

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

**OA 587 of 2020
with
MA 715 of 2020**

Col Sunil Kumar **Applicant**
Versus
Union of India and Ors. **Respondents**

For Applicant : Mr. Rajiv Manglik, Advocate
For Respondents : Gp Capt Karan Singh Bhati, Sr. CGSC

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

ORDER

This application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007, by a serving Col of the Indian Army who is aggrieved on his non-empanelment by No 2 Selection Board (SB) and grant of inadequate redressal on his non-statutory complaint made against his non-empanelment. The applicant has made the following prayers:-

- (a) To call for the records of all the No 2 Promotion Board held in 2017 to 2019 in respect of the applicant for promotion to the rank of Brig and peruse and quash the same; and

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- (b) To quash and set aside order dated 07 Dec 2018 to the extent that it expunged ACRs for the period 9/12 – 8/13, 10/13 – 5/14, 5/14 – 8/14 and 9/14 – 4/15 being technically invalid and did not expunge the complete assessment of the RO and the IO for the ACRs period 06/01 – 05/02 and 09/10 – 04/11 respectively; and
- (c) To restore the ACRs for the period 9/12 – 8/13, 10/13 – 5/14, 5/14 – 8/14 and 9/14 – 4/15 to its original position; and
- (d) To quash and set aside the complete assessment of the RO and the IO for the ACRs period 06/01 – 05/02 and 09/10 – 04/11 respectively; and
- (e) To direct the respondents to re-consider the applicant as a special review (Fresh) case by the No 2 Selection Board and if promoted as Brig grant all consequential benefits including pay and allowances and seniority; and
- (f) To award exemplary costs in favour of the applicant; and

(g) To pass such other and further orders which their lordships may deem fit and proper in the existing facts and circumstances of the case; and

(h) In the interim, be allowed to challenge the award punishments challenged in the non-statutory complaint in separate proceedings in terms of the Rule 10 of the AFT (Procedure) Rules, 2008.

Brief Facts of the Case

2. The applicant was commissioned on 15.12.1990 in the Corps of Engineers, served in various sectors, did mandatory courses including Masters from IIT Delhi. In Oct 2008, he was promoted to the rank of Col and was initially posted as CWE, 137 Works Engineer where he served from 10/08 – 04/11. Subsequently, from 05/11 – 03/12 he was posted to SEMT Wing at CME School, Pune. Thereafter, he was posted to HQ CE (P) Dantak from 04/12 – 04/14, after which he was posted at HQ DGBR from 05/14 – 11/16. From 10/08 – 11/16 he earned the following CRs, as CWE 137 Works Engineer – 03 CRs; at CME – 02 CRs; HQ CE (P) Dantak – 03 CRs and at HQ DGBR – 04 CRs.

3. In 06/2013, a Court of Inquiry (CoI) was ordered to investigate into certain lapses whilst the applicant was CWE, 137 Works Engr. He was then placed on a DV Ban from 19.05.2015, and in Sept 2015 was awarded a censure (Severe Displeasure) by GOC 3 Corps. Following this, DV Ban was lifted on 30.09.2015. A second CoI against the applicant in Jul 2015 and in May 2016, the applicant was again placed under DV Ban and on process, he was once again given a censure (Severe Displeasure) by GOC 3 Corps in Nov 2016. The applicant was considered for promotion to the rank of Brig by No 2 SB in Nov 2017 and was not empanelled. Aggrieved by the non-empanelment, the applicant filed a non-statutory complaint dated 03.02.2018 against his non-empanelment. In Dec 2018, the Competent Authority granted partial redressal on the non-statutory complaint in which one grading by the IO and the RO, in two different CRs were expunged and also four other CRs were expunged having been found technically invalid. The redressal also directed that the applicant be considered as a Special Review Fresh Case. The applicant was considered as a First Review case by No 2 SB held in Jul 2018 and as a Final Review case by the No 2 SB held in Jun 2019 and was not empanelled. Aggrieved by this situation, the applicant sought an interview with Military Secretary

(Annexure A-7) which was, however, not granted and he was never intimated the reasons as to why his four good CRs had been expunged as technically invalid. Hence the OA.

Arguments by the Counsel for the Applicant

4. The Counsel for the applicant took us through the service profile of the applicant and explained in detail the contents of the non-statutory complaint dated 03.02.2018 and the details of the partial redressal granted. The Counsel stated that the applicant had impugned 03 CRs covering the period 24.10.2008 to 12.04.2011 and sought a redressal that all the CRs in the entire reckonable profile be reviewed and inconsistency be removed; box grading assessments of IO/FTO in these CRs be expunged; assessment by the HTO in the CRs be checked with his earlier CRs and if any inconsistency was found, the same be set aside and after expunction he be considered as a Special Review Fresh Case. He further added that in the partial redressal granted, two figurative gradings in two different CRs were expunged, one a figurative grading by RO in the non-impugned CR covering the period 06/2001 to 05/2002 and another figurative grading by the IO in one of the impugned CR covering the period 09/2010 to 04/2011. In addition,

four CRs covering the period from 09/12 to 04/12 were completely expunged having been held as technically invalid CRs as part of the examination of the non-statutory complaint.

5. The Counsel then went on to explain the details of the four CRs which were expunged being technically invalid. The Counsel elaborated the details and stated that these were the second and third out of the three CRs earned whilst serving in CE (P) Dantak, and the first and second CRs out of the four CRs earned whilst serving in HQ DGBR. The Counsel then explained that during the period of two CRs under CE (P) Dantak, a CoI was initiated against certain lapses alleged to have been committed by the applicant while serving as CWE 137 Works Engineer, and that the CoI had commenced in Jun 2013 and the process continued for the rest of his tenure in CE (P) Dantak and finally concluded during his tenure in HQ DGBR when he was placed on DV ban from May 2015 to Sep 2015 when he was finally given a Censure (Severe Displeasure Recordable) by GOC 3 Corps on 22.09.2015.

6. He then went to elaborate the contents of Special Army Order 45/2001, amended in 2016, and drew our attention to the procedure to be adopted when a CR is to be initiated of an officer,

against whom disciplinary action is in progress. In particular, he drew our attention to Para 32 to 34 of AO 45/2001 which lays down that if the disciplinary action is completed within the reporting period and the officer continues to discharge his official duties, the CR will be initiated with prior permission of the SRO and also that it is to be ensured that such CRs are objective and do not contain reference to the officer's involvement in the disciplinary case. The Counsel further added that if on the other hand the officer continues to remain under a disciplinary case during the reporting year, as per Para 32 of the AO, no CR will be initiated and a NIR will be forwarded to the MS Branch provided the officer has not been discharging his official duties for the appointment posted.

7. The counsel further elaborated that in the light of the policy on action to be taken whilst initiating CRs for those who were under disciplinary action, in the applicant's case, the first CoI had been ordered vide letter dated 21.06.2013 and the CRs were written after Aug 2013 for the period covering 09/12 – 08/13. The Counsel then emphasised that whilst the CoI was held between 05.10.2013 – 09.10.2013, the CR for the period 09/12 – 08/13 had already been written. The Counsel vehemently asserted that the CR in question was required to be

initiated under Para 32 (b) of AO 45/2001 wherein the permission of the SRO was required to be taken. However, since the reporting channel has no SRO, there was no necessity of seeking permission. It was the applicant's case that in the absence of the SRO, the CR covering the period 09/12 – 08/13 had been initiated fairly and correctly without the permission of anyone, since there was no question of seeking permission from anyone as there was no SRO in the channel of reporting.

8. The counsel then elaborated that in a similar manner the applicant earned another CR covering the period 10/13 – 05/14 in the same appointment and again no permission of the SRO had been obtained as there was no SRO in the channel of reporting. On completion of his tenure at CE (P) Dantak, the applicant was posted at HQ DGBR wherein DDG was his IO and DGBR was his RO and once again there was no SRO in the ACR channel. Here again the applicant earned two CRs for the period 05/14 – 08/14 and 09/14 – 04/15. In May 2015, with reference to the CoI conducted in 2013, the applicant was placed under DV Ban and was awarded a censure of 'Severe Displeasure (Recordable)' on 22.09.2015 by GOC 3 Corps.

9. The counsel then stated that a second CoI was ordered against the applicant on 01.07.2015; followed by being placed on DV ban from 25.05.2016, culminating in the issue of yet another censure of 'Severe Displeasure (Recordable) on 22.09.2015 by GOC 3 Corps on 17.11.2016. Here again, since he was posted at HQ DGBR and there was no SRO ascribed in the channel of reporting, there was no cause for taking any permission of the SRO. The Counsel then stated that for the period under consideration whilst the applicant had disciplinary proceedings against him, four CRs have been initiated without the permission of the SRO only because there were no SROs in the channel of reporting. The Counsel vehemently stated that it was therefore not understood how the MS Branch would have scrutinized the CRs and set them aside for no fault of the applicant, causing irreparable damage to him.

10. The Counsel then took us through the redressal granted vide letter dated 07.12.2018 (Annexure A-1) and elaborated that the IO's and RO's assessments in two different CRs had been expunged on the ground of inconsistency. The counsel asserted that if these ratings were found to be inconsistent, it was necessary that the other ratings too ought to have be moderated. The counsel further

asserted that though four CRs covering the period from 09/2012 to 04/2015 had been held technically invalid and expunged on the grounds that since the permission of the SRO had not been obtained to initiate these CRs as the applicant was under disciplinary action, actually the disciplinary action continued till Nov 2016 when the second censure was awarded. The Counsel asserted that the MS branch did not deem it fit to expunge the two CRs covering the period 04/2015 to 08/2016 on similar grounds as these two CRs covering the period 04/15 – 08/16 were also taken under the same appointment where there were no SRO ascribed. However, these were not expunged since the MS Branch had changed its policy in 2016, wherein it was no longer necessary to obtain the permission of the SRO for initiating as described in the Para 32 of the AO. The Counsel vehemently asserted that the applicant cannot be made a victim of such a situation, where out of a total six CRs pertaining to the period of disciplinary action, four were set aside merely on the grounds that SRO's permission was not taken when under similar condition subsequent CRs are permitted merely because of a change in policy.

11. The counsel concluded by asserting that instead of granting appropriate redressal as sought for in the non-statutory

compliant, the partial redressal granted was inadequate and the fact that four CRs have been expunged having been held that they were technically invalid since no SRO permission had caused irreparable damage to the applicant and therefore prayed that the OA be allowed.

Arguments by the Counsel for the Respondents

12. The counsel for the respondents took us through the prayers made by the applicant and drew our attention to the non-statutory complaint and explained that whilst the non-statutory complaint was dealt at the level of the Chief of Army Staff, a statutory complaint was processed at the level of the MoD. He further reiterated that in the non-statutory complaint, the applicant had prayed for the Box grading to be expunged and the organisation had examined all the CRs and granted appropriate redressal based on figurative gradings which were found to be inconsistent with the applicants profile in the reckonable period. In that the RO's and IO's figurative rating in two different CRs were found inconsistent, and had been accordingly expunged.

13. The counsel then stated that the applicant had been considered for empanelment by No 2 SB (Fresh) case held in

Nov 2017; as a First Review Case in Jul 2018 and as a Final Review Case in Jun 2019 and had remained non-empanelled. He then went to explain the details of the two disciplinary proceedings which were initiated against the applicant, wherein, in the first case, the CoI had been convened on 21.06.2013 and punishment was awarded on 22.09.2015; whilst in the second case, the CoI had been convened on 01.07.2015 and the punishment was awarded on 17.11.2016. The counsel then elaborated on the various CRs earned by the applicant whilst being posted in HQ 137 WE/ CE (P) Dantak/ HQ DGBR. As regards seeking permission of the SRO for initiating CRs whilst disciplinary proceedings were in process, the counsel asserted that the applicant had been was under disciplinary proceedings from Jun 2013 to Nov 2016; the date when the first CoI was initiated to the date when the second disciplinary proceedings had concluded with award of the second censure. That since the character and military reputation of the applicant was involved, AR 180 had been applied during the proceedings. Therefore, the sanction of SRO was mandatory and that since in this case it was a two layered report with no SRO in the channel of reporting, the sanction to initiate the CR ought to have been taken from the MS Branch as per Para 32 of the AO 45/2001/MS. The Counsel further

elaborated, since the applicant had sought the review of all CRs in the reckonable period, the MS Branch had accordingly scrutinised all the CRs, and during the scrutiny it was noticed that these four CRs had been initiated without seeking permission of the MS Branch and had therefore been set aside being technically invalid.

14. The Counsel then stated that the policy on the mandatory requirement of SRO sanction for initiation of CRs in respect of officers under disciplinary proceedings had been done away with effect from 01.06.2015 vide MS Branch policy letter dated 11.03.2016. He further added that in the light of this change of policy, the two CRs from 4/2015 to 08/2016 were not interfered with during the scrutiny of the CRs by the MS Branch. Referring to the applicant's plea that the policy of 2016 was contrary to the Special Army Order, the counsel emphasized both, the SAO and the policy were laid down on behalf of the Chief of the Army Staff and as such the policy letter does not prejudice the SAO as it was also amended later.

15. As regards the non-empanelment by the SB, the counsel stated that the No 2 SB had been convened and held as per the rules and policies on the subject. He reiterated that it was up to the

SB to assess the suitability of the applicant for promotion and that the assessment of the SB was recommendatory in nature and not binding until approved by the competent authority. In the case of the applicant, he had been considered thrice and had not been empanelled due to his overall profile and comparative merit. The counsel went to cite various judgments in support of his arguments mentioned herein under:

- (a) UoI Vs Lt Gen RS Kadyan, (2000) 6 SCC 698.
- (b) Maj Gen IPS Dewan Vs UOI & Ors, (1995) 3 SSC 383.
- (c) AVM S L Chabbra, VSM Vs UOI, 1993 Supp (4) SCC 441.
- (d) Dalpat ASolunke Vs BS Mahajan, (1990) 1 SCC 305.
- (e) Lt Col Amrik Singh Vs UOI, (2001) 10 SCC 424.
- (f) Major Surinder Shukla Vs UoI & Ors, (2008) 2 SCC 649.

16. The Counsel concluded stating that requisite relief had already been granted to the applicant in the non-statutory complaint submitted by him. Since all the CRs during the reckonable period were sought to be reviewed, this had been diligently done by the competent authority who did not identify any other CR which required interference. However, as part of this review the MS Branch also noticed that four of the CRs in the reckonable period had been initiated without seeking the requisite permission since the applicant was under a disciplinary process during this period, and

these had been set aside as per the rules in vogue as applicable to this period and therefore did not warrant to be restored as prayed for. In view of this, the OA be dismissed.

Consideration of the Case

17. Having heard both parties at length, the only issue which requires to be adjudicated are :-

- (a) Whether the impugned CRs and any other CR in the reckonable period require any further interference?
- (b) Whether the Respondents were right in setting aside the four CRs of the applicant initiated without permission of MS Branch since the applicant was under a disciplinary process at the relevant time.

Examination of CRs

18. Examination of CRs. The CR dossier of the applicant has been submitted by the respondents and has been examined by the Court. In the reckonable profile, the applicant has earned 21 CRs; seven in the rank of Maj; two in the rank of Lt Col; and 12 in the rank of Col. He has earned 10 criteria/ part criteria reports with box grading averaging 22 % of '9' and 78 % '8' by IO/RO/SRO and 16% '9' and 84 % '8' by FTO/HTO. In the

reckonable profile, all the CRs are clear Above Average/Out Standing assessments. However, since CRs from 06/2001 - 05/2002 and 09/2010 - 04/2011 both had certain inconsistencies, these have already been expunged as part of the partial redressal granted in response to the non-statutory complaint. Other than these, no other figurative or box gradings are found to be inconsistent and therefore, neither the impugned CRs nor any other CR in the reckonable profile merit any further interference.

Expunction of Four CRs

19. The channel of reporting for various appointments is promulgated by MS Branch to the environment from time to time. The Channel of Reporting for HQ CE (P) Dantak and HQ DGBR at the relevant time of this case have been promulgated vide MS Branch letters dated 8531/MS 4D (Channels) dated 16.04.1996. Relevant details are extracted below :-

(a) HQ CE (Projects)

CE Project - As laid down vide our letter no 31741/38/MS 4D(Channel) dated 04 Dec 86 and 26 May 89.

Other Officers Serving with HQ CE (Projects)

SO-1	Not below the rank of Lt Col , IO/FTO if from the same arm
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Col (Wks&Plg) / Equivalent	Also to initiate reports on officers serving directly under him. FTO/HTO as applicable if from the same arm
CE	If applicable .Also FTO/HTO where applicable
Tech rep at HQ DGBR	FTO/HTO as & where applicable for ASC, Sigs, EME officers
DGBR	If applicable

(b) HQ DGBR

Director	
DDG	Also initiate reports on officers serving directly under him
Addl DG BR	If and where applicable. Also to initiate reports on officers serving directly under him
DGBR	If applicable
E-in-C/ DG EME	As applicable. HOA to endorse reports of brig and above of respective arms.

(c) Based on the above details, the applicant's IO/RO/SRO as reflected in the CRs are as under:-

Ser	Reporting Officer	HQ CE (P) Dantak	HQ DGBR
	Appt of Applicant	Dir (Wks& Budget)	Dir (Res & Coord)
(i)	IO	CE (P) Dantak	DDG (TP)
(ii)	RO	DGBR	DGBR
(iii)	SRO	-	-
(iv)	FTO	CE (P) Dantak	-
(v)	HTO	Endorsed by DGBR – set aside as non entitled	-

20. The policy on rendition of CR is governed by AO 45/2001. AO 45/2001 has seen been superseded by AO 2/2016/MS with effect from 01.06.2016. The directions for initiation of report when

the ratee of Reporting Officer is involved in a disciplinary case if given in paras 32 to 43 of AO 45/2001 and are extracted below :-

Initiation of Reports when Ratee or the Reporting Officer is Involved in a Disciplinary Case

32. CRs will be initiated on all officers under disciplinary proceedings, subject to following conditions being met : -

(a) The disciplinary proceedings are completed within the reporting period. Ratee under this provision is also entitled for a Delayed CR, if reasons for delay are those other than the disciplinary case.

(b) In case, disciplinary proceedings are not completed within the reporting period and the officer continues to discharge his official duties for the appointment posted, the CR will be initiated with prior permission of the SRO. It will be ensured that such CRs are objective and do not contain reference to the officer's involvement in the disciplinary case.

33. If the officer continues to remain under a disciplinary case during the reporting year, no CR will be initiated and a NIR will be forwarded to the MS Branch, provided the officer has not been discharging his official duties for the appointment posted.

34. An officer will be considered to be the subject of a disciplinary case with effect from the earlier of the following two dates :-

(a) The date on which a Court of Inquiry is ordered involving his character or military reputation (invoking of Para 180 of Army Rules), or

(b) The date on which formal cognisance of an offence is taken against him.

21. In AO 2/2016/MS, the directions for initiation of report when the ratee of Reporting Officer is involved in a disciplinary case if given in paras 27 to 32 and effective from 01 Jun 2016. Para 27 and 28 which are relevant to the case at hand are extracted below:-

Initiation of Reports for Officers Involved in a Disciplinary Case

27. An officer will be considered to be the subject of a disciplinary case with effect from the earlier of the following two dates:-

(a) The date on which a Court of Inquiry is ordered involving his character or military reputation (invoking of Army Rule 180 in convening order of C of I) or the date on which Army Rule 180 is invoked with respect to him.

(b) The date on which formal cognizance of an offence is taken against him implying earliest of the following:-

(i) Date on which the competent authority directs disciplinary or administrative action against the officer post finalisation of Court of Inquiry proceedings.

(ii) Date of imposition of DV ban on the officer.

(iii) Date on which the officer is attached for disciplinary purposes under Army Instruction 30/86 and related provisions.

(iv) Disciplinary proceedings are initiated against the officer by his Commanding Officer with hearing of charge under Army Rule 22.

28. Ratee Involved in Disciplinary Case. CR/ NIR will be initiated on officers under disciplinary proceedings as given below:-

(a) In case disciplinary proceedings are completed within the reporting period before the due date of CR, officer is entitled to CR as per normal provisions of AO.

(b) If the disciplinary proceedings are not completed within the reporting period and the officer continues to discharge his official duties for the appointment posted, CR as and when due will be initiated. It will be ensured that assessment in such CR is objective and does not contain reference to the officer's involvement in the disciplinary case. In such CRs endorsement of SRO is mandatory to ensure objectivity.

(c) If the officer continues to remain under a disciplinary case during the reporting period and the officer has not been discharging his official duties for the appointment posted, no CR

(when due) will be initiated and NIR for the period will be forwarded to MS Branch.

22. It is also seen from the documents on record two CoIs were initiated against the applicant and both culminated in a Censure (Severe Displeasure - Recordable) being awarded to the applicant. As seen from the records, the first CoI was initiated on 21.06.2013 and culminated with issue of a censure on 22.09.2015. The second CoI was initiated on 01.07.2015 and culminated on 01.11.2016 with issue of the second censure. Thus, the applicant was under a disciplinary process from 21.06.2013 to 17.11.2016.

23. As per the relevant instructions in AO 45/2001 on rendition of CR in such circumstances, *"In case, disciplinary proceedings are not completed within the reporting period and the officer continues to discharge his official duties for the appointment posted, the CR will be initiated with prior permission of the SRO. It will be ensured that such CRs are objective and do not contain reference to the officer's involvement in the disciplinary case."* It is also seen from the Channel of Reporting that for both the appointments held by the applicant during these four CRs, both did not have a SRO ascribed in the channel of reporting. In such cases

where a SRO is not nominated in the channel of reporting, such permissions are to be taken from MS Branch. The Respondents have relied on Para 48 of OA 45/2001 which is reproduced below :-

Sanctions I Debarments for CRs.

47. xxxxx

48. Details of various sanctions for initiation of CRs by officers other than the IO, and for debarment of reporting officers from endorsing CRs, is at Appendix J. In case, no SRO is posted, sanction will be given by the next higher authority in the chain of command. The sanction letter may, however, be signed by a staff officer where entitled to handle CRs as per Paragraph 13 of the AO, after approval of the appropriate sanctioning officer, except for cases mentioned at Paragraph 28, waiver of 60 days warning period (vide Paragraph 111 (d)), 90 days physical service (vide Paragraph 111 (e)), where sanctions/waiver as appropriate must be signed by the sanctioning authority himself. In case, SRO is above the level of GOC-in-C Command / PSO at Army Headquarters, the sanctions as applicable, may be accorded by the MS. All other cases not covered under the provisions of the AO, may also be referred to the MS Branch.

24. It is seen from the relevant paragraphs of AO 45/2011 that while there are specific instructions that when the CR is to be initiated of an officer under disciplinary process and continues to hold the appointment to which he is posted, the SRO's sanction will be taken. And in case no SRO is posted, sanction will be given by the next higher authority in the chain of command. However, there are no specific instructions for DGBR whose command and control arrangements are different to that of the regular Army units/formations. Thus, it the Respondents case that such extraordinary

cases are then covered by Para 48 of AO 45/2001 extracted above, which concludes that '*All other cases not covered under the provisions of the AO, may also be referred to the MS Branch*'.

25. As seen from the record no sanction was taken from MS Branch. It is seen from the CR Dossier that while these CRs have been internally checked/ non entitled assessments set aside/ transcribed, even the internal assessment has missed the fact that the applicant was under a disciplinary process and that sanction was required to be taken as per the AO, in spite of the fact the letters placing the applicant on DV ban and lifting of DV ban are also held on record. We are of the opinion that if this was indeed such an important infringement it *OUGHT TO HAVE BEEN IDENTIFIED DURING INTERNAL ASSESSMENT* and necessary action taken. Moreover, whether it was possible for MS Branch to have granted an 'ex post facto' sanction to cover the lapse, on the premise that there was nothing that would have denied a sanction in the first place has also not been explored/ examined and documented. From the records pertaining to the examination of the non-statutory complaint submitted to the Court, it is seen that the MS Branch realised the lapse only when they initially examined the complaint in Aug 18. The examination states that '*... MS Branch sanction was apparently*

not taken. However, MS Branch did not have the intimation of the officer being a subject of disciplinary case except imposition of DV ban wef 13 Aug 15. Accordingly, the four CRs.... Earned between 21 Jun 13 to 13 Aug 15 were accepted as 'Technically valid' reports in consonance with known discipline status of the officer and relevant policy provisions'. Thus, based on this input, the competent authority finally took the decision to set aside these four CRs.

26. Without going into the details on record of when the details of DV ban and it being lifted consequent to award of censure were seen at the MS Branch and transcribed into the automation system, we are of the opinion that obtaining sanction in the first place was an organisational responsibility of the unit/ establishment to which the applicant was posted and cannot be seen to be the responsibility of the applicant himself. Moreover, we also hold that having 'missed' the issue and having identified these CRs as being technically valid only in Aug 2018, in the fitness of things, considering the special circumstances of this case, this lapse should have been regularised by the MS Branch when it came to its notice for the first time in Aug 2018, or certainly by the competent authority. We are therefore of the opinion that serious prejudice has been caused to the applicant with these four CRs being set aside as

technically invalid and we therefore direct that these four CRs be restored.

No 2 SB

27. The Respondents have also produced the proceedings of the No 2 SB held in Nov 2017, Jul 2018 and Jun 2019 in which the applicant was considered. The SB has been conducted as per the policy on the subject. When the applicant was considered as a Fresh case in Nov 2017, his overall merit was 87.680 in comparison to the last empanelled officer whose overall merit was 91.087. When the applicant was considered as a First Review in Jul 2018, his overall merit was 90.068 in comparison to the last empanelled officer whose overall merit was 92.462. During the applicant's consideration as a Final Review case in Jun 2019, his overall merit was 89.097 in comparison to the last empanelled officer whose overall merit was 91.659. Thus, it is seen that the applicant was not empanelled due to his overall comparative merit amongst all the officers under consideration. Therefore, these No 2 SBs do not merit any further examination or interference.

Conclusion

28. With the above consideration we conclude the following:-

(a) None of the CRs in the reckonable period merit any further interference.

(b) Setting aside of the four CRs covering the period 9/2012-08/2013, 10/2013-05/2014, 05/2014-08/2014 and 09/2014-04/2015 has caused prejudice to the applicant, and has been carried out without any consideration for the regularisation of the lapse.

(c) The No 2 SBs of Nov 2017, Jul 2018 and Jun 2019 in which the applicant was considered have been conducted as per the policy on the subject, and the applicant has not been empanelled due to his overall merit.

29. In view of the above, the OA is partially admitted and the Respondents are directed to :-

(a) Restore the four CRs covering the period 9/2012-08/2013, 10/2013-05/2014, 05/2014-08/2014 and 09/2014-04/2015 which have been set aside vide MS Branch letter No 36501/ 17294/ EME/ 2018/ 2018/ MS-19dated 07.12.2018 (Annexure A-1).

(b) Para 5 (c) of MS Branch letter No 36501/17294/ EME/2018/2018/MS-19 dated 07.12.2018 related to the direction to set aside the four CRs be quashed.

(c) The applicant be considered as a Special Review Fresh case in those No2 SBs in which the four CRs were set aside and not included in the reckonable profile.

30. No order as to costs.

31. 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)**

/Neha/