

**IN THE ARMED FORCES TRIBUNAL, REGIONAL BENCH
GUWAHATI
O.A No. 27 of 2015**

Lt Col KD Chaturvedi
Son of Shri J.P.Chaturvedi
4/3 Baluganj,Agra,Uttar Pradesh

... **Applicant**

**Mr Rajib Sarma
Counsel for the Applicant**

Versus

- 1.The Union of India represented by the
Secretary to the Govt.of India,Ministry of Defence,New Delhi.
- 2.The Chief of the Army Staff, New Delhi
- 3.The Under Secretary to the Govt. of India,
Ministry of Defence,New Delhi.
- 4.The GOC-in-Chief,Eastern Command,Fort William,Kolkata.
- 5.The Military Secretary, Integrated HQ of Ministry of Defence
(Army), New Delhi.

... **Respondents**

**Mr N. Baruah, CGSC
Counsel for the Respondents**

PRESENT

**HON'BLE MR. JUSTICE B.P. KATAKEY OFFICIATING CHAIRPERSON
HON'BLE LT GEN SANJIV LANGER MEMBER (ADMIN)**

JUDGMENT & ORDER.

Date of hearing : 19.07.2016.
Date of Judgment & Order : **26.08.2016**

(S. Langer, Member (A))

This O.A is against non-empanelment of the applicant for promotion to the next higher rank of Colonel, on the basis of the impugned ACRs earned during Aug 1999 to May 2000, wherein his prayer is to expunge the adverse remarks, which were reflected in his CR, resultant in his non-empanelment for promotion to the higher rank.

Facts of the Case:

2. The applicant was commissioned in the Indian Army in the Corps of EME on 17 Dec 1988. After joining the Army, the applicant claims to have served in various EME Units with excellent records. The applicant has given a detailed account of his service profile, contribution in the field of sports and adventure and professional achievements. He has claimed, that all his Commanding Officers appreciated his conduct and cited him as an example for others to emulate. The applicant has impugned the CR earned at 3 EME Centre, where he was required to raise the Army Hot Air Ballooning Node in Oct 1996. During the period, he was accountable to two different channels i.e. 3 EME Centre his reporting channel and to Army Adventure Wing, MT Dte, as OC of the Hot Air Ballooning Node. This arrangement led his IO to have a negative opinion about him and he was graded with a "Box 7". The applicant continued to work hard and was subsequently appointed as the Centre Adjutant in addition to his duties as OIC Node. He was then graded with a "Box 8" in the subsequent CR by the same IO as his worth and efforts had then been recognized and appreciated.

3. As per Annexure-A dated 30 Jun 2007, the applicant was intimated that his case was considered by the No. 3 Selection Board for promotion (hereinafter referred to as SB), to the rank of acting Colonel as a fresh case of 1989 batch, but he had not been empanelled for promotion to the next higher rank, based on his overall profile and the comparative batch

merit. The applicant, therefore, submitted a non-statutory complaint before the Chief of Army Staff on 21 Jul 2007 against his non-empanelment to the rank of Col by the SB, narrating the service profile, etc. as stated above. The said non-statutory complaint was rejected by the competent authority, which was conveyed to the applicant vide communication dated Feb 2008. In the non-statutory complaint, the applicant had requested to examine the aberrations or inconsistencies in his CR profile in relation to gradings/pen pictures or recommendations awarded by his IO/RO/SRO, with his overall profile and performance; and to expunge the adverse remarks, if any, as he had never been communicated the same; and consequent to granting him redress, he be considered as a fresh case and his seniority be maintained. However, vide Annexure B, the applicant was intimated as follows:

"4. The COAS has examined the complaint of the officer in detail along with his overall profile and other relevant documents. After consideration of all aspects of the complaint and viewing it against the redress sought, it is observed that the CR impugned by the officer, lies outside his reckonable profile and hence merits no interference. All other assessments in the officer's reckonable period appear to be fair, objective, balanced and performance based. There is no discernible subjectivity/bias in any of the CRs. None of the CRs therefore merit any interference.

5. Apparently, the officer has not been empanelled for promotion to the rank of Colonel on account of his overall profile as assessed by No. 3 Selection Board.

6. *The COAS has, therefore, directed that the Non Statutory Complaint of the officer be rejected."*

Thereafter, vide Annexure-C, the applicant was further intimated that his case was considered by the SB for promotion to the rank of acting Colonel, as a first review case of 1989 batch, but he had not been empanelled for promotion to the next higher rank based on his overall profile and the comparative batch merit.

4. The applicant thereafter filed a statutory complaint on 10 Jul 2008 praying as follows:

(a) *My ACRs in the entire reckonable profile be reviewed, especially the two reports in question be thoroughly scrutinized, and if I have been judged below '8' by any of the reporting officers in any portion of the ACR (both open and closed portion) the same be expunged on grounds of inconsistency and subjectivity.*

(b) *Having expunged the assessment as requested above, I be considered as a Special Review Fresh Case by the next No. 3 Selection Board.*

The statutory complaint submitted by the applicant was rejected by the Central Government vide Annexure E stating:

"3. The statutory complaint of the officer has been examined in detail along with his overall profile, previous complaint and other relevant documents. After consideration of all aspects of the complaint and viewing it against the redress sought, it emerges that all the assessments in the officer's reckonable period including the impugned CRs 06/00-

05/01 and 02/03-07/03 are fair, objective, balanced and performance based. There is no discernible subjectivity/bias in any of the CRs. None of the CRs therefore merit any interference.

4. The officer has not been empanelled for promotion to the rank of Colonel on account of his overall profile and comparative merit.

5. The Central Government, therefore, rejects the Statutory Complaint dated 10 Jul 2008 submitted by IC-48251F Lt Col KD Chaturvedi, EME, against non-empanelment, being devoid of merit."

5. Against the non-empanelment for promotion by the Selection Board (Final Review), the applicant had submitted another statutory complaint praying that:

"(a) his entire reckonable profile with effect from Aug 1999 to Jun 2009 be reviewed in totality for aberrations/inconsistency/subjectivity, which if found, be expunged;

(b) His CR of Jun 2009 be considered as part of reckonable profile as it was earned after the Board was held; and

(c) He be considered as a fresh case in the next No. 3 Selection Board".

The Central Government, vide Annexure-G dated 04 Feb 2013, rejected the statutory complaint of the applicant dated 17 Jul 2012 stating that after consideration of all aspects of the complaint and viewing it against the redress sought, it had emerged that all CRs in the reckonable profile,

including the impugned CRs were well corroborated, objective and performance based and there being no evidence of any bias or subjectivity, none of the CRs merited any interference. It was also stated that the officer had not been empanelled for promotion to the rank of Col on account of his overall profile and comparative merit.

6. The applicant has, therefore, filed the present application praying for the following reliefs:

- (i) set aside and quash the ACR of the applicant earned in 654 EME Bn from August 1999 to May 2000 and expunge any weak remark, whatsoever, including the next report covering period June 2000 to May 2001 earned under the same IO, Col SK Sareen, as an aberration on the ground of inconsistency and subjectivity;
- (ii) consider the case of the applicant for promotion to the rank of Colonel as a Special Review Fresh Case by the next No. 3 Special Selection Board by considering the ACRs of the applicant in the entire reckonable period and by setting aside the ACR earned in 654 EME Bn from August 1999 to May 2000 and expunge any weak remark, whatsoever, including the next report covering period June 2000 to May 2001 earned under the same IO, Col SK Sareen and consider his company commander (Command Criteria) report, ACR of June 2009 for the purpose of promotion to the rank of Colonel;

- (iii) direct the respondent authority to consider all ACRs of the applicant earned by him as Company Commander (Command Criteria report) and consider his ACR of June 2009 for the purpose of promotion to the rank of Colonel;
- (iv) direct the respondent authority to conduct Selection Board and consider the applicant afresh on the basis of the facts and circumstances stated above; and
- (v) pass such further other order/orders as deem fit and proper in the facts and circumstances of the case.

Arguments by the Counsel for the Applicant:

7. Counsel for the applicant has contended, inter alia, that the applicant had performed well in all fields and in his reckonable profile from 9th year of service onwards, and he had earned outstanding/above average assessment in PQDP with over all box grading of 9/8 from his IOs in the open portion of the CRs. The applicant had earned a total of ten reckonable CRs, (four CRs were as an Instructor and six CRs as Criteria Report), which included reports earned in Op Vijay, Exercise Purna Vijay and Op Rakshak in CI and LoC environment, till the result of the last Selection Board No. 3 Special Selection Board (Review). Counsel for the applicant has pointed out that despite the service and his all round performance; he was not empanelled even for the first select rank. The only ground shown for non-empanelment of the applicant for promotion to the rank of Colonel was that his overall profile and comparative merit are not suitable. Counsel has further submitted that the applicant

apprehended that the reason for non-empanelment for his promotion was due to aberration/error of judgment by reporting officers (IO/RO), in the closed portion of the CR forming part of the reckonable profile during the period from Aug 1999 to June 2001, where the applicant had earned two CRs.

8. Counsel for the applicant has contended that Rule 137 of AO No. 45/MS specifically provides that the CR when checked for objectivity in reporting will also be analyzed for consistency of performance of the ratee, and depending upon variation from past profile of the ratee against the parameters defined in the SOP of MS Branch, the CR may be accepted as it is, in the instant case this procedure, the counsel claimed, has not been followed. Further, the Selection Board had not considered the CRs of the applicant for the complete ten years of reckonable period, (Aug 1999 to Jun 2009), for promotion and also had not considered the criteria report for June 2009. If the Selection Board had considered the CRs of the applicant for the entire reckonable period, it would have set aside the CRs, which did not fall in conformity with the majority of the CRs, on the ground of inconsistency and subjectivity. Even officers of the same rank as that of the applicant, with less meritorious course profiles and with no achievements in adventure sports and regimental activities, were promoted to the rank of Colonel.

9. During the course of pleadings and arguments, the applicant also chose to highlight a fresh aspect related to his CR, of Aug 1999 to May

2000. He and his counsel claimed that during the period of this ACR, he actually had not served as a Coy Cdr. He stated, that on joining the Centre, he proceeded for a Junior Command Course, and when he returned, he was appointed to a junior assignment in the HQ, and actually did not serve as a Coy Cdr. This he claimed, due to the CO not finding him pliable enough, consequently a junior officer was made to continue in the job of a Coy Cdr, which was rightfully his. Also he only assumed the appointment of a Coy Cdr on 24 Jun 2000.

10. When questioned about his CR for the period, that in Part I he had certified and signed all details himself, including the fact that he was the Coy Cdr for the period of the ACR, he had stated that all the particulars had been filled in by the Head Clerk, and he had merely signed it, he being unaware of the details he had signed. In effect, they argued that he had been given an ACR, for a period when he had actually not performed the duties he was assessed for.

Arguments by the Counsel for the Respondents:

11. Counsel for the respondents, while defending the action of the respondents, which had culminated in the non-empanelment of the applicant to the rank of Colonel, has contended that due to late passing of mandatory Part D promotion examination, the applicant lost ten months of seniority and reckoned seniority of 16 Oct 1989. He has not done any competitive career courses such as Defence Service Staff

College and Senior Command. He had obtained 'C' grading (46% marks) in Junior Command Course. He was not empanelled to the rank of Colonel on account of his overall profile and comparative batch merit. The Selection Board had given the following considerations for the promotion to the rank of Colonel:

S No	Type of Consideration	Date of Selection Board	Result
(a)	1989 Fresh	May 2007 (under value judgment system)	Not Empanelled
(b)	1989 First Review	Apr 2008 (under value judgment system)	Not Empanelled
(c)	1989 Final Review	May 2009 (under quantification system)	Not Empanelled

12. When the applicant assailed the CR for the period 11/96-05/97, it was found that the said CR was outside the reckonable profile of the applicant for consideration by the No. 3 Selection Board. Therefore, counsel for the respondents has contended that the COAS rightly rejected the non-statutory complaint filed by the applicant.

13. According to the counsel for the respondents, when the applicant challenged the CR for the period 06/2000-05/2001 earned in 654 EME Battalion and the CR for the period 02/2003-07/2003 earned while posted at EME School, Vadodara, the Central Government, after analyzing the Army HQ recommendations of COAS and the relevant records, rightly came to the conclusion that the assessments of the IO and the RO in CRs for the period 06/2000-05/2001 and 02/2003-07/2003, were high/above average with matching pen pictures, and positive recommendation for promotion and career courses, etc. It has further emerged that all

assessments of the applicant in the reckonable profile were fair, objective, balanced and performance based.

14. Counsel for the respondents has pointed out that as stipulated in Para 118 of AO 45/2001/MS, the assessment in the CR shall be restricted strictly to the performance and potential as observed during the reporting period. The assessment by the IO in two impugned CRs under two different ROs, is indicative of the fact that it was based on demonstrated performance as assessment by the reporting officers in chain. The assessment in a CR cannot be judged from the assessment in previous and subsequent CRs. Furthermore, the CR form in the Army is well laid out where the ROs in chain have to grade the officer independently in various qualities besides box gradings, pen picture and the whole process ensures objectivity and precludes subjectivity. Under Para 39 of AO 45/2001/MS, the mandatory stipulation for RO to endorse CR is that the ratee and RO shall have 75 days concurrent service during the period of service with IO and this period is not physical service. There is no provision that RO should physically interact with the ratee. RO and SRO have various means to know the demonstrated performance and potential of the ratee. In this case, the pen picture of RO in CR for the period 08/99-05/00 shows that the RO was fully aware of the performance of the applicant. Moreover, the CR for the period 06/00-05/01, as borne out from the records, the assessment of the IO and the RO was definitely better than the previous CR, which rules out element of bias and

establishes that the assessment in both the CRs was based on demonstrated performance. Both the CRs were examined during the internal assessment and accepted being objective, performance based and technically valid. All these were also examined while disposing of the non-statutory and the statutory complaints. Therefore, the contentions raised by the applicant are not tenable and merit no interference by this Tribunal.

15. The counsel has also stated that the applicant filed one non-statutory and two statutory complaints before approaching this Tribunal, the dates of which were 21 Jul 2007 (non-statutory), 10 Jul 2008 (statutory); 17 Jul 2012 (statutory) as also an earlier O.A No. 23 of 2013 before this Tribunal. The counsel has stated that during the hearing and arguments of the earlier O.A, the officer representative of MS (Legal) Branch had produced the original records of the applicant. While hearing the arguments and perusing the records, it was indicated in open court, which was conveyed to the applicant, that there was no aberration in the CR for the period 02/03 to 08/03. However, it was inadvertently divulged to the applicant that the CR for the period 08/1999 to 05/2001 is a comparatively weak assessment. The respondents claimed that the applicant, taking lead from the above information from the Tribunal, filed M.A No. 1 of 2014 seeking amendment of the prayer in the O.A for setting aside the CRs for the period 08/1999 to 05/2000 and 06/2000 to 05/2001 for the first time in Feb 2014. The respondents having filed

objection to this amendment, O.A No. 23 of 2013 and the M.A were dismissed as withdrawn, with liberty to file a fresh application. The present O.A was the outcome of these earlier developments.

16. To the contention raised during arguments, the officer assisting the counsel for the respondents, stated that the aspects of the applicant not having actually served in the appointment, for the CR of 1999-2000, and the fact that when he prepared the CR for initiation, the preparation of its facts were in his ignorance, since he merely signed them, cannot be accepted since the officer at that point of time had 11 years of service and he, indeed, had prepared and signed the form himself.

Consideration by the Court:

17. In consideration of this O.A, we are aware that the applicant has filed three complaints prior to his O.A being considered by this Tribunal. The three complaints in sequence are: (a) Non-statutory complaint dated 21 Jul 2007 against non-empanelment by 3 SB held in May 2007. In this, the applicant assailed his CR for the period 11/1996 to 05/1997 earned by him while serving in 3 EME Centre; (b) statutory complaint dated 10 Jul 2008, wherein the applicant had challenged his CRs for the period 06/2000 to 05/2001 earned in 654 EME Battalion and for the period 02/2003 to 07/2003 earned at EME School, Vadodara. In this statutory complaint, the applicant has apprehended that he was under-assessed by the RO and the SRO due to alleged instances mentioned in the complaint;

and (c) statutory complaint dated 17 Jul 2012 against his non-empament by No. 3 SB as a final review held in Jun 2009. The applicant once again assailed the CRs for the period 06/2000 to 05/2001 and 02/2003 to 07/2003.

18. Each of the above complaints has been considered by the respondents and all were rejected by relevant and concerned orders. Thereafter, the applicant filed O.A No. 23 of 2013 before this Tribunal challenging his non-empament by No.3 SB and CR for the period 02/2003 to 08/2003, specifically praying for setting aside of only one CR for the period mentioned preceding. He had no grievance with respect to CRs for the period 08/1999 to 05/2000 and 06/2000 to 05/2001 in any of his complaints, nor O.A No. 23 of 2013, as contended by the respondents. In the present O.A, therefore, we need to re-focus that the applicant is seeking setting aside and quashing of the ACR earned in 654 EME Battalion from 08/1999 to 05/2000 as also expunging of any weak remark (He has also included the next report covering the period 06/2000 to 05/2001 earned under the same IO Col SK Sarin), as an aberration on the ground of inconsistency and subjectivity. In the light of this background, we are now privy to the entire CR profile related to this officer; as well as the Boards of the applicant with a specific focus on the specific CRs that have now been highlighted for consideration.

19. Specifically related to the CRs of this period, as prayed for in the reliefs, first and foremost it has been found that in the CR of 1999 to

2000, Part I of the CR, which deals with validation and authentication of data, wherein personal data; period covered by the report; details of CRs/Reports rendered during the year; **appointments held during the period**; AE period for Maj; have indeed all been certified as correct by the then ratee, present applicant and his Commanding Officer. To this end, we are indeed puzzled by the argument of the counsel for the applicant and the applicant that the applicant was not aware of the details that he signed in his CR, and indeed only certified it with perfunctory knowledge, since this was prepared by the dealing Clerk. It is revealed from Part I that not only was the applicant shown as a Sub Unit Commander (OC of a Company), but also this period counted towards his AE (Adequately Exercised) period, that being a significant period necessarily to be considered in its totality for promotion to the next rank. We are aware that the AE periods are specified for each rank and are specifically important to be completed both in total duration as well as need to be covered by relevant CRs. In the instant case, the applicant was given the benefit of being a Company Commander, which, according to him, is a duty he did not perform, and as such, the overall impact of this CR as apparent to the Court is that a benefit has been given to him, both in terms of coverage of period as well as adequately exercised period, which he is now denying as incorrectly given to him, since he did not perform those actual duties. We are aware that these are completely

new grounds that have been brought up by the applicant and have not been agitated in his earlier complaints or petition.

20. Given the fact that the first SB of the applicant was held in May 2007, his first non-statutory complaint was in Jul 2007 after the Board, it is evident that the applicant has benefited from the completion of AE period, during the same report, which he now claims he did not perform the duty, and also he never chose to assail this CR (on these grounds), in his non-statutory complaint immediately after his first promotion board. Even in the subsequent complaint, the applicant has not chosen to assail this CR (on these grounds), and has, indeed, benefited from being shown as a Company Commander, as well as his period of AE being counted during that period, which he now claims was erroneously recorded, since he neither performed the duty of an OC, nor, indeed, did that period accrue to his AE reports. We do not find any reason to uphold this argument, it being self-serving and disingenuous, as also an argument which impacts on the credibility of the applicant, who chose to take silent benefit of this report and has only agitated his case now; post developments during arguments of the previous O.A. Recognising this fact, we do not seek to go any further into this specific issue.

21. The specific CRs written during the period reveal that the assessments of the IO in both these CRs have been shown to the applicant as per orders on the subject. It is also evident from the CRs that the IO of the applicant has held a largely consistent/overall view on the

applicant during the period of these two reports. The assessment undertaken by two different ROs during the period also are indicative of the fact that they have assessed the officer based on the demonstrated performance during the periods and have assessed the officer based on his demonstrated performance, as perceived at the level of a General Officer Commanding of the Division. It needs to be stated here that all the overall assessments in this duration by the IO and the RO have been qualified by supporting pen pictures, and are all above average ratings, with no negative/weak remarks in the several pen pictures.

22. We have scrutinized the overall data sheet of the applicant, which covers all his CRs starting from the period that he was in Maj. It is evident from this that in the overall quantification of various qualities, attributes and potential, there is a pattern of quantification through his period of service, and such quantification profile pervades his service for the period that he has been a Maj and Lt Col. It may be noted that in the period of his CRs when he was Maj/Lt Col, we are privy to the entire profile generated by various IOs, ROs and SROs, as well as officers in his technical chain of reporting. These are no adverse/negative remarks/opinions. That having been verified, we move on to view the Promotion Board proceedings.

23. The Promotion Boards have considered the applicant based on the policy on promotion, in which his quantified merit and, indeed, his value judgment have been clearly recorded. The quantified merit of the officer,

undoubtedly, would have been influenced by his course reports as well as other necessary qualifications, which the applicant would or would not have qualified with during his service profile. We also do not find any fault in the allocation of value judgment to this officer by the Boards during the conduct of the Promotion Board proceedings. In this consideration of records, we do not find any mala fide, arbitrariness, unexplained interventions or interpolations.

24. In the light of the preceding, we see no justifiable reason to interfere with the specific reports that have been highlighted by the applicant in his prayer or his overall profile. Further, no mala fide or indeed, arbitrariness has emerged, in either the assessment of the officer in the rank of a Maj and Lt Col or the conduct of the Promotion Boards related to this officer. As such, the O.A is devoid of merit and is consequently dismissed. There shall, however, be no order as to costs.

MEMBER (A)

OFFICIATING CHAIRPERSON

Alex