

**IN THE ARMED FORCES TRIBUNAL, REGIONAL BENCH  
GUWAHATI  
O.A No. 9 of 2014**

IC 53722N Lt Col Anil Kr Yadav  
S/O Shri Ravinder Singh Yadav  
No.3 Detachment, Eastern Command Intelligence Unit

... **Applicant**

**Mr AM Bujorbaruah  
Ms Meghali Barman  
Counsel for the Applicant**

**Versus**

1.Union of India,through  
Secretary, Ministry of Defence, South Block  
New Delhi-110011  
2.Chief of the Army Staff,Integrated HQ  
Of Ministry of Defence (Army)South Block  
New Delhi-11011  
3.Military Secretary,Integrated HQ of  
Ministry of Defence(Army)South Block  
New Delhi-110011.

... **Respondents**

**Mr S Bhattacharjee  
CGSC**

**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: **26.08.2016**

**(S. Langer, Member (A))**

The challenge in this O.A is directed against Annexure-6 dated 08 Oct 2008 (so far as it partly rejected the claim of the applicant), and Annexure-10 order dated 18 Mar 2013, rejecting Annexure-9 statutory complaint filed by the applicant dated 28 Feb 2012. It is centred on the prayer for setting aside the entire confidential report of the applicant

for the period Jan 2007 to Dec 2007; and fresh consideration for promotion to the rank of Colonel.

**Facts of the Case:**

2. The applicant was commissioned in the Indian Army on 10 Jun 1995 and out of 224 months of service, he had served with distinction for four tenures of nearly 113 months, in active counter insurgency operations area in the North East and Jammu and Kashmir, which included service in the capacity of a Company Commander of an Assam Rifles Battalion and Officer Commanding Intelligence Detachments. That apart, he had also continuously served in counter insurgency operational areas from Jan 2000 to Jul 2005. The applicant claims that from the inception, since his commission in the Armed Forces till 2013, his confidential reports were excellent, except for the year 2007. For the year 2007, in respect of 22 qualities, he was given quantitative seven out of (a possible) nine in respect of seven listed qualities and eight out of (a possible) nine in respect of another fifteen qualities; with an observation that he "may be promoted", instead of the categorization being, that he "should be promoted". Awarding of seven marks out of nine in seven of the qualities and eight marks out of nine in the fifteen other qualities, out of the total 22 qualities, according to the applicant, is considered to be a comparatively low assessment, which is inadequate for promotion to the next rank. If the assessment of the CR of the year 2007 is not taken into account, the

applicant, on the basis of the assessment in CRs of the previous years and seeing the overall profile had a very high probability, of being promoted to the next rank.

3. When the CR was initiated for the period Jan 2007 to Dec 2007, the applicant was serving in the South Western Command Counter Intelligence Unit as Officer Commanding, Interrogation Cell. The applicant claims that the Commanding Officer, who was also the Initiating Officer of the applicant, wanted the applicant to bring an investigation (in a sensitive matter), to a pre-determined conclusion, which, the applicant claims, was contrary to the facts which emerged from the investigation. The refusal to accede to the requirement of the Commanding Officer, resulted in a personal grudge, which led to a prejudicial and biased reporting in the CR of the applicant. In the CR of the year 2007, the applicant was given seven points in certain important qualities and was deliberately given the recommendation 'may promote', which is an inferior recommendation when compared to the recommendation 'should promote'. That apart, the IO did not give a single assessment of "9" in any of the Personal Qualities (PQs) or Demonstrated Performance Variables (DPVs), despite the achievements of the applicant in that year of reporting.

4. In the year 2007, the applicant had certain important achievements, which, he claims, were not taken into consideration while preparing the CR. Furthermore, in the CR, an adverse pen picture



3. *The officer has requested that CR covering the period 01 Jan 2007 to 28 Dec 2007 be expunged due to biased and prejudiced reporting by IO.*

4. *The Non Statutory Complaint of the officer has been examined by the COAS alongwith his overall profile and other relevant documents. After consideration of all aspects of the complaint and viewing it against the redress sought, it has emerged that the assessment of the IO in CR 01/07-12/07 is marginally inconsistent with the overall profile of the officer.*

5. *The COAS has therefore, directed that the officer be granted partial redress by way of expunging the following assessments of IO in CR 01/07-12/07:*

- (a) Para 9(c) - Dependability*
- (b) Para 9(f) - Loyalty*
- (c) Para 10(e) - Effectiveness in carrying out administration of his command.*
- (d) Para 10(g) - Dedication to the organization and service and selflessness.*
- (e) Para 24(a) - Foresight and planning*
- (f) Para 24(b) - Delegation*
- (g) Para 24(d) - Tolerance for Ambiguity*
- (h) Para 26(a) - 'May Promote' recommendation for promotion to the next rank.*

6. *The COAS has further directed that the above aberration be removed from the CR dossier of the officer.*

7. *Accordingly necessary expunctions have been carried out in the CRD of the officer. The officer may please be informed accordingly. Please acknowledge."*

As the Chief of Army Staff had partially redressed the grievance of the applicant vide order dated 08 Oct 2008, the earlier promotion policy did not have major bearing on the promotional prospects of the

applicant to the next higher rank. But, by the new promotion policy contained in Annexures 7 and 8, the procedure for promotion has been changed to that of 'Conduct of Selection Boards by Quantification System'. Based on this new promotion policy, the CRs and other service aspects are computed out of 95%, leaving only 5% for value judgment.

6. The Promotion Policy of 2009 (hereinafter referred to as "2009 Policy"), put the applicant in a disadvantageous position vis-à-vis his batch-mates, while being considered for promotion for the next higher rank because of the biased CR for the period Jan-Dec 2007, as the Chief of Army Staff did not fully expunge all the remarks. While considering the applicant for promotion for the rank of Colonel by the No. 3 Selection Board of 2011, along with his batch-mates. Due to the biased and adverse CR for Jan-Dec 2007, the applicant was evaluated lower in merit, in comparison with his batch-mates, consequent to which the applicant was not recommended for promotion to the next higher rank of Colonel. His case for promotion to the next higher rank of Colonel was again considered in the Selection Board meeting of the year 2012 and 2013 and because of the adverse CR, he was not recommended for promotion.

7. The applicant preferred a statutory complaint dated 28 Feb 2012 (Annexure A9), against non-empowerment in the Selection Board stating that consequent to grant of the partial relief, granted by the

Chief of Army Staff, the applicant's case should be considered afresh.

However, the same was rejected by the respondents stating:

*"3. The Statutory Complaint of the officer has been examined in the light of his career profile, relevant records and analysis/recommendations of Army Hqrs. After consideration of all aspects of the complaint and examining it against the redress sought it has emerged that all the CRs in the reckonable profile including the impugned CR are well corroborated, 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 next rank due to his overall profile and comparative merit.*

*5. The Central Government, therefore, rejects the Statutory Complaint dated 28 Feb 2012 submitted IC-53722N Lt Col Anil Kumar Yadav, Int Corps, against non-empanelment, being devoid of merit."*

Consequently this Original Application seeking the following reliefs:

- (a) To set aside the Ministry of Defence Order No. 36501/12068/INT/08/MS-19/265/SC/2012-D(MS) dated 08.03.2013 rejecting the statutory complaint dated 28.02.2012 of the applicant for review of his confidential report profile for the period January 2007 to December 2007 and consequent thereof for fresh consideration for promotion to the rank of Colonel by the No. 3 Selection Board by Central Government by maintaining his seniority with his batch mates;
- (b) For partial interference with the Integrated HQ of Ministry of Defence (Army), Military Secretary's Branch letter No. 36501/12068/INT/08/MS-19 dated 08.10.2008, by retaining the partial relief given to the applicant in his non-statutory complaint against a

biased confidential report for the period January 2007 to December 2007 and directing the expunction of the biased assessment in respect of the other 15 qualities which were retained by the impugned order dated 08.10.2008; and

- (c) To direct the respondent authorities to expunge and set aside the entire confidential report of the applicant for the period January 2007 to December 2007 and for a fresh consideration for promotion to the rank of Colonel without considering the impugned confidential report for the period January 2007 to December 2007, by maintaining his seniority with his batch mates.

**Additional Arguments by the Counsel for the Applicant:**

8. Counsel for the applicant has contended, inter alia, that the applicant categorically stated in the non-statutory complaint that while the applicant was posted with the South Western Command Counter Intelligence Unit as Officer Commanding Interrogation Cell, during the period from January 2007 to December 2007, he was required to investigate a highly sensitive counter intelligence case involving loss of 87 identity cards, of an Army Unit and his Commanding Officer at that relevant time had asked the applicant to manipulate the results of the investigation, and that when he refused to accede to his demand, the said Commanding Officer made biased and prejudiced remarks in his CR. The Chief of Army Staff, accepting the stand of the applicant, expunged the adverse quantification in the CRs in respect of seven of

the qualities out of 22 qualities. The Chief of Army Staff, the counsel for the applicant contends, even recorded that the IO wanted the applicant to doctor the investigation of a highly sensitive counter intelligence case of national importance, and when the applicant refused to accede to such illegal demand, the IO made the adverse remarks in the CR of the applicant for the period Jan-Dec 2007. He also claimed, that certain achievements of the officer during the period, were not properly projected, and intimated in the hierarchy, due to the overall biased attitude of the CO (IO).

9. The Chief of Army Staff, based on the material on record, having found that the IO was biased, in the subsequent statutory complaint, the Central Government ought not to have taken a contrary view. There was no material for the Central Government to take a contrary view, when the Chief of Army Staff found that the IO, while initiating CR of the applicant for the relevant period, was biased.

10. The ACR for the relevant period, where the assessment in respect of seven of the qualities and the recommendation 'may promote' should not have been taken into consideration for promotion of the applicant to the next higher rank, as the same would remain incomplete in the absence of the recommendation and assessment in respect of these seven qualities.

11. To sum up, counsel for the applicant has pointed out that when the applicant had specifically stated that the IO was biased and the

same was accepted by the Chief of Army Staff, there is no reason to take a contrary view that the CR of the applicant for the relevant period was not biased.

**Arguments by the Counsel for the Respondents:**

12. At the outset, the counsel for the respondents has submitted that the Army has a pyramidal rank structure and thus the 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. As per the promotion policy, which was applicable till 15 Dec 2004, promotions in the Army up to the rank of Major were by time scale and promotions from Major to Lt Col and above were decided through Selection Boards. After the implementation of AVSC-I recommendations, promotions up to Lt Col are by time scale. All officers of a particular batch are considered together with the same cut off ACRs and inputs on the basis of individual profile of the officer and the comparative batch merit, they are approved or not approved. Seniority in itself is no consideration before the Selection Board for approval or non-approval. In case any officer gets any relief through complaint, etc. in any CR, after the Selection Board has been held, he is entitled to a special corresponding consideration by the Selection Board with his changed profile and in case he is approved by such special consideration, his original seniority remains protected.

13. As per the 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 approved as a fresh case, but approved 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 approved, he is deemed to be finally superseded. The assessment of officers in ACR was regulated by SAO 3/S/89, which has been replaced by Army Order 45/2001/MS and other relevant policies. The gradings are numerical from 1 to 9 (overall), as well as in personal qualities and performance variables in different qualities and in the form of pen picture also. 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. 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.

14. Placing reliance on various decisions, wherein the Hon'ble Supreme Court held that the Courts should not substitute the findings of the Selection Board by its own judgments, the counsel for the respondents has contended that the assessment of the Selection Board

is recommendatory in nature and not binding until approved by the competent authority viz. Chief of Army Staff or the Central Government, as the case may be.

15. Justifying the impugned orders, counsel for the respondents states that the allegation of the applicant that the IO was biased is without any basis. There was no substance in the allegation of doctoring of investigations by the IO. Having found that assessment of the IO in seven qualities was inconsistent, the Chief of Army Staff expunged the assessment in seven qualities by the IO and his recommendation "may promote". The applicant was fully satisfied with the redressal granted by the COAS on his non-statutory complaint, for the relevant period (since he did not file any statutory complaint), against the said CR till his non-empanelment by No. 3 Selection Board in December 2011.

16. In the case of the applicant, the No. 3 Selection Board for promotion to the rank of Col was conducted as follows:

<b>S No</b>	<b>Type of Consideration</b>	<b>No 3 SB held</b>	<b>Result</b>
(a)	Fresh 1995	Dec 2011	Not Empanelled
(b)	First Review 1995	Dec 2012	Not Empanelled
(c)	Final Review	Jun 2013	Not Empanelled

The applicant submitted his statutory complaint on 28.02.2012, after a lapse of four years. The respondents had considered all aspects of the complaint of the applicant and found that the CRs in the reckonable profile, including the impugned CR were well corroborated,

performance based and technically valid. Furthermore, there being no evidence of any bias or subjectivity, the CRs merited no interference.

17. When the applicant was fully satisfied with the redressal granted by the COAS, the order dated 08.10.2010 (Annexure-6), attained finality and he is estopped from challenging the same CR without any additional facts in the guise of non-empanelment, by the Selection Board.

18. Finally, the counsel for the respondents has pointed out that the applicant made serious allegations of bias against his IO for the period Jan-Dec 2007 stating that he had pressurized him to doctor the investigations in a sensitive case. However, the applicant has not made him a party in these proceedings. He has also stated, that all the achievements of the officer that were attained, were projected to the senior authorities, in the correct and appropriate manner. Therefore, the counsel for the respondents submits that the O.A is devoid of merit and is liable to be dismissed.

**Consideration by the Court:**

19. Having perused all the pleadings on record as well as heard the arguments, the Court also benefited from the presence of Col. Ajeen Kumar, MS, Legal on 19 Jul 2016, the date when the case was reserved for judgment. Col. Ajeen Kumar assisted the Court in studying the personal file, master data sheet as well as the various processing of the non-statutory complaint related to the applicant, which have

been retained by the Court. We, at the outset, would like to examine in some detail the personal file as well as the CRs on record of the applicant.

20. The applicant commenced his service on commissioning in the Artillery, thereafter he was sent on probation to the Intelligence Corps (he having volunteered), and due to successful performance as an Intelligence Officer, he was inducted into the Intelligence Corps of the Indian Army. A perusal of his overall performance, as assessed by his CRs over the years, reveals that in quantification of his overall profile, (during the reckonable profile), as assessed by 19 ROs, he has been assessed "above average" 13 times (68%) and "outstanding" 6 times (32%) in his overall profile. Commencing from the CRs, earned in the Artillery to those when he was under probation, as well as when he was absorbed in the Intelligence Corps, it emerges that the applicant has been reported on well, with exceedingly good reports and clear indication of a future potential for doing well, based on professional and personal qualities, which have been considerably commented on and documented. His profile is also fortified by performance on various courses of instructions in the Army, in the significant, ones under consideration, he has been graded with commendable performance. He is a recipient of General Officer Commanding in Chief (South Western Command Commendation Card). A review of his CRs, including those related to performance in the Assam Rifles and indeed,

Intelligence Corps, substantiates the fact that the applicant has a balanced peace and field profile with considerable experience in counter insurgency environments, and it is significant to note that his performance in field and counter insurgency, when related to his core competence of intelligence work, and the performance of intelligence related duties, have, by different assessing officers, been documented and certified as exceedingly high performances. Commencing from his earlier reports, his recommendations have always been for the highest possible profile appointments and is indicative of his assessed potential. His reports, during various operations, starting from Op. Hifazat up to Op. Rhino, in the earlier part of his service profile have all been rated at the highest possible levels of performance, or well above average. His subsequent reports in operational environments Op. Rakshak (J & K) when relatively senior in the rank of Lt Col are either "outstanding" or "well above average".

21. Subsequently, his report as a Lt Col during C1 Ops (Op Rhino) is once again outstanding, as assessed by the IO. His peace reports also, except for the report presently represented against; all conformed to his overall profile of outstanding/above average. The applicant was awarded a censure on 11 Sep 2015 by the General Officer Commanding (Corps) when he was attached with 106 Infantry Brigade.

22. The applicant has, during his service, filed one non-statutory complaint dated 09 Apr 2008 against his CR of Jan 2007 up to Dec

2007. He has also, in addition, filed a statutory complaint on 28 Feb 2012 against non-empanelment for the rank of Col. In consideration of the non-statutory complaint, the COAS had, based on consideration analysis and recommendations, given him the benefit of a partial redress by way of expunging the assessment of the IO in CR Jan 2007 to Dec 2007, which is quoted in para 5 preceding.

23. Consequent to this, the applicant continued in service and was considered by No. 3 Selection Board (as a fresh case), in Dec 2011 and consequent to his non-empanelment, he had filed his statutory complaint.

24. The statutory complaint again was considered, analyzed and based on the fact that firstly the necessary report, which had been impugned, had already been intervened on earlier, as also the fact that the balance of the report, was considered in consonance with his overall profile, therefore, the same impugned report was not interfered with and the statutory complaint was considered lacking in merit, and consequently dismissed.

25. In the non-statutory complaint dated 09 Apr 2008, the applicant had requested that his earlier CR covering the period from Jan 2007 to Dec 2007 be expunged due to the biased and prejudiced reporting by the IO, at that point of time. In the statutory complaint filed by the applicant on 28 Feb 2012, the applicant has stated, in his redress sought, the following:

*"12. Redress Sought. I would request that my CR profile be reviewed in its entirety and I be granted the following redress to ensure justice is done.*

*(a) My CR for the pd 01 Jan 07 to 28 Dec 07 in which I was given a partial redress be completely expunged, as the same remains inconsistent with my overall profile. This subjective CR by my IO and its likely manifestation by the RO/SRO, I apprehend is the major cause of my Non Empanelment.*

*(b) The fact that a partial redress was given proves the subjectivity in the reporting of the IO. The same should also be viewed in retrospect as the present quantification model for the Selection Boards, wherein every single figurative in the Confidential Reports of reckonable profile contributes to the calculation of CR merit, was not in vogue at that time.*

*(c) Any other aberrations or inconsistencies, in my ACRs in relation to the grading/pen picture/recommendations given by my IO/RO/SRO may kindly be examined in totality and in consonance with my overall profile and performance.*

*(d) Adverse remarks, if any, be expunged, as I have never been communicated the same.*

*(e) Consequent to granting me the above redress, it is requested that I may be considered afresh for promotion to the rank of Colonel by No 3 Selection Board and my seniority be maintained with my batch mates."*

26. In conclusion, on the statutory complaint, the Ministry of Defence had, after considering all relevant factors and issues, conveyed its decision on 18 Mar 2013, whereby it had stated that the officer had not been empanelled for promotion to the next rank due to his overall profile and comparative merit. Consequently, the Central Government had rejected the statutory complaint against non-empanelment, being devoid of merit.

27. In the present O.A, the counsel has argued vehemently on the fact that the Commanding Officer of the applicant, during the period under consideration of CR for the period Jan 2007-Dec 2007, had

personally targeted the applicant, since he had wanted the outcome of an investigation manipulated in order to conform to his conclusions. This, the applicant claimed that he had refused to do, resulting in the impugned ACR. The counsel has also claimed that since the decision of the COAS, based on his non-statutory complaint, had, in its resultant order, admitted the fact that the IO was biased and prejudiced, therefore, there was adequate grounds, for the entire report for that period being set aside. He, therefore, has argued that the entire CR of the applicant for the period Jan 2007 to Dec 2007, be set aside.

28. In consideration of the various arguments put forward by the counsel for the petitioner, factors that have emerged are the lack of knowledge of the IO and the SRO of the petitioner during the period of the report, the fact that as per the applicant his achievements and indeed various gradings and awards were not projected in the correct manner by the same CO and IO, as well as the repeated pressure and insistence on the officer to conform to a pre-meditated outcome, in a sensitive inquiry, which he had been detailed to conduct, have emerged.

29. The respondents, in these issues, firstly have stated that there is no basis for such accusations against the Commanding Officer and none of these alleged allegations can, in any way, be substantiated. Further, the IO, RO and the SRO had time to assess and report upon the officer (applicant), and each had, indeed, exercised their

independent judgment in the issue. Related to aspects of the officer's career profile, and achievements not having been projected correctly, the respondents have stated that such allegations are misconceived, and are in no way indicative of the fact that, all his course reports as well as awards were properly documented as required in the chain of command.

30. In the absence of the Commanding Officer and other individuals alleged to have pressurized the applicant during the period of his CR in question, we cannot enter into any such examination or indeed allegations and counter-allegations; since the persons who have been alleged to have pressurized the applicant have not been made parties to the O.A and, indeed, are not before us. We will, therefore, not proceed into these allegations.

31. We also find that the argument made, that the COAS, in disposal of the non-statutory complaint, had found the impugned CR biased, non-substantiated, since redress was given to the officer based on it being 'marginally inconsistent with his overall profile.'

32. We now, however, would like to look critically at the period of service that the applicant had during his tenure at South Western Command. It emerges that the applicant, under the same reporting chain, had served for a period of 18 months and his first report of 18 months' duration precedes the impugned report. In the previous report, covering the period Jul 2005 to Dec 2006, a period of 18

months, which was part of the Adequately Exercised (AE) period of the officer, the same reporting chain, (with the exception of the SRO, who has stated that he had inadequate knowledge), has reported on the officer and endorsed a well above average report on the applicant, with exceedingly laudatory pen pictures; recommendations for foreign assignments; war, etc. The impugned report for the period Jan 2007 to Dec 2007, a period of 12 months with AE period of 12 months, endorsed by the same reporting channel stands out in a stark contrast to the report immediately preceding, and in examination by this Court is also in complete contrast to the overall profile of the applicant. What is more significant is, this twelve months' report follows on the heels of an earlier 18 months' report. Herein, not only has the quantification been downgraded, but, in fact, the pen pictures are in stark contrast to those recorded earlier. In fact, when the pen pictures of the same IO in the two reports are examined, there is a complete change in the tone, tenor and assessments recorded by the same IO in two separate reports. That of the impugned report can only be put to be positively derogatory to the officer, in stark contrast to the preceding pen picture, which is, indeed, laudatory. Overall complexion of quantification, as endorsed in this report by the IO, has been followed by the RO. The overall paradigm of quantification and the pen picture set by the IO has pervaded the report.

31. In consideration, it is apparent that the earlier report covering 18 months is not a short duration where IOs are trained to assess subordinate rates in a period of 90 days (in the Army); 18 months is a considerable period for assessment of a subordinate. Furthermore, the assessment quantification as well as pen pictures given by the IO and RO in the earlier CR that we are dealing with, are indicative of the fact that indeed, a detailed assessment of the performance, potential, character and capability of the officer had been undertaken. The second report (impugned report), stands out in stark contrast. We are not in a position to judge what transpired or what compelled the same set of assessing officers to change their opinion so radically, related to the same officer, who had served under them for a previous period of 18 months, since no specifics have been mentioned.

32. We are aware that CRs, processing of statutory and non-statutory complaints, internal MoD and Government files on these issues are highly sensitive and confidential. We would not like to breach that confidentiality and extract elements from these reports in an open Tribunal order. Suffice it to say, the fact that this report in itself stood out in stark contrast, to not only the close profile but the overall profile of the officer is a fact which has been recognized in the consideration and analysis of the officer's profile by the Army HQs and MoD, at various levels, during the consideration of non-statutory and statutory complaints. In our own independent analysis, undertaken

preceding, we find, indeed, the same and also find, there being no reason for such an abrupt and derogatory, change of assessment perception, and indeed, quantification pattern in stark isolation, not only to the preceding report, but also the overall profile.

33. It consequently emerges clearly that this report is representative of an arbitrary assessment not based on any justifiable parameters and based on the assessment of pen pictures of the same IO, it can only lead to the conclusion that the assessment was not objective. It is also evident that the report and tenor of the IO has set tone of the entire CR. The fact that the report has already been partially interfered with also fortifies the opinion of the Court, and we cannot see any reason how this particular report can be dealt with in isolation with partial expungement, not being cognizant of the overall tone, tenor and quantification of this report, which is arbitrary; (Oxford Advanced Dictionary 2010 Edition "not seem to be based on a reason, system or plan and sometimes seeming unfair". Concise Law Dictionary 2010 Arbitrary; Depending on will or pleasure based on mere opinion or preference, hence capricious"). We, therefore, have no hesitation in labeling this report not only completely out of profile of the officer, but also initiated in an arbitrary manner.

**Order of the Court:**

34. In view of the preceding, the O.A is disposed of with the following directions:

- (a). The entire CR for the period Jan 2007 to Dec 2007 is set aside;
- (b). The applicant will be considered afresh by the next ensuing No. 3 Selection Board, as a fresh case, with his original seniority, de hors the CR of Jan 2007 to Dec 2007, for the grant of selection grade rank of Colonel;
- (c). The respondents are directed to complete the consideration by No. 3 Selection Board, for the applicant within three months from the date of receipt of a copy of this order; and
- (d). If the applicant is found fit, he will be granted his rank, and promotion, with all consequential benefits in accordance with law.

No order as to costs.

**MEMBER (A)**

**OFFICIATING CHAIRPERSON**

Alex