

(2020) 01 AFT CK 0005

In the Armed Forces Tribunal

Case No : Original Application No. 1175 Of 2019, Miscellaneous Application No. 2976 Of 2019

Jasbir Singh

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 06-01-2020

Acts Referred:

Armed Forces Tribunal Act, 2007 — Section 31(1)

Citation : (2020) 01 AFT CK 0005

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

Bench : Division Bench

Advocate : Deepika Sheoran, Baljeet Singh, J.S. Yadav

Final Decision : Dismissed

Judgement

1. Vide our detailed judgment of even date, we have dismissed the main OA. Faced with this situation, learned counsel for the applicant makes an oral

prayer for grant of leave to appeal to the Hon'ble Supreme Court in terms of Section 31(1) of the Armed Forces Tribunal Act, 2007.

After hearing learned counsel for the applicant and going through our judgment, in our considered view, there appears to be no point of law much less

any point of law of general public importance involved in the judgment rendered by the Tribunal, therefore prayer for grant of leave to appeal is

declined.

Aggrieved by the impugned order dated 12.02.2019 denying him grant of further promotion, the applicant has filed the instant O.A. seeking the

following reliefs:

(i) Quash and set aside the impugned letter No Air HQ/C 22029/36/83/P0-3(D) dated 12.02.2019 whereby the applicant's Statutory Complaint

(Redressal of Grievances application) for promotion to the rank of Wg Cdr has been rejected.

(ii) Summon the records, viz Performance Review Register and the AR dossier of the applicant and set aside the AR for the period from 01.04.2014

to 04.09.2016.

(iii) Appraisal reports of the applicant in the reckonable profile be reviewed and any aberration including grading of less than 6 be expunged on the grounds of inconsistency and subjectivity.

(iv) Direct the respondents to consider the applicant for promotion to the rank of Wg Cdr based on his modified profile, i.e. after effect of aforesaid

ARs have been removed in entirety.

(v) Direct the respondents to promote the applicant to the rank of Wg Cdr wef 17.12.2018 with all consequential financial benefits along with due

arrears.

2. Brief facts of the case are that the applicant was commissioned in the Administrative Branch of Indian Air Force on 17.12.2005 and he was due for

promotion to the rank of Wing Commander with effect from 17.12.2018. However, he was not promoted to the next rank on the said date. Thereafter,

the applicant had submitted Redressal of Grievance (ROG) which was turned down vide letter dated 12.12.2019 with the remarks that since he was

not meeting Minimum Performance Assessment Criteria (MPAC) for time scale promotion to the rank of Wing Commander, in accordance with

Human Resource Policy (HRP) No. 03/13, hence he was not promoted. He was not granted time scale promotion next year also after receipt of AR

for the year 2019. Hence this O.A.

3. Learned counsel for the applicant submitted that the applicant has performed all duties and responsibilities assigned to him throughout his entire

service with utmost sincerity and dedication. He further submitted that the applicant was never subjected to any disciplinary or administrative

proceedings and no adverse report was raised against him at any stage and also no adverse remarks were communicated to him either by the JO or

RO during his entire service period. He stated that due to the applicant being upright and honest, he has been victimised by one of the IOs who

wanted to do wrong things. He also stated that due to mala fide intention, one of the IO had endorsed his AR manually instead of initiating it online

which was mandatory with effect from 01.07.2015. He further stated that since he has missed time scale promotion, he must have been given an

adverse AR by any of the IOs without informing him about it. Relying upon the decision in Lt Col Vinay Lakhera v. Union of India and others (O.A.

No. 1168 of 2011 decided by Regional Bench, Chandigarh on 30.07.2013) and the judgment of the Honble Supreme Court in S . T. Ramesh v. State of

Karnataka and another (2007) 2 SCI 238, learned counsel for the applicant submitted that while considering the applicant for promotion, his overall

profile should have been taken into consideration and shortcomings of lesser period ought not to have been taken into account as brought out in the

aforsaid judgments. He concluded by pleading that the applicant's AR below 06 marks be revised and the respondents be directed to consider the

applicant for promotion.

4. In rebuttal, learned counsel for the respondents submitted that the ARs of the applicant by different IOs, ROs and SROs indicate similar profile for

last five years. He submitted that there is no evidence of any bias or mala fide by any IO against the applicant. He further stated that all ARs of the

applicant are 6 and above but as per the policy, he requires at least two ARs of 7 in last five years before being considered for promotion. The

applicant unfortunately could not meet this criterion. He claimed that all the ARs of applicant are online and that his signed copy of counselling also is

available along with his ARs, hence the applicant is projecting his case based on apprehensions and not on facts. On the point of case laws cited by

Ld. Counsel for the applicant, learned counsel for the respondents submitted that the referred case laws are relevant in the cases of promotions

pertaining to selection grade. He further pleaded that on receipt of AR for the year 2019 the applicant was again considered for promotion to the next

rank but he could not make it out due to non- performance at desired level as per HRP 03/13. He concluded that since the applicant has not been able

to meet the minimum performance level for promotion to the rank of VVg Cdr, his RUG was rightly rejected. He pleaded that the applicant is not

entitled to any relief and prayed the O.A. to be dismissed.

5. We have gone through the averments made by both the parties and perused the records including the original ARs and copies of counselling reports

with applicant's signatures.

6. On perusal of the records it transpires that the applicant's ROG against non-promotion was disposed of on 12.02.2019 with the following remarks:

(i) You were considered for the substantive promotion to the rank of Wg Cdr w.e.f. 17 Dec 18. However, the same was not granted due to not

meeting Minimum Performance Assessment Criteria in accordance with /-/RP 03/13 on this subject. You will be again considered for the same on

receipt of AR for the year 2019 in accordance with HRP 03/13 on the subject.

(ii) Your performance of prestigious tasks/being an outstanding athlete, NIS coach are a matter of record, for a period before the period of the ARs of

2014 to 2018 which were considered for promotion to the rank of Wg Cdr (TS). ARs for the period 2014 to 2018 were reviewed in light of the

contentions brought out by you. In your performance counselling, numerous areas which need improvement have been brought out clearly by your IOs,

several times during the assessment period mentioned above. Your AR gradings are in consonance with your pen picture, remarks and performance

counselling. All the provisions of AFO 06/12 have been complied with.

7. Further, on scrutiny of the ARs for the consideration period, we have observed that the applicant's AR average is generally between the range of 6

to 7 marks in last 5-6 years, whereas he requires to have at least two ARs with an average of 7 in last 5 years so as to secure an aggregate of 33

marks which is a pre-requisite for promotion to the next higher rank of time scale Wg Cdr. However, the fact remains that he has not been able to

secure minimum average grading of 7 in two of the last five years ARs raised on him. We have also noted multiple counselling reports signed by

applicant and pen picture in AR which are suggestive of the need for the applicant to improve his performance in his primary duties, His pen pictures

for last 5-6 years by different IDs and ROs are repeatedly commenting on the need for the officer to improve in his primary duties. Thus considering

the issue in totality, we are of the opinion that the respondents cannot be faulted for denying further promotion to the applicant because he does not

fulfil the AR criteria required for promotion as per HRP No. 03/13.

8. In light of the above observations, we feel that the applicant has failed to prove his case, hence the application is liable to be dismissed. It is

accordingly dismissed.

9. No order as to costs.

Pronounced in open Court on this the 6th day of January, 2020.