

(2019) 11 AFT CK 0007
In the Armed Forces Tribunal
Case No : Original Application No. 339 Of 2019

Praveen Bhat

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 27-11-2019

Acts Referred:

Armed Forces Tribunal Act, 2007 — Section 14
Air Force Act, 1950 — Section 27

Citation : (2019) 11 AFT CK 0007

Hon'ble Judges : Rajendra Menon, J; Philip Campose, Member (A)

Bench : Division Bench

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

Final Decision : Dismissed

Judgement

1. This O.A is filed under Section 14 of the Armed Forces Tribunal Act, 2007 by a serving Air Force Officer of Air Vice Marshal (AVM) rank, who is

aggrieved by his non-empanelment for promotion to the rank of Air Marshal by the Special Promotion Board that was held on 03.01.2018 and the

subsequent Review Board held on 21.12.2018. He is seeking the following reliefs:

(i) Review of his Annual Reports (ARs) for the period from 2008 to 2017 in comparison with the ARs of the officers who were approved for

promotion by the Promotion Board;

(ii) Review the relevant Selection Board proceedings as well as the file relating to rejection of his statutory complaints by the respondents;

(iii) Quash any arbitrary or unjustified downward moderation of ARs pertaining to the period from 2008 to 2010 and the period from

01.12.2016 to 30.11.2017 and restore the original assessments by the reporting officers;

(iv) Quash the entire AR of the applicant for the year 2013; and

(v) Reconsider the applicant for promotion by the Special Promotion Board after acceding to the above mentioned prayers.

2. The brief facts of the case, as averred by the applicant, are that the applicant was commissioned in the Flying Branch of the Indian Air Force on

29.12.1982 and was promoted to various higher ranks upto the rank of Air Vice Marshal based on his exceptional merit. However, he was not

empanelled for promotion to the rank of Air Marshal by the Special Promotion Board that was held on 03.01.2018. This, the applicant apprehends,

happened because of being rated subjectively in some of the ARs under consideration by the Board, more so his AR for 2013, as well as arbitrary and

unjustified downward moderation of some of his ARs by the Air Headquarters/ CAS, especially the reports for the period from 2008 to 2010 when he

served as SASO HQ Maintenance Command, Air Force, ACAS (Ops) AD at Air HQ, New Delhi and CSO (AV) at HQ Strategic Forces Command,

a tri-service organisation. The statutory complaint filed by the applicant was rejected by the first respondent (Government of India/Ministry of

Defence) on 09.07.2018. A second statutory complaint filed by him was also rejected by the second respondent (Chief of Air Staff) on 05.10.2018

and the first respondent on 16.01.2019. Hence this O.A.

3. Mr. Pandey, learned counsel appearing for the applicant, contended that arbitrary and unjustified downward moderation of the applicant's ARs by

the Air HQ was the prime reason for the unfair nonempanelment of the applicant for promotion to the rank of Air Marshal. In this regard, he has

referred to the Air Force Order (AFO) No. 06 of 2012 to question the competence of the officer at Air HQ/CAS conducting the AR review, while

submitting that review of AR marks could have been done only by an officer senior in rank to the Senior Reviewing Officer (SRO) and, therefore, any

moderation of ratings awarded by the then President of India in her capacity as SRO in the ARs from 2008 to 2010 was irregular. Para 49(b) of the

said AFO is reproduced as under:

49. Whenever the RO / SRO Is posted at Command / Air HQ, their review would be construed as Command HQ / Air HQ review. The

reviewing officers at Air HQs / Command HQ should check correctness of the AR as mentioned in this AFO and should also include the

following in their review:-

(a) xx xx xxxx xxxx

(b) The rank of reviewing officer at Command /-/Qs / Air HQ should at least be the same as that of the last reviewing officer in the appraisal

channel. If the reviewing officer so detailed is junior in service (even if of the same rank) to the officer who last reviewed the AR, then

he/she should endorse the report if in agreement. In case he/she is not in agreement with the last reviewing officer, he is to put up the report

for review to the next higher level. There is no mandatory period of contact with the appraisee for the

Command review.

X,V XX XXXX XXXX

4. Learned counsel for the applicant also refers to Para 56 of the aforesaid AFO to contend that the second respondent (CAS/ Air HQ), despite clear

mandate prescribed under the existing policy, refused to re-examine the ARs of the applicant on the pretext that since the said ARs pertaining to the

period 2008-10 had been considered in No. 1 PB held in 2012 and had not been contested in any way by the applicant, hence the same could not be

examined now at a belated stage. Learned counsel contends that this was contrary to the existing policy. Para 56 of AFO No. 06 of 2012 in this

regard is reproduced as under:

56. After scrutiny of Air HQ, all ARs will be graded and entered in the AR database. After authentication, the ARs will be filed in the

dossiers of respective officers. The ARs thereafter will be treated as closed. Under no circumstances will these ARs be given to any of the

reviewing officers for any further modification or change in assessment / remarks. However, in the event of representation by an appraisee,

an AR can be reopened, scrutinised and put up to the competent authority for review. Similar action may be resorted to if any specific trend

emerges in the assessment pattern of an IO/RO/SRO/Command/Air HQ Reviewing Officer. (emphasis supplied)

5. Reliance has been placed on the order dated 06.01.2012 of this Tribunal (Principal Bench) in the matter of Gp Capt TM Rao v. Union of India and

others (O.A No. 155 of 2011), where, in the case of downward moderation of the AR initiated by a civilian scientist in respect of the petitioner while

he was serving on deputation with DRDO, the Tribunal had observed as follows:

13. The next issue that comes up for consideration is whether petitioner's ACR earned while working in the DRDO have been properly

evaluated or not. We have gone through those ACRs in which DRDO has found the petitioner exceptionally good and made a significant

contribution in developing the Trishul missiles. We cannot sit over these ACRs given by the persons under whom petitioner was working i.e.

JO, RO or SRO but reading of these reports and pen picture given by them makes out a case that the contribution of the petitioner in the

development in the missiles project has been of great value. It is true that it is for the competent authority who have been entrusted the job

of reviewing the ACRs for them to assess how much weightage be given; but, what we find is that they have employed the same yardstick i.e.

persons before going out of the Air Force and coming back his ACR will be compared with his last three years ACR. This stock standard

may sometime cause injustice. When the petitioner came back after serving in the DRDO from 2000 to 2005, they applied the same yardstick

and after taking into consideration three years previous ACRs of Air Force, they have moderated his ACRs to 7.33 onwards. This is a

common yardstick which they apply for all others. But when a person goes to a very specific project and his achievement and contribution

is of very high quality then the same yardstick cannot be employed so as to beat the person down to his past performance in the Air Force.

We can understand that a person is already serving in the Air Force and some times he gets 8 marks and other times he gets only 6 marks,

then in such a variation the respondent can assess that when he has been rated for the last three years with 8 or 7 marks then suddenly how

come his performance is dropped to 6 marks. The job requirement is that of the Air Force and of a different nature, then in that case

adopting the same yardstick will be hazardous. This will not be a correct assessment of the incumbent and this will have a demoralising and

discouraging effect that even when a person in a specialised subject of Trishul development has done a high quality contribution and his

contribution is sought to be judged from the yardstick of his past performance in the Air Force and then reduce his assessment to the same

level as before going to the DRDO will not be fair, reasonable or rationale.

14. It has been pointed out to us that all his ACRs and pen picture of the petitioner were considered by the reviewing authority and they

have taken into consideration the pen picture given by the Director of DRDO and his contribution made in the development of missiles and

after considering all these factors he has been assessed with reference to his previous three years ACRs i.e. 7.33 and accordingly reduced

his ACRs from 8.45 or 8.56 to 7.33 only This in our opinion was not correct. It appears that proper evaluation of his performance rendered

by him i17 the development of Trishul at DRDO seems not to have been given due credit. After going through the ACRs and the pen picture

of the petitioner by the 10, RO or SRO of the DRDO we feel that proper credit does not seem to have been given to the petitioner

achievement. We fail to appreciate the review undertaken by the Air Force by applying the same standard that since in Air Force he had last

three years ACR at 7.33, therefore, his performance in DRDO may be brought down to 7.33. This is not a correct assessment of his

performance. We cannot substitute the view of reviewing authority but we can certainly hold that assessment of the petitioner's performance

in the DRDO vis--à-vis the performance in the Air Force has not been reasonably and rationally evaluated by the respondent. Therefore,

we are of the opinion that the matter is remitted back to the authorities to give a proper consideration to the ACRs received by the petitioner

for his achievements in the DRDO. These may be assessed objectively and not by stock standard, that since his prior to joining DRDO he

got 7.33 in last ACRs then they reduced all the ACRs to 7.33. This is not, in our opinion, a rationale approach. Hence, we allow the petition

in part and remit the matter back to the respondent to give due weightage to the ACRs received of the petitioner in DRDO and thereafter

review his performance for the aforesaid period. In case it is moderated, then the case of the petitioner may be considered afresh for

promotion to the post of Air Commodore by convening a special Promotion Board.

6. Further, learned counsel for the applicant claims that the applicant's AR for the year 2013 was assessed subjectively due to 'personal predilections

and proclivity of the 10' and thus, there was a legitimate case for expunging the

aforesaid CR in keeping with the provisions of Para 56 of AFO 06/2012.

7. In order to strengthen the stand taken by him, learned counsel for the applicant has placed reliance on the following decisions:

(a) Brig VG. Cole v. Union of India and others (0.A No. 377 of 2011 decided on 15.12.2011); and

(b) Air Vice Marshal Sanjay Sharma v. Union of India and others (0.A No. 363 of 2014 decided on 18.05.2015)

8. Learned counsel has averred that, keeping the high ratings achieved in most of his ARs, the only moderation that the applicant's ARs should have

been subjected to was by way of upward moderation in case his marks in any AR was found to be less than 8, rather than any downward moderation,

as done by the second respondent in a number of ARs.

9. With regard to the ARs of the applicant in 2016-17, when he was serving in various appointments viz. SASO in HQ Maintenance Command,

ACAS (Ops) at Air HQ and CSO (LV) at HQ SFC, learned counsel contends that, whereas the respondents have submitted that review of ARs of

officers posted to tri-service organisations are undertaken so as to bring uniformity of AR assessments across the entire officer cadre, thus providing a

'level playing field' among officers in a batch so that none of them is at an advantage or disadvantage by earning an 'inflated' or 'deflated' report on

such postings, however, such a review by Air HQ/ CAS and Chairman, COSC were not mandated in the applicant's case as he was being reported

upon by IOs and ROs from the Air Force and even while posted as CSO (AV) at HQ SFC, he had an Air Force officer of Air Marshal rank as his

RO, who would have kept Air Force norms of AR reporting while reviewing the applicant's AR. Learned counsel has submitted that comparison may

also be made with the applicant's performance appraisal in his next CR of 2018, in which his JO was an Army Officer of Lt General rank.

10. Learned counsel for the applicant has also alleged that the value judgment (Vi) out of 5 marks awarded by the Special Promotion Board would

have been less than what he deserved as the Vi would have been dependent on his pre-Board merit out of 95 marks, which had been computed after

repeatedly moderating arbitrarily and without justification.

11. With regard to the 'censure' awarded on 03.02.2015 to him by the second

respondent (CAS), in a sexual harassment case, while he was posted at HQ Eastern Air Command, learned counsel contends that the censure was based on a motivated false complaint and its validity was in effect for only two years and thus could not have been taken into consideration by the Special Promotion Board, which was held on 03.01.2018. The learned counsel has argued that, if indeed the applicant's character, integrity or moral fibre was in question, why was it not reflected accordingly in his AR of 2014. The learned counsel contends that absence of any adverse comments in subsequent ARs and endorsement of exceptional high gradings therein is a reflection of the fact that his reporting officers endorsed his 'impeccable integrity and character' and held that he was falsely implicated. The applicant had tendered an apology to the female complainant but the apology should not have been construed as an admission of guilt but as an act of 'generosity or empathy' to repair a damaged work relationship.

12. On the other hand, justifying the actions taken by the respondents, Mr. Bhati, learned Senior Central Government Standing Counsel (Sr. CGSC), at the outset, contended that there is no illegality or irregularity in the impugned order rejecting his statutory complaint and, therefore, the instant O.A is devoid of merit. He further contended that the AR review policy in the Indian Air Force is governed by Paragraphs 18, 48 and 49 of AFO No. 06/2012, which has been followed correctly and uniformly by the respondents. Furthermore, AFO No.03/2008 on Disciplineâ€"IAF Personnel mandates that complete service records, including all the censures awarded in the past will be taken into consideration by the Promotion Board for assessing the suitability of officers for promotion to 'Air Ranks'. The SPB shall specifically consider the censure(s) awarded to an officer after the last promotion while deciding the suitability of the officer for the next rank.

13. In the case of the applicant, learned Sr. CGSC pointed out that he was awarded 'censure of severe displeasure for 24 months' by the CAS on 03.02.2015 consequent to the show cause notice dated 13.01.2015 issued to him for inappropriate behaviour and harassment at work place of a woman Stenographer, after due investigation of the complaint by the Internal Complaints Committee (ICC), wherein the applicant expressed his consent for conciliation and tendered unconditional apology for the alleged misconduct. The Board members of SPB-2018 had assessed all the Air

officers considered in the Promotion Board and awarded promotion board (value judgment) marks according to the extant policy. The promotion in the

Air ranks were held in accordance with the 'Promotion Policy &" Air Ranks' dated 30.12.2015. The applicant was considered by SPB 2018 as a first

timer but could not be empanelled for promotion to the rank of Air Marshal due to being low in comparative merit. As such, there was no violation in

implementation of the policies by the Air HQ.

14. Learned Sr. CGSC thereafter drew our attention to the rationale behind implementing the policies and stated as under:

(i) All IAF officers are assessed through an Appraisal Report (AR) which is confidential, once filled. This report is rendered annually and/ or on

occasions as specified in the Air Force Order 06/2012 on the subject. It contains specific professional and behavioural attributes that are assessed on

a numerical scale from 1 to 9 for quantitative assessment with a descriptive pen picture for qualitative assessment. The report is initiated by the

immediate senior officer in the chain of command called Initiating Officer (JO) and goes through two more levels of assessment and review in the

form of the Reviewing Officer (RO) and Senior Reviewing Officer (SRO), prior to being reviewed by the Command HQ. Thereafter, the AR is

forwarded to Air HQs where it is again reviewed.

(ii) With regard to the need for review at Air HQs, learned counsel contended that there are various factors which influence the assessment of an

Appraisee by the Reporting officers in the appraisal chain which could create anomalies in his ARs. The factors which are broadly considered are (a)

Psycho-Social influences; (b) Organizational influences; (c) Environmental factors beyond the officer's control and

(d) Inflationary trend in ARs. Review of the ARs at Air HQs is a key element of the reporting system and is scientifically designed to rule out

anomalies and inconsistencies in ARs and ensures level playing ground for all the officers of the Air Force. A review of the AR in the light of an

officer's long term past performance is a good tool to remove all the anomalies listed before. Variation review at Air HQs is carried out when a large

variation upwards or downwards is noticed between the numerical grading awarded, when compared to the officer's AR average for the preceding

five years, more so when the officer is assessed by the reporting officers from

outside the Air Force who may not be conversant with the rating

norms followed in the Air Force. This Air HQ review is needed to maintain objectivity and uniformity in assessment of all officers.

(iii) The final review of ARs at Air HQ is governed by Para 18 of AFO 06/2012. Para 18 provides for review of AR in comparison to the past five-

year performance profile of the officer. Since the record of past fiveyear performance profile is only available at Air HQ, the review contemplated in

Para 18 can only be done by the competent authority at Air HQ and not by any authority in a lower formation including AOC-in-C at a Command

HQ. On the basis of performance profile of the Appraisee, the Air HQ reviews the final grading/marks without any change of assessment made in the

remarks column.

Hence, the review of an AR vis-a-vis the past performance profile as authorized under Para 18 of AFO 06/2012 and the review of ARs for anomalies

in assessment by JO, RO, and the SRO, as given in Paragraphs 48 and 49 of AFO 06/2012, are mutually exclusive and there is no contradiction

between them. Further, this policy has been applied in a fair and uniform manner, as evident from the fact that the applicant has gained in terms of

increase of ratings in some ARs as a consequence of the policy of review.

15. Learned Sr. CGSC also contended that as per Para 56 of the AFO, the authentication of ARs is carried out at Air HQ and entered in AR

database. The ARs thereafter will be treated as closed and is filed in the dossiers of the respective officers and under no circumstances, these ARs

will be given to any of the reviewing officers for any further modification or change in assessment/remarks. However, in the event of filing a

representation by the appraisee, an AR can be reopened, scrutinised and put up to the competent authority for review. Similar action may be resorted

to if any specific trend emerges in the assessment pattern of an IO/RO/SRO/ Command/Air HQ Reviewing officer.

16. In the case of the applicant, learned Sr. CGSC submitted that his ARs for the period 2008-2017 had been scrutinized and it was pertinent that the

SPB-2018 has only considered the reckonable five years ARs of the applicant for the period 2013-17 in terms of Para 16 of the Promotion Policy-Air

Ranks dated 30.12.2015. The ARs for the years 2008 to 2010 raised as Dy MS to the President of India were already considered in P3-1/2012,

wherein the applicant was promoted from Air Commodore (Cmde) to AVM as a first timer. A comparative analysis between two sets of ARs (with

Air HQ Review and without Air HQ Review) would also reveal that there is no adverse/cascading effect on his career due to the Air HQ review

policy. In fact, after the Air HQ review, the ARs of the applicant for the years 2013, 2014 and 2017 have been reviewed upwards.

17. With regard to the Special Promotion Board conducted on 03.01.2018, learned counsel contends that whereas 18 officers were considered against

the 06 vacancies for Air Marshal rank, the applicant was ranked at 16 and thus not empanelled for promotion. Further, in the review board conducted

on 21.12.2018, 12 officers were considered against 06 vacancies and the applicant was ranked at 11. The rankings were the same before and after

adding the value judgment marks in both PBs.

18. Summing up, learned Sr. CGSC submitted that the issue of final review of the AR at Air HQ in the Indian Air Force has been upheld by the

Hon'ble Supreme Courts and various Benches of this Tribunal in a number of judgments. In support of his arguments, he relied on the following

decisions:

(i) Gp Capt TM. Rao v. Union of India and others. (0.A No. 155 of 2011 decided on 06.01.2012);

(ii) Gp Capt R.K. Khattri v. Union of India and others (0.A No. 376 of 2013 decided on 15.01.2014);

(iii) Gp Capt R.K. Raksha v. Union of India and others (0.A No. 153 of 2013 decided on 03.07.2014);

(iv) Sqn Ldr Poop Kashyap (Retd) v. Union of India and others (upheld by the Hon'ble Supreme Court in C.A Diary No. 5987 of 2018 dated

19.03.2018);

(v) Air Cmde Devender Sharma v. Union of India and others (0.A No. 554 of 2016 decided on 16.11.2017;

(vi) Sqn Ldr Kalpana Kumari (Retd) v. Union of India and others (upheld by the Hon'ble Supreme Court in C.A Diary No. 5097 of 2018 dated

19.03.2018)

Consideration:

19. We have given careful consideration to the arguments made by the learned counsel on both sides and find that the primary issues before us are

follows:

(i) Whether consideration/ moderation of ARs of the applicant was fair and just and if so, was it done correctly as per the policy in vogue. If not, is

there a case for intervention by this Tribunal to set aside any moderation or expunge any AR ratings?

(ii) Whether the Special Promotion Boards in respect of the applicant were held in a fair, correct and just manner?

(iii) Was the applicant's statutory complaints dealt with and rejected by the respondents after due application of mind and in keeping with the extant

policy and procedures?

Issue No. (i) - Moderation of ARs

20. We find that the system of appraisal reports (ARs) of IAF officers is guided by Air Force Order (AFO) No. 06/2012, whereby the Air Force, like

the other Services, has a three tier system of reporting viz. annual Appraisal Reports (ARs) are required to be reported by JO, RO and SRO.

However, unlike the Army, the Air Force follows a reporting/review system, whereby the ratings by the last reviewing officer (SRO) on the AR is

taken as the final AR rating for that AR. This quantified rating is subjected to review by the Personnel Branch at Air HQ, which compares the final

ratings with the average of ratings of the last five years and thereafter, recommends acceptance or moderation of upwards or downwards

accordingly, with the aim of neutralising effects of 'inflationary' or 'deflationary' trends in the reporting. The CAS is the final arbiter for this Air HQ

review, wherein he directs the final ratings after upward or downward moderation.

21. In the case of the applicant, his ARs in the rank of Air Commodore, when he was posted as Deputy MS to the President were subjected to

moderation as they were considered inflationary in comparison with general norms of the Air Force as well as the average of ratings of the previous

five years. We find that this was done in keeping with extant policy which is being applied uniformly across the Air Force. In this regard, we find that

the applicant's case is clearly distinguishable from the case of Air Cmde TM. Rao (supra), where the Tribunal had given due consideration to the

achievements of the petitioner with regard to development of the Trishul missile as described in detail in the ARs raised on him while posted in

DRDO, while allowing his appeal, whereas no such distinct achievement justifying the highest ratings are found in the ARs of the applicant during that

period, while he was functioning in a role which was administrative in nature.

22. With regard to the applicant's AR of 2013, which has been specifically impugned, we find that the AR was moderated upward by the CAS/Air

HQ and thus, there is no reason for intervention by the Tribunal.

23. In the ARs for the period of 2016-17, the ratings of the IOs and ROs were duly considered by the SRO while finally reporting on the applicant.

These were thereafter subjected to moderation by Air HQ as per policy, consequent to which they were increased/decreased keeping his average of ratings of the last five years.

24. As the above moderation of CRs was done fairly by Air HQ/CAS as per extant policy, which is applied uniformly across the Air Force, we do not

find any reason for interfering with the impugned ARs.

Issue No. (ii) "Conduct of Special Promotion Board

25. We find that the promotion policy for Air Ranks (Air Commodore, Air Vice Marshal (AVM) and Air Marshal) are guided by Air HQ promotion

policy letter dated 30.12.2015, which includes the conduct of Special Promotion Boards (for promotion from AVM to Air Marshal ranks). The

selection process is outlined in Paragraphs 16 and 17 of the said policy, which are reproduced hereunder:

16. Preparation of Merit List. Merit list will be prepared on the basis of 'AR Marks' and 'Board Marks' with weightage of 95:05 respectively.

In the case of promotion to the rank of Air Marshal average of numerical gradings of the available ARs during last five years will be taken

into account to determine the AR marks. For promotion to the ranks of Air Cmde and AVMS, average of numerical gradings of available

ARs during last ten years will be taken into consideration. 'Board marks' will be sum total of marks given by each member present in the

Board meeting on the scale of 05. The guiding principle for Board marks will be based on the following features as discerned from reports

raised on the officer in various field and staff appointments held by him in the past:-

(a) Employability

(b) Leadership

(c) Personality

(d) Potential to hold the responsibility of the next higher rank.

These features have been sub-divided into 24 attributes as a guideline. The same are annexed as Annexure - I.

17. Overall Merit. A Merit List of officers considered by the Board will be prepared on the basis of the total marks obtained in AR Marks

and Board Marks. An illustration to demonstrate the actual computation of an officer's marks is placed as Annexure - II to this paper.

In case of the award of Board marks alters the comparative overall merit of an officer resulting in changing his promotion prospects, the

Promotion Board shall record the reasons for awarding low/high marks which would help Competent Authority appreciate the rationale for

such a recommendation.

A Select List of the officers will be prepared from the Merit List, The Select List will contain the names of the officers restricted to the

number of forecast vacancies and rearranged in the order of seniority. The officers from the list will be promoted in that order.

In case of any additional vacancy / vacancies (unforeseen or ex-cadre) arising during the promotion year, these should be added to the

forecast vacancies for the next promotion year and the Promotion Board for the next Promotion Year should be appropriately advanced.

The zone of consideration will be as provided in para 11 above, Therefore, there will be no "Select Reserve List".

26. With regard to this issue involving award of Value Judgment (VJ) marks by members of the Promotion Board, we have been made aware that as

per the policy, each member, in this case the CAS, VCAS and C-in-Cs of four Air Force commands, awarded marks out of 5 and the aggregate of

the same was added to the overall marks. Learned counsel for the respondents has submitted that these marks were awarded fairly by the Members

as per the policy and that the applicant's merit for AR marks (out of 95%) did not change (out of 100c/0) after the Vi marks (out of 5%) were added.

Further, it has also been contended that even if the highest VJ marks had been awarded to the applicant, he would still have scored lower marks than

the last officer who was empanelled in the Board. Learned counsel for the

applicant, on the other hand, has argued that the censure awarded to him was unfairly taken into consideration by the Members of the Board while awarding Vi marks despite the fact that the period of effectiveness of the censure, viz, two years, had elapsed before conduct of the Board.

27. We have examined the proceedings of the Special Promotion Boards held on 03.01.2018 and 21.12.2018 and are satisfied that the respondents

conducted the Boards as per the extant policy of 30.12.2015 and correctly placed the details of censure in respect of the applicant before the

Members of the Board in keeping with the relevant paragraph of A.F.O No. 03/2008, whereby it has been directed that in case of assessing suitability

of officers for promotion to 'Air ranks', complete service records, including all censures awarded in the past, will be taken into consideration by the

Promotion Board. We do not find any error apparent in the award of V3 marks by the Board members or in computation of the same. It has been

verified that as contended by the respondents, against the 06 promotion vacancies in each Board, the applicant was placed at Rank Nos. 16 and 11 in

the respective Boards and thus could not be empanelled for promotion. Further, even if he had been awarded the highest VJ marks as awarded in

these Boards, he would still have figured lower in rank to the last officer (6th rank) who was empanelled for promotion. We find that the respondents

have correctly followed the policy of 30.12.2015 for conduct of the Special Promotion Boards, a policy which was applied uniformly and provided

equal opportunity to the AVMs considered by the Board. To that extent, we do not find any illegality or irregularity in the conduct of the two Boards.

The respondents did nothing wrong or illegal in placing the details of censure awarded to the applicant before the members of the Promotion Board as

this action was in keeping with the contents of AFO No.3/2008, which mandates that complete service records, including all censures awarded in the

past, are required to be considered in Promotion Boards for assessing suitability of officers for promotion to 'air ranks'.

Issue No. (iii) â?" Response to Statutory Complaint

28. We find that the Statutory Complaints have been given fair and detailed consideration and consequently, in exercise of the powers vested under

Section 27 of the Air Force Act, 1950 and Para 622(j) of the Regulations of the Air Force, 1964, the first respondent (Government of India/MoD) has

rejected the statutory complaints through its speaking order dated 16.01.2019. Hence the applicant cannot claim any relief on this issue also.

29. As regards the decisions relied on by learned counsel for the applicant â?" Brig. VG. Gale and Air Vice Marshal Sanjay Sharma (supra), we are

of the considered view that they are clearly distinguishable from the facts of the present case and hence not relevant.

30. In the result, we find the instant O.A lacks merit and is dismissed.

31. No order as to costs.

Pronounced in open Court on this the 27th day of November, 2019