
(2019) 12 AFT CK 0019
In the Armed Forces Tribunal
Case No : Original Application No. 585 Of 2019

S.K. Punia

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 02-12-2019

Acts Referred:

Citation : (2019) 12 AFT CK 0019

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

Bench : Division Bench

Advocate : S.S. Pandey, Debina Sharma, Tarunvir Singh Khehar, Vishal Tripathi, Prabhdeep Singh Bindra

Final Decision : Dismissed

Judgement

1. Aggrieved by his non-empanelment for promotion to the rank of Colonel by No. 3 Selection Boards held by the Army in December 2016,

September 2017 and October 2018, the applicant, who is a serving Army Officer of the rank of Lt Col, has filed this OA praying for the following

reliefs :

(a) Set aside/expunge the Confidential Reports (CRs) covering the period 01/2011-12/2011, 06/2013- 12/2013 and 06/2014-05/2015 in case their

rating/recommendations have resulted in his nonempanelment for promotion;

(b) Thereafter, consider the applicant afresh for promotion and if approved, promote him and provide other consequential benefits.

2. Heard the learned counsels on both sides and perused the pleadings and documents on file, including the CR Dossiers, Promotion Board documents

and the Statutory Complaint file made available to us.

3. The brief facts of the case, as averred by the applicant, are that he was

commissioned in the Dogra Regiment of the Army on 09.12.2000 with date of seniority as 09.06.2001. Thereafter, he was posted to various peace, field and high altitude areas during which service, he was promoted upto the rank of Lt Col. The officer, along with his batch, was considered for promotion to the rank of Colonel on 21.12.2016 by No. 3 Selection Board but was not empanelled for promotion. He submitted a Non-Statutory complaint to Respondent No. 2 (COAS) on 27.01.2017 but the same was rejected vide order dated 06.07.2017. Thereafter, the applicant was considered again by the No. 3 Selection Board (Review) on 11.10.2017 but was not empanelled. In the meanwhile, he had been awarded GOC-in-C (Western Command) Commendation Card on 15.08.2017 while serving with Dogra Scouts in a High Altitude Area. The applicant's Statutory Complaint against non-empanelment was rejected by Respondent No. 1 (Govt. of India/Ministry of Defence) on 22.06.2018. The applicant was not empanelled for promotion yet again on 02.11.2018 by the final review board. Hence, this OA.

4. Mr. S.S. Pandey, learned counsel for the applicant, submitted that the applicant had served in an exemplary manner throughout his career and had always been graded as Outstanding (9 points) or Above Average (8 points) by all his reporting officers. The applicant participated in Operation Parakram' and was specially selected to lead the Ghatak (Commando) team, whose performance was well appreciated by the Brigade Commander and Divisional Commander. Counsel contends that he has not been given fair consideration by the Promotion Board, which has rejected him for promotion in an unfair, arbitrary and discriminatory manner.

5. Learned counsel has contended that the applicant's reporting officers may not have graded him fairly in 2011 during his tenure with 11 Rashtriya Rifles Battalion in Jammu 8z, Kashmir in a counter insurgency environment despite a number of operational successes and this first 'lukewarm report' may have adversely influenced his subsequent CRs also, though he was awarded the COAS Commendation Card for gallantry in 2013. Subsequently, in 2014-15, the applicant was detailed as the Officer Commanding (OC) of the Unit Advance Party, during which period he ensured smooth handing taking over between units. However, the applicant, as Second in Command, had to apprise the Commanding Officer (CO) about ""the sentiment of unit

officers about his wife interfering in unit matters""', which appears to have been taken amiss by him, resulting in the CO unfairly harming the applicant in the ACR of that period.

6. Learned counsel for the Respondents, on the other hand, controverts arguments made on behalf of the applicant. Counsel contends that the applicant was not empanelled for promotion in the No. 3 Selection Board of his batch on account of his overall profile, relative merit and comparative evaluation, and thus, the allegation of malafide or bias made by the applicant against his CO in 11 Rashtriya Rifles or in his own unit (5 DOGRA) are presumptuous and bereft of merit.

7. Counsel contends that the applicant has been reported upon fairly in the ACRs impugned by him and there is no inconsistency, arbitrariness or bias against the applicant. The applicant has been graded outstanding or above average throughout. Thus, his non-empanelment for promotion was purely due to his standing low in comparative merit of his batch. This fact can be verified from the documents which are being provided to the Tribunal.

Consideration:

8. We have given careful consideration to the arguments by both sides and find that the primary issue before us is whether the applicant was judged fairly and without bias by his reporting officers in his Confidential Reports (CRs) as also in his consideration by the No. 3 Selection Board held on 21.12.2016 and subsequent review boards, which decided on his non-empanelment for promotion to the rank of Colonel.

9. We have perused the applicant's CR Dossiers and the file related to his consideration by No. 3 Selection Board and his Non-Statutory/Statutory

Complaints. The results of our perusal are as follows:

(a) The applicant has been reported upon as 'Outstanding' (9 points) and 'Above Average' (8 points) in all his impugned CRs. There is no evidence of inconsistency or bias as apprehended by the applicant.

(b) The No. 3 Selection Board of 2001 batch (Infantry) conducted on 21.12.2016 considered 732 officers and empanelled 253 officers against

available vacancies, based on comparative merit, whereas the applicant was placed at merit position 359. Subsequently also, in September 2017 where

218 officers were empanelled from a batch of 797 and in October 2018 where 140 officers were empanelled from a batch of 790, the applicant was

far below in rank to the last officer empanelled. The computation of ACR marks, out of a total 89, and for courses, out of 04 marks, was done

correctly as per extant policy. The applicant was not awarded any marks (out of 02 marks) for gallantry awards as he was not entitled for the same

as no marks are awarded for COAS Commendation Card. Overall, the applicant was not empanelled for promotion as, despite fair and impartial

consideration by the Board, his comparative merit ranking was far below the merit of the last officer selected as per vacancies available.

(c) The Non-Statutory and Statutory Complaints were given fair consideration and responded to accordingly by the respondents.

10. In the result, we do not find any reason whatsoever for intervention by the Tribunal in the applicant's ACRs or No. 3 Selection Board proceedings

in terms of expunging the applicant's ACRs, or reviewing his promotion board result. We find that the applicant's CRs were rated in a consistent and

fair manner. He was not empanelled for promotion due to lacking in comparative merit. Hence, OA is disallowed.

Pronounced in open court on this 2nd day of December, 2019.