
(2020) 01 AFT CK 0054

In the Armed Forces Tribunal

Case No : Original Application No. 902 Of 2017

Prashant Yadav

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 29-01-2020

Acts Referred:

Citation : (2020) 01 AFT CK 0054

Hon'ble Judges : Sunita Gupta, J; Philip Campose, Member (A)

Bench : Division Bench

Advocate : S.S. Pandey, V. Pattabhi Ram

Final Decision : Dismissed

Judgement

1. Vide separate order pronounced today, OA stands disallowed.

Original record be returned to the respondents.

Aggrieved by his non-empanelment for promotion to the rank of Colonel by the No. 3 Selection Board held in June 2012 and rejection of the Statutory

Complaint thereto vide order dated 23.03.2017, the applicant, a serving Army (Engineer) officer of the Lt Col rank, who had been detailed for Senior

Command (SC) Course in December 2011, has filed this OA seeking the following reliefs :

(a) To call for the No. 3 SB proceedings in respect of the applicant to determine why the applicant was not empanelled for promotion whereas he had

been earlier selected on merit, based on the similar criteria, for the Senior Command (SC) course.

(b) To check whether allocation of vacancies in Colonels rank for Engineer officers of the 1995 batch was done correctly as per the Pro-Rata

Vacancy (PRV) policy of minimum 0.4, and after taking into consideration,

additional vacancies that occurred consequent to judgements dated

15.02.2016 and 14.07.2016 of the Hon'ble Apex Court in the matter of Lt Col P.K. Choudhary & Ors. Vs. Union of India & Ors. [Civil Appeal No.

D. 11682 of 2015].

(c) To examine his ACRs of the reckonable period, especially CR for the period from 02.03.2011 to 29.07.2011, and set aside any unfair moderation

of his CR ratings and/or expunge CRs where he has been unfairly given low ratings and, consequently, grant him promotion to the rank of Colonel,

with all consequential benefits.

2. Heard the arguments on both sides and perused the pleadings and documents on file including the CR dossier and files pertaining to No. 3 SB and

consideration of Statutory Complaint in respect of the applicant, which were handed over by the respondents after the final hearing on 20.01.2020.

3. The facts germane to the case, as averred by the applicant, are that he belongs to the 1995 batch of the Engineers and, prior to consideration by

No. 3 SB in June 2012, he was selected by the MS Branch, as per comparative merit, among the 18 officers of his batch (Engineers) for attending the

Senior Command Course in December 2011. Hence, he was surprised when he was not empanelled for promotion to the rank of Colonel, due to the

fact that the nominations for the Senior Command Course are based on the same criteria by which officers are empanelled for promotion to the

Colonel rank. He found the continued non-empanelment all the more surprising because 62 additional colonel's vacancies were subsequently allotted to

the Engineers over six batches (1992 to 1997 batches) consequent to judgment of the Honble Supreme Court in Civil Appeal No. D. 11682 of 2015,

whereby 141 additional Colonel's vacancies were allotted to the Combat Support Arms (Engineers, Signals, Air Defence, Army Aviation), to be

distributed on a pro-rata basis. The applicant apprehends that either the CR from 02.03.2011 to 29.07.2011 may have harmed him or low value

judgment (VJ) marks may have been awarded to him during the No. 3 Selection Board. The applicant has also alluded to Respondent No. 3's policy

letter dated 21.01.2009 on 'Allocation of Select Ranks', wherein at Para 6(e) it is mentioned that a PRV of .4 to .6 will be ensured for all arms and

services during the conduct of promotion boards, to assert that this policy was not followed while allocating vacancies for his (1995) batch.

4. Learned counsel for the applicant has contended that his batch (Engineers) have been unfairly allocated lesser number of vacancies for Colonel.

Further, whereas he was among the top eighteen (18) Engineer Officers of his batch who were selected by Respondent No. 3 as potential Colonels

and detailed for the Senior Command Course in December 2011, he has not figured in among the 27 officers of his batch who have been approved so

far for promotion to the rank of Colonel. Counsel contends that the only reason this could have happened is that he was rated low in the last CR

before his No. 3 Selection Board (02.03.2011 to 29.07.2011) or he was awarded low VJ marks in the said Board, more so as his batch was allocated 7

additional vacancies as a consequence of the judgment of the Hon'ble Apex Court in P.K. Chaudhary's case (supra).

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

that it is an incorrect presumption by the applicant that selection for Senior Command Course and empanelment for promotion to Colonel are based on

identical criteria. Though both may appear similar, the selections are done totally independent of each other. Further, counsel has asserted that VJ

marks have been awarded correctly by the No. 3 Selection Board, in keeping with extant MOD policy and the only reason that the applicant was not

empanelled for promotion is that he did not figure high enough in the comparative merit of his batch. Respondents have alluded to the fact that, neither

being qualified in the Staff College or Technical Staff College nor being M. Tech qualified, the applicant would have been at a disadvantage while

computing his pre-Board marks and that would have contributed to his non-empanelment.

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 was not

empanelled for promotion to the rank of Colonel due to any unfairness or inconsistency in his CRs or due to any unjust or illegal low VJ marks allotted

to him in the Selection Board.

7. On perusal of the documents placed before this Tribunal, we find the following:

(a) There is no inconsistency or unfairness evident in the CR ratings of the reckonable period in respect of the applicant.

(b) Pre-Board Quantified marks in respect of the applicant were calculated correctly as per policy. The applicant was awarded VJ marks fairly in the

No. 3 SB conducted from 22.06.2012 to 29.06.2012 by the Board in keeping with the extant policy on the subject. There is no arbitrariness evident in

the award of VJ marks.

(c) The applicant figured low in the comparative merit of his batch and thus was not empanelled for promotion while assessed as a fresh case and

subsequently as review case.

(d) After allocation of 7 additional vacancies to his batch, consequent to allocation of 62 Colonels vacancies to Engineers as a result of the judgement

of the Hon'ble Apex Court, the applicant still did not figure in the merit list.

8. In the result, we do not find merit in the instant case and the OA is disallowed. No order as to costs.

Pronounced in open Court on this 29th day of January, 2020.