

(2020) 01 AFT CK 0025
In the Armed Forces Tribunal
Case No : Original Application No. 100 Of 2016

Naresh Chander Badhani

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 20-01-2020

Acts Referred:

Armed Forces Tribunal Act, 2007 — Section 14

Citation : (2020) 01 AFT CK 0025

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

Bench : Division Bench

Advocate : Prashant Sivarajan, K.S. Bhati

Final Decision : Dismissed

Judgement

Unit,Post,Place,From,To,Month

HQ Northern

Command",Brig Admn,Udhampur,18.12.11,29.04.12,04

HQ 16 Corps,COS,Nagrota,30.04.12,28.09.12,05

16 Inf Div,GOC,Sri Ganga Nagar,05.10.12,31.10.13,13

HQ 16 Corps,COS,Nagrota,09.11.13,26.04.14,06

HQ Northern

Command",MGGS,Udhampur,29.04.14,,20

(b),First Review 1979 batch,Apr 2015,Not empaneled,,

(c),Special Review (Fresh) 1979 batch,Oct 2015,"Board proceedings under
considera(cid:42)on for approval of
Central Government",,

9. The respondents have also stated that the COAS, being the SRO in all the three CRs earned by the applicant in the rank of Major General, had",,,,,

consistently assessed him objectively on the basis of his performance during the respective reporting periods. It is also stated by the respondents that",,,,,

the applicant was empaneled to the rank of Major General in Command and Staff stream on the basis of his overall profile and comparative merit, but",,,,,

promotion to the rank of Lieutenant General is comparatively tougher, due to limited number of vacancies. The applicant was not empaneled for",,,,,

promotion to the rank of Lieutenant General on account of his overall profile, comparative merit and limited number of vacancies in the higher ranks.",,,,,

10. In his rejoinder to the counter affidavit filed by the respondents, the applicant has reiterated the averments made in the O.A. He has also stated",,,,,

that the assessment of the CRs in a bunch together by the SRO, especially a few days before the holding of the Special Selection Board, tantamounts",,,,,

to an action malicious in law when the assessment made by the SRO resulted in downgrading of the CRs initiated by the JO and the RO. Moreover, it",,,,,

was highlighted that the respondents had failed to appreciate that the SRO had, at the same point of time, held all of the three CRs of the applicant",,,,,

before him for assessment, in total disregard to the extant rules and policy instructions.",,,,,

He claimed that there was an unexplained aberration in the dates when it came to the CRs of the applicant in the rank of Major General pending",,,,,

review by the SRO. The first CR for the period from October 2012 to January 2013 was forwarded to the MS (X) by the RO on 18.05.2013, who",,,,,

then forwarded the same to the SRO on 16.08.2013. The SRO sent back the same to the MS (X) only on 11.04.2014. The second CR for the period",,,,,

February 2013 to June 2013 was forwarded to the MS (X) by the RO on 30.09.2013, which was forwarded to the SRO on 14.02.2014. The SRO sent",,,,,

the same back to the MS (X) only on 11.04.2014. The third CR for the period from July 2013 to October 2013 was forwarded to the MS (X) by the",,,,,

RO on 20.01.2014, which was forwarded to the SRO on 18.02.2014. The SRO sent the same back to the MS (X) only on 11.04.2014. It was",,,,,

concluded in the rejoinder that the three CRs of the applicant in the rank of Major General reached the MS Branch i.e. MS (X) only on 11.04.2014",,,,,

from the SRO, just 13 days prior to the Promotion Board held on 25.04.2014, hence it is a case of subjectivity in assessment by SRO.",,,,,

11. We have observed that the case of the applicant is primarily hinging around the fact that COAS as SRO has not only carried out delayed review,,,,,

of his impugned CRs, but also downgraded the box grading to 8, as compared with the box grading of 9 by 10 and RO. Additionally, he has alleged",,,,,

that his impugned CRs have also got bunched up and have been reviewed by SRO, very close to Promotion Board date i.e. 13 days before the",,,,,

Promotion Board, hence the SRO assessment is subjective and ought to have been expunged. Having heard the learned counsel for the parties in",,,,,

detail and after going through the relevant records, including the original CRs and the statutory complaint of the applicant and the reply by Central",,,,,

Government, the factual picture, which is emerging on the issue of CR review dates and its bunching up, is as follows:",,,,,

(a) CR Oct 2012 to Jan 2013 Signed by SRO on 30.11.2013,,,,,

(b) CR Feb 2013 to Jun 2013 - Signed by SRO on 17.02.2014,,,,,

(c) CR Jul 2013 to Oct 2013 Signed by SRO on 18.02.2014,,,,,

(d) The first Promotion Board (Fresh) was held for the applicant on 25.04.2014. Thus, the first and the second impugned CRs of the applicant i.e. Oct",,,,,

2012 to Jan 2013 and Feb 2013 to Jun 2013, were reviewed and signed by SRO about five months and two months respectively, before the date of the",,,,,

Promotion Board. Thus, it is primarily the dispatch of CR from SRO office to MS (X) office which has got delayed and resulted in this apparent",,,,,

bunching.,,,,,

(e) Thus it is clear there is no actual bunching but apparent bunching up between first and second CR review, the gap being over two-and-a-half",,,,,

months, However, the second and third CRs have been reviewed within a gap of one day to each other, hence there is a certain actual bunching up",,,,,

between these two impugned CRs, which will require further examination." ,,,,,

(f) We have also noted that the applicant's premise about delay of CRs with SRO is primarily based on RTI information of dispatch dates between,,,,,

MS (X) and the SRO office and not on actual review dates as signed by the SRO in the CRs. Thus, if we look at how many days each CR has been",,,,,

held at each level, from receipt to review and from review (with signature and date) to dispatch, then following factual picture is emerging:",,,,,

(I) First impugned CR - Oct 2012 to Jan 2013 time taken from receipt to review and review date to dispatch is as follows:",,,,,

10-03 days from receipt to initiation & 03 days for dispatch,,,,,

RO-104 days for review and 01 day for dispatch to MS branch,,,,,

MS Branch about 75-80 days from receipt, for scrutiny and dispatch to SRO",,,,,

SRO-103 days for review and 130 days for dispatch to MS,,,,,

(ii) Second impugned CR - Feb 2013 to Jun 2013 - time taken from receipt to review and review date to dispatch is as follows:,,,,,

TOâ?"07 days for initiation and 01 day for dispatch,,,,,

RO 78 days for review and 01 day for dispatch,,,,,

MS Branch â?" about 135 days from receipt, for scrutiny and dispatch to SRO.",,,,,

SRO- 03 days for review and 52 days for dispatch,,,,,

(iii) Third impugned CR - Jul 2013 to Oct 2013 - time taken from receipt to review and review date to dispatch is as follows:,,,,,

TOâ?"02 days for initiation and 02 days for dispatch,,,,,

RO 76 days for review and 04 days for dispatch,,,,,

MS Branch â?" about 27 days from receipt, for scrutiny and dispatch to SRO",,,,,

SRO - 01 day for review and 51 days for dispatch,",,,,

12. Thus the above factual picture clearly indicates that delay in handling of applicant's impugned CRs is not specific only to SRO, but similar delay is",,,,,

being noticed at the level of RO and also at MS Branch level. The delay in movement of CRs from RO and above, prima fade, appears to be of an",,,,,

organizational nature. The only factor which is slightly different is that the gap between review date of CRs and the dispatch date of CRs is relatively,,,,,

larger in SRO's office as compared to others. In our effort to understand this gap, we have examined the CRs in terms of dates, signature of the SRO",,,,,

and the dispatch dates and we find them to be genuine and authentic. Hence the delay in the SRO's office from actual review date of SRO to the,,,,,

actual dispatch date out of his office appears to be an office related delay which is linked to the work culture, prioritization and work efficiency of",,,,,

concerned office staff. Notwithstanding the above, in all probability, because of this large delay in SRO's office in relation to the first impugned CR,",,,,

the benefit of doubt has been given to the applicant and the Central Government has expunged the box grading of SRO in the first impugned CR of the,,,,,

applicant i.e. Oct 2012 to Jan 2013. In this context, the specific prayer of the applicant is that the SRO's assessment should be expunged in other two",,,,,

impugned CRs also and he should be reconsidered for promotion as a Fresh Case with his batch.,,,,,

13. We have also examined in detail the issue of bunching of the last two impugned CRs of the applicant in Feb 2014 with SRO and review by SRO.,,,,,

with a gap of one day between the CRs. We have noted that MS Branch had forwarded the two impugned CRs to the SRO within a gap of 04 days.,,,,,

each and hence it is a clear case of bunching, initially at the level of MS (X) and subsequently this bunching has got telescoped to SRO. Thus the SRO",,,,,

had no direct role in creating this bunching effect. When we go deeper into the matter, we have realized that all the three Services have a tradition of",,,,,

fast tracking the last CR of the batch, which is required to be considered for promotion by a Promotion Board. The time gap from last CR initiation",,,,,

date to the Promotion Board is normally between 6-7 months, hence the need to fast track. This fast tracking is also visible in the last impugned CR of",,,,,

the applicant and hence this traditional fast tracking of last CR has apparently caused the bunching of last and second last impugned CR initially at MS.,,,,,

(X) and subsequently at the SRO level. While Army is at liberty to initiate steps to improve its CR movement system, we are not inclined to agree with",,,,,

the applicant that the bunching of last two impugned CRs with SRO, close to Promotion Board date is a reflection of his subjectivity against the",,,,,

applicant.,,,,,

14. We have also noted that as far as the statutory complaint of the applicant is concerned, he has already been provided with two major reliefs. The",,,,,

first relief relates to expungement of box grading of SRO for the first impugned CR of the applicant i.e. 05.10.2012 to 31.01.2013. The second major.,,,,,

relief is that after expungement of the box grading of SRO, the applicant has been reconsidered for promotion, as a Fresh Case along with his batch",,,,,

mates of 1979 in 2015 by a special Promotion Board. Apparently, the applicant was not empaneled. Being not satisfied, the applicant has primarily",,,,,

prayed in this O.A for expungement of SRO's remarks in the remaining two impugned CRs and for reconsidering him for promotion with his batch.,,,,,

mates by a special Promotion Board.,,,,,

15. In view of the above facts and circumstances, the questions that arise for our

consideration are:" ,,,,,,

(i) Whether there are valid reasons to set aside the assessment of SRO in the remaining two impugned CRs under challenge on grounds of delay," ,,,,,,

particularly in the light of the guidelines given by the MS Branch policy letters on the subject? ,,,,,,

(ii) Similarly, is there a case to set aside the gradings of the SRO in the last two impugned CRs on grounds of subjectivity, in the light of decisions by a" ,,,,,,

Coordinate Bench of this Tribunal on similar matters? ,,,,,,

16. So far as the first question is concerned, we have gone through the records and the MS Branch letters. We have also noted that besides MS" ,,,,,,

Branch letters being directory in nature, none of the policy letters of the MS Branch state that if there is delay beyond the recommended days of" ,,,,,,

processing a CR at different levels, the CR will become invalid on the ground of delay. It is also clear that while it is desirable for CRs to be processed" ,,,,,,

within specified time frames at every level, however, due to a series of valid organizational reasons, a CR can get delayed. Thus, as per the policy" ,,,,,,

letters, it is for the MS Branch to satisfy itself on the reasons for delay in the movement of a CR and if the MS Branch is not satisfied, it can decide" ,,,,,,

on further course of action. Therefore, merely because there is delay in the processing of a CR, it cannot automatically be presumed that the" ,,,,,,

concerned JO, RO or SRO is biased and, therefore, the CR is subjective. For reaching a conclusion, to state that the 10, RO or SRO is biased or to" ,,,,,,

state that the assessment is subjective, delay in initiation or review of CR in itself is not enough. There has to be something more, than mere delay" ,,,,,,

factor, to substantiate the allegation of subjectivity or bias. Thus, in this case, after considering the relevant MS Branch policy letters on the subject," ,,,,,,

we are of the opinion that there is nothing in the MS Branch letters that can be interpreted to read that delayed CRs will become invalid and their ,,,,,,

assessment will have to be expunged on the ground of delay or deemed subjectivity due to delay. ,,,,,,

17. Coming to the second question framed i.e. is there a case for expungement of delayed/ bunched up SRO assessment due to binding precedence by ,,,,,,

Coordinate Bench judgments, the applicant has referred to two judgments of the Coordinate Bench i.e. Maj. Gen K.K. Sinha (supra) and Ma] Gen" ,,,,,,

Sukesh Rakshit (supra). Similarly, the respondents have referred to one

judgment which supports their case i.e. Ma] Gen R.P.S Bhadaurta v. Union of",,,,,
India and others (O.A No. 208 of 2015 decided on 19.01.2016). Between these
three judgements, two of them i.e. Maj. Gen K.K. Sinha (supra) and",,,,,
Ma] Gen R.P.S Bhadauria (supra) have been delivered by the same Bench of this
Tribunal. There is also some similarity in the applicant's case and",,,,,
the above mentioned two cases. However, we have noted that while in the
former (Ma] Gen KK Sinha), relief has been provided, but in the latter",,,,,
(Ma] Gen R.P.S Bhaduria), wherein the judgement has been delivered after
considering the former case of Ma] Gen KK Sinha, the Bench has",,,,,
provided no relief and dismissed the case. While dealing with the case of Ma]
Gen R.P.5 Bhaduria, the Bench has clarified in its judgement that relief",,,,,
to Ma] Gen KK Sinha was not granted purely on grounds of delayed review and
review in close proximity to Promotion Board alone, but also on other",,,,,
factors which pointed towards subjectivity. Similarly, we have noted that in the
other case as referred to by applicant i.e. Ma] Gen Sukesh Rakshit",,,,,
(supra), the facts and circumstances leading to relief on grounds of subjectivity
in the assessment by both RO and SRO, are entirely different and",,,,,
cannot be compared with the applicant's case merely because delay and
bunching up of CRs is a common factor between both. Thus, considering all",,,,,
the issues, we are of the considered opinion that the decisions cited by the
applicant are not relevant to his case. On the other hand, the most recent",,,,,
judgment of the Coordinate Bench, cited by the respondents (Ma] Gen R.P.5
Bhaduna) is fully relevant to the present case. Additionally, we have also",,,,,
considered the other decisions cited by the applicant in his rejoinder to the reply
of respondents. However, without going into details of the cited",,,,,
decisions, we would like mention that in the specific facts and circumstances of
the present case, these judgements do not help the applicant. Hence to",,,,,
sum up, we are of the opinion that the assessment of the SRO in the last two
impugned CRs of the applicant, cannot be set aside or expunged on the",,,,,
basis of decisions cited by the applicant.,,,,,

18. We would also like to mention that as far as the handling of the statutory
complaint by the respondents is concerned, we find that the Central",,,,,

Government has already given substantial redressal to the applicant in 2015 by
expunging the box gradings of the SRO for the first impugned CR of",,,,,

October 2012 to January 2013. Additionally, the applicant has also been given a

reconsideration for promotion as a Fresh Case by a Special Promotion" ,,,,,,

Board (Fresh) in 2015 along with his batch mates. Thus, we are of the opinion that the respondents have been more than fair to the applicant and their" ,,,,,,

response to the statutory complaint, though a speaking order is fair and as per extant policy on the subject, hence merits no interference." ,,,,,,

19. We would also like to mention that the COAS is a very important functionary in this fighting Force called Indian Army. He heads and leads this ,,,,,,

organisation both in peace and war. He is also fully responsible not only to ensure that the Army remains combat ready in the present but also ,,,,,,

prepares itself well for the future challenges in the field of warfare. Additionally, the Army Chief has to take decisions on assessing an officer to the" ,,,,,,

best of his judgement and ability to understand the performance of the concerned officer. This responsibility of the Army Chief is more critical for ,,,,,,

assessing very senior officers of the Army, because the future leadership of the Army will be selected from amongst them. Due to the pyramidal" ,,,,,,

structure of Army and limited vacancies, the competition to come in relative merit is extremely tough and, therefore, anything less than full marks i.e." ,,,,,,

nine out of nine in CR is perceived as adverse in the field and is being represented by a large number of officers as a sign of bias and subjectivity by ,,,,,,

the reviewing officer. However, no organisation can afford to give full marks out of full marks in CR to every officer who is due for promotion." ,,,,,,

Additionally, keeping everybody happy in matters of promotion is not easy for any organisation, however, this challenge is more acute in Armed" ,,,,,,

Forces due to its pyramidal design. Thus, in organizational interest, the Army Chief has every right, as SRO of a senior officer, to increase or" ,,,,,,

decrease the box grading or assessment of an officer being reviewed by him, in difference to the opinion of JO or RO. Therefore, his opinion not only" ,,,,,,

as SRO but as JO and RO also, is very important and must be considered by the Promotion Board as per the extant policy on the subject. Therefore," ,,,,,,

in the final analysis, it will not be in the interest of national security, and justice to the Armed Forces, if the assessment in the CR of an officer by" ,,,,,,

Army Chief is expunged on hyper technical grounds like delay and bunching close to Promotion Board, etc. unless there is supporting evidence or" ,,,,,,

circumstances, which clearly points towards bias or subjectivity in his assessment." ,,,,,,

20. Keeping in view all these facts and having perused the entire record, we do not find any valid reason to set aside the disputed ACRs nor do we",,,,,
find any irregularity or illegality in the impugned order. Therefore, being devoid of merit, the instant O.A deserves to be dismissed. The O.A is thus",,,,,
dismissed. No order as to costs.,,,,,
Pronounced in open Court today, the 20th day of January, 2020." ,,,,,