

(2019) 12 AFT CK 0009
In the Armed Forces Tribunal
Case No : Original Application No. 105 Of 2019

Harjinder Singh	Vs	APPELLANT
Union Of India And Others		RESPONDENT

Date of Decision : 20-12-2019

Acts Referred:

Citation : (2019) 12 AFT CK 0009

Hon'ble Judges : Rajendra Menon, J;B.B.P. Sinha, Member (A)

Bench : Division Bench

Advocate : S.S. Pandey, Vijendra Singh Mahndiyan

Final Decision : Dismissed

Judgement

1. The applicant, an Aeronautical Mechanical Engineer in the Technical Branch of Indian Air Force in the rank of Wing Commander, seeks the

following relief by filing the instant O.A:

(a) Call for the relevant records to ascertain if any AR of the applicant has been down moderated and the records based on which the respondents

have taken into consideration impugned AR resulting in non-promotion of the applicant to the rank of Group Captain in all the three Promotion Boards

as well as the records based on which the impugned order dated 14.06.2018 has rejected the statutory complaint and thereafter quash the same; and

(b) Issue further direction to the respondents to carry out necessary rectification in the AR profile of the applicant by removing the inconsistencies in

the overall AR profile of the applicant and restore any of the AR assessment if the same has been down moderated by the respondents at any point of

time resulting in non-promotion of the applicant in the Promotion Boards held in May 2016, March 2017 and March 2018 and granting him Board

marks strictly as per his modified AR profile and promote the applicant if found fit with all consequential benefits.

2. The brief facts relating to the instant O.A are that the applicant was commissioned in the Technical Branch of the Indian Air Force as Aeronautical

Engineer Mechanical on 24.11.1997 and is presently a serving officer in the rank of Wing Commander. In 2016 while on the posted strength of 22

Sqn, the applicant was considered for the first time for promotion to the rank of Group captain but when the results were declassified, he was not in

the list of empanelled officers. Soon thereafter in August 2016 he was posted to take over the command of 1 AFRU (Air Force Range Unit). In

March 2017, the respondents conducted the second Promotion Board for promotion to the rank of Group Captain, the result was declassified in April

2017, wherein again the applicant was not empanelled. Additionally, based on an anonymous complaint against the functional practices of the unit

under his command, a Court of Inquiry (Col) was initiated against the applicant on 12.04.2017. The court of inquiry for one reason or other prolonged

for about two years before finalising its report. Following developments took place during this period of about two years taken by the court of inquiry

to finalise its report:

(a) On 07.12.2017, the applicant sent a letter dated 07.12.2017 to the respondents by stating that keeping in view his past record and dedicated performance, his present AR should be expunged.

(b) On 16.02.2018, he sent another letter to the respondents stating that due to the Col, the applicant and his family had suffered mental agony and

requested to finalise the CoI proceedings and to expunge his AR for the period from 01.07.2016 to 04.06.2017. In reply, the respondents intimated the

applicant that there was no discrepancy/ anomaly in the AR requiring rectification and that there was no provision for expungement of an AR.

(c) In March 2018, the applicant was considered for the third and final time by the Promotion Board, however he once again could not make it in the empanelled list of select Group Captains.

(d) Against his non-selection to the rank of Group Captain and for expunging the AR for the period from 01.07.2016 to 04.06.2017, the applicant put

up a Statutory Complaint on 05.03.2018. The statutory complaint of the applicant was rejected by the respondents as being devoid of merit.

(e) On 18.09.2018, the applicant sent a representation to the respondents requesting the status of the Col, to which the respondents replied that the Col had undergone staff scrutiny and corrections till the second week of September 2018 and that the Col would be dispatched to the concerned HQ for further disposal.

(f) In subsequent developments, Air Commodore D.V. Khot, the local commander vide his order dated 09.11.2018, ordered re-convening of the Col by changing the composition of the Court due to transfer of certain officers and also directed certain additional points to be commented upon.

(g) The reconvened Col in its findings apportioned blame on applicant for storage of danger explosives in excess of authorised quantity and for storage of LE stores in nonauthorised danger buildings of the unit. Despite apportioning blame, the CoI also brought out certain mitigating factors in favour of the applicant.

(h) The Air Officer Commanding in Chief Western air command, however opined on 18.09.2019 that the applicant is not to be held blameworthy for the reason that blame apportioned is against the weight of evidence. Hence in the final analysis applicant is held to be acquitted by the CoI.

Thus, in the above background and before the completion of reconvened Col, the instant O.A had been filed in January 2019 and primarily relates to his

AR and Promotion Boards.

3. In this backdrop the learned counsel for the applicant stated that the applicant is professionally very competent and a highly skilled engineering

officer of IAF aircraft stream. The applicant has been commended by AOC-in-C in 2009 and Chief of Air staff in 2013. That after missing his first

Promotion Board declassified in June 2016 the applicant took over command of 1 AFRU on 22.08.2016. He claimed that the applicant contributed

immensely towards improving the unit capabilities however in the next Promotion Board held in March and declassified in April 2017 he was not

empanelled and on 12.04.2017, based on an anonymous complaint, an inquiry was ordered against the applicant. He stated that this Col resulted in

harassment of the applicant and his family and accordingly the applicant represented for an early finalisation of CoI. Additionally, the applicant also

pleaded for expungement of ARs for the period 01.07.2016 to 04.06.2017 on the ground that the RO was the convening officer for this Inquiry hence

he could adversely influence the TO and higher officers against the applicant in this impugned AR period. He also expressed his fears of downward

AR moderation and submitted that a statutory complaint by the applicant on all these matters was rejected by the respondents by a non-speaking

order. He concluded by pleading for removal of inconsistencies in his ARs, correction to Promotion Board marks and for considering grant of

promotion to the applicant.

4. The learned Counsel for the respondents through the counter affidavit and arguments during hearing, elaborately commented on the issue of

fairness in dealing with applicant's ARs and the conduct of three Promotion Boards of the applicant in a fair manner. He emphasised that the

applicant's ARs are in order and that no injustice has been done to him. He stated that all the grievances of the applicant had also been reflected in his

statutory complaint and the same has been rejected by the respondents in a very fair manner and after proper scrutiny. He concluded by submitting

that the applicant's apprehension that his ARs has been adversely affected due to inquiry against him and, therefore, he has missed his Promotion

Boards is factually incorrect. He emphasised that the main reason for applicant missing his Promotion Board is the pyramid structure of armed forces,

limited vacancies and the applicant being low in relative merit vis-a-vis other officers who made it in the three Promotion Boards. He concluded by

pleading for the OA to be dismissed.

Consideration by the Tribunal:

5. Having heard the learned counsel appearing for the parties and perused the records made available to us, the following questions arise for our

consideration:

(i) Whether the ARs of the applicant have been raised and handled as per the policy in vogue? Additionally, has any AR of the applicant been

downgraded through moderation during the inquiry period against the applicant?

(ii) Whether the Promotion Boards in respect of the applicant were held in a fair, correct and just manner and as per the policy on the subject?

6. After going through all the representations made by the applicant, the replies of the respondents, the original ARs of the applicant, the original

copies of Col, the original Promotion Board records and scrutiny of other related records, we have observed that the following factual picture

emerges:

(a) That the ARs of the applicant have been raised and handled in a fair manner and as per the policy in vogue. Additionally, we have noticed that

there is no downward moderation of any of the applicant's ARs by the respondents and on the contrary, there is evidence of upward moderation by

Air HQs for the ARs of 2016 and 2017 in favour of the applicant.

(b) We have noticed that the IAF has a system of 10 years of AR average being considered for Group Captain promotion. In the case of the

applicant, he missed his second Promotion Board in the year 2017, in this Promotion Board, his ARs up to the year 2016 (last Unit 22 Sqn) had been

considered. Thus, the applicant had effectively missed his first two Promotion Boards even before an inquiry was ordered against him in April 2017.

Only one AR of the applicant for the year 2017 has featured, post ordering of Col, in his last Promotion Board of 2018.

(c) We have observed that in the first Promotion Board of 2016 and the second Promotion Board of 2017, the applicant was way behind in the relative

merit list visa-vis vacancies. i.e. in first Promotion Board when the cut off in relative merit was at SI. No. 13, the applicant was way behind at SI. No,

88. We found him to be similarly way behind in relative merit in second as well as third Promotion Board.

(d) We noticed that ARs of last ten years i.e. up to 2016, were considered by the second Promotion Board in March 2017. These ARs up to 2016

related to his last unit 22 Sqn and earlier postings and had nothing to do with the inquiry ordered against the applicant at a later date in April 2017. On

scrutiny of the original ARs for this period, we find that we have no reasons to interfere with these ARs or the recommendations of the first as well as

second Promotion Board.

(e) The last AR of the applicant was in the year 2017. This AR was considered by the third and his last Promotion Board. This AR was raised in the

shadow of the ongoing Col. We have noticed a mild dip in this AR which has resulted in upward moderation by Air HQ in favor of the applicant. This

moderation has been done by Air HQ as per their policy on moderation, which basically corrects all spikes and dips vis-a-vis a 05 year average.

However, we are not inclined to interfere with this AR because we have noticed that the Col has blamed the unit as well as applicant as Commanding

Officer for certain shortcomings in the functioning of the unit. The fact that AOC-in-C Western Command IAF has exonerated the applicant from

direct blame, against the opinion of Col, due to lack of adequate evidence, however in our opinion, is not a good ground for us to interfere with the

ARs.

We have also noticed that considering the relative merit of the applicant in the ten year average of ARs, even if the applicant is given full marks i.e. 9

out of 9 in each attribute of his AR of 2017, he still does not make it to the empaneled list and his relative AR merit continues to be below the cut off

mark of last empaneled officer in 2018 Promotion Board. Hence his apprehension that the Cal ordered against him has adversely affected his chances

of promotion is not based on facts.

Thus we are of the opinion that the factual picture emerging out of applicant's ARs and his Promotion Boards, do not indicate any bias or injustice

towards him and hence merit no interference by this tribunal.

7. Thus, to sum up, we are of the considered opinion that there is nothing in the impugned ARs of the applicant or the conduct of Promotion Boards,

which merit an intervention by this Tribunal. We are also of the opinion that the applicant has failed to prove his case of inconsistencies in his AR or

any inconsistency in the three Selection Boards, which considered him for promotion.

8. Resultantly, we find that the instant O.A lacks merit and is dismissed. No order as to costs.

Pronounced in open Court on this the 20th day of December, 2019.