
(20) 06 AFT CK 0001

Armed Forces Tribunal Principal Bench, New Delhi

Case No: Original Application No. 1906 Of 2018

Ratan Kumar

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision: June 1, 0020

Acts Referred:

- Armed Forces Tribunal Act, 2007 - Section 14

Hon'ble Judges: Sunita Gupta, J; Philip Campose, Member (A)

Bench: Division Bench

Advocate: S.S. Pandey, Anil Gautarn, S. Prabhu

Final Decision: Allowed

Judgement

1. Aggrieved by his non-empanelment for promotion to the rank of Maj General by the No. 1 SB (Artillery)(Fresh) held in January 2018 and rejection

of his Statutory Complaint thereto by Respondent No. 1 vide order dated 08.08.2018 and nonempanelment by subsequent review boards, the applicant,

a serving Brigadier, has filed this Original Application (OA) under Section 14 of the Armed Forces Tribunal Act, 2007, seeking the following reliefs:

(a) Quash the ratings by RO and SRO in his ACR covering the period from 01.07.2012 to 30.06.2013, wherein he has already been granted partial

relief by Respondent No.1, in response to his Statutory Complaint, in terms of expunging QsAP ratings by JO at Paras 19 (a) to (e) and

Recommendation at Para 20 of the said ACR.

(b) Direct the respondents to expunge his entire ratings of SRO in CR covering the period from November 2011 to April 2012 and entire CR covering

the period from 01.07.2012 to 30.06.2013.

(c) Thereafter, grant him fresh consideration in terms of Special Review (Fresh) by No. 1 SB (Artillery) and consequent benefit in terms of promotion to the rank of Maj General.

2. Facts of the case, as averred by the applicant, are that he was commissioned in the Indian Army (Artillery) in 1985 and, having performed well in his service, which included qualifying on the DSSC and HDMC courses, selection for a UN tenure abroad and award to GOC-in-C Commendation

Card (CC) in March 2008 and COAS CC in January 2015, he was promoted to the rank of Brigadier in November 2011 and given command of an

Artillery Brigade on the North-Eastern borders. The applicant contends that, in his command criteria reports as Brigade Commander, some extraneous

incidents influenced his second 10 adversely against him, due to which, he was under rated in his second ACR in command, covering the period from

01.07.2012 to 31.06.2013, which resulted in his non empanelment for promotion to the rank of Maj. General in the No. 1 SB (Artillery)(Fresh) held for

his batch in January 2018. The applicant filed a Non-Statutory complaint (later converted into a Statutory Complaint) impugning his CRs for the

reckonable period, in response to which, Respondent No. 1 granted partial relief by way of partly expunging the assessment of SRO in CR 11/11 -

04/12 and expunging part assessment (unseen portion) of 10 in CR 07/12 to 06/13, on ground of inconsistencies. However, fresh consideration

thereafter still did not result in empanelment of the applicant for promotion. Hence, this OA.

3. Heard the learned counsels on both sides and perused the pleadings and documents on file including the applicant's CR Dossier and the file

pertaining to his Non Statutory/ Statutory Complaint which was handed over the Tribunal after the final hearing on 12.03.2020.

4. Mr. S.S. Pandey, learned counsel for the applicant, highlighted the remarkable track record of the applicant, especially his operational achievements

and notable performance as Brigade Commander during the reckonable period and contended that the applicant had been harmed by his second 10

(Respondent No. 4) purely on extraneous reasons, more specifically, related to the 'bitter interactions' between the applicant's wife and the wife of

Respondent No. 4 over the former's absence from the station and her consequent inability to contribute more actively towards Army Wives Welfare

Association (AWWA) and Ladies Club activities. Thus, as per the applicant, in ACR/7/2012 - 6/2013, though the applicant was awarded 'outstanding'

(9 points) rating in eight out of 11 qualities in the portion of his ACR shown to him, however, the JO had harmed him in the 'unseen' portion, as obvious

from the fact that all entries by the 10 in that part of the ACR had been, in response to his Statutory Complaint, expunged by Respondent No. 1, due to

inconsistency. Counsel contends that in all fairness to the applicant, the ratings of the RU and SRO also in that ACR needed to be expunged as the

RO's and SRO's ratings would have been influenced by the JO's adverse ratings while endorsing their own ratings.

5. Counsel has also averred that in his first ACR as Brigade Commander, for the period from November 2011 to April 2012, whereas his JO rated him

outstanding (9 points) and RU may also have endorsed the same, the SRO's ratings appear to have been subjective, considering that three of these

have been expunged, thus the box grading of the SRO should also be set aside, especially due to the fact that the SRO had never visited the

applicant's HQ or interacted with him during the reporting period.

6. Mr. Anil Gautam, learned counsel for the respondents, on the other hand, has controverted the arguments made on behalf of the applicant. Counsel

has contended that the assessments of the 10, RO and SRO are independent of each other and, as such, the ratings by one are not influenced by those

given by the other. Further, wherever ratings by any reporting officer in the chain are seen to be inconsistent with an officer's overall profile or are

subjective, they are set aside, which has, very fairly, also been done in the applicant's case, wherein SRO's ratings in CR 11/11-04/12 for three

aspects, viz. 'professional competence to handle higher appointments,' judicious delegation of responsibilities' and 'tolerance for ambiguity', have been

set aside and expunged. Further, JO's ratings in the QsAP in ACR 7/12-6/13 (unseen portion) have very fairly been set aside/expunged due to

inconsistency. However, it has been wrongly presumed by the applicant that the RO and SRO have been adversely influenced by the IO's ratings in

that ACR, which fact can be verified from the records. Counsel contended that just because some ratings in the CRs have been expunged, it does not imply that all other ratings in the CRs which are not outstanding (9 points) should also be removed.

Consideration:

7. We have given careful consideration to the arguments made before us and find that the primary issue before us is whether A) SRO's box grading

in the CR 11/11 - 4/12 should be expunged, on grounds of subjectivity and B) whether RO and SRO's assessments/ratings in ACR 7/12 -6/13 should

be expunged on grounds of inconsistency/subjectivity.

8. On the first issue, viz. SRO's box grading and other ratings in CR 11/11 - 4/12, we have examined the impugned CR in detail in the context that it

was his first criteria report as a Brigadier. We find that the applicant had been graded outstanding (9 points) by his JO (Division Commander) and RO

(Corps Commander) in box grading. However, he was rated above average (8 points) by the SRO (Army Commander). We find that 3 of the 5

ratings of the SRO as well as his recommendation for promotion column were expunged by the respondents on grounds of inconsistency/subjectivity.

In light of the same, it is our opinion that if the majority of ratings of the SRO in that report, were expunged on the ground of inconsistency/subjectivity,

in all fairness to the applicant, the box grading should also have been expunged. Thus, the SRO's box grading is also liable to be expunged for the same

reason.

9. On the other hand, our examination of ACR 7/12 - 6/13 has revealed that the RO and SRO had assessed the applicant fairly without any apparent

influence by the assessment of the IO. In fact, we find that the positive ratings by the RO and SRO in the QsAP (unseen portion) of that CR may

have resulted in the respondents determining the QsAP ratings by the IO and his non-recommendation for promotion in the said ACR as being

inconsistent/subjective and thus expunged. Thus, we find no justification to expunge the assessment of the RO and SRO in ACR 7/12-6/ 13.

10. In the result, the OA is partially allowed. Box grading by SRO in CR 11/114/12 be expunged and the applicant be given fresh consideration for

promotion by No. 1 SB accordingly.

11. During the course of arguments, the applicant had informed the Tribunal that the No. 1 Selection Board is to be held in April, 2020. However, due to the lockdown declared by the Government for containment of spread of COVID-19, the Tribunal was closed and, therefore, the order could not be pronounced during this period. In view of the fact that partial relief has been granted to the applicant by directing the respondents to give fresh consideration for promotion by the No.1 Selection Board, accordingly, in the interest of justice, we direct the respondents to hold the Selection Board within four weeks from the date of receipt of the copy of this order.

12. No order as to costs.

Pronounced in open court on this 1st day of June, 2020.

The order of the Bench consisting of Hon'ble Ms. Justice Sunita Gupta, Member (J) and Hon'ble Lt Gen Philip Campose, Member (A) in the above mentioned OA was pronounced in the Open Court by Hon'ble Lt Gen Philip Campose, Member (A) today i.e. 1st June, 2020.