
(2020) 03 AFT CK 0058

In the Armed Forces Tribunal

Case No : Original Application No. 146 Of 2019, Miscellaneous Application No. 562, 937 Of 2019

Anjan Kumar Sinha

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 13-03-2020

Acts Referred:

Citation : (2020) 03 AFT CK 0058

Hon'ble Judges : Rajendra Menon, J; Philip Campose, Member (A)

Bench : Division Bench

Advocate : S.S. Pandey, K.S. Bhati

Final Decision : Dismissed

Judgement

MA No.562 AND 937/2019

1. Both these applications have been filed for condonation of delay in filing the OA. At the time of filing the OA the applicant had filed MA 562/2019

for condoning the delay of 356 days. However, when the OA came up for hearing on 28.01.2019, learned counsel for the applicant sought time for

filing another application for condonation of delay with better particulars. Learned counsel for applicant on 14.03.2019 filed another application MA

937/2019 for condoning the delay of 1146 days. In view thereof, MA 562/2019 has become infructuous and is dismissed as such.

2. By way of MA 937/2019, the applicant seeks condonation of delay of 1146 days in filing the present O.A. Since sufficient cause has been shown in

the Application, delay of 1146 days is condoned and the MA 937/2019 stands allowed.

OA 146/2019

1. Aggrieved by his non-empanelment for promotion to the rank of Colonel in the No.3 Selection Board (EME) held in June 2014, the applicant, an

EME officer of Lt. Col rank of the 1997 batch, has filed this OA seeking the following reliefs:

(a) Call for the relevant records pertaining to his three considerations by No.3 Selection Board as well as the files regarding rejection of his Non-

Statutory Complaint vide order dated 05.08.2015 and statutory complaint dated 30.04.2015 and quash all such orders.

(b) Direct the respondents to remove any inconsistent assessment in his CRs of the reckonable period particularly the ICRs covering the period

06/2011-09/2011 and 09/2011-02/2012 and grant him promotion to the rank of Colonel after giving him a Special Review (Fresh) for promotion.

2. Facts germane to the case, as averred by the applicant, are that he was commissioned in the EME Branch of the Indian Army on 06.12.1997 and

after 13 years of meritorious service at various stations, including counter insurgency operations in Assam he was promoted to the rank of Lt Col on

06.12.2010. The applicant avers that on 26.12.11. while posted as Engineering Officer at 21 R&O Flight, he requested the respondents to post him out

of the unit because the attitude towards him of the First Technical Officer (FTO) and Reviewing Officer (RO) were negative and consequently, he

was posted to another unit, in the same station in the month of February. 2012. Subsequently. The applicant filed a Non-Statutory Complaint on

09.02.2012 impugning his CR for the period 06/2011 to 09/2011 but the same was rejected on 14.03.2012. Thereafter. he filed a Statutory Complaint

against CRs 06/11-09/11 and 09/11- 02/2012 but the same were rejected by Respondent No.1 (Gol/MoD) vide order dated 30.04.2015. The applicant

was considered along with his batch (1997-EME) by No.3 SB in June 2014 but he was not empanelled for promotion. He filed a NonStatutory

Complaint against non-empanelment in July 2014 which was rejected vide Speaking Order dated 05.08.2015. Hence, this OA.

3. Heard the learned counsels on both sides and perused the pleadings and documents on record.

4. Learned counsel for the applicant has submitted that the applicant performed his duties to the best of his abilities to the entire satisfaction of his

superiors for fourteen years and he was awarded the DGEME's Professional Excellence Certificate in 2010 when he was posted as Engineering

Officer with an Aviation Unit. On 30.04.2012, the applicant wrote a letter to GoC 3 Corps bringing out issues related to HR and technical

administration of his unit. He brought out that the respondents, which were rejected without due thought and consideration. Learned Counsel has

contended that these subjective and inconsistent CRs resulted in his non-empanelment for promotion in his three promotion boards (No.3 SB) from

2014 to 2017. Thus, learned counsel has contended that the inconsistent CRs of 2011-2012 be set aside and he be given a fresh chance for

consideration for promotion.

5. Learned counsel for the respondents, on the other hand, has controverted the arguments made on behalf of the applicant. Counsel has argued that

all the CRs of the applicant for the reckonable period have been scrutinized consequent to his filing Non-Statutory and Statutory Complaints and these

have been found to have been initiated/reviewed fairly and were consistent with his profile. Further, the applicant was given fair consideration for

promotion as a fresh case along with his batch in 2014 as well as review board in 2015 and 2016/2017 but was not empanelled for promotion purely on

the basis of comparative merit.

Consideration:

6. We have given careful consideration to the arguments on both sides and find that the primary issue before us is whether the applicant's ACRs for

the reckonable period have been initiated/reviewed in an objective and fair manner and whether he was given fair consideration by the relevant No.3

SB promotion boards which did not empanel him for promotion to the rank of Colonel.

7. Results of our scrutiny of the records submitted to the Tribunal by the respondents are as follows:

(a) The applicant has secured above average gradings in the technical courses attended by him but is not qualified on Junior Command, Senior

Command and Staff College Courses.

(b) He has been generally rated above average/outstanding in his CRs in the reckonable period. He impugned CRs of 2011-2012 are well

corroborated consistent and objective and thus, in our opinion, there is no need for interference by this Tribunal, in this regard.

(c) The applicant was given fair consideration in his promotion boards. In No.3

SB(EME) conducted in June 2014, where 291 officers were considered against 43 Colonel's vacancies, the applicant's order of merit (OoM) was 175. In the First Review conducted in April 2016, 321 officers were considered against 46 vacancies and the applicant's OoM was 213. The applicant's candidature was withdrawn from the Final Review Board conducted in December 2015 where 335 officers were considered against 37 vacancies and the applicant's pre-Board Order of Merit was 222. In his Final Review (VWithdrawn) conducted in September 2017, where 306 officers were considered against 34 vacancies, the applicant's marks were compared with the merit of the last empanelled officer of the EME 1999 batch and he was not empanelled as he was found to be well below the cut-off marks/merit.

(d) Value Judgment (VJ) marks in respect of the applicant have not adversely impacted his promotion prospects.

Thus it is clear that the applicant was not empanelled for promotion because he was low in comparative merit.

8 In the result, we find that the OA lacks merit and is disallowed.

9. No order as to costs.

Pronounced in open Court on this the 13th day of March 2020.