

**COURT No.1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

**O.A No. 1068 of 2020 WITH MA 1219/2020,
MA 1651/2020 AND MA 1002/2021**

Col Pradeep Goswami **Applicant**
Versus
Union of India and Ors. **Respondents**

For Applicant : Applicant-In-Person
For Respondents : Mr. Harish V Shankar, Advocate with
Ms. Bushra Kazim, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN P.M. HARIZ, MEMBER (A)

ORDER

1. This OA has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by a serving Col of the Corps of Engineers who is aggrieved on not being granted complete redressal in his non-statutory and statutory complaints and not being nominated for the HC / HDMC course. He has made the following prayers:-

(a) To expunge the ACR from 01.01.2007 to 24.11.2007 and Jan 2009 till May 2009 which was affected due to the arbitral and prejudiced acts and remarks of the IO & RO.

(b) To direct the Respondents for considering the applicant for future advanced courses such as HDMC/HCC/NDC.

(c) To grant such other relief appropriate to the fact and circumstances of the case as deemed fit and proper.

Brief Facts of the Case

2. The applicant was commissioned on 12.12.1998 and since then he has served in various sectors/terrain, done well on various career courses and has held important appointments. During his service career, the applicant has also represented India at certain expert committee group meetings at the UNO. As per the applicant, he was posted at 237 Engr Regt from 2006 to 2009. He was inadequately assessed by the RO and SRO specially CR-1 from Jan 2007 to Nov 2007 and CR-2 for a period of 5 months from Jan 2009 to May 2009. Subsequently, the officer was empanelled by No 3 SB and promoted to the rank of Col. He then commanded his unit from 2016 to 2019 in HAA/ CI operational environment. It is the applicant's case that despite his sterling performances as a CO, he was neither nominated for the prestigious HCC/HDMC course, nor was he selected for any UN assignment as a military observer. He was considered for promotion to the rank of Col by No 3 SB held in June 2014, in which he was non-empanelled. Aggrieved by this, he filed a non-statutory complaint dated 02.07.2014 against the two CRs i.e., of 2007 and 2009. Vide MoD letter dated 21.11.2014, the applicant was granted partial redressal in CR from Jan 2007 to Nov 2007, wherein six assessments by the RO were expunged on grounds of inconsistency with the overall reckonable profile of the applicant. While disposing of this non-statutory complaint, the COAS further

directed that these expunctions be removed from the CR dossier of the officer and that he be considered for promotion by an appropriate Selection Board. It is the applicant's case that the redressal granted in the non-statutory complaint was inadequate for him and, therefore, he filed a statutory complaint dated 02.02.2015 and had prayed that CR-1 (Jan 2007 to Nov 2007) be set aside completely and that the reports earned by him in subsequent AE reports be then considered by the No 3 SB. This statutory complaint was examined by the Competent Authority who rejected the complaint vide letter dated 18.01.2016 on the grounds that the assessments in the impugned CR were well corroborated, performance-based and technically valid, and that being so, and there being no evidence of bias or subjectivity, the CR did not merit any interference. Hence this OA seeking expunction of CR-1 and 2, extrapolation of merit from subsequent criteria reports and fresh consideration for HC/ HDMC Course.

Arguments by the Counsel for the Applicant

3. The counsel for the applicant took us through the complete service profile of the applicant and highlighted his excellent performance, courses done, appointments held and his participation in certain committee meetings at the UNO. The counsel reiterated that on not being empanelled by the No 3 SB in 2014, the applicant had submitted a non-statutory complaint, based on which he was granted partial redressal. The counsel elaborated that though the non-statutory application was against CR-1 to CR-2 from Jan 2007 to Nov 2007, the competent authority only set aside six figurative grading given by the RO in

CR-1. The counsel further stated that out of the 10 parameters in Personal Qualities (PQ), rating in three parameters had been expunged; out of seven parameters in Demonstrated Performance Variable (DPV) one rating had been expunged; and out of the five parameters in QAP, two had been expunged. The counsel further added that out of a total of 30 parameters in the CR, six parameters (20%) had been expunged on grounds of inconsistency with the applicant's overall profile. The counsel asserted that having expunged these parameters, nothing else survives in the CR and, therefore, the complete CR ought to be expunged. He then added that since a portion of the RO's assessment were found to be non-objective and inconsistent, it would be prudent to assume that the balance of the RO's assessment which continue to be held on record also would suffer from the same infirmity.

4. The counsel then drew our attention to paragraph 29 of the rejoinder filed by the applicant and took us through the various achievements of the applicant in the years 2007 and 2009. He further added that although he did well in 2009, the policy of quantification of CR had come into force with effect from 01.01.2009. As a result, the environment was still not certain about how the quantification system ought to be marked and graded in CRs. The counsel pointed out that numerous queries had been raised by the environment and that these were finally clarified by the MS Branch vide their letter dated 14.04.2009. Thus, the applicant's CR's for 2009 covering nearly five months was initiated by the IO without having adequate knowledge of

how a CR under the quantified system ought to be initiated. The counsel vehemently asserted that because of the introduction of the new system of grading, the applicant had been severely prejudiced by his report of 2009. The counsel further added that the applicant had continued to remain non-empaneled in June 2014 and when he was considered as a special review fresh case in Dec 2014. The Counsel further added that it was only in Nov 2016 consequent to the Hon'ble Supreme Court order in **Union of India and Ors. Vs. Lt Col P. K. Chaudhary & Ors** that additional vacancies were assigned to combat support arms and that the applicant was finally empanelled in Nov 2016. The counsel concluded that the applicant's balance of convenience was in favour of the applicant and, therefore, his CR for 2007 and 2009 ought to be set aside and the OA allowed.

Arguments by the Counsel for the Respondents

5. The counsel for the respondents invited our attention to the prayer of the applicant and also the reliefs sought in both the non-statutory complaint dated 02.07.2014 and the statutory complaint dated 02.02.2015. The counsel initially elaborated on the delay and laches in the case filed by the applicant in that, though the CR pertains to 2007 and 2009, which the applicant earned as a Major, it was only in 2014 that redressal was sought as part of non-statutory complaint. The counsel added that it was pertinent to note that in the partial redressal accorded by the competent authority, only certain figurative grading of the 2007 CR had been expunged and the competent authority had not found it necessary to grant any relief in the CR of 2009. The

counsel further added that the statutory complaint dated 02.02.2015 again addressed only the 2007 CR and did not address the 2009 CR. Thus, there is no ground for the applicant to now seek a relief in the CR of 2009. The counsel also added that based on the CR of 2009, the applicant had been first promoted to the rank of Lt Col and having enjoyed the benefit of CR of 2009 and gained promotion, he had no ground to challenge that CR presently. Moreover, when the applicant was finally considered by the No 3 SB held in Nov 2016, he was promoted to the rank of Col by considering the impugned CRs which are under challenge, and once again having benefited from the said CRs, the applicant is now estopped from challenging the same CRs.

6. The counsel drew our attention to the policy letter dated 11th November 2010 at (**Annexure R-1**) and elaborated on the screening process for nomination to the higher commander and equivalent course and added that the applicant had not been nominated for these courses based on comparative merit amongst those who were considered. The counsel then elaborated on the paramedical structure of the Army, the process of initiation of CRs, and the process of selection by the Selection Board at various ranks. The counsel also added that the applicant had filed a 2nd statutory complaint dated 8th March 2019 challenging the CR for the period 6/2016 to 11/2016.

7. The counsel then drew our attention to the aspersions cast by the applicant on the IO and the RO for acting against him during the period between 2007 and 2009. In all fairness, such details would only be known to these officers and, if indeed these

were true, then the applicant ought to have made them a party to this OA so that they could answer these issues before the Tribunal. Since these officers have not been impleaded, the OA is devoid of non-joining of parties. The counsel for the respondents concluded finally by vehemently stating that no case was made out for the prayers at Para 8 of the OA as the applicant had already ventilated his grievance against both the CRs and these had already been examined as part of non-statutory and statutory complaint and redressal as applicable had already been granted. There being no further grounds for any further interference, the counsel said that the OA lacks merit and therefore deserves to be dismissed.

Consideration of the Case

8. Having heard counsel on both sides at length, the only issue that remains to be adjudicated is, whether the two impugned CRs merit any further interference. We have also gone through the CR dossier submitted by the respondents and the files pertaining to the examination of the various applicants.

Non Empanelment and No. 3 SB 2014

9. From the SB proceedings submitted by the respondents, it is seen that the applicant's overall merit at 90.212 was below the overall merit of the last approved officer which was 90.631. In the No. 3 SB held in December 2014, the overall merit of the applicant was 90.217 as compared to the merit of the last approved officer, which was 90.631. However, consequent to the release of the additional vacancies for the combat support arms

based on the orders of the Apex Court in the No. 3 SB held in 2016, the applicant was empanelled with his merit at 90.212 as against a new benchmark of 90.108.

Nomination for HC/HDMC Course

10. The applicant was considered for nomination to the high commander HDMC Course in 2019 and 2020. In 2019, the applicant had an overall merit of 94.420 as against the merit of the last officer nominated, whose merit was 95.415. In his consideration for nomination for the HC course in 2020, the merit of the applicant was 94.474 while the merit of the last officer to be nominated was 95.035. Thus, it is evident that the applicant was not nominated for the HC/ HDMC Course based on the overall comparative merit amongst the officers who were under consideration each time.

Complaints

11. As part of the non-statutory complaint dated 02.07.2014, eight CRs that form part of the reckonable profile were examined, and based on the overall profile, six figurative grading of the RO in the CR from Jan 2007 to Nov 2007 were expunged on the ground of inconsistency with the overall profile. It is seen from the record that no other CR in the reckonable period merits any further interference. In the statutory complaint dated 02.02.2015, since the prayer was to expunge the CR from Jan 2007 to Nov 2007 the issue was examined once again and the competent authority did not find any merit in the grounds canvassed for such action. Accordingly, since all CRs were well-corroborated,

performance-based, and technically valid, the competent authority rejected the statutory complaint finding no merit in it. Having examined the CR dossier, we are of the opinion that none of the CRs in the reckonable period merit any further interference.

12. In light of the above consideration, the OA is dismissed being bereft of any merit.

13. No order as to costs.

14. Pending miscellaneous application(s), if any, stands closed.

Pronounced in open Court on this **24th** day of January 2023.

**(JUSTICE RAJENDRA MENON)
CHAIRPERSON**

**(LT GEN P.M. HARIZ)
MEMBER (A)**

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