
(2021) 07 AFT CK 0009
In the Armed Forces Tribunal
Case No : OA 961 Of 2021

Maj Gen Rajiv Mohan Gupta

APPELLANT

Vs

Union of India & Ors

RESPONDENT

Date of Decision : 08-07-2021

Acts Referred:

Armed Forces Tribunal Act, 2007 — Section 14

Citation : (2021) 07 AFT CK 0009

Hon'ble Judges : Rajendra Menon, Chairperson (J); Lt Gen P.M. Hariz, Member (A)

Bench : Division Bench

Advocate : S.S. Pandey, Harish V. Shankar

Final Decision : Disposed Of

Judgement

1.Â Â The applicant, a serving Maj Gen of the Army Medical Corps had filed this application under Sec 14 of the AFT Act, having been aggrieved

by the non-disposal of his statutory complaint dated 23.11.2020 against his non empanelment in SPB 2020. The applicant had made the following

prayers

(a)Â Â Â Call for the records based on which the Respondents have not decided the Statutory Complaint dated 23.11.2020 submitted by the applicant till date and

proceeding to hold the SSB AFMS (AMC) in terms of the impugned order dated 06.04.2021 and thereafter, quash the same.

(b)Â Â Â Direct the Respondents to dispose off the statutory complaint dated 23.11.2020 of the applicant forthwith.

(c)Â Â Pass such other and further order as may be deemed fit and proper in the facts and circumstances of the case.

2.Â Â In our Order dated 28.05.2021, the Respondents were directed to decide the statutory complaint and issue necessary speaking order within a period of fifteen days from the date of receipt of the Order. The Counsel for the Respondents said that the Statutory Complaint has since been disposed of by the competent authority vide their letter dated 22.06.2021, which has since been forwarded to the applicant. A copy of the communication to the applicant was submitted by the Counsel. The applicant has been granted partial redressal by way of expunction of the adverse remarks endorsed by the then COAS in ACR 2018 (27.06.2018 to 31.12.2018). The applicant is now required to be considered for promotion by an appropriate SPB (AFMS) AMC in accordance with the relevant rules, regulation and policy.

3.Â Â The Counsel for the Respondents also stated that necessary instructions to convene a Review SPB had already been issued by the DGAFMS vide their letter No 18836/SPL PB(A)/LT GEN/ DGAFMS/ DG-I(X) dated 06.07.2021. This Review SPB is to consider the applicant in this OA and the applicant in OA 934/2021 , both of whom have been granted redressal by the competent authority in their respective statutory complaints against their non-empanelment in SPB Sep 2020.

4.Â Â Â The Counsel for the applicant argued that since there were limited number of vacancies in the rank of Lt Gen, and the fact that the applicant was senior most in the SPB 2020, the results of SPB 2021 be withheld till the results of the Review SPB 2020 are declared, so that a vacancy is available to the applicant should he be empaneled by the Review SPB.

5.Â Â Â The Counsel for the Respondents vehemently agitated against withholding the results of SPB 2021 merely because a Review SPB for the previous SPB is to be held, since it would be contrary to the policy. He further explained the process of review where in, if the officer under review with the modified record is placed above the last empaneled officer in the previous promotion board, against which the review is being conducted, he is then graded 'Fit' and empaneled for promotion in his own turn.

6.Â Â Â Having heard both parties, we find no reason to withhold the promulgation of the results of SPB 2021 as requisite rules and policy exist for the management of an officer empaneled by a Review Board. We therefore direct that the OA be disposed of, since nothing survives as the prayer

for disposal of the statutory complaint has been met and the Respondents have issued necessary instructions for the conduct of the Review SPB 2020.

7.Â Â OA stands disposed of accordingly.