



2025:DHC:5081-DB



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 25.04.2025
Pronounced on: 01.07.2025

+ W.P.(C) 7381/2024

MAJ GEN H DHARMARAJAN, PVSM AVSM, SM VSM
(RETD.)Petitioner

Through: Mr. Dhruv Dwivedi, Advocate

Versus

UNION OF INDIA & ORS.Respondents

Through: Mr. Neeraj, SPC with Mr.
Rudra Paliwal, Mr. Vedansh
Anand, Mr. Sachin Saraswat,
Mr. Soumyadip Chakraborty,
Mr. Pradip, Advocates along
with Col. Sarika Pendlwar, Lt.
Col. Deepak Renvah, Major
Anish Muralidhar & Major
Abhishek Sharma

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

SHALINDER KAUR, J.

1. The present writ petition has been filed by the Petitioner, who served in the Army as a Major General and retired on 31.01.2024, impugning the Order dated 17.01.2024 passed by the learned Armed Forces Tribunal, Principal bench, New Delhi (hereinafter referred to as the 'Tribunal') in Original Application ('OA') No. 1106/2022 titled ***Maj Gen H Dharmarajan vs. Union of India and Ors.*** whereby the



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OA filed by the Petitioner has been dismissed by the learned Tribunal.

2. The brief narrative of the relevant facts, as emanating from the record, may be noted hereinbelow:-

- A. The Petitioner was commissioned into the 3 Engineer Regiment ('ER') on 20.12.1986. During his Service in the Army, he had been a recipient of numerous distinguished accolades and commendations for his meritorious performance. The Petitioner whilst serving the Army in a most exemplary manner had earned his promotions upto the rank of Major General and on 01.12.2018, he assumed command of the 25th Infantry Division as the General Officer Commanding (GOC). He was due to be considered for promotion in June, 2020.
- B. The Petitioner received a Show Cause Notice (SCN) on 25.07.2019, alleging violation of the Cyber Security Policy and resultant Cyber breach from the Official Laptop of the Petitioner leading to loss of classified data. The Competent Authority, while considering the reply of the Petitioner held him blameworthy for some minor procedural issues and dropped all the serious allegations, consequently, counselled the Petitioner in the form of 'Reproof' *vide* letter dated 17.09.2019.
- C. In the meantime, the Special Selection Board ('SSB') meeting was held on 22.06.2020, for consideration of case of the Petitioner and others for 1986 Batch for empanelment to the rank of Lieutenant General, and the result of the meeting was communicated *vide* letter dated 26.10.2020. The Petitioner was



not empanelled.

- D. Upon learning about the decision of the SSB, the Petitioner filed a Non-Statutory Complaint dated 09.11.2020 against his non-empanelment, highlighting his achievements and performance throughout his Service and inquiring if the Reproof awarded to him was referenced in any of his Confidential Reports (CRs) which may have affected his career progression.
- E. During the pendency of the Non-Statutory Complaint, the Petitioner was again considered for promotion to the rank of Lieutenant General by the SSB on 23.02.2021 as a First Review Case when the 1987 Batch was considered as Fresh Cases.
- F. Subsequently, the Non-Statutory Complaint of the Petitioner came to be dismissed by the Respondent No. 1 *vide* Order dated 08.03.2021 on the ground that all the CRs for the reckonable period were consistent and performance based and thus, required no interference.
- G. Being dissatisfied, the Petitioner filed a Statutory Complaint on 17.03.2021 against his non-empanelment, reinforcing his stand on the Non-Recordable Reproof being used in his CR for the relevant period or it being taken into consideration by the SSB, thereby making him ineligible for promotion.
- H. This Statutory Complaint was also dismissed by the Respondents on 15.10.2021, reiterating the reason for non-empanelment as Petitioner's overall profile, relative merit and



comparative evaluation as assessed by the SSB. It further stated that there is no mention of the Non-Recordable Reproof by any of the Reporting Officers in the CRs or in his records and, that as per MoD Letter dated 05.09.2017, Non-Recordable Censures are not placed before the SSB.

- I. In this while, the result of the SSB (First Review Case) was declared on 26.07.2021 and the Petitioner was again not empanelled.
- J. The Petitioner was reconsidered as a Final Review Case (1988 Batch), however, was again not empanelled in the result declassified by the letter dated 18.04.2022.
- K. In these circumstances, the Petitioner approached the learned Tribunal by way of the OA No. 1106/2022, seeking the following reliefs:

(a) Call for the records including the SSB Selection Proceedings of all the Three Boards including the file noting exchanged between the Respondents based on which the Petitioner has been denied empanelment for promotion to the Rank of Lt Gen by adopting any method of reducing the Board Member Assessment Marks in any of the considerations' to somehow bring the Petitioner below the last empanelled officer of the batches with whom he was considered for such promotion and the records based on which the Respondents have rejected the complaints filed vide impugned order dated 15.10.2021 and thereafter quash all such orders of the non empanelment as well as the order dated 15.10.2021.

(b) Direct the Respondents to promote the Petitioner to the Rank of Lt Gen if in case it is found that he has been denied the earmarked marks as Board Member Assessment on any ground whatsoever contrary to the



policy including use of Reproof in any manner directly or indirectly for such purpose with further direction to grant him all consequential benefits which includes his original seniority, continuity of service, back wages in the rank of Lt Gen etc. if his merit so determined is found to be above the bench mark merit of the last empaneled Officer of 1986 batch who were promoted in the Command. and Staff Stream or Staff only Stream in any of the subsequent considerations with a clear direction that for all further appointments the Petitioner will be deemed to have been promoted as Lt Gen from the date his immediate junior was promoted as Lt Gen based on his consideration as Fresh Case of 1986 Batch to do complete justice with him.

L. The learned Tribunal, *vide* Impugned Judgment dated 17.01.2024, dismissed the OA of the Petitioner, holding that the Petitioner had been given a fair consideration by the SSB for promotion to the rank of Lieutenant General. It upheld the dismissal of the Non-Statutory and Statutory complaints filed by the Petitioner with respect to his non-empanelment to the said rank.

M. Since, the Leave to Appeal was not granted by the learned Tribunal, the Petitioner was constrained to approach this Court by way of the present petition invoking the writ jurisdiction of this Court.

SUBMISSIONS ON BEHALF OF THE PETITIONER

3. Before us, Mr. Dhruv Dwivedi, learned Counsel for the Petitioner has primarily laid a challenge to the Selection Procedure of the SSB in consideration of Petitioner's promotion to the rank of Lieutenant General, by submitting that the SSB acted in contravention



of the Defence Services Regulations, 1987 (Revised) inasmuch as the *Reproof* awarded to the Petitioner was placed before the SSB during the Fresh, First Review and the Final Review of the Petitioner, and was considered by the Board, thereby affecting the Petitioner's assessment and merit for promotion to the said rank and the opportunity to serve the Army till 31.01.2026.

4. Further, he submitted, *Reproof* is the mildest form of Censure and is an administrative action. It attains operational finality the moment it is awarded/issued to an Officer. Thus, a *Reproof* is not reflected in the Service Dossier of an Officer. Moreover, learned counsel submitted that *Reproof* is also distinguished from other forms of Censure which have an operational life.

5. The learned counsel vociferously submitted that the *Reproof*, in the instant case, being a non-recordable Censure, was not reflected in Petitioner's CR, thus, the same could not have been considered by SSB for denying promotion to the Petitioner. He brought to our notice the Paragraph 327 of Defence Services Regulation, 1987 (Revised) and submitted that the Rules are clear, beyond any doubt and categorically state that the *Reproof* is not to be placed in the Service Record of the Petitioner, much less before the SSB, which has been wrongfully done in the present case.

6. Learned counsel referring to the background of the incident on account of which the *Reproof* was awarded to the Petitioner, submitted that the Petitioner was handed over an official laptop, after assuming charge of the GOC of the 25 Infantry, by his predecessor with



Operating System (OS) i.e., Windows 7 instead of OS, Bharat Operating System Solutions (BOSS). He further contended that the Petitioner never used his official laptop for any operational communication, as it was the only system with a civil internet. However, to the utter dismay of the Petitioner and inadvertence to the Cyber Group Alert, the Petitioner opened an email on 21.02.2019 which may have led to some malware being installed in his laptop. He submitted, nonetheless, later when the laptop was examined by the Cyber Security Team, it was found that no loss of data of any operational or classified nature took place. In these circumstances, the learned counsel submitted that not even a Court of Inquiry was initiated nor any investigation was done against the Petitioner.

7. Mr. Dwivedi, proceeding further with the submissions, contended that even the SCN issued to the Petitioner on 25.07.2019, does not disclose any loss of data/information pertaining to the alleged Cyber Security Breach and thus, he was only awarded with a *Reproof* by the Competent Authority, after taking into account his reply to the SCN, thereby, giving quietus to the matter. He submitted that mild warning/counselling *vide* letter dated 17.09.2019 was not supposed to be used for any purpose nor the same was to be recorded in his Service Dossier.

8. Mr. Dwivedi, while drawing our attention to the Policy dated 06.05.1987, contended that the record relating to *Reproof* awarded to the Petitioner was brought into the notice of the SSB at the behest of one of its members, who had personal knowledge of the Cyber



Security Breach and the said *Reproof*, which was directly in violation of the aforesaid policy dated 06.05.1987, as the assessment by the Board is to be made on the material placed before it and not from any personal knowledge.

9. He submitted that in their affidavit filed before the learned Tribunal, the Respondents admitted that the *Reproof*, which was otherwise barred from being placed before the Selection Board, was considered upon the query of one of the Board members. This query led to the documents pertaining to the *Reproof* being retrieved and brought on record for consideration of the Board. Further, he contended, the Policy dated 05.09.2017 prohibits placing of non-recordable *Reproof* before the SSB, therefore, the SSB has strikingly violated the fairness of the Selection Procedure and has deprived the Petitioner of his due promotion.

10. He submitted that the Petitioner had the highest marks amongst the candidates, and by following the Promotion Policy that has been amended from time to time, the case of the Petitioner could not have been ignored by the SSB in view of the mandate that the selection will be based on 95% quantified merit and 5% Value Judgement/Board Members Assessment Marks ('BMA').

11. The learned counsel emphasized on the plea that the denial of promotion to the Petitioner only on the basis of the *Reproof* clearly shows that the SSB has contravened the settled Selection Procedure by *suo-moto* taking into consideration the factors which, as per Respondents' own Policies and Regulations, were otherwise not to be



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in the knowledge of the Board.

12. Mr. Dwivedi further submitted that the Petitioner has consistently demonstrated excellent performance throughout his Service, achieving top ranks in all the professional courses undertaken during his tenure. Moreover, his CRs for the relevant period were assessed as 'Outstanding'. The learned counsel brought to our notice various medals/commendations achieved by the Petitioner during his Service tenure of 37 years. He urged that in spite of being overlooked for promotion, the Petitioner had been awarded Vishisht Seva Medal in 2019, Ati Vishisht Seva Medal in 2022 and Param Vishisht Sewa Medal in 2024.

13. The learned counsel contended that the Competent Authority had dismissed the Statutory Complaint filed by the Petitioner *vide* letter dated 15.10.2021, after a delay of almost 7 months as against the statutory limit of 6 months, and without appreciating the facts and circumstances as highlighted by the Petitioner in his complaint.

14. To conclude, the learned counsel submitted that the learned Tribunal also had pronounced the judgment after a long delay, which has resulted in violation of principles of natural justice. He, thus, prayed that the writ petition be allowed in light of the facts and circumstances surrounding the present case.

15. Learned counsel to further support his arguments, drew sustenance from the following decisions:-

- ***Maj Gen Dhiraj Mohan vs. Union of India & Ors.*** passed by the Armed Forces Tribunal, Principal Bench, New Delhi in OA No. 709/2022, date of decision 12.11.2024



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- *Dr. A.K. Doshi vs. Union of India*, (2001) 4 SCC 43.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

16. On the other hand, Mr. Neeraj, learned Senior Panel Counsel appearing on behalf of the Respondents, at the outset, submitted that as per the applicable policies of the Indian Army, every officer is eligible for three looks in the Selection Board, which were duly afforded to the Petitioner. The Petitioner was not empanelled as a result in Fresh Case, First Review Case and Final Review Case held in June, 2020, February, 2021 and December, 2021, respectively.

17. He contended that the Petitioner's Non-Statutory and Statutory Complaints dated 09.11.2020 and 17.03.2021 against his non-empanelment to the rank of Lieutenant General, were rightly dismissed on 08.03.2021 and 15.10.2021, respectively, as requiring no interference by the Competent Authority.

18. The learned counsel, while relying upon the Policy dated 11.08.2017, submitted that the award of Censure is operative for 10 years from the date of award. Moreso, by virtue of MoD vide ION No. 25(1) 12017-D (MS) dated 05.09.2017, the recordable Censures are to be placed before SSB and the *Reproof*, whenever awarded in writing is covered under Policy dated 11.08.2017. He, thus, submitted that in the present case, as the *Reproof* was given in writing to the Petitioner and, being an administrative action, it formed part of reckonable profile of the Petitioner.

19. The learned counsel also brought to the notice of the Court to Paragraph 12(f) of Quantified System of Selection Policy dated



23.12.2017, to contend that the past disciplinary/administrative record of the Officer is also considered by the SSB while evaluating the suitability of an Officer to the next higher rank. It was further submitted that the aim of the Selection System is to serve the best interest of the Service by selecting Officers competent to take on the responsibilities of higher ranks. It was vehemently contended that the SSB, in exercise of its inherent powers, can recommend Non Empanelment of an Officer irrespective of his Quantified Merit, and Officers with disciplinary/administrative awards for gross negligence are not recommended, as specified in Paragraph 13(a) and (b) of the Policy dated 23.12.2017.

20. Further, he submitted, the SSB can, thus, take into consideration of the *Reproof* awarded to an Officer to assess the suitability of the Officer for the Higher Rank. Therefore, *Reproof* whenever awarded in writing, consequent to a Court of Inquiry wherein SCN is issued, the SSB can make recommendations as it deems fit.

21. While narrating the incident dated 20.02.2019, the learned counsel submitted that the malware was installed in the official laptop of the Petitioner due to his own negligence, as he did not pay heed to a warning issued by Army Cyber Group about the malware attacks with instructions not to open any suspicious attachments. The said action of the Petitioner had resulted in Cyber Security Breach and compromised the classified information to unauthorised persons. In this regard, the learned counsel submitted that the matter was investigated by the Court of Inquiry convened by the HQ 16 Corps



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and the Petitioner was found blameworthy on the lapses on his part. He submitted that the Petitioner was, thereafter, served with the SCN dated 25.07.2019, to which he had furnished his reply. Taking his reply into consideration, the Competent Authority awarded the Petitioner with a *Reproof vide* letter dated 17.09.2019.

22. He submitted that during the proceedings of the SSB, when a Board Member brought forth the information about the *Reproof* issued to the Petitioner on account of security lapse, the Board, to assess the suitability of the Petitioner for the highest rank of Lieutenant General, called for the relevant record, which was placed before the SSB. Further, it was contended that none of the other suitable Candidates had a disciplinary background, and the non-empanelment of the Petitioner, after considering his entire Service record, was a unanimous decision of the SSB.

23. It was submitted that as far as the Promotion Policy *vis a vis* SSB required to furnish reasons for denial of promotion to a Candidate who is ranked high on 95% weightage but is given a low BMA is concerned, this issue is currently sub-judice before the Supreme Court in a Civil Appeal bearing Diary No. 35933/2023 titled ***Colonel Rajbir Singh vs. UOI & Ors.*** In any case, it was submitted, the SSB had recorded cogent reasons for the Petitioner's non-empanelment which had been perused and examined by the learned Tribunal. He submitted that the conclusions of the SSB were only recommendations in nature and were required to be approved by the Competent Authority in terms of Paragraph 108 of the Regulations for



the Army, 1987 (Revised).

24. Furthermore, it was contended, the learned Tribunal had also perused the Service record of the Petitioner as well as the record pertaining to the *Reproof* awarded to him, and keeping the entire gamut of facts and circumstances as well as record, had passed the Impugned Order, which is a well reasoned Order and with which no interference is thus, warranted. He submitted that, therefore, the Writ Petition be dismissed being devoid of any merit.

25. The learned counsel, in support of his contentions, placed reliance on the following decisions:

- *Union of India and Others vs. K.V. Jankiraman and Others*, (1991) 4 SCC 109.
- *Air Vice Marshal S.L. Chhabra, VSM (Retd.) vs. Union of India and Another*, 1993 Supp (4) SCC 441.

ANALYSIS AND CONCLUSION

26. We have heard the learned counsel for the parties and perused the record as well as the Original record of the SSB proceedings conducted in June, 2020 (Fresh), February, 2021 (First Review) and December, 2021 (Final Review).

27. At the outset, we may note that the learned counsel for the Petitioner had raised a plea that the Impugned Judgment was pronounced by learned Tribunal belatedly, which had resulted in violation of principles of natural justice.

28. Undoubtedly, Rule 97 of the Armed Forces Tribunal (Practice) Rules 2009 mandates that a judgment should be fixed for pronouncement no later than 30 days after having been reserved,



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which has not been done so in the present case. Though the timeframe prescribed may only be directory in nature, in the present case, the Petitioner asserted, and which is not denied by the respondents, the learned Tribunal had heard the OA and reserved the same for judgment on 19.11.2022. It was only pursuant to the order dated 16.01.2024 of this Court in WP(C) 596/2024, a Writ Petition filed by the Petitioner herein, directing the counsel for the Petitioner to make a mention before the learned Tribunal for a decision in the OA expeditiously and for the learned Tribunal to consider the same appropriately, that the learned Tribunal finally delivered the impugned judgment on 19.01.2024, that is, after a period of more than 1(one) year of reserving the same. In such circumstances, one option open to us in terms of the judgment of the Supreme Court in **Anil Rai v. State of Bihar**, (2001) 7 SCC 318 was to remand the matter back to the learned Tribunal for a fresh consideration without going further into the consideration of the dispute on merits, however, since we have heard the matter at length, it would not be appropriate to remand it back, which would only further delay the disposal of the case/dispute.

29. Before we delve further, it would be apposite to note the jurisdiction of this Court under Article 226 of the Constitution of India insofar as decisions of Tribunals and interference therewith is concerned. It is a settled position of law and as observed by the Supreme Court in catena of its decision such as in **Shama Prashant Raje vs. Gapatrao and Ors.**, (2000) 7 SCC 522 and **Tulsidas Paul vs. Second Labour Court, W.B. and Ors.**, (1972) 4 SCC 205 (2), the



High Court may interfere with such decisions only if there is any illegality or perversity in the decision making process. It was cautioned that, it should not enter into the merits of the decision.

30. We are conscious of the fact that we are dealing with promotion of Major General aspiring to be promoted to the rank of Lieutenant General. The said promotion is selection post filled up on the basis of relative merit assessed by the designated Selection Boards in accordance with the system of selection policies issued from time to time by the Competent Authority. Needless to say, it is not for the Courts to scrutinise the relative merit of the candidates, which is an obligation on the part of Selection Boards on the basis of Rules & Regulations, and the Courts do not sit in appeal as an Appellate Court over the decisions made by duly constituted Selection Boards. It is only on account of material irregularity or illegality in decisions of Selection Boards or where the selection procedure is vitiated, the impugned decisions can be interfered with by the Court. Usefully, reference can be made to the decision of the Supreme Court in ***Dalpat Abasaheb Solunke & Ors. v. B.S. Mahajan & Ors.***, (1990) 1 SCC 305, wherein it was observed as under:

“12. ... It is needless to emphasise that it is not the function of the court to hear appeals over the decisions of the Selection Committees and to scrutinise the relative merits of the candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The court has no such expertise. The decision of the Selection Committee can be interfered with only on limited grounds, such as



illegality or patent material irregularity in the constitution of the Committee or its procedure vitiating the selection, or proved mala fides affecting the selection, etc.”

31. Further, in **S.L. Chhabra** (supra), the Supreme Court held as under:-

“10. ... No oblique motive has been suggested on behalf of the appellant against any of the members of the Selection Board and there is no reason or occasion for us to infer such motive on the part of the members of the Selection Board for denying the promotion to the appellant with reference to the year 1987. Public interest should be the primary consideration of all Selection Boards, constituted for selecting candidates, for promotion to the higher posts, but it is all the more important in respect of Selection Boards, meant for selecting officers for higher posts in the Indian Air Force. The court cannot encroach over this power, by substituting its own view and opinion. ...”

32. In **Union of India & Ors. v. Rajendra Singh Kadyan & Anr.**, (2000) 6 SCC 698, the Supreme Court opined as under:

“29. ... Critical analysis or appraisal of the file by the Court may neither be conducive to the interests of the officers concerned or for the morale of the entire force. Maybe one may emphasise one aspect rather than the other but in the appraisal of the total profile, the entire service profile has been taken care of by the authorities concerned and we cannot substitute our view to that of the authorities. It is a well-known principle of administrative law that when relevant considerations have been taken note of and irrelevant aspects have been eschewed from consideration and that no relevant aspect has been ignored and the administrative decisions have nexus with the facts on record, the same



cannot be attacked on merits. Judicial review is permissible only to the extent of finding whether the process in reaching decision has been observed correctly and not the decision as such. ...

33. Lastly, in ***Surinder Shukla vs. Union of India & Ors.***, (2008) 2 SCC 649, it was iterated:

“11. Considering the comparative batch merit, if the Selection Board did not recommend the name of the appellant for promotion to the rank of Colonel which appears to have been approved by the Chief of Army Staff, it is not for the court exercising power of judicial review to enter into the merit of the decision. The Selection Board was constituted by senior officers presided over by an officer of the rank of Lt. General. It has been contended before us that the Selection Board was not even aware of the identity of the candidates considered by them because only in the member data sheet all the information of the candidates required to be considered by the Selection Board are stated, but the identity of the officers is not disclosed. The appellant moreover did not allege any mala fide against the members of the Selection Board. ...”

34. From the above decisions, it emerges that Selection Boards/Committees are the expert bodies to assess the suitability of a candidate for promotion. It conducts complete appraisal of the profile of the candidate and takes into account their Service Dossier, while adjudging the profiles. The Courts usually refrain from entering into merits of such decision, unless any oblique motive is suggested.

SELECTION PROCEDURE FOR PYRAMIDAL PROMOTION STRUCTURE AND ROLE OF THE SELECTION BOARDS

35. Having noted the above, it would further be relevant to examine



the Selection System for promotion to higher ranks in the Army for which a comprehensive policy had been framed by the Army Headquarters with the approval of the Government of India on 06.05.1987. Paragraph 10 of which deals with '*Guidelines of Assessment*' as the number of vacancies in the higher ranks decreases in view of the pyramidal rank structure. As per the guidelines, the selection is to be based on the overall profile of the officers with respect to their performance which include character qualities, disciplinary background and positive recommendations/decorations earned by the concerned officer. The assessment of the officers is as per comparative merit of the overall profile of the Officers within their own batch.

36. At this stage, we may also note the Composition of the Special Selection Board, which consists of the Chief of Army Staff as the Chairperson, Seven General Officers (Commanding-in-Chief), Vice COAS, and the Secretary (Military Secretary). In terms of the assignment made in the Transaction of Business Rules, the Appointment Committee of the Cabinet (ACC) is the Competent Authority to approve the empanelment of an Officer to the rank of Lieutenant General.

37. The revised Policy dated 31.12.2008 for the conduct of the Selection Boards, in order to ensure greater objectivity, introduced Quantification System in the matter of selection for empanelment to the higher ranks. The quantified model provides as under:-



“(a) 95 marks Will be given for quantified Parameters to include confidential reports (CRs), Courses, Honours and Awards.

(b) Five marks are earmarked for Value Judgement (VJ) by the Selection Board (SB) members for aspects that cannot be quantified.”

38. The said Policy was further revised, providing for more modifications on 04.01.2011, and it superseded all other policies on the conduct by the Selection Boards of Quantification System.

39. The Policy on “Award of Censure”, issued on 23.04.2007, was amended and promulgated on 11.08.2017. A revised QSS Policy for promotion was issued on 23.12.2017, applicable to all select ranks including for promotion to the rank of Major General and Lieutenant General.

40. In the conspectus of ‘*Guidelines of Assessment*’ issued by policies, we find that *vide* the Selection System Policy dated 06.05.1987, Paragraph 10 (i) postulates that whilst making a comparative merit of the overall profile of the officers within their own batch, the grading by the Selection Board is to be undertaken on the basis of the material placed before it and not from any ‘*personal knowledge*’.

41. Thus, it is important to ascertain whether the Respondents breached its own policy guidelines at the time of assessment of the Petitioner’s case for promotion to the rank of Lieutenant General.

42. The Respondents have claimed that Petitioner does not have an absolute right to promotion rather only for its consideration. The promotion to a selection post, the Respondents urged, depends upon several circumstances including an unblemished record, which is



necessary to protect public interest. They rely on **K.V. Jankiraman** (supra). While there can be no dispute on the said proposition of law, at the same time, it is incumbent upon the Respondents to establish that the Petitioner's *Reproof* could be taken into consideration by the Selection Board to deny him promotion.

43. In the present case, as per the Respondents, while following the laid down procedure, the then Lieutenant General had issued a SCN on 15.07.2019 to the Petitioner calling upon him to provide an explanation as to why a suitable action should not be taken against him, *inter alia*, in view of the Cyber Security lapses that occurred on his behalf on 21.02.2019. The contents whereof are as under:

“1. **WHEREAS**, you have taken over command of 25 Infantry Division on 01 December 2018.

2. **AND WHEREAS**, you as the user of official laptop with Medium Access Control (MAC) Address 58-94-6B-61-11-A4 while in full knowledge of the fact that commanders at all levels are responsible for execution of Cyber Defence functions, failed to comply with instructions issued vide Directorate General of Military Operations letter Number A/12100/Policy/MO-12 dated 18 September 2015 and allowed the official Internet facing laptop installed in your office (Office of the General Officer Commanding 20 Infantry Division) to continue to function on Windows operating system (Windows 7) instead of Bharat Operating System Solutions (BOSS) operating system as made mandatory vide Paragraph 98 of Army Cyber Security Instructions-2017.

3. **AND WHEREAS**, you also failed to obtain requisite waivers to continue to operate the official internet facing laptop in your office (Office of the General Officer Commanding 25 Infantry Division) on Windows operating system instead of BOSS operating system.

4. **AND WHEREAS**, you did not take due



cognisance of Army Cyber Group Cyber Alert Number 06-2019 issued by computer Emergency Response Team-Army vide Case Number B/51084/ArCyGp/T-3 dated 20 February 2019 and on 21 February opened an unsolicited phishing e-mail "EoMA Post Republic Day Gallantry Awards 2019" received on your personal e-mail from a dubious e-mail identity cedir@idsagov.in on your official internet facing computer in your office (Office of the General Officer Commanding 25 Infantry Division) resulting in a malware being installed on your official internet facing laptop leading to loss of classified and operational information from your office between 22 Feb 2019 to 10 May 2019.

*5. **NOW THEREFORE**, you are hereby informed and called upon to submit your defence, if any, in writing as to why suitable action should not be initiated against you for the above stated cyber security lapses.*

6. In case no reply submitted by you within 30 days of receipt of this Show Cause Notice, it will be assumed that you have no reason to urge against suitable action being initiated against you and action as deemed appropriate will be taken ex-parte."

44. The parties are *ad idem* on the facts that the Petitioner had duly replied to the aforesaid SCN on 13.08.2019 and keeping his reply into consideration, the Competent Authority awarded the *Reproof vide* letter dated 17.09.2019, which is in the form of a 'warning', reading thus:-

"REPROOF"

1. I have considered the reply to the show cause notice submitted by you vide your letter No 1001/GOC Sectt/Confid dt 13 Aug 2019.

2. I have concluded that you have lapsed on following:-

(a) You were the user of official laptop with Medium Access Control (MAC) Address 58-94-6B-



61-11-A4. You continued to use the official laptop on Windows operatin system (Windows 7) instead of Bharat Operating System Solutions (BOSS) operatin system as mandated vide Paragraph 98 of Army Cyber Security Instructions -2017, without obtaining the necessary waiver.

(b) You did not take due cognisance of Army Cyber Group Cyber Alert Number: 06-2019 issued by Computer Emergency Response Team-Army vide Case Number B/51084/ ArCyGp/T-3 dated 20 February 2019. You opened an unsolicited phishin e-mail "**EoMA Post Republic Day Gallantry Awards 2019**" from a dubious e-mail identity **cedir@idsagov.in** on 21 February 2019, resulting in a malware being installed on your official internet facing laptop.

3. You are hereby warned to refrain from such negligence and ensure due compliance of Army Cyber Security Policy 2017 to avoid any Cyber Security lapses in future."

45. The question that arises for our consideration is whether the *Reproof*, awarded vide letter dated 17.09.2019, could have been considered by the SSB for considering the suitability of the Petitioner for promotion to the subsequent higher rank i.e. Lieutenant General.

46. To answer this question, it would be relevant to examine concept of *Reproof* as a form of Censure, governed by the "Regulations for the Army" also known as Defence Services Regulations, which are issued under the authority of the Government of India. The Army Regulations 1962, in the Paragraph 327 governs the *Reproof*, which reads as under:-

"327: Administration of Reproof: Reproofs should not be administered in the presence of subordinates unless it is necessary for the purpose of making an example that the Reproof be public.

In no circumstances should Reproof take the form of



insult or abuse. It may be strong, but it should be directed to the actual fault committed and the language used should not be intemperate or offensive.”

47. The Defence Services Regulations were further revised by the Ministry of Defence, Government of India in 1987. The Paragraph 327 of the same governing Reproof, stood amended as under:

“327. Reproof.- (a) Reproof may be verbal or in writing or both.

(b) In no circumstances should Reproof take the form of insult or abuse. It may be strong but should be directed to the actual fault committed and the language used should not be intemperate or offensive. A Reproof should not be administered in the presence of subordinates unless, for the purpose of making an example, it is necessary that the Reproof be public.

(c) Warning, a minor censure, may take the form of Reproof and be administered verbally or in writing to service personnel by the officer commanding or by an authority superior in command to the officer commanding. A warning will not be recorded in the service documents of the person concerned.

(d) It should be ensured that before administering Reproof by way of a warning or otherwise the Competent Authority applies its mind to the case; and comes to a conclusion that ends of justice would be met by closing the case with Reproof. Once a decision has been arrived at and the case closed by administration of a Reproof by a Competent Authority, no superior authority can reopen the case.”

(Emphasis supplied)

48. The legal position that emerges from the aforesaid is that *Reproof* can be of two types, verbal or written and is in the form of a warning or a minor Censure. It is a warning, which is not to be recorded in the Service documents of the concerned Officer. Further,



the Rule provides that the Competent Authority must apply its mind to the case before administering *Reproof*, and once a conclusion has been arrived at and the case is closed by administration of *Reproof* by the Competent Authority, no superior authority can re-open the case.

49. We may also note that *Reproof* and Censure are disciplinary measures, used to address minor misconduct or shortcomings in Service of a personnel. They are a way of communicating disapproval or areas of improvement by the Competent Authority to the delinquent officer. The intent of *Reproof* is clear that it is issued for an action of a mild nature, minor negligence or a *bona fide* mistake, that no other inquiry seems necessary. Thus, it does not reflect in the Service dossier of an Officer.

50. The Policy letter No. 32908/AG/DV-1(P) dated 11.08.2017 further lays down the policy on 'Award of Censure to Officers'. It states that censure can take the form of 'Reproof, Displeasure or Severe Displeasure' of the officer awarding the censure. It further states that while *Reproof* would be governed by the Regulations of 1987, the authority to award censure, the type of censure that can be awarded and its operative duration shall be as under:

<u>"Authorities who can Award Censure"</u>	<u>Type of Censure that can be Awarded</u>	<u>Recording and validity</u>
(a) Central Government	(i) Severe Displeasure	Permanently Recorded in the Dossier
(b) COAS	(i) Severe Displeasure	Permanently Recorded in the Dossier
(c) GOC-in-C Comd, C-in-C (Army) Andaman & Nicobar Comd, and C-	(i) Severe Displeasure	Operative for ten years, effective from date of



<i>in-C (Army) Strategic Forces Comd</i>		<i>award</i>
	<i>(ii) Displeasure</i>	<i>Operative for ten years, effective from date of award</i>
<i>(d) GOC Corps, GOC Area, DG AR, DG BR, DG NCC, Commandant Cat 'A' Est (non below Lt Gen), Dy C-in-C (Army) Strategic Forces Comd (not below Lt Gen)</i>	<i>(i) Severe Displeasure</i>	<i>Operative for ten years, effective from date of award</i>
	<i>(ii) Displeasure</i>	<i>Operative for ten years, effective from date of award"</i>

51. Therefore, while *Reproof* is a form of Censure, it is still distinct from the same, as there is no life of *Reproof*. It can be verbal, leaving no record of the same. It, even if in writing, is not to be placed in the service record of the Officer. This distinction is also important as Clause 24 gives the 'Effect of Censure on Career Aspects' of an Officer. It explicitly states that the award of a censure does not debar an officer from being considered for promotion and other career aspects and may not be itself affect his promotion, selection, nomination etc. However, while it is operative, it is taken cognizance as part of the officer's overall record of service in assessing the officer as per relevant career policies governing such promotion, selection, nomination, etc. Therefore, as *Reproof* has no operative period, as a natural corollary, it cannot be taken into consideration for purposes of assessing the officer for purposes of promotion, selection, nomination, etc. A positive would rule out the negative if it is part of the same set up.

52. Further, it is the Respondents' own stand that the non-



recordable Censures are not to be placed before the SSB. We may note that *vide* Order dated 15.10.2021, Department of Military Affairs, Ministry of Defence, Government of India, while rejecting the Statutory Complaint dated 17.03.2021 filed by the Petitioner, has observed:-

“4. The General Officer's apprehension regarding mention of 'Reproof' in the impugned CR also appears misplaced. There is no mention of "Non-recordable Reproof" by any of the reporting officers in the CR. Moreover, it is pertinent to highlight that as per MoD note ID No 25 (1)/2017-D (MS) dated 05 Sep 17 non-recordable censures are not placed before Selection Boards (SSB and SB I).”

(Emphasis supplied)

53. Paragraph 327 of the Defence Services Regulations, 1987 (Revised), by express provision ‘*shall not be recorded in the service documents*’, mandates that the Reproof is not to form part of the Service Dossier of an Officer, and it was not originally placed before the SSB as per the said Regulation, but was summoned only on the asking of the Selection Board, as one of the Members on account of his personal knowledge, had brought to the notice about the Petitioner’s involvement in the Cyber Security Breach and the Reproof. Thus, the record was placed before the SSB which was considered by it for his non-empanelment. Therefore, once the case of the Petitioner was conclusively dealt with by the Competent Authority and the same could not have been reopened by any Superior Authority, in our view, the intent of the regulation has, hence, been defeated. The consideration of the *Reproof* by the SSB has led to re-



opening and re-evaluating the incident leading to the said *Reproof*, which was otherwise, not permitted by the Rules, moreso, without giving the Petitioner an opportunity to place his stand against the same. If this is permitted, there would be no finality after the award of *Reproof* and the same would become a harsher punishment and to the undue prejudice to an Officer's career, rather than being non-punitive in nature, as was envisaged by the Regulation.

54. Relevantly, we may quote observations from the decision in *Air Commdr. S.K. Mishra vs. Union of India*, (1997) SCC OnLine Del 845, passed by the learned Single Judge of this Court, as under:

"4. ...It is not the case of the respondent that on account of "Reproof promotion of the Petitioner was deferred or passed over. Respondents' case is based on the fact that despite "Reproof awarded by the Chief of Air Force, the Selection Board could go behind it to find out the cause of "Reproof. Meaning thereby on the basis of cause or the reason leading to the "Reproof the Selection Board could ignore the Petitioner for promotion. To my mind, the Selection Board could not have gone behind the cause or the reason. Once the Competent Authority on the basis of that cause i.e. report of C.B.I, had already taken action the Selection Board could not look into that report. If the award of "Reproof could be based as the basis of supercession only then the Selection Board could have ignored him or superceeded him but not on that cause i.e. report of C.B.I. for which the Petitioner had already been awarded "Reproof because that would amount to review or reopening the case which the Selection Board was not competent to do. ..."

xxx

9. Reading of this Section 327 shows that Reproof can be administered verbally under the Army Regulations. May be to bring the Award of "Reproof" at par with Army Regulations that amendment was made in Paragraph 26(d) vide corrigendum No. 52 of 23rd September, 1978 thereby deleting the word 'Reproof' from Paragraph



26(d). If 'Reproof' under the Army Regulations can be administered verbally, the Air Force authority in its wisdom by amending Paragraph 26(d) achieved the same results. That is the reason the "Reproof" has not to be reflected in the confidential report or on the personal file of the officer as per the amended Paragraph 26(d). Moreover, the censure of Displeasure or Severe Displeasure have the effect of negative marks upto the extent of the currency of the censure. It would be an anomalous position if "Reproof" is allowed to result in total denial of promotion while the censure of Displeasure result in reduction of just mark in the total grading. As already referred to above "Reproof as compared to Displeasure is the lesser and mildest punishment. If as suggested and argued by Mr. Mishra is accepted the result would be that 'Reproof' would become the strongest punishment which the drafters of Air Force Orders never intended."

(Emphasis supplied)

55. To our mind, the Paragraph 327 of the Army Regulations is not just a mere procedural Rule, rather it also embodies the fundamental principle of Fairness. Though, the Petitioner does not possess a vested right to promotion, however, he certainly has the right to be considered for promotion in accordance with the applicable Rules and Regulations. The right to be considered fairly is also a factor to be taken into account while adjudicating this aspect.

56. From perusal of the Original Record of the SSB Proceedings, it is evident therefrom that the Petitioner's merit was downgraded primarily as the Board Members proceeded to go behind the cause or reason for which the *Reproof* was awarded, while considering the overall profile of the Petitioner for empanelment to the rank of Lieutenant General.

57. The policy dated 06.05.1987 has been relied upon by the



Petitioner, which provides that the grading by the Selection Board has to be assessed from the material placed before it and not from any '*personal knowledge*'. The *Reproof*, not being recordable, was not to be placed before the SSB. The Selection Board should have considered only the material placed before it and not called for the record of *Reproof*, which was otherwise not to be placed before it as per the policy. The denial of promotion on the ground of *Reproof* alone, is unjustified and arbitrary.

58. Pertinently, had there been a different member who did not have personal knowledge about the *Reproof*, things would have fared differently for the Petitioner. As a consequence, this has prejudiced the Petitioner's case and influenced the members of the SSB, thereby vitiating the fairness of the selection procedure.

59. Needless to say, the Regulations for the Army, 1987 make it clear that all departmental orders and instructions are based on, and take their authority from these Regulations. Should any variance arise between such order and instructions and these "Regulations for the Army", the latter shall prevail. Thus, the matter is clear, the Regulations take precedence over the Policies and the Regulations are clear as noted by us hereinabove.

60. Unfortunately, the Respondents have taken a contrary and divergent stand, at one hand, they have rejected the Statutory Complaint of the Petitioner *vide* order dated 15.10.2021, by stating that non-recordable Censures are not placed before the Selection Boards (SSB and SB1), however, their stand taken before the learned



Tribunal and as well as this Court is that the *Reproof* had been pointed out on the personal knowledge of a member of the Board and was placed before the SSB. It appears as if the Respondents are trying to wriggle out of their non-compliance to the rules by taking contrary stands.

61. Viewed thus, the Respondents, in transgression of Paragraph 327 of the Defence Services Regulations, 1987 and Policy dated 06.05.1987 barring the Members of the Board from considering anything from personal knowledge and to account for material placed before it, cannot now take the plea that the SSB, while assessing the suitability of an officer for Apex rank, has inherent powers to also consider the gravity of misconduct/omission for which *Reproof* was awarded, once it was appropriately dealt with and closed as per Rules.

62. The Respondents have also tried to turn back the clock by contending that the negligence on the part of the Petitioner was grave, which could have resulted in serious security lapse. If such was the gravity of the negligence, a disciplinary inquiry would have been in order and a proper trial into the matter should have followed by affording proper opportunity to the Petitioner to present his defence. The Petitioner could also have been awarded a Censure, which has a life/operational validity and can be considered for purposes of promotion etc., as per the Rules/Policy. Having found that the case deserved only a *Reproof*, at the stage of promotion, the said *Reproof* cannot be made a basis to deny him promotion, especially when the Respondents' own policies and Defence Services Regulations do not



permit.

63. We shall, at this stage, also refer to the Policy Letter No. 04502/MS/Policy dated 23.12.2017, giving the “Quantification System of Selection”. It revised the ‘Quantified System’ for conduct of Selection Boards, which had been introduced on 31.12.2008 and earlier revised with effect from 04.01.2011. It gives the distribution of marks as under:-

“Broad Allocation of Marks

4. *Distribution of marks in the Overall Quantified Merit will be as under:-*

(a) **Quantified Weightage.** 95 marks will be allocated for quantified parameters to include Confidential Reports (CRs), Courses and Gallantry Awards.

(b) **Board Members Assessment (BMA).** Board members will assess each officer under consideration out of five marks. The assessment will be based on the officer’s overall profile including those aspects which have not been quantified.”

64. The overall Quantified Merit for various parameters is given in form of a table in Clause 5 of the Policy, as under:

“5. *The broad allocation of marks in the overall Quantified Merit for various parameters is given in the table below:-*

Parameters	Level of SB			
	No. 3 SB	No 2 SB	No. 1 SB	SSB
CRs in Reckonable Profile (as applicable)	89	91	93.5	93.5
Courses	04	02	0.5	0.5
Gallantry Awards	02	02	01	01
Quantified Total	95	95	95	95
Board Members Assessment	05	05	05	05
Quantified Merit	100	100	100	100



65. The Policy further, very succinctly, gives the prime weightage to the CRs and how they are to be marked, the marking of the Gallantry Awards, etc.

66. Importantly, the Policy gives the parameters on which the five marks allocated to “Board Members Assessment (BMA)” are to awarded. Clause 12 of the Policy, in this regard, reads as under:

“Board Members Assessment (BMA)

12. Five marks are allocated for Board Members Assessment. The assessment will be based on an officer’s overall profile including those aspects which have not been quantified. Unquantified aspects of an officer’s performance in his entire career will be considered for award of BMA. The following unquantified aspects will be assessed:-

*(a) **Performance.***

(i) Operational experience/Battle Performance Reports.

(ii) Service in difficult areas/challenging environment.

(iii) Overall consistency in performance.

*(b) **Potential,** Suitability for being employed in higher ranks.*

*(c) **Recommendation for promotion.** Negative recommendations for promotion will be assessed by the board. Board will also take into cognizance the recommendations for promotion in Command/ Staff Stream.*

*(d) **Honours and Awards:** Distinguished Service Awards will be assessed keeping in view the nature of achievement, appointment held and service at which the award is conferred. Gallantry Awards will be assessed as part of Board Members Assessment after they cease to have quantified weightage.*

*(e) **Special Achievements.** Any special achievements in the field of sports, adventure activities, civil awards, etc., captured in the CRD, will be assessed.*

*(f) **Disciplinary/Administrative Awards.** The past disciplinary/administrative record of the officer for the entire reckonable period or at least ten years will be placed before the Selection Board. While assessing officers with disciplinary background, the gravity and nature of offence and the service level at which the offence was committed will be taken into consideration.*



- (g) **Weak Remarks.** All weak Remarks captured in the CRD will be assessed.
(h) Confidential Reports enfaced as Inflated/Deflated.”

67. From a reading of the above, though one of the criteria for award of BMA is the ‘Disciplinary/Administrative record of the officer for the entire reckonable period’, the same is to placed before the Selection Board. As noted herein above, *Reproof* was not to be placed before the Selection Board. Therefore, it could not have been considered even for the awarding of the marks under the BMA.

68. Clause 13 of the Policy further entitles the Selection Board to make recommendation for non-empanelment irrespective of Quantified Merit. However, such power is restricted to cases of moral turpitude, gross negligence or acts of cowardice or poor performance in combat/operational situations, unofficer-like/negative character traits or overall weak profile. None of these circumstances, but for the *Reproof*, were made out against the Petitioner. The *Reproof*, therefore, played an important, however illegal, part in the non-empanelment of the Petitioner.

69. Though the Selection Board has a discretion in judging the relative merit of the Officers brought before it for considering them for promotion, at the same time, such discretion is not unguided nor can it be exercised arbitrarily, against the stated Policy directives, or whimsically. Unfortunately, present is one such case where the Selection Boards, repeatedly, relying upon *Reproof*, which it had no business to even know of, non-empanelled the Petitioner, thereby vitiating the selection process.



70. The reliance of the Respondents on the decision in *Air Vice Marshal S.L. Chhabra* (supra), is misplaced inasmuch as in the said case, the Selection Board had taken a decision to watch the performance of the Appellant therein for at least a year, as there was only one Appraisal report available by that time for their perusal, fact which was also recorded in the Selection Board's Proceedings in 1987. Thus, the Supreme Court did not interfere with the said decision of the Board. However, in the subsequent Selection Board in 1988, the Court found that the reason for non-empanelment in this Selection Board was due to consideration of the adverse remarks in his Appraisal Report, remarks which were later expunged in year 1989. The Supreme Court, in this view of the matter, directed the Respondents to reconsider the case of the Appellant therein with reference to year 1988 as against 1989, when he was actually promoted to the said rank.

71. That being said, in normal circumstances, when an individual superannuates, the employer and employee relationship stands terminated and therefore, promotion cannot be granted with retrospective effect. However, if a claim for promotion arises during employee's Service and he takes appropriate legal remedies to seek redressal against the unlawful denial of the same, however, the same is not addressed before his retirement, a Court might consider granting him a notional promotion to ensure that the employee receives the correct pension or seniority but not the financial gains. The maxim '*Actus Curiae Neminem Gravabit*' shall apply in such a case. The



Petitioner cannot be left high and dry only because of the delay in court process. As noted herein above, there was a considerable delay by the learned Tribunal in pronouncing its judgment and two weeks after the pronouncement of the Impugned Order, the Petitioner had retired on 31.01.2024.

72. If an employee had a legitimate claim for promotion that arose during Service, and had taken legal remedies against the denial of the same, the right to be considered for promotion may survive retirement. Moreover, every individual aspires, after rendering continuous number of years in Service and having earned commendations and several accolades, to be making up to the rank of Apex rank, in accordance with the laid out Rules and Regulations. Therefore, to retire at a particular rank is, not only a matter of status, but to enjoy the privileges attached to the said rank. In reference to this, we may quote from the decision of this Court in **Major Joginder Singh Gill vs. Union of India & Ors.**, (2000) SCC OnLine Del 429:-

“Undoubtedly in Army services the rank at which a particular officer retires is a matter of status for him even after his retirement which rank he carries for the rest of his life and enjoys various privileges, apart from status because of this rank.”

73. Keeping into account the peculiar facts and circumstances of the present case, as well as the extant Policies and Regulations, we set aside the Impugned Order dated 17.01.2024. Further, while setting aside the Orders dated 08.03.2021 and 15.10.2021 as well as the SSB Proceedings *vide* Final Review case held in December, 2021, we direct the Respondents to reconsider the Petitioner’s case for notional



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promotion as Lieutenant General, with respect to the SSB held in June, 2020 (Fresh), February, 2021 (First Review) and December, 2021 (Final Review) by holding a Review Selection Board. In case the Petitioner, who has now retired, is found fit to be promoted to the rank of Lieutenant General, the Respondents are directed to grant him notional promotion and rank, and the consequential benefits that is, re-fixation of his pay for the purpose of pension on the basis of notional seniority albeit without any arrears of wages. This exercise must be completed within the period of 12 weeks of this judgment.

74. We make it clear that this order will not entitle the Petitioner to seek reinstatement in service or actual pay post his retirement. The judgment entitles him only to the rank and consequential re-fixation of his pension.

75. The writ petition is disposed of with the above directions.

76. The original record shall be returned to the respondent/Department by the Court Master.

SHALINDER KAUR, J.

NAVIN CHAWLA, J.

JULY 01, 2025
KM/SU