his merit for HC consideration and the injustice caused to him needs to be rectified by considering him for the nomination for HC or equivalent courses by waiving off any restriction like residual service clause.

(c) The officer has also highlighted as to how vacancies were allotted by the MS Branch for the 1990, 1991 and 1992 batches for the General Cadre for No 2 SB in which he was considered for promotion. He avers that allotment of vacancies in No 2 SB for Armd Corps officers for the batches 1991 and 1992 indicate absolute discrimination and violates the fundamental right of equality enshrined in our constitution.

(d) He states that as per policy, weightage for Shaurya Chakra is 0.8 and is applicable for two Selection Boards after awards. He states that the weightage of 0.8 marks should remain same for particular board and hence if he has not been given 0.8 marks in the review boards then the same be given to him.

2. The officer has sought the following:-

(a) A holistic review of all CRs earned by him during his command tenure and an intervention for upwards moderation or expunction of lower figurative assessments and adverse recommendations, in view of his recorded achievements during his command.

(b) Review of endorsement by SRO in CRs 09/10-02/11 & 02/11-08/11 and upwards moderation of lower figurative assessments and adverse recommendations.

(c) Consideration of his merit as a 'Fresh Case' in true spirit by reconsideration of his merit for nomination to HC or equivalent course.

(d) Grant of weightage of 0.8 marks for the gallantry award during review board if there is an omission on that account.

(e) Redistribution of vacancies for the General Cadre for 1990, 1991 and 1992 batches and reconsideration of his merit.

3. The Statutory Complaint of the officer has been examined in light of officer's overall profile, previous complaint, other relevant documents and recommendations of AHQ. After consideration of all aspects of the complaint and viewing it against the redress sought, it has emerged that all CRs including impugned CRs 01/10-08/10, 09/10-02/11, 02/11-08/11 and 09/11-01/12, in the reckonable profile are well corroborated, performance based, objective and technically valid. There being no evidence of any bias or subjectivity, none of the CRs merit any interference.

4. All averments of the officer have been analysed and no anomaly has been noticed as regards distribution of vacancies for No 2 SB and weightage given for awards to the officer. Further the officer was not considered for HC/equivalent courses post earlier redressal due to being in promotion zone. This policy is applied uniformly to all similarly placed officers and no injustice has been done to him on this account.

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

6. The Central Government, therefore, rejects the Statutory Complaint dated 08 Mar 2018 submitted by IC-49611Y Col Balraj Sharma, SC, Armd, against non empanelment for promotion to the rank of Brig by No 2 Selection Board (First Review) held in Nov 2017."

16. The applicant had written a Demi Official letter dated 28.05.2018 (Annexure A-11) to Dy MS (B) for grant of weightage for the gallantry award in Review Selection Boards which was replied vide letter dated 28.05.2018 (Annexure A-12) clarifying that marks for 'Shaurya Chakra' were awarded while considering the applicant in No 2 Selection Board in accordance with policy letter dated 04.01.2011. Against non consideration/withdrawal of weightage for gallantry award vide letter dated 27.01.2014, the applicant submitted a non statutory complaint dated 26.2.2014 which after thorough analysis was rejected vide order dated

10.06.2015. For convenience sake order dated 10.06.2015 is reproduced as under:-

"1. IC-49611Y Col Balraj Sharma, SC, Armd Corps has submitted a Statutory Complaint dated 26 Feb 2014 against withdrawal of weightage for gallantry awards for comparative merit for 'Higher Command' and equivalent courses. The officer states that repeated weightage is inherent in the present quantitative model and is pertinent for ACRs and course performance for nomination on career courses and for SBs. Similar weightage should therefore be given to gallantry awards for such considerations including consideration for nomination on HC/HDMC/HACC/NHCC.

2. The officer has requested for the following redress:-

(a) The issue of repeated weightage in the quantification model be addressed (after a lapse of a fair period of the existing model), for all factors and not only for gallantry awards.

(b) Pending resolution of the issue of repeated weightage in the quantitative model, weightage of 'Shaurya Chakra' be included in his overall merit for consideration in Higher Command/equivalent courses and his nomination for the course commencing in 2014, in case he makes up to in the comparative merit.

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 the complainant was considered for nomination on Higher Command/equivalent courses in 2013 along with weightage of his gallantry award and in 2014 without weightage of gallantry award as per extant policies. The officer was not nominated on both occasions being low in comparative merit. His case has been handled correctly as per extant policies and no institutional injustice has been done to the officer, as the policies have been uniformly applied to all similarly placed officers.

4. The Central Government, therefore, rejects the Statutory Complaint dated 26.02.2014 submitted by IC-49611Y Col Balraj Sharma, SC Armd Corps against withdrawal of weightage of gallantry awards, being devoid of merit."

17. We have gone through the No 2 SB proceedings and we find that the 0.80 marks awarded for his gallantry award has been included while preparing the promotion merit list. For the officer to assume otherwise is not correct.

18. The applicant was considered for HCC and equivalent courses in the years 2013, 2014 and 2015 and was not nominated. In his non statutory complaint he was granted partial redress in the year

2016. The applicant was ineligible for any consideration for HCC/equivalent course thereafter due to promotion zone ban as per the then existing policy which is uniformly applied to all similarly placed officers. There seems to be no anomaly with regard to distribution of vacancies of No 2 SB and weightage given to the awards to the applicant. The applicant was not considered for HCC/equivalent courses post earlier redressal due to being in promotion zone ban and no injustice seems to be done to the applicant. The applicant has not been empanelled for the promotion to the rank of Brigadier on account of his overall profile, relative merit and comparative evaluation as assessed by the No 2 SB.

19. Army has a pyramidal rank structure and number of vacancies in higher ranks are limited. From the broad base of the pyramid, 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. All officers of a particular batch are considered together with same cut off ACRs and inputs and on the basis of individual profile of the officer and the comparative batch merit, they are either empanelled/not empanelled. Seniority in itself is no consideration before the SB for empanelment or non empanelment. In case, any officer gets any relief through complaint etc in any CRs, after the SB has been held, he is entitled to a special corresponding consideration by SB with his

changed profile, and in case, he is empanelled by such special consideration, his original seniority remain protected. As per the extant 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-a-vis his original batch. After three considerations, if an officer is not empanelled, he is deemed to be finally superseded. While considering an officer for promotion to a selection rank, the SB takes into consideration a number of factors such as war/operational reports, course reports, ACRs, performance in command and staff appointments, honours and awards, disciplinary background etc and not just the ACRs 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 SB.

20. With respect to grievance of the applicant relating to decision to trifurcate General Cadre vacancies taken in Army Commander's Conference held in 2001, we have observed that since 2001, a number of batches have been considered for promotion to the rank of Brigadier (General Cadre) and SBs duly approved by the MoD. The decision to trifurcate the General Cadre into separate vacancies of Combat Arms i.e. Armoured, Mechanised Infantry and Infantry was based on the reasoning that Colonels in zone of

consideration for promotion to the rank of Brigadier earn their criteria CRs in different environments and therefore, considering all of them together for promotion to Brigadier was not in the organisational interest. Moreover, the General Cadre takes into consideration officers of the rank of Brigadier and above who are from the Combat Arms (Armoured Corps, Mechanised Infantry and Infantry). The entry into General Cadre is from amongst Colonels who have earned their credentials in their respective Arms. Due to aforesaid reasons, SBs of different arms of same batch have been held on different dates for several years and there is no reservation of vacancies for any arm in the General Cadre. The allocation of vacancies for select ranks in the Army is done annually by the Adjutant General's Branch. Pro-rata share of Brigadier vacancies carried out in 2001 has been continuing since then and has been ratified by the competent authority. The existing system does not endow any advantages or disadvantages to any particular arm or service. In this way neither the merit is overlooked nor compromised by the competent authority. The decision to trifurcate the General Cadre vacancies into pro-rata share for the combat arms for No 2 SB was taken in 2001 after considerable deliberation at the highest levels. This system based on pro-rata share of overall cadre strength is fair and transparent, as it gives an equal chance to the officers of all arms to higher ranks. Further, the grievance of the applicant that this trifurcation

was done without any authority is also not true as the respondents have produced a note dated 06.05.2003 of MoD, which authorises the IHQ of MoD (Army) to conduct three separate Selection Boards for Armoured Corps, Mechanised Infantry and Infantry.

21. We also find that the similar controversy was decided by the Hon'ble AFT (PB), New Delhi vide order dated 26.04.2013 passed in O.A. No 331 of 2012 in the case of **Col LC Dahiya vs Union of India & Ors** wherein para 16 being relevant, is reproduced as under:-

"16. Next contention of the learned counsel for the petitioner is that the promotion to the post of Brigadier has been given by HQ, there is no such sanction of the Government, this is also not correct as we have pointed out that there is a government order dated 3.8.2001, where the power of the promotion to the rank of Brigadier has been delegated by the Government to the Military Secretary, therefore, this argument is also without any basis. The fixation of the prorata basis of the vacancies cannot be faulted as this has been done on the recommendations at the Army Commanders' Conference and Government has acted upon and it means that it is the action of the Government. After all Army Commanders' conference always make recommendations and same cannot be acted upon unless it is accepted by the Government. Therefore, this contention of the learned counsel for the petitioner is without any merit."

Thus, these aspects were holistically considered and the Hon'ble Tribunal was pleased to reject such contentions of the applicant and these issues stand settled.

22. With regard to issues raised vide para 4.25 to 4.30 of the O.A. we are of the view that these are the applicant's own conclusions and are without any basis. The applicant was fairly

considered by all the SBs and could not be empanelled for the rank of Brigadier on account of his overall profile, relative merit and comparative evaluation as assessed by No 2 SB. Further, the weightage marks in Selection Boards for courses are given after successful completion of the course, as such courses are meant for the benefit of the organisation. Thus, such courses are not meant for individual aspirations but for the organisational needs. Having not being selected for such courses does not entitle the applicant for grant of any notional marks.

23. The applicant's CRs during Botswana were expunged and after expunction he was also considered for nomination to the course and selection in No 2 SB, but still he could not succeed due to the promotion zone ban and his low merit respectively. His statutory complaint dated 26 Feb 2014 preferred against withdrawal of weightage for gallantry award for comparative merit for 'Higher Command' and equivalent courses was rejected by the Central Govt vide order dated 10.06.2015 being devoid of merit and further statutory complaint dated 08.03.2018 against non empanelment for promotion to the rank of Brigadier by No 2 SB was rejected vide order dated 28.09.2018 on account of his overall profile, relative merit and comparative evaluation.

24. In view of the above, we are of the opinion that the respondents have acted as per laid down statutory provisions,

departmental orders and policies which are being applied uniformly and is applicable to all. As such no discrimination seems to have been done to the applicant in regard to violation of any provision of policy or law.

25. In view of the above, the O.A. being devoid of merit is liable to dismissed. It is accordingly, **dismissed**.

26. No order as to costs.

27. Miscellaneous applications, pending if any, stand disposed of accordingly.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 29.4.2022
rathore