

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW****Original Application No. 317 of 2012**Tuesday, this the 27<sup>th</sup> day of October 2015**Hon'ble Mr. Justice D.P. Singh, Member (J)**  
**Hon'ble Air Marshal Anil Chopra, Member (A)**

Lt Col Dharmender Singh Yadav (IC No 47052F)  
son of Shri Harphool Singh, presently posted  
at Perspective Planning Directorate, IHQ of MoD  
(Army), New Delhi

.....Applicant

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

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi 110011
2. Chief of Army Staff, Integrated Headquarter of the Ministry of Defence (Army), South Block, New Delhi - 110011
3. Military Secretary, Integrated Headquarters of the Ministry of Defence (Army), south Block, New Delhi - 110011

.....Respondent

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

**ORDER (ORAL)**

1. Heard learned counsel for the parties and perused the record.

2. The present Original Application has been preferred under Section 14 of the Armed Forces Tribunal Act 2007 for setting aside the ACR entry for the year 2000- 2001 being not sustainable. It is admitted fact that the applicant has earlier preferred the Original Application No 107 of 2011 in this Tribunal for setting aside the ACR entries earned in the year 2000 – 2001 and 2003 – 2004. The Original Application was finally decided and entries for the year 2003 – 2004 were set aside by the Tribunal.

3. While deciding the Original Application No 107 of 2011 (supra) vide order dated 27.07.2011 the Tribunal has summarised the factual averment raised before it, in para 1 of the order itself. For convenience para 1 of the judgment and order is reproduced as under:-

*“1. This is the second round of litigation between the applicant and the respondents in this Tribunal regarding the ACR of the applicant for the years 01.06.2000 to 09.05.2001 and 01.09.2003 to 31.08.2004 and his non empanelment to the rank of Col. The applicant had earlier approached the Tribunal in T.A. No 12 of 2009 against the order of the Central Government dated 05.09.2006 rejecting the statutory complaint dated 17.02.2006 in respect of the aforesaid grievance. By our order dated 01.11.2010, we had set aside the order of the Central Government and directed it to decide*

*the complaint dated 17.02.2006 as a complaint against ACR preferably within four months from the date a certified copy of the Tribunal's order was submitted. The Central Government has, in pursuance of the Tribunal's order, considered the matter afresh and by an order dated 14.03.2011 rejected the complaint. This order has brought the applicant to file the present O.A. Counter and rejoinder affidavits have been exchanged. A supplementary counter affidavit has been filed by the Union of India."*

4. The plain reading of the order of the Tribunal shows that the earlier the applicant has filed OA to set aside ACR entries for the year 2000 – 2001 alongwith ACR entries for the year 2003 – 2004. However in para 21 of the order, the Tribunal held that since the Learned Counsel for the applicant has not argued with regard to entries for the year 2000 – 2001 on merit. Para 21 of the order of the Tribunal is reproduced as under: ,

*"21. Although in the OA the applicant has challenged the ACR of 200 and 2001 but no arguments were advanced by the learned counsel for the applicant in respect of this ACR."*

5. After considering the entire material placed before it, the Tribunal has allowed the O.A. and passed following order:-

*"22. In the result, the Original Application is allowed. The order of the Central Government dated 14.03.2011 is set aside. The portion of the ACR for the year 2003 – 04 relating to Potential for promotion qualities given by the IO and RO is quashed. The applicant's case for promotion to the rank of Colonel shall be considered by the relevant Selection Board. it is stated by the applicant, who is present in person, that during the pendency of this OA, the applicant has become overage for Command and the*

*appointment of Commanding Officer hence the applicant should not be made to suffer on account of the delay in the decision in the matter. We find merit in the submission of the applicant. In the circumstances, we direct that the applicant shall be considered without reference to the age bar and in case the applicant is selected to the rank of Colone, he would be given his due seniority”*

6. Ld. Counsel for the applicant submits that ACR for the year 2000 – 2001 should be set aside on the same ground since it suffers from infirmity relying upon which the Tribunal has set aside the ACR entries for the year 2003 – 2004. Argument advanced by Ld. Counsel for the Applicant is correct and that entries for the year 2000 – 2001 suffers from illegality then ofcourse, it should have been set aside by the Tribunal but the fact remains that the applicant has not argued with regard to entries in question in the earlier O.A. (supra). The Tribunal has declined to interfere with the entries of the year 2000 – 2001 under the present fresh O.A. with regard to sit in appeal with the earlier order of the Tribunal dated 27.07.2011. The observations made by the Tribunal in earlier order cannot be subjected with other co-ordinating Bench in a fresh O.A.. Ofcourse the applicant has to prefer the by approaching Hon’ble Supreme Court in jurisdiction under Section 3 of the Army Act which seems not to have done.

7. Since the Tribunal lacks the jurisdiction to interfere with the observations raised and finding recorded by co-ordinating bench vide order dated 27.07.2011, it is open for us to adjudicate under the present O.A. which is fresh one preferred

by the applicant for the same cause of action. Thus, it shows that the applicant has not prayed with regard to entry for the year 2000 – 2001 but the same has been left without adjudication on merit (supra) hence for the same relief, the O.A. is not maintainable.

8. Accordingly we decline to interfere the present controversy with liberty to approach proper forum.

9. Accordingly we dismiss the O.A as not maintainable.

No order as to costs.

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

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

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