
(2020) 01 AFT CK 0008

In the Armed Forces Tribunal

Case No : Original Application No. 1437 Of 2019

Rajeev Sen Roy

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 23-01-2020

Acts Referred:

Citation : (2020) 01 AFT CK 0008

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

Bench : Division Bench

Advocate : Rajiv Manglik, arunvir Singh Khehar

Final Decision : Dismissed

Judgement

1. Aggrieved by the rejection of his Statutory Complaint dated 05.11.2018 against non-empanelment for promotion to the rank of Colonel by the first respondent vide its order dated 16.05.2019, the applicant, a serving Lieutenant Colonel of the Indian Army (Air Defence Corps) has filed this O.A

seeking the following reliefs:

(i) Call for complete records of the applicant's profile, including his CR Dossier, and compare the same with his ACR for the period 04/2008-12/2008

and set aside the same; and

(ii) Grant him consequential benefits thereafter in terms of Special Review (Fresh) look for promotion and promotion thereto to the rank of Colonel.

2. Heard the learned counsel on both sides and perused the pleadings and documents on record, including the Government of India/Ministry of

Defence file on consideration of his complaints and his CR dossier.

3. The facts germane to the case, as averred by the applicant, are that, the applicant was commissioned into the Indian Army (AD Corps) on

07.03.1998 and was promoted from time to time up to the rank of Lieutenant Colonel. In the meanwhile, he had qualified on various Army courses and held important assignments and participated in a number of operational deployments. It is the applicant's case that he was not empanelled for promotion primarily due to his being underrated in his ACR as AD Battery Commander for the period from 22.04.2008 to 28.12.2008. He alleges that the fourth respondent, his Commanding Officer, who initiated the impugned CR, was biased against him due to the applicant excusing himself from late parties in the Officers' Mess and not clearing the Staff College exam and this bias was evident from the fact that the applicant was not provided furlough leave (in addition to annual leave) when he was preparing for the Staff College examination.

4. Learned counsel for the applicant has submitted that the applicant had always been graded '9' (outstanding) by his Initiating Officers in all his five

AE ACRs, except for the said ACR, which was the first AE ACR in the reckonable profile. Further, he contends that his Statutory Complaint has

been rejected in a mechanical manner and the main issues raised by him have not been addressed in the order of the first respondent dated 16.05.2019

in response to his Statutory Complaint. Hence, the aforesaid order needs to be quashed and the impugned CR set aside.

5. Learned counsel for the respondents, on the other hand, contends that reporting in the impugned ACR for the period 04/2008-12/2008 is fair,

objective, well corroborated, performance based and technically valid. Overall, the officer has an average to above average course profile as reflected

from his course gradings. Further, from a perusal of his impugned CR, there is no evidence of specific bias by the Initiating Officer. Rather, the ratings

given by the Initiating Officer mostly corroborates the ratings given by his other reporting officers, including his Initiating Officers. Hence the O.A

deserves to be rejected.

6. We have given careful consideration to the arguments of both the parties and find that the primary issue before us is, whether the ACR for the

period 04/2008-12/2008 in respect of the applicant deserves to be set aside on the basis of negative bias of the Initiating Officer (fourth respondent) or

on the ground of inconsistency.

7. The respondents have averred that the Army has a pyramidal rank structure,

wherein the number of vacancies in higher ranks is limited and

officers are selected for promotion based on a system of comparative merit. They have submitted that the applicant is a non-Staff College/Senior

Command course qualified officer, whose course gradings are 'average' to 'above average' with 'B' grading in the Junior Command Course. The

respondents have averred that all CRs earned by the applicant, including the impugned CR 04/2008-12/2008, are well balanced, performance based,

devoid of any inconsistencies and technically valid, in tune with his overall profile.

8. On a detailed perusal of the applicant's ACR Dossier, we are in agreement with this assessment of the respondents and find no reason to set aside

the impugned CR or the order of the first respondent dated 16.05.2019. We find no apparent bias with regard to the reporting by the fourth respondent

in CR 04/2008-12/2008.

9. In the result, the O.A is found to be devoid of merit and is dismissed. No order as to costs.

Pronounced in open Court on this the 23rd day of January, 2020.