

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A.No. 30 of 2013

Wednesday, the 23rd day of October 2013

THE HONOURABLE JUSTICE V. PERIYA KARUPPIAH
(MEMBER-JUDICIAL)

AND

THE HONOURABLE LT GEN ANAND MOHAN VERMA
(MEMBER – ADMINISTRATIVE)

Commander R Upendra Babu
Officer in Charge PSTAT
HQ Eastern Naval Command
Visakhapatnam
Andhra Pradesh.

.. Applicant

By Legal Practitioner:
M/s. K.Ramesh,
M.K. Sikdar & Archana Ramesh

vs.

1. Union of India
Through the Secretary
Ministry of Defence
New Delhi-110 011.

2. The Chief of Naval Staff
Through Director of Personnel
IHQ MOD (Navy)
New Delhi-110 011.

..Respondents

By B. Shanthakumar, SPC

ORDER

(Order of the Tribunal made by
Hon'ble Lt Gen Anand Mohan Verma,
Member-Administrative)

1. This application has been filed against the rejection of Statutory representations communicated to the petitioner vide IHQ of Ministry of Defence (Navy) Orders dated 25th May 2012 and 13th December 2012.
2. The petitioner was commissioned in the Engineering Branch of Navy on 1st January 1993 where he was adjudged the Best Positive Living Officer of his course. In 2009 and 2010, he was considered by a Technical Sea Board but was not selected for Commander's Sea Time. He submitted a Statutory Complaint against the non-empanelment on 31st March 2011 which was replied vide respondents' letter dated 25th May 2012 wherein it was stated that no injustice had been done to the petitioner. The petitioner filed a fresh Statutory Representation on 1st August 2012 which was replied to by the respondents vide their letter dated 13th December 2012 wherein the representation had been rejected being devoid of merit. The petitioner was considered by Promotion Board in August 2012 for promotion to the rank of Captain in Staff Stream but was not selected.

3. The reliefs sought by the petitioner are, to quash the respondents' Orders dated 25th May 2012 and 13th December 2012; consideration for Commander's Sea Time; issue directions to the respondents to promote him to the rank of Captain in Staff Stream (if his seniority in rank is way beyond seniority bracket for consideration for Commander's Sea Time); to direct the respondents to revalidate *inter se* merit of the petitioner after negating ACRs against which the O.A. has been filed and accord higher weightage factor to his high value ACRs; call for records held by DOP/DSMO to incorporate revalidated *inter se* merit; promote him to the rank of Captain in 'Operations Stream' if nomination for Commander's Sea Time is not found viable by according a waiver of Commander's Sea Time; and, if redress is granted as aforementioned, then the petitioner be nominated for all courses/appointments/deputations he is eligible for and pass such other and further orders as deemed fit.

4. The petitioner pleaded his case through his learned counsel Mr. K. Ramesh and a detailed Rejoinder to the counter-affidavit of the respondents. In his application, the petitioner would state that he was adjudged the Best All Round Officer of his course as also Best Positive Living Officer of his course. In February 2010 he was awarded "On the spot Commendation" by the Flag Officer Commanding in Chief Eastern Naval Command for achievements at School of Advanced Undersea Warfare (SAUW). He was considered for Commander's Sea Time Selection

in 2009 but was not selected. He refrained from initiating a representation or ROG based on the conjecture that his non-selection was primarily attributable to a policy shift for Sea Time selection in 2009. When he was not selected for the second time in 2010, it indicated injustice despite praiseworthy performances in all appointments held by him that he was not selected which compelled him to file a representation in March 2011, reply to which was not only delayed excessively but it also afforded no objectivity and no concrete reasons for the decision. His representation to the Ministry of Defence (Navy) in August 2012 too was rejected. The petitioner would submit that he seeks unassailable reasons from the respondents on a number of issues; frequent transfers in the rank of Lieutenant; not expunging an ACR in the rank of Lieutenant considering credentials of the Initiating Officer(IO); not bestowing a fair and a rightful chance in Commander's Sea Time selection; positioning the petitioner in a training establishment without defined charter of duties and reporting channel; nullifying meritorious performance in establishing a state-of-the-art Special Projects Training establishment; nullifying meritorious performance in conducting Training Programme for the Special Projects; and, not considering petitioner's meritorious performance in all appointments excluding the aberrations. The petitioner would submit that the provisions for meriting selection by Commander's Sea Time are last five ACRs, last ACR in the rank of Lieutenant, last ACR in the rank of

Lieutenant Commander, Sea Time ACR in the rank of Lieutenant Commander and Benchmark finalised by Performance Appraisal & Review Board (PARB). The petitioner would submit that the circumstances corroborated in the representations submitted by him may have been one-off wherein an officer suffered gross injustice attributable to not ascertaining the credentials of IO assessing a crucial Sea Time Report, inadequacy in directives issued by IHQ MoD (Navy) for establishment of a Core Team, ambiguity in reporting channel for an officer nominated to the Core Team, overlooking circumstances leading to low ACRs and invalidating key credentials associated with commissioning of Special Projects and invalidating efforts directed towards commissioning a high value training asset for Special Projects. The petitioner would submit that the delay in receiving written communication from IHQ MoD for Representation No.1 buttressed a premonition that the case was being accorded lack of objectivity in the light of circumstances cited by him. The delay in addressing the grievances cast elusive aspersions on a redress system. The petitioner would also submit that RACAB apparently lacks objectivity and have passed a cryptic order rejecting his Complaint. The petitioner would go on to say that the consideration of an officer for promotion to the rank of Captain in Staff Stream also hinges on the same extant provisions which clearly indicate that probability of selection in either of the streams when an officer is subjected to circumstances that the

petitioner has been subjected to remain the same, which is largely minimal. Therefore, the ACR which resulted in non-selection by Technical Sea Board will have a similar result in the 'Staff Steam Captain' selection with no increase in probability. Therefore, in the light of circumstances corroborated in all his representations and considering his unflinching strive for excellence, the petitioner prays that his case be considered by this Tribunal and the respondents be asked to provide reasons for the issues raised by him and he be granted reliefs that he has asked for.

5. The respondents in their counter-affidavit and pleadings by the learned Senior Panel Counsel Mr. B. Shanthakumar assisted by Lt Rahul Ahlawat, Assistant JAG Officer and Mr. U.S. Latwal, Dy. Director, Directorate of Personnel (OA&R), IHQ, MoD (Navy), New Delhi would object to the application by saying that the petitioner's application is an abuse of the process of law as no existing legal right of the petitioner has been jeopardized who has no cause of action to seek intervention by this Tribunal. In response to the application the respondents would state that there has been some delay in disposing the representation of the petitioner primarily because it was examined threadbare at various levels with a view to do justice. There was no '*mala fide*' intention involved in the delay in disposing of the application. Representation was thoroughly examined taking into consideration of all facts and was rejected by a reasoned order conveying the fact that number of eligible officers were

more than the number of sanctioned sea billets. The respondents would submit that the selection criteria for Technical Sea Board are not what was stated by the petitioner. The respondents would produce the relevant policy letter in this regard which states that the selection criteria for technical officer like the petitioner for sea billets is that he should have had at least two tenures at sea; should have passed Professional Management Examination(PME) and should be in sea going category. There was a shift in policy in 2009 due to which large number of officers were considered. However, the respondents would state, no injustice was done to the petitioner as alleged by him. The petitioner has missed selection because he was low in '*inter se*' merit. On the issue of frequent transfers in the rank of Lieutenant, the respondents would say that transfers are based on service requirements and are parts of service conditions. In the rank of Lieutenant, the petitioner was detailed for courses twice, for a period of more than two years and thus the allegation of frequent transfer is not based on facts and is malicious. On the issue of expunging a particular report in the rank of Lieutenant, the respondents would say that in the CR of 2002, he was advised to pay critical attention to minute details while dealing with technical issues but this report did not affect the profile of the petitioner adversely. On the issue of channel of ACR, the respondents would submit that the unit to which the petitioner was posted had clearly defined ACR channel. Every appointment in every

station has a predefined charter of duties which the appointee has to follow. The respondents would state that the petitioner is under a false presumption that his certain ACRs were responsible for non-selection. Under the system of PARB, a report having unreasonable upwards or downwards variation is moderated to bring it in line with his overall profile and thus, the petitioner's apprehension was taken care of. Since the ACR in question was not an adverse report, it had no negative impact leading to non-selection of the petitioner. He was not selected by Technical Sea Board due to his overall low profile and availability of better officers who were higher in merit. On the issue of assessing credentials of IO, the respondents would submit that there is no provision for ascertaining the credentials of an IO. On the issue of circumstances leading to non-selection as alleged by the petitioner, the respondents would state that while assessing the performance of an officer, his CRs are the main criteria, rather than the circumstances. Adding weightage to the circumstances, would make selection system biased and prejudiced. A low CR might be the result of his low performance as assessed by IO and RO. The petitioner has not stated in the application that any IO or RO was biased against him or was prejudiced against him. Hence, there can be only one reason for under-rating the petitioner which is low performance. For promotion to the rank of Captain under Staff Stream, only those officers who are within the threshold for selection are selected. The

petitioner was not selected for promotion to the rank of Captain in the Staff Stream being low in merit. In the backdrop of the facts and circumstances stated above, the respondents would pray that the application be dismissed being devoid of merit.

6. The petitioner filed a detailed Rejoinder supported by annexure to the counter-affidavit, tabulated sequence of arguments and an analysis of his overall performance profile with assigned mathematical attributes to various parameters. In addition, during the final hearing, the learned counsel for the petitioner would plead the case of the petitioner in which, in addition to highlighting issues raised in the Rejoinder, he pleaded that the ACRs in 2004 and 2005 were initiated by an OiC SMS who was not fully aware of the petitioner's achievements. He would plead that the petitioner had not been given a fair chance of being posted to varied appointments such as dockyard appointments, staff appointments, training and Sea-Time but was kept in the same establishment for a period of six years from 2004 to 2010. When his normal tenure was to end in 2009, the SAUW, where the petitioner was posted took up a case for his further extension in the establishment on grounds of continuity of training for the ongoing courses and he was posted to INS Virbahu in April 2010 which indicative of his indispensability. The petitioner would reiterate that his case is one-off. The circumstances and constraints faced by him affected his ACRs which do not reflect his competence and he was not

provided a level playing field as compared to his peers of same seniority. He would state that he joined NAVAC (Naval Academy) through the Graduate Special Entry Scheme whereafter he attended Basic Engineering Course. Thereafter, he has attended 6 months special marine course, M.Tech and has passed PME. He would submit that his performance has always been outstanding and has done well in all courses. Despite that he was not selected by Technical Sea Board due to alleged low merit. The fact that he continued to serve in the same appointment for six years would indicate that he was indispensable to the organization and therefore his excellence and performance cannot be questioned. The sole reason for non-selection by the respondents, is that sea billets were fewer than the contending officers. If the petitioner was retained in his appointment due to his indispensability, the respondents should have questioned as to why it did not translate into good ACRs. The respondents' contention that the Statutory Representation had been considered in detail is not convincing as it should have been responded objectively in the light of the circumstances rather than the extant rules. He would submit that he has not questioned the objectivity, fairness and transparency of the system. The entire foundation of ROG has been on the fact that the petitioner has completely lost out purely due to certain circumstances. On the issue of temporary duties, he would submit that the frequent transfers were on local orders. Regarding issue of advisory remarks given to him for the

ACR from 11th April 2002, he would state that it indicates an unwarranted dichotomy and starkly contradicts the guidelines for accurate, fair and objective reporting as stipulated in Navy Order SPL 5/05. He would submit that he has a strong intuition about low ACR marks based on the weightage attributed to the Sea Time ACR by an IO who himself was embroiled in grave professional issues at that juncture and who did not counsel the petitioner for underperformance or did not conduct a Performance Appraisal Discussion (PAD) and who gave an advisory remark. ACRs are finally counted towards selection for courses, deputations and promotions. Therefore, the petitioner would submit that the respondents' statement that this particular ACR has not adversely affected the petitioner, indicates that the ACR marks in this tenure have left a potential officer 'hanging' without any concrete assessment. He would submit that he was posted to INS Satavahana in July 2004 to be part of the Core Team specifically nominated for a Special Project in 2004. This was made clear to him by CO Satvahana. He was instrumental in establishment of SAUW. These achievements of the petitioner were not translated into good ACRs. Alluding to PARB, he would submit that his apparent stagnation has had an adverse effect on his overall profile which may not have been addressed by PARB. To substantiate his claim that his case is one-off case, he would submit that he, unlike many of his peers, was steering pioneering assignments and therefore his grievance

necessitated threadbare analysis ascertaining credentials of the initiating officers. He would submit that the appropriate weightage to the circumstances faced by him had not been accorded. In the tabular sequence of arguments and pleadings by the learned counsel for the petitioner, he would sum up his case by stating that right from '*ab initio*', he had been an outstanding officer, with praiseworthy performance throughout, despite that an advisory ACR has been unjustly used against him, he would say that when he was stationed at INS Satvahana, no clear directions were issued about ACR channel due to which two CRs were initiated by OC Submarine School(SMS) rather than by CO Satvahana who was well aware of his performance. In this tabular sequence of arguments, he gives out his overall profile starting from INS Sindhughosh to 2010 when he was posted as Officer-in-Charge of PSTAT indicating two sea appointments, one staff appointment and training appointments. Among his achievements, he would cite, the training given to South African Navy, Myanmar Navy and development of advanced training package for SMS. The learned counsel for the petitioner would state that a report for the period ending with March 2012 rendered by Flag Officer Commanding is not reflected in the DOP web site. The respondents confirmed that this report ending 31st March 2012 was taken into consideration by the Selection Board in August 2012. The petitioner would submit an analysis of his overall profile to include his ACRs and

assignments, elaborated and explained in graphical and pictorial forms. This analysis is summarised to say that by expunging Sea Time ACR, reducing weightage of ACRs by OiC SMS at INS Satavahana and increasing weightage of other ACRs, he would stand a chance for selection to Sea Time, if PARB value is ranged at $7.8 + 0.2$. In the light of these facts and circumstances, the petitioner would pray that the relief cited by him be granted.

7. Heard both sides and perused the documents.

8. The reliefs sought by the petitioner are several and varied, not to say complex. It is therefore necessary to place the issues raised by him systematically, link them to the reliefs sought and then examine each issue. (1) The first relief is to quash the respondents letters dated 25 May 2012 and 13 December 2012. (2) He has stated that his alleged low profile, which according to him led to his non-selection for Commanders Sea Time, was due to his frequent temporary duties in the rank of Lieutenant. He would link it to the circumstances/constraints under which he worked and which contributed, according to him, this being a one-off case. He would state that frequent temporary duties affected his ACR profile adversely. Though he has not mentioned what relief does he seek, we infer from the pleadings that he seeks expunction of the CR in which he was given advisory remark. (3) He has asked for negating the ACRs against which OA has been filed and according apposite weightage factor

to other high value ACRs. From the application and the pleadings we have inferred that the ACRs he wants negation are one in the rank of Lieutenant in which he was given an advisory remark and two in the rank of Lieutenant Commander in 2004 to 2006 when he was posted to Satvahna. He has not stated which high value CR(s) does he want higher weightages assigned to. (4) He has stated, supported by the analysis carried out by him, that if the ACRs mentioned above are set aside and his high value CRs are accorded higher weightage, he stands a chance for selection. The relief that he seeks is that his high value CRs be given higher weightage. (5) He has stated that the circumstances/constraints under which he worked were such that led to lack of exposure to other types of appointments and that despite being indispensable his competence was not found translated appropriately in CRs. He would plead that the 'circumstances' were not considered by the respondents while examining his representations. The relief he would seek is that in view of the 'circumstances' his competence and achievements be recognised by selecting him for Commander's Sea Time for which he would request us to issue directions to the respondents. (6) He would seek a cumulative relief, arising from all the above reliefs, of selection for Commanders Sea Time. (7) In the event his seniority is well beyond the seniority for consideration for Commanders Sea Time, he would seek relief of a waiver of this requirement and then promote him to the rank of Captain in Ops Stream.

And finally, (8) if promotion to Captain's rank in Ops Stream is not feasible, promote him in Staff Stream.

9. **Point No 1.** The petitioner had sent two representations against his non-selection for Commander's Sea Time. We have examined the analysis of his representation produced by the respondents which includes comments of the DOP and RACB while arriving at their decision. The analysis takes into account petitioner's claim that despite performing exceedingly well on courses and various other achievements he has been dry listed for sea appointment in Commander's rank. According to the analysis the petitioner attributes his non-selection to frequent temporary transfers, unwarranted assessment by CO who had command and control issues, under performance at INS Satavahana from July 2004 to December 2006 due to inadequacy in directive for core team which may have led to being detailed on diverse duties by OiC Submarine School(SMS) who was not privy to majority of tasks undertaken by the petitioner and his retention in SAUW for five years which denied him career progression. The analysis commented on order of merit by saying that his order of merit was 47 and 89 respectively in Technical Sea Board 2009 and 2010 respectively whereas selection threshold was at serial No.29 and 60 respectively. Thus, the petitioner missed selection by a wide margin on both occasions and was accordingly placed in Staff Stream. The analysis considered all the CRs rendered on the petitioner and found

they are technically valid and acceptable for all purposes and also pen pictures were commensurate with numerical grading.

10. On the issue of temporary duties from INS Sindhughosh, the analysis indicates that the petitioner was away on temporary duty from Sindhughosh from 22nd March 1999 to 27th August 1999 during which he was onboard Karanj for which a six months report from 22nd March to 30th September 1999 had been rendered from Karanj. This was an above average report and his profile, acumen and potential were taken cognizance of. He was graded C/C in war/peer assessment. In Lieutenant Rank, the officer has received eight reports and the analysis does not mention any adverse comment or advisory issued to him. The PARB during this period gradually increased from 7.3 to 7.4 which is a near outstanding report. A scrutiny of the ACRs indicates that the reports in Lieutenant Commander's rank include one report from 1st November 2004 to 31st October 2005 in which as claimed by the respondents OiC SMS was the IO in which the petitioner was graded 'near outstanding'. In this report while OiC SMS was the IO, the petitioner stated during the final hearing that RO was CO Satavahana. The PARB in Lieutenant Commander's report is 7.4. In Commander's rank he has earned six reports from SAUW in which he served under two IOs and has received near outstanding reports from both the IOs and the PARB has progressively gone up to 7.8 which is 'outstanding'. The respondents

therefore have concluded that the representation be rejected being devoid of merit. The petitioner's claim that the decision was unduly delayed has been responded to by the respondents by stating that the issues raised by the petitioner warranted detailed examination which led to the delay. We find this response is appropriate and the analysis of the Representation is comprehensive leading to a decision which is just and merits no interference. Point No 1 is answered against the petitioner.

11. Point No 2. The issue of temporary duties has been adequately examined by the respondents while analysing the Representation and has been suitably and satisfyingly commented upon. When a person is away on temporary duty for extended period a CR is initiated as was done in the case of the petitioner when he was onboard Karanj. When he is on a course, a course report is initiated. We have also scrutinised the ACR profile of the petitioner and find that the profile has progressively improved throughout his service. His overall profile has been Above Average to start with and is currently outstanding. Thus, we are of the view that the temporary duties, details of which he has provided as annexure along with his Rejoinder, have had no adverse impact on his profile. The issue of expunction of the CR of 2002 will be examined while discussing Point No 3.

12. Point No 3. The issue of ACRs has been discussed earlier too in Point No 1. The respondents inform us that ACR grading of 6.5 to 7.4 is

considered to be Above Average and from 7.5 to 8.4 is considered to be Outstanding. Alluding to the ACR of 2002 in which the petitioner says he got an advisory remark, the petitioner refers to his 'intuition', and says he has been left 'hanging' without concrete assessment. We find this somewhat astonishing. Intuition has a place in decision making, not in drawing inferences which should be based on facts and not intuition. The petitioner has not explained 'hanging' or, concrete assessment. We infer that he refers to his non-selection as 'hanging'. This issue has been discussed in Point No 1. We do not find any instance when the petitioner has not been assessed in a CR. We assume by concrete assessment he means a CR which is to his liking. CR assessments by reporting officers reflect a ratee's performance during that period as observed by them. CR assessments in the case of the petitioner are not meant to please him or are meant to be of his liking. Reverting to the ACR of 2002, according to the petitioner the IO was embroiled in graver professional issues at that juncture, who did not counsel the petitioner for underperformance or did not conduct a Performance Appraisal Discussion (PAD). The petitioner neither provides details of the professional issues that the IO was embroiled in nor the manner in which such embroilment impacted his CR. A reporting officer assesses performance of his subordinate or ratee based on observation and by monitoring ratee's performance. If the IO finds that the subordinate needs to be advised to further improving his performance,

the IO is perfectly within his rights to do so. This is not only in the best interest of the subordinate but also in the best interest of the organisation. In any case we find that this alleged advisory remark is not reflected in the ACR profile of the petitioner. This particular report is an Above Average report meriting no interference. Moving on to the other two reports when the petitioner was posted to Satvahana in 2004, the petitioner claims his achievements and competence have not been adequately translated into CRs. He would cite establishment of special projects team and School of Advanced Undersea Warfare(SAUW) in this regard. He also mentions that he was appointed to INS Satavahana to be part of the core team which was made clear to him by CO Satavahana. We have examined the relevant order which is follows:

" GENFORM: OFFICERS

LT CDR RU BABU (41663-N)

PROCEEDING ON PMT TRANSFER TO INS SATAVAHANA VIDE IHQ LETTER NO NA/0201/223-225 DATED 27 APR 04. GRANTED 06 DAYS JOINING TIME EXCLUDING ONE SUNDAY ON 04 JUL 04.

CEASED TO DRAW RIK (O)

B/A/L OF 04 DUE 28 DAYS

B/C/L OF 04 DUE 17 DAYS

FORM 'D' AVAILED-ONE "

This order does not indicate that he was to be part of any core team. Also he states that the establishment of special project team and SAUW were solely of his own achievements. By his own admission, he was one among the part of a team. Credit therefore would go to the entire team and not to any one individual. The petitioner has downloaded several documents from DOP web site. According to one such document produced by the petitioner he was posted to Satavahana vide order dated 10th July 2004 for 'Duties'. There is no mention of Core Team in this order too. The petitioner claims he was being detailed on diverse duties by OiC SMS whereas he was part of the Core Team. Since he was working closely with the CO, the latter would have been well aware of the duties that the petitioner was performing. Apparently, the CO did not intervene or did not ask OiC SMS to not detail the petitioner on diverse duties. The petitioner claims there was no directive with regard to channel of reporting for Satvahana which resulted in OiC SMS initiating his report as IO. We have examined Table No.8 annexed by the petitioner to his Rejoinder. This Table lists out the ACR channels. On page 50 of this Table ACR channel of Satvahana laid down according to which for officers of the rank Lieutenant Commander and below, IO will be OiC/HOD, RO will be CO Satavahana and SRO will be FOC-in-C South. For officers of the rank of Commander, IO will be CO Satvahana. The two reports that the petitioner wants negation were in the rank of Lieutenant Commander which were rightly

initiated by OiC SMS and CO Satavahana who the petitioner claims was well aware of his achievements and tasks being performed by him was the RO and was in a position to comment on the competence and performance of the petitioner. Later, when the petitioner was promoted to the rank of Commander, CO Satvahana as IO initiated his CRs. Thus, petitioner's claim that there was no clear directive with regard to ACR channel is totally ill founded and **we are constrained to note that the petitioner has made a vexatious claim** in this regard. The two reports initiated by OiC SMS are 'near outstanding' reports and merit no interference. The ACR profile of the petitioner is above average and has been showing upward trend right from the beginning of 31st March 2011, stood at 7.8 which is outstanding. We also are of the view that if the petitioner was aggrieved about the ACRs being initiated by OiC SMS, or being detailed on diverse duties, he had the option of challenging the ACR then. He did not do so. He had the option of bringing to the notice of his CO that he was being detailed on diverse duties. He has not indicated that he did so. Now, after a lapse of about seven years, he has brought up these issues that have no legs to stand. In sum, the three ACRs that the petitioner feels aggrieved about are above average and near outstanding. There is no adverse comment in any of the CRs and these ACRs merit no interference. Point No.3 is answered against the petitioner.

13. **Point No 4** . Petitioner seeks higher weightage for his high valued CRs but has not mentioned which are those high valued CRs. Navy has a system of PARB wherein a report having unreasonable upwards or downwards variation is moderated to bring it in line with his overall profile. Extracts of INSTRUCTIONS FOR RENDERING CONFIDENTIAL REPORTS ON NAVAL OFFICERS (EXCLUDING MEDICAL AND DENTAL OFFICERS) (File No.RS/0210/98) relating to PARB reads:

18. Function: The PARB will meet once every three months and review all the latest confidential reports received on officers in the rank of Lt Cdr and Cdr. The PARB will analyse instances of any deviations (Spikes) in reports with regard to past trend and make appropriate recommendations based on PARB norms for the approval of the Chief of the Naval Staff, i.e., apply appropriate index correction or accept deviation. Previously, PAR Bed reports will not be normally reviewed except in cases where reports pertaining to period prior to the reviewed reports are received subsequently or where a decision to review reports is taken in the light of ROGs by officers or where an officer's spike in report is consistently sustained in subsequent reports, all duly approved by the Chief of the Naval Staff. "

It is clear thus that concerns of the petitioner with regard to his CRs are adequately addressed by the respondents in accordance with the extant policies. There is no provision for assigning higher weightage to any CR. Every CR is the reflection of the person's performance for the period

covered by that CR in which his competence, achievements and performance are commented upon both figuratively and through a pen picture. In the absence of any provision this relief is not grantable. Point is answered accordingly.

14. **Point No 5.** The petitioner has repeatedly mentioned the circumstances/constraints under which he worked which were that he was frequently moved out on temporary duties and has produced Genforms to support his claim. He claims he was not given an opportunity to work in any establishment other than INS Satavahana and SAUW. Unlike his peers he was pioneering assignments which needed special skills and he would claim that his competence and achievements did not appropriately translate into CR assessments leading to low profile. We have carefully examined these issues. As stated by the respondents, criteria for selecting an officer for Commander's Sea Time is that he should have had at least two tenures at sea, above average service records, should have passed PME and should be in sea going category. The petitioner fulfilled these conditions when he came up for selection for Commander's Sea Time in 2009. Before getting posted to Satvahana in 2004, he had two sea tenures and one staff tenure. Considering that as a young officer he attended several long and short duration courses, we find that there is no circumstance during this period which in any way adversely impacted the career of the petitioner and that the ACRs during this period are such that

they need no interference. As regards the temporary duties, these are part of the job and wherever the temporary duty and courses go beyond a certain length of time measures are taken to ensure that the concerned person is not adversely affected by either initiating a report on him by the establishment where he had proceeded on temporary duty as was done by Karanj in the case of the petitioner or a course report is initiated. Thus, the contention of the petitioner that circumstances and constraints were responsible for his 'low profile' is not valid. The circumstances that he claims make his case one-off are not such that are unique to petitioner's case. All officers of similar seniority and similar skills would be placed similarly. A young officer would attend courses and his skills would be optimally exploited. His tenure at Satvahna till 2009 was within the bracket of normal tenure. SAUW vide their letter dated 1st December 2009 took up a case for extension of his tenure:

"RETENTION OF OFFICERS BEYOND FIVE YEARS IN STATION

1. Refer to HQENC fax OF/0017/Gen dated 25 Nov 09 regarding retention of officers beyond five years in station.

2. Recommendations along with reasons for retaining the following officers at this station are enumerated below:

(a) Cdr RU Babu (41663-N) – The officer is carrying out the duties of instructor (E) and TDEC. He has been trained by the ROEM and is presently involved in the

training of the maiden Object Conversion Course. The present course will be completing in Jun 2010 and the next course will commence in Jul 2010. It is recommended that the officer be retained till Dec 2010.

.....”

This letter goes on to recommend retention of three more officers at SAUW for various reasons. Thus, the petitioner cannot claim that he alone was considered indispensable. If his contention that he was indispensable were to be accepted, the other three officers mentioned in this letter of SAUW would also be indispensable. There would be several other officers whose tenures may have been extended in the Navy in the organisational interest. Such officers are not indispensable. Indeed, no person is indispensable in any organisation. Those who claim to be indispensable are afflicted by a false sense of self-importance and grandeur. The petitioner would be well advised to dispel such an illusion. As regards his ACR profile, we find that it is not only not low, but on the contrary his profile is presently outstanding and has consistently been outstanding to near outstanding for several years now. It has not been less than above average which makes a very competent officer.

15. The petitioner has cited several achievements which he claims were not translated into ACR grading. It is our view that the reporting officers, particularly the IO, closely observe performance of their subordinates and report objectively on them. In case the report is less than objective there

are checks and balances to ensure that the subordinate's competence and achievements do not go unrecognised. ROs and SROs always ensure that full justice is done. In the instant case the petitioner has not challenged any CR on grounds of lack of objectivity. His competence and achievements would have been duly noted by the reporting officers and suitably reflected in the CR grading. No person can demand that he be given a particular grading in his CR. It is entirely up to the reporting officers to assign appropriate figurative assessment to qualities listed in the ACR form and overall grading. For petitioner to claim that he be given a particular high grading in his CRs is not only uncalled for but is also unethical. To sum up, circumstances/constraints cited by the petitioner are not unique and do not make his case as 'one-off'. In any case there is no provision for assigning weightage to circumstances. Point is answered against the petitioner.

16. Points 6, 7 and 8: These relate to his selection by Technical Sea Board and Selection Board. The analysis by the respondents brought out in examination of Point No1 indicated that the petitioner was low in merit and missed selection by wide margin. We have examined the Promotion Board proceedings of PB 2/12 held in August 2012 in which total strength of Engineering Officers considered for promotion including the petitioner was 117 against six vacancies. The CR average of the last selected officer was 15.39 whereas the petitioner's CR average was 15.20. He was at

serial No.51 in the list of 117 officers and did not get approved for promotion on account of relative merit. Thus, we find that the petitioner missed the selection threshold by a wide margin. During the course of final hearing, the issue of Review-1 and Review-2 also came up. These Reviews were held in 2013 which was after filing the instant O.A. which was in 2012, and therefore was not considered by us. The petitioner may, if is so advised, agitate against the decision of the Review Boards, if he considers himself aggrieved. Also during the hearing, the respondents confirmed that ACR dated 31st March 2012 which the petitioner did not find on the DOP web site was considered by the Promotion Board in August 2012.

17. Now, to address the reliefs sought by the petitioner. It is settled law that in the matters of selection by a Selection Boards the scope of judicial review by Supreme Court/High Court/Tribunals is very limited and a Court cannot substitute its opinion or assessment for that of the Selection Board or assessment of Reporting Officers. In the case **Air Vice Marshal S.L. Chhabra vs. UOI and others 1993 Supp (4) (SCC 441)** it was held:

" 10. It is well known that a Selection Board, while considering the suitability of an officer for promotion to a higher post or rank, takes into consideration several factors and it is not solely based on the Appraisal Report of the controlling officer. "

.....

" In such a situation, it was neither possible for the High Court, nor is possible for this Court to act as a court of appeal against the decision of the Selection Board, which has been vested with the power of selection of an officer for being promoted.....I. No oblique motive has been suggested on behalf of the appellant against any of members of the Selection Board and there is no reason or occasion for us to infer such motive on the part of the members of the Selection Board for denying the promotion to the appellant..... . "According to us, neither the High Court nor this Court can moderate the appraisal and the grading of the appellant for a particular year. While exercising the power of judicial review, a court shall not venture to assess and appraise the merit or the grading of an officer. "

In the case **UOI & Ors. vs. Lt Gen RS Kadyan** reported in **(2000) 6 SCC 698**, it was held,

" Judicial review is permissible only to the extent of finding whether the process in reaching decision has been observed correctly and not the decision as such. In that view of the matter, we think there is no justification for the High Court to have interfered with the order made by the Government. "

In the case **Amrik Singh vs. Union of India and others** reported in **(2001) 10 SCC 424**, it was held,

"21. In the result, we are not inclined to grant any relief to the appellant in spite of the fact that his performance in the subsequent years has been shown to be very good and his ratings were very high. But the scope of the jurisdiction of the High Court being very limited, we cannot go into the correctness of the adverse remarks nor into the assessment made by the Selection Board on the two occasions. "

In the case **Surinder Shukla vs. Union of India & Ors.** reported **(2008) 2 SCC 649**, it was held,

" 11. Considering the comparative batch merit, if the Selection Board did not recommend the name of the appellant for promotion to the rank of Colonel which appears to have been approved by the Chief of the Army Staff, it is not for the court exercising power of judicial review to enter into the merit of the decision.The appellant moreover did not allege any mala fide against the members of the Selection Board. What impelled the Selection Board not to recommend his case but the names of other two officers is not known. "

The judgments quoted above make it abundantly clear that judicial review is permissible only to the extent of finding whether the process in reaching

decision has been observed correctly and not the decision as such. The petitioner in the instant case has not assailed the decision making process of the Technical Sea Board and the Selection Board, neither has he assigned any *mala fide* intention on part of any member of the Boards. Since no relief of either negating any CR or according higher weightage to any CR, or any relief relating to circumstances/constraints has been found to be grantable to the petitioner by us, no directions need be issued to the respondents. It is left entirely to the respondents to consider the petitioner for promotion, if he is eligible. Points are accordingly answered against the petitioner.

18. On the issue of analysis presented by the petitioner along with his Rejoinder, we wish to acknowledge that the officer seems to possess abilities for mathematical modelling. However, there are questions that remain unanswered in this analysis, for instance the basis on which attributes have been assigned. Importantly, this analysis is in respect of the petitioner alone and does not take into account the relative merit of his peers who too were considered by the Technical Sea Board and the Promotion Board. Relative merit is a vital factor in any selection process where competing candidates outnumber the vacancies available. The petitioner was not selected for Commanders Sea Time and for the rank of Captain in Staff Stream on account of low merit. Every person has a right

to have ambitions to rise in the hierarchy. An officer who joins Navy desires to rise to the highest rank. However, the pyramidal structure of Navy translates into fewer vacancies in higher ranks than contending candidates. This needs to be recognised and accepted by the petitioner. Apart from successes in the chosen career, every person has the right and, more importantly, need to be happy for his own sake and for the sake of his family, friends and loved ones. And happiness germinates from contentment, acceptance of realities and acknowledgement of the fact that there are others in the organisation that may be higher in relative merit, which indeed is the case here. We advise the petitioner to accept this fact. Such acceptance will help him be happier in the year to come which is far more important than any other achievement in life.

19. In fine, the petition is dismissed being devoid of merit. No costs.

Sd/
LT GEN ANAND MOHAN VERMA
(MEMBER (ADMINISTRATIVE))

Sd/
JUSTICE V. PERIYA KARUPPIAH
MEMBER (JUDICIAL)

23.10.2013
(True copy)

Member (J) – Index : Yes / No
Member (A) – Index : Yes / No

Internet : Yes / No
Internet : Yes / No

Vs

N.B: Registry is directed to return the documents produced at the time of hearing to the respondents after obtaining acknowledgement from the competent officer.

To:

1. The Secretary to Government
Ministry of Defence
New Delhi-110 011.

2. The Chief of Naval Staff
Through Director of Personnel
IHQ MOD (Navy)
New Delhi-110 011.

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4. Mr. B. Shanthakumar, SPC
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5.OIC, Legal Cell (Navy) INS Adyar,
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Port Complex, Rajaji Salai,
Chennai-9.

6.Library, AFT , Chennai

HON'BLE JUSTICE V. PERIYA KARUPPIAH
(MEMBER-JUDICIAL)
AND
HON'BLE LT GEN ANAND MOHAN VERMA
(MEMBER – ADMINISTRATIVE)

O.A. No.30 of 2013

Dt: 23.10.2013