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

% *Date of Decision: 25th November, 2026*

CNR No. DLHC010531382026

\+ W.P.(C) 16317/2026, CM APPL. 76434/2026

UNION OF INDIA AND ORS. .....Petitioners

Through: Mr. Satya Ranjan Swain, CGSC with Mr Sanjay Pal G.P., Wg. Cdr. Gagan Kant Sharma and Mr. Shamim Akhtar DPOZL.

versus

GROUP CAPTAIN PRASHANT KUMAR GUPTA (22798-K) .....Respondent

Through: Group Capt. Y Venugopal (Retd.)

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH
HON'BLE MR. JUSTICE GURVINDER PAL SINGH

JUDGEMENT

JYOTI SINGH, J.

1. This writ petition is filed on behalf of the Petitioners challenging judgment dated 05.08.2026 passed by learned Armed Forces Tribunal, Principal Bench, New Delhi (Tribunal) in OA 3484/2024, whereby the Tribunal has directed the Petitioners herein to promote the Respondent, who was Applicant before the Tribunal, to the rank of Air Commodore with antedated seniority within three months from the date of receipt of copy of the judgment.

2. To the extent necessary, facts of the case are that Respondent was commissioned in Indian Air Force on 18.12.1993 in the Accounts Branch and posted to Air Force Station, Jorhat as an Accounts Officer. During his

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service tenure, Respondent held several important field and staff appointments and discharged his duties with dedication and distinction, as detailed in the OA. In recognition of his meritorious service and looking at his professional competence, Respondent was promoted to various ranks, the last one being to the select rank of Group Captain on 05.03.2015 on first consideration.

3. Petitioners No. 2 and 3 herein notified the revised Promotion Policy for Air Ranks on 24.11.2020 after approval by Ministry of Defence (MoD) and in terms of Paras 5 and 6 of the Policy, promotion to the rank of Air Cmde is considered by No. 1 Promotion Board on the basis of Appraisal Reports and Board Marks awarded on parameters such as employability, leadership, personality and potential for higher responsibility. Respondent was considered for promotion to the rank of Air Cmde by Promotion Board No. 1(B)/2022 held from 16.02.2022 to 18.02.2022 for vacancies for the year 2022-2023, but was not empanelled owing to lower comparative merit. Respondent was again considered by PB-1(B)/2023 on 07.08.2023 along with five other officers of the Accounts Branch against two available vacancies and was second in the Overall Order of Merit (OOM). The Board proceedings were forwarded to Secretary/DMA, MoD for approval. Certain clarifications were sought by DMA/MoD vide letter dated 23.08.2023, which were provided by Dir PO-2, Air HQ vide letter dated 24.08.2023. Thereafter, the Board proceedings were returned by DMA/MoD under letter dated 29.08.2023 seeking clarifications regarding punishments awarded to the Respondent, to which response was sent by Dir PO-2, Air HQ and the recommendations of the Board held on 07.08.2023 were thereafter returned by DMA/MoD vide letter dated 26.09.2023, for re-consideration in light of Reproof awarded to the Respondent.

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4. Pursuant to directions of DMA/MoD, Review PB-1(B)/2023 was convened on 27.10.2023 and as per the re-assessed merit, Group Captain C. Thomas (now Air Cmde) ranked No.1 in the OOM while Group Captain Kalpa Ghosh (now Air Cmde) ranked No.2 and Respondent was at No. 3 against the two vacancies under consideration. Recommendations of Review PB-1(B)/2023 were forwarded to DMA/MoD for approval, however, the proceedings were returned under letter dated 07.11.2023 seeking clarification as to why Group Captain Kalpa Ghosh was recommended by Review PB-1(B)/2023, when he was not recommended by the original Board. Dir PO-2, Air HQ vide letter dated 08.11.2023 sent a clarification that recommendation of Group Captain Kalpa Ghosh was a natural consequence of the Respondent coming at Serial No. 3 in the final merit drawn up by the Review PB-1(B)/2023. By note dated 16.11.2023, DMA/MoD sought the CR dossier of Group Captain Kalpa Ghosh, which was sent by Air HQ but the Review Board proceedings were returned directing Air HQ to reconsider the recommendations and in furtherance thereof, Air HQ convened the Reconstituted Review PB-1(B)/2023 (Accounts Branch) on 05.01.2024, however, Respondent continued to be at No.3 in the OOM. Recommendations of the Board were approved by the Competent Authority and the Select List was declassified on 06.02.2024 and Respondent was not empanelled while Group Captain C. Thomas and Group Captain Kalpa Ghosh were approved for promotion to the rank of Air Cmde. Respondent was again considered as a third timer by PB-1(B)/2024, but was not empanelled due to low comparative merit.

5. Respondent submitted a statutory complaint dated 19.03.2024 against his non-empanelment but the same was rejected by Petitioner No.1 and Respondent was informed of the rejection vide communication dated

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12.06.2024, whereafter he approached the Tribunal for quashing the impugned communication as also signal dated 06.02.2024, whereby result of Reconstituted Review PB-1(B)/2023 was declassified. Direction was sought to the Petitioners to promote the Respondent to the rank of Air Cmde in terms of the recommendations of original PB-1(B)/2023 held on 07.08.2023, with all consequential benefits. By the impugned judgment, Tribunal allowed the OA and directed the Petitioners to promote the Respondent to the rank of Air Cmde within three months with antedated seniority, which is the subject matter of challenge before us by the Petitioners.

CASE OF THE RESPONDENT

6. Due to Respondent's merit, dedication and professional competence, he was promoted from time to time after he was commissioned in Indian Air Force in the Accounts Branch on 18.12.1993. Respondent was promoted to the select rank of Group Captain on 05.03.2015 as a fresh case along with his batch. Respondent was awarded Commendation by AOC-in-C Maintenance Command in January, 2001, Commendation by Chief of Air Staff in October, 2004, Appreciation by Commander, UN Mission in 2006, Commendation by AOC-in-C in January, 2012 and CISC Commendation in 2020, apart from other recognitions. Respondent was selected on merit to undergo exclusive and merit-based career courses as also for deputation to UN Peace keeping Mission in Congo in September, 2005 and thereafter, detailed for PGDFM and Higher Defence Management Course. Respondent was one amongst the first two officers in the Group Captain rank in the Accounts Branch to be awarded Professional Category 'A'.

7. Respondent was considered for the first time by PB-1(B)/2022 for promotion to the rank of Air Cmde but was not empanelled. He was again considered by PB-1(B)/2023 on 07.08.2023 along with five other officers

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and learnt that he was recommended as against the second vacancy. However, the Board proceedings were returned by MoD for holding Review Board and in this Board, instead of the Respondent, Group Captain Kalpa Ghosh was recommended. It was further learnt that recommendations of Review Board were returned by DMA/MoD seeking clarifications in respect of the said officer, on receipt of which Air HQ was directed to re-convene the Board and reconsider the recommendations. Reconstituted Review PB-1(B)/2023 was convened on 05.01.2024 and result was declassified on 06.02.2024, wherein Group Captain C. Thomas and Group Captain Kalpa Ghosh were recommended for promotion and the Competent Authority approved the recommendations.

8. Review PB-1(B)/2023 acted illegally and *mala fidely* by taking cognizance of the Displeasure awarded to the Respondent by AOC-in-C on 28.03.2000 due to alleged financial impropriety, despite the fact that the same was already considered by original PB-1(B)/2023 in August, 2023, wherein Respondent was recommended for promotion. In terms of Para 26(a) of AFO 03/2008 censure is to be considered only once by the Promotion Board before which officer's case first comes up for consideration after award of censure. In the instant case, Displeasure was awarded on 28.03.2000, when Respondent was holding the rank of Flight Lieutenant and was considered for promotion to the rank of Squadron Leader. Subsequently, Respondent was promoted as Wing Commander with his batchmates as also Group Captain in the first consideration, which is a select rank. Displeasure was also considered by PB-1(B)/2022, wherein Respondent was considered for first time for promotion to the rank of Air Cmde and there was no plausible reason to consider the Displeasure in the Review Promotion Board again. Also for Air ranks, Para 26(b)(i) lays down

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that if censure is awarded after the last promotion, the same needs to be specifically considered by No. 1 Promotion Board based on gravity of the lapse/misconduct. Since the Displeasure was awarded in 2000 for a lapse in 1997, it is not understood how it was taken into consideration by the Review PB-1(B)/2023 and the only reason that comes forth is that the intent was to lower the overall merit of the Respondent to stall his promotion.

9. Displeasure awarded to the Respondent in 2000 pertains to supervisory lapse by the Respondent when he had only three and a half years of service and was tenating the appointment of Senior Accounts Officer. Due to a clerical error by Officers' Pay Section Clerk, LTC advance of an officer of the station was not cleared on time and subsequently, after identification in the audit the claim was settled. Court of inquiry was ordered at the station and apart from other officers/staff, Respondent was awarded Displeasure terming it as financial impropriety. Review Board ought not to have taken into consideration the Displeasure awarded years ago and that too for a trivial aberration. The *mala fides* of the Petitioners are further evident from the fact that Review PB-1(B)/2023 also took into consideration the Reproof awarded to the Respondent on 23.06.2016 for submitting false LTC claim of Rs.24,940/- overlooking Para 16 of AFO 03/2008 and Para 712 of Regulations for the Air Force, 1964 (1964 Regulations), which provide that Reproof is not a recognized punishment under the Air Force Act, 1950 (1950 Act) and will not be entered in the officer's record as also the input/clarification by Air HQ pointing out this fact vide note dated 06.09.2023, in response to clarification sought by DMA/MoD vide note dated 29.08.2023. The action of DMA/MoD was motivated and at the instance of Group Captain T. Johnson, who was posted in MoD and knew that if Respondent and Group Captain Kalpa Ghosh were

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not empanelled, he would be approved for promotion, being at No. 4 in OOM.

10. The Review PB-1(B)/2023 as also the Reconstituted Review PB-1(B)/2023 took into consideration the Reproof erroneously and in violation of Policy dated 20.12.2021 issued by Air HQ stating that award of censure is a matter of custom of service and depending on the severity, it may take the form of Reproof, Displeasure or Severe Displeasure but in terms of Para 712 of 1964 Regulations, Reproof is not a recognized punishment and will not be entered in the Officer's or WO's record and accordingly, all entries having record of Reproof have been deleted from the database, with the sanction of the Chief of Air Staff. It is therefore not understood how Review PB-1(B)/2023 took into consideration the Reproof. This had a direct adverse impact on the OOM of the Respondent and his original ranking at No. 2 came down to No.3 in the Review PB-1(B)/2023 and Reconstituted Review PB-1(B)/2023. As per Promotion Policy, 95% weightage at the time of consideration for promotion to the rank of Air Cmde is assigned to Appraisal Reports of the preceding 10 years while remaining 5% is of the average Board Marks awarded by members of the Promotion Board on the basis of employability, leadership, personality and potential for higher responsibility. Respondent was originally awarded 03.981 marks by the Board, however, owing to the Reproof, the average Board Marks came down to 03.411 and as a result, the final marks changed from 87.729 to 87.159 and Respondent's OOM came down to No. 3 from No. 2.

11. Tribunal rightly noted that there was nothing on record to show why Board members awarded lesser marks to the Respondent in the Review Promotion Board as compared to the marks in the original Board, when the

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gap between the two Boards was barely two and a half months and the only plausible reason was re-consideration of Respondent's merit taking into account the Reproof, which was a patent illegality and reflected legal bias and correctly held that Review PB-1(B)/2023 proceedings of 27.10.2023 and Reconstituted Review PB-1(B)/2023 proceedings were invalid. The fact that there was a clear design to help Group Captain T. Johnson is also evident from the fact that even the Review PB-1(B)/2023 proceedings were sent back for clarification with an observation on the candidature of Group Captain Kalpa Ghosh, so that the Respondent as also the said officer are not empanelled and Group Captain T. Johnson comes at No.2 in the OOM and is empanelled against the 2nd available vacancy.

CASE OF THE PETITIONERS

12. The impugned judgment passed by the Tribunal is legally flawed and deserves to be set aside. Tribunal failed to appreciate that there was no legal infirmity in the assessment of merit of the Respondent by Review PB-1(B)/2023 and Reconstituted Review PB-1(B)/2023, which was purely based on the promotion policy, wherein 95% marks are towards the Appraisal Reports and 5% are average Board Marks. There is also no infirmity in taking into consideration the Reproof awarded to the Respondent owing to financial irregularity in submitting a false LTC claim. Air Cmde is a high rank in the Air Force and there was no reason why a Promotion Board would have ignored the Reproof and recommended the Respondent for promotion as against the option of promoting an officer with a clean record and good merit. It is trite that Tribunal cannot substitute its own assessment in matters of promotion as this is the domain of the Promotion Boards subject to final approval by the Competent Authority. The Promotion Boards comprised of senior officers with vast experience, who

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were experts in the field and their judgment on merit cannot be questioned in a judicial review *sans* allegations of *mala fides,* bias or patent illegality and significantly, Tribunal has not rendered any finding of *mala fides* or bias against any member of both the Review Boards.

13. The average Board Marks given by the members of the Promotion Board are discretionary and are awarded independently by each member after considering the entire service profile including adverse entries in respect of all officers in the zone of consideration. The mere fact that the marks were lower in the Review Promotion Boards proceedings, comparative to those awarded by the original Board proceedings, does not establish any illegality as the selection is on a comparative merit and competition is more and more as when goes up the pyramid. No fault can be found with the assessments of the Boards in taking into consideration the Reproof as this was in consonance with the promotion policy. Tribunal's observation that "*the only plausible reason"* for reduction in overall marks of the Respondent was the observation by MoD to take into consideration the Reproof, is conjectural, inasmuch as no material was placed on record by the Respondent to show that the members of the Boards had abandoned their independent judgment.

14. Promotion to the rank of Air Cmde is not based on seniority alone but on comparative evaluation of Appraisal Reports of preceding 10 years for which 95% marks are allocated and remaining 5% are the Board Marks as per Promotion Policy dated 24.11.2020. Respondent was awarded Reproof on 23.06.2016 for submitting a false LTC claim amounting to Rs.24,940/-. The claim was supported by PNR number, however, Railway record revealed that tickets had been cancelled before commencement of the journey. Additionally, Displeasure was also awarded to the Respondent by

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AOC-in-C, MC on 28.03.2000 and the Board Marks were calculated and awarded on the basis of this adverse material on record in the profile of the Respondent and Petitioners cannot be faulted for not empaneling the Respondent.

15. Respondent cannot claim any right of promotion on the basis of proceedings of original PB-1(B)/2023 held on 07.08.2023 since recommendations were not approved by the Competent Authority and hence, no vested right accrued in favour of the Respondent. The Competent Authority DMA/MoD, which is the approving authority for promotions, has an inherent power to send back the proceedings to the concerned departments for holding a Review Promotion Board and reconsidering the recommendations, wherever it is found necessary to do so. An approving authority, beyond any doubt, has the power not to approve the recommendations and till such time the approval is granted, the Board proceedings are inchoate and grant no right to the officer under consideration to insist that the recommendations must be approved. In ***Dalpat Abasaheb Solunke and Others v. Dr. B.S. Mahajan and Others, 1989 SCC OnLine SC 346,*** the Supreme Court held that it is not the function of the Court to hear appeals over decisions of Selection Boards and to scrutinize the relative merits of the candidates, which should be left to the Selection Committee which has the expertise on the subject and Selection Committee's decision can be interfered only on limited grounds i.e., illegality or patent material irregularity in constitution of the committee or its procedure etc. In ***Air Vice Marshal S. L. Chhabra, VSM (Retd.) v. Union of India and Another, 1993 Supp (4) SCC 441,*** the Supreme Court held that while exercising power of judicial review, Court cannot venture to assess and appraise the merit or grading of an officer.

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16. Tribunal failed to appreciate that promotions in Armed Forces is pyramidical and are not granted based on individual merit but on comparative merit with the officers under consideration and the number of vacancies being few, the process is competitive and only top performing officers with best comparative merit are promoted. Respondent's reliance on Para 26(a) of AFO 03/2008 is misplaced as the said provision pertains to promotions upto the rank of Group Captain and below. For promotions to Air Ranks, Para 26(b)(ii) applies which provides that complete service record including all censures awarded to an officer, shall be taken into consideration by the Promotion Board and other Competent Authorities while determining suitability for promotions. In the instant case, the Review PB-1(B)/2023 and Reconstituted Review PB-1(B)/2023 acted strictly in accordance with Promotion Policy and Para 26(b)(ii) of AFO 03/2008 and there was no illegality in taking into consideration the Reproof awarded to the Respondent, which was a part of his overall service record.

ANALYSIS AND FINDINGS

17. The primordial grievance of the Respondent is, as captured by the Tribunal, that PB-1(B)/2023 recommended him for promotion to the rank of Air Cmde as he was at No.2 in the OOM, however, DMA/MoD did not approve the recommendation and directed holding of Review PB-1(B)/2023/Reconstituted Review PB-1(B)/2023, which did not recommend empanelment of the Petitioner as his OOM had dropped to No.3 and there were only two vacancies under consideration. Tribunal ruled in favour of the Respondent finding that the Reproof awarded to the Respondent on 23.06.2016 was wrongly considered by the Review PB-1(B)/2023/Reconstituted Review PB-1(B)/2023 on the dictates of

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DMA/MoD, despite the fact that Reproof is not a recognized punishment as per AFO 03/2008 and Para 712 of 1964 Regulations and Dir PO-2, Air HQ had given this clarification vide Note dated 06.09.2023 in response to DMA's Note dated 29.08.2023.

18. Parties are not at variance that original PB-1(B)/2023 held on 07.08.2023 had considered 6 officers for promotion to the rank of Air Cmde including the Respondent and based on the Appraisal Report Merit and Board Marks, Respondent was at No.2 in OOM. Comparative merit of the officers extracted by the Tribunal in the impugned judgment is reproduced hereunder for ease of reference:-

TABLE-A

PROMOTION BOARD NO. 1(B) /2023 (Accts Branch)							
Sl No.	*Name of Officer*	*AR Merit*	*95% AR WTG*	*BM Merit*	*AVG Board Marks*	*Final Marks*	***Overall Order of Merit (OOM)***
			(a)		*(b)*	*(a+b)*	
1.	*Gp Capt Charles Airben Thomas*	*2*	*83.822*	*1*	*04.019*	*87.841*	**1**
2.	***Gp Capt Prashant Kumar Gupta***	***3***	***83.748***	***2***	***03.981***	***87.729***	**2**
3.	*Gp Capt Kalpa Ghosh*	*1*	*84.286*	*4*	*03.404*	*87.690*	**3**
4.	*Gp Capt Thomas Johnson*	*4*	*83.389*	*3*	*03.750*	*87.139*	**4**
5.	*Gp Capt Rajneesh Bhatia*	*5*	*83.378*	*5*	*03.288*	*86.666*	**5**
6.	*Gp Capt Atul Pokhriyal*	*6*	*82.872*	*6*	*03.192*	*86.064*	**6**

19. Since there were two vacancies, being at OOM No.2, Respondent would have been empanelled. However, when the Promotion Board proceedings were forwarded to DMA/MoD for approval, they were not approved and instead clarification was sought from Dir PO-2, Air HQ regarding punishments awarded to the Respondent. Admittedly, this exercise was carried out at the behest of Group Captain T. Johnson, who at the relevant time was posted at MoD as Director, DMA (Gen-1). Group Captain

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T. Johnson, vide communication dated 28.08.2023, wrote to Joint Secretary (Est & Coord) that Respondent was awarded Severe Reprimand in 2009 besides being implicated for falsifying his LTC claim for an amount of Rs.24,940/- in 2015 and therefore, his promotion to a select rank will set a wrong precedence. Taking cognizance of this communication, clarification was sought from Air HQ regarding punishments awarded to the Respondent pertaining to major financial irregularities.

20. The original file shown to us during the course of hearing by the Petitioners reflects, Dir PO-2 vide Note dated 06.09.2023, clarified that no punishment of Severe Reprimand was awarded to the Respondent in 2009 as per record of the department. Insofar as the LTC claim for 24.09.2014 was concerned, Reproof was awarded on 23.06.2016, however, it was not entered in the service record of the Respondent as Reproof is not a recognized punishment in terms of Para 712 of 1964 Regulations as also AFO 03/2008. However, DMA/MoD returned the Board proceedings of PB-1(B)/2023 to Air HQ stating that recommendations of the Board merited reconsideration in view of the Reproof awarded to the Respondent for financial impropriety. This triggered the convening of Review PB-1(B)/2023 on 27.10.2023, which reassessed the comparative merit of all the officers including the Respondent. On review by PB-1(B)/2023, the Appraisal Report marks of the Respondent remained the same i.e. 83.748, but the Average Board Marks reduced from 03.981 to 03.411 and resultantly, Respondent was placed at No.3 in OOM since the final marks consequently reduced from 87.729 to 87.159 in Review PB-1(B)/2023. Relevant table showing the final marks as also the OOM of all officers under consideration of Review PB-1(B)/2023 is as follows:-

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TABLE-B

REVIEW PROMOTION BOARD NO. 1(B) /2023 (Accts Branch)							
Sl No.	Name of Officer	AR Merit	95% AR WTG	BM Merit	AVG Board Marks	Final Marks	Overall Order of Merit (OOM)
			(a)		(b)	(a+b)	
1.	Gp Capt Charles Airben Thomas	2	83.822	1	04.036	87.858	1
2	Gp Capt Kalpa Ghosh	1	84.286	3	03.446	87.732	2
3.	**Gp Capt Prashant Kumar Gupta**	**3**	**83.748**	**4**	**03.411**	**87.159**	**3**
4.	Gp Capt Thomas Johnson	4	83.389	2	03.661	87.050	4
5.	Gp Capt Rajneesh Bhatia	5	83.378	5	03.304	86.682	5
6.	Gp Capt Atul Pokhriyal	6	82.872	6	03.196	86.068	6

21. Recommendations of Review PB-1(B)/2023 were forwarded to DMA/MoD on 27.10.2023 for approval. The Board proceedings were again returned by DMA/MoD under letter dated 07.11.2023 with an observation that Group Captain Kalpa Ghosh was recommended by the Review Board without any justification inasmuch as his name was not recommended by original PB-1(B)/2023. Certain other clarifications were also sought from Air HQ, which responded vide letter dated 08.11.2023 clarifying that in the original Promotion Board, the comparison of the officer with regard to requirement of more expertise/experience to tenate higher appointment in the rank of Air Cmde was not in absolute terms and in the changed circumstances, where Respondent, who was at Serial No.2 in the final merit in the original Board was relegated to Serial No.3 in the Review Board, Group Captain Kalpa Ghosh was automatically upgraded to Serial No.2. On receiving this clarification, DMA/MoD vide Note dated 16.11.2023 sought CR Dossier of Group Captain Kalpa Ghosh which was sent by Air HQ vide Note dated 16.11.2023 itself. DMA/MoD again returned the Review Board proceedings directing Air HQ to reconsider the Review Board proceedings

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and basis this direction, Air HQ convened Reconstituted Review PB-1(B)/2023 on 05.01.2024. Record indicates that after assessing the comparative merit of all officers under consideration, the Appraisal Report marks of the Respondent remained constant at 83.748 but the Board Marks were 03.429 and he remained at No.3 in OOM. Relevant table depicting the final marks as also the OOM of all 6 officers under consideration is as follows:-

TABLE-C

Reconstituted Review Promotion Board No. 1(B) /2023 (Accts Branch)							
Sl No.	*Name of Officer*	*AR Merit*	*95% AR WTG*	*BM Merit*	*AVG Board Marks*	*Final Marks*	***Overall Order of Merit (OOM)***
			(a)		*(b)*	*(a+b)*	
1.	*Gp Capt Charles Airben Thomas*	*2*	*83.822*	*1*	*04.036*	*87.858*	***1***
2	*Gp Capt Kalpa Ghosh*	*1*	*84.286*	*3*	*03.429*	*87.715*	***2***
3.	***Gp Capt Prashant Kumar Gupta***	***3***	***83.748***	***3***	***03.429***	***87.177***	*3*
4.	*Gp Capt Thomas Johnson*	*4*	*83.389*	*2*	*03.661*	*87.050*	***4***
5.	*Gp Capt Rajneesh Bhatia*	*5*	*83.378*	*5*	*03.286*	*86.664*	***5***
6.	*Gp Capt Atul Pokhriyal*	*6*	*82.872*	*6*	*03.232*	*86.104*	***6***

22. Competent Authority approved the recommendations of the Reconstituted Review PB-1(B)/2023 and the result was declassified on 06.02.2024 but Respondent was not empanelled being at No.3 of OOM as there were only 2 vacancies. Respondent was again considered by PB-1(B)/2024 as third timer but was not empanelled due to low comparative merit. As noted above, the Tribunal came to a conclusion that the only plausible reason for award of lesser Board Marks to the Respondent in the Review and Reconstituted PB-1(B)/2023 was owing to consideration of Reproof given to him on 23.06.2016 as there was nothing else brought on record to justify change of discretionary Board marks and the gap between

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the two Selection Board proceedings was barely two and a half months. The Tribunal also observed that the act of altering the merit of the Respondent based on consideration of Reproof was not permissible in law and was a case of legal bias and in this backdrop held that the proceedings of Review Board held on 27.10.2023 and Reconstituted Review Board held on 05.01.2024 were invalid and the original PB-1(B)/2023 proceedings held on 07.08.2023 were valid and resultantly, directed Petitioner to promote Respondent with ante-dated seniority.

23. Having considered the submissions of the parties and after perusal of the original file containing correspondence between DMA and Dir PO-2 and after examining the impugned judgment of the Tribunal, we are of the view that the judgment warrants no interference by this Court. Parties are not at variance that in the original PB-1(B)/2023, Respondent was awarded 83.748 marks under the 95% Appraisal Report marks and the Average Board marks were 03.981. Basis these marks, the final marks of the Respondent were 87.729 and as can be seen from **Table-A** above, he was at No.2 in the Overall Order of Merit since Group Captain Kalpa Ghosh was given total of 87.690 marks and he was at No.3. Group Captain T. Johnson was awarded 87.139 total marks and he was at Serial No.4 in the overall merit. There is no dispute that in all the 3 considerations, i.e. by Original, Review and Reconstituted Review Board, Respondent's marks for the Appraisal Reports were constant and therefore, the only bone of contention is with respect to Average Board Marks, which the Respondent attributes to the *mala fide* consideration of the Reproof awarded to him on 23.06.2016.

24. It is pertinent to mention at this stage that when Respondent was considered by original PB-1(B)/2023, the Displeasure awarded to him on 28.03.2000 by AOC-in-C, MC was taken into consideration. This is

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captured by the Tribunal in paragraph 33 of the impugned judgment. The Displeasure was awarded for not carrying out required supervisory checks by the Respondent, which delayed the clearing of LTC advance of another officer. Notably, when the Displeasure was awarded in 2000, Respondent was in the rank of Flight Lieutenant and had only three and a half years of service. Despite the Displeasure being considered, Respondent was at No.2 in OOM with 03.981 marks. Two things clearly flow from this position. Firstly, Para 26(b)(ii) stands complied with inasmuch as the Displeasure *albeit* awarded in 2000, was taken into consideration as it was part of complete service record and more importantly, despite taking into consideration the Displeasure, Respondent was at No.2 in the overall merit.

25. Therefore, the Tribunal is right in observing that in the absence of any other material on record and taking into consideration that the gap in the Original Board and the First Review Board was two and a half months, the only plausible reason for award of lesser Board Marks in the Review Board to the Respondent could be the observation of DMA/MoD to reconsider Respondent's merit taking into consideration the Reproof, which was considered. Tribunal is also right that this exercise was a patent illegality inasmuch as the December, 2021, Air HQ Policy expressly provided that award of censure is not a recognized punishment and therefore, all entries in the record of officers pertaining to Reproof shall be deleted from the database and this policy was issued with the sanction of Chief of Air Staff. We have ourselves perused the policy dated 20.12.2021 which pertains to "*Deletion of Entry of 'Reproof' from Database"* and provides that in terms of Para 712 of 1964 Regulations, Reproof of an officer or a Warrant officer is not a recognized punishment and will not be entered in their record, though it may be referred to, if necessary, in a confidential report.

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Accordingly, sanction was obtained from Chief of Air Staff to purify the database and delete all Reproof entries awarded to officers. Relevant portion of the Policy letter is as follows:-

> 3. Award of censure is a matter of custom of service in accordance with which it may, in the order of severity, take the form of 'Reproof', Displeasure or 'Severe Displeasure'. A censure may be awarded for offences/lapses which are not of such serious to warrant disciplinary action under AF Law.
>
> 4. In terms of Para 712 of the Regulations for the Air Force, 1964, the 'Reproof' of an officer or a WO is not a recognized punishment and will not be entered in the Officer's or WO's record though it may be referred to, if necessary, in a confidential report on the Officer or WO concerned. Accordingly, sanction was obtained from CAS to purify the data base and delete all 'Reproof' entries awarded to Officers at Air HQ data base and for WOs at AFRO data base. Consequently, all entries having record of 'Reproof' have been deleted in respect of Officers from the data base maintained at AOA CC. Similarly, AFRO has also deleted all 'Reproof' entries in respect of WOs.
>
> 5. Further, it is pertinent to mention that the database in respect of discipline records of Officers and WOs has been purified and the entries of 'Displeasure' and 'Severe Displeasure only are being reflected.
>
> 6. In view of above, it has been decided at appropriate level that the copy of Censure letters awarded in the form of 'Reproof' are not to be forwarded to this HQ. Henceforth, a quarterly return be submitted to this department in respect of Officers and Warrant Officers awarded Censure in the form of 'Reproof'.
>
> 7. Request ensure compliance.

26. It is significant to note that DMA/MoD had directed Air HQ to reconsider the recommendation of original PB-1(B)/2023, despite being completely aware of the fact that Reproof cannot be taken into consideration owing to a proscription in Para 712 of 1964 Regulations and was not oblivious of this position and we say so because on a clarification sought by DMA/MoD vide note dated 29.08.2023, Dir PO-2 had specifically clarified in his Note dated 06.09.2023 that Reproof cannot be taken into consideration and referred to the rule position in this regard. Tribunal has captured both the communications in paragraphs 33 and 34 of the judgment and relevant paragraphs are as follows:-

> *"33. We have perused the selection board proceedings of all the selection boards in respect of the applicant for his second chance. The original*

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selection board proceedings were held on 07.08.2023; the disciplinary record of the applicant was put up to the selection board and reads as under :

"FLT LT GUPTA PK 22798 K ACCTS

Entry No. 1 AWARDED 'DISPLEASURE' OF THE AOC-IN-C, MC ON 28 MAR 2000 IN CONNECTION WITH A COI WAS CONDUCTED AT RAME (W) AF ON 11 NOV 99 AND SUBSEQUENT DAYS TO ASCERTAIN THE CAUSES FOR NON-BLAMEWORTHY FOR THE FOLLOWING:-

"NOT C ARRYING OUT THE REQUIRED SUPERVISORY CHECKS WHILE HANDLING THE FINANCIAL DOCUMENTS."

From the above document, it appears that the selection board did take into account the award of 'Displeasure' of the AOC-in-C, Maintenance Command to the applicant (awarded on 28.03.2000) for not carrying out the required supervisory checks while handling the financial documents, whilst considering the applicant for promotion in this selection board. The applicant was third in the ACR merit (AR), however, due to award of board marks, the applicant's OOM moved to second place. Air HQ had given appropriate justification for deviation in the OOM. The said board proceedings were however returned to Air HQ by MoD/DMA with specific observations vide its note DMA/MoD ID No.18(3)/Air/PB-1(B)/Accts/ DMA/Estt (Pers) dated 29.08.2023 and the observations read as under:

"(a) Whether Gp Capt PK Gupta was awarded Severe Reprimand in the year 2009 for any reason, and was it considered during his promotion to the rank of Gp Capt?

(b) Whether, Air HQ is aware about the finding of PCDA (Air Force) report on major financial irregularities published vide their letter No. T/VI/1261/CAO/obj dated 28 Jul 2015 that brought forth that the officer was paid LTC claim amounting to Rs 24940/ by quoting the PNR of cancelled ticket in his claim.

(c) If yes, action taken on the false claim referred at para 2 (b) above may be intimated and it may also be clarified why facts at (a) & (b) above were not brought to the notice of the Ministry."

34. Air HQ (Dir PO-2) vide its Note bearing No. Air HQ/C-21922/

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282/05/PO-2(D) dated 06.09.2023 replied to the above queries of DMA/MoD and its reply reads as under :

> *"3. In this connection, response received from JAG (Air) & DPO-4 vide their letter Nos. Air HQ/C 41541/1/JAGAAIR(Discip) dated 01 Sep 23 alongwith enclosures & Air HQ/C 99231/14/PO4 (E) BM-II dated 04 Sep 23 are forwarded herewith.*
>
> *4. Further, Para 16 of AFO 03/08 and Para 712 of the Regulations for the Air Force, 1964, (Reprint Edition 2003) stipulates that 'the Reproof of an officer or warrant officer is not recognized punishment under the AF Act and will not be entered in the Officer's or warrant officers' service record though it may be referred to, if necessary, in a confidential report on the officer or warrant officer concerned."*

and resubmitted the selection board proceedings for approval."

27. We also find from the original file that this clarification is taken note of by DMA/MoD and despite noting the stand of Air HQ on the subject and observing under the heading '*Comments and Observations'* that Air HQ has clarified that Reproof was not communicated to the Board in light of the decision in 2021 and that Reproof is removed from database as also the fact that it was not a recognized punishment and was not to be entered from the service record in terms of Para 712 of 1964 Regulations, DMA/MoD directed reconsideration of recommendation of original PB-1(B)/2023 with the Reproof awarded to the Respondent. The consideration by the Review Board as also the Reconstituted Review Board taking into consideration the Reproof led to the average Board marks of the Respondent going down from 03.981 to 03.411 and thereafter slightly higher to 03.429. It is owing to the lesser Board marks in the Review Promotion Board that the overall merit of the Respondent dropped from No.2 to No.3 and since there were only two vacancies, he was not empanelled. Tribunal is thus right that consideration

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of the Reproof was a patent illegality and in the teeth of Para 712 of 1964 Regulations as also Policy decision of Chief of Air Staff dated 20.12.2021. Undoubtedly, the alteration of overall merit of the Respondent is only owing to consideration of Reproof since despite the Displeasure, the overall merit of the Respondent was at No.2. Therefore, the proceedings of the Review Board as also Reconstituted PB-1(B)/2023 stand vitiated and have been rightly declared as invalid by the Tribunal.

28. Before parting, we must also put on record that Respondent is right in his submission that the entire exercise of obstructing the approval of original PB-1(B)/2023 was *mala fide* and at the behest of Group Captain T. Johnson, who at the relevant time was posted in the office of DMA and finding that he was at Serial No.4 in OOM, sent a communication to the Joint Secretary (Est & Coord) to reconsider the Original Board proceedings on the basis of Severe Reprimand awarded to the Respondent in 2009 and for his implication for falsifying his LTC claim. This communication is dated 28.08.2023 and from the file notings, we find that basis this communication, a Note was sent on 29.08.2023 to Air HQ seeking clarification on: (a) whether Respondent was awarded Severe Reprimand in 2009 for any reason and whether it was considered during his promotion to the rank of Group Captain; (b) whether Air HQ was aware of the major financial irregularities by the Respondent pertaining to his LTC claim of Rs.24,940/-; and (c) if yes, action taken on the above as also clarify why the facts were not brought to the notice of the Ministry. Interestingly, after Air HQ clarified that there was no punishment of Severe Reprimand in the record of the Respondent for the year 2009, noting dated 19.09.2023 records that clarification be sought from Group Captain T. Johnson as to his source of information. It is clear that this entire process of returning the original

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PB-1(B)/2023 proceedings was to somehow bring the said officer at No.2 and this is fortified by the fact that after the Review PB-1(B)/2023 proceedings were sent for approval to DMA/MoD, a frivolous objection was raised with respect to Group Captain Kalpa Ghosh since it was as clear as day that if both Group Captain Kalpa Ghosh and the Respondent were out of the reckoning, Group Captain T. Johnson being at No.4 in the overall merit would move to No.2 and would be empanelled against the second vacancy. The file notings clearly reflect the *mala fide* reason, for which the original PB-1(B)/2023 proceedings were not approved and the file was sent by DMA/MoD to and fro for review. The entire plan was orchestrated at the behest of Group Captain T. Johnson and the Tribunal has rightly come to aid of the Respondent and set aside the Review and the Reconstituted PB-1(B)/2023 proceedings.

29. Contention of the Petitioners that the Board marks were awarded by Members of the Promotion Board as a matter of discretion and also independently, is not borne out for the reason we have stated above that the Members of Review and Reconstituted PB-1(B)/2023 took into consideration the award of Reproof to the Respondent on the dictates of DMA/MoD. While there is merit in the legal proposition brought forth by counsel for the Petitioners that Ministry of Defence, which is the Competent Authority to approve the Promotion Board proceedings, has inherent power not to approve the proceedings, however, when an action is actuated with *malice*, as found by the Tribunal and correctly so, the action cannot be endorsed. Petitioners are also right that it is not for the Courts to substitute their decisions for the decisions of the Selection Boards, but it is equally settled that in judicial review, the Court can examine the decision making process and which is what the Tribunal has done and rightly so. As noted

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above, the decision making process in the present case is completely tainted and despite the clear position of law and clarification given by Air HQ, DMA/MoD insisted on returning the Original PB-1(B)/2023 proceedings with a dictate to take into consideration the Reproof. There is also merit in Petitioners' contention that promotion is not a matter of right and the only right that an officer has, is consideration for promotion. The right to be considered for promotion includes the right to be considered as per law and fairly and not out of *malice* or arbitrarily.

30. For all the aforesaid reasons, exercising jurisdiction of judicial review under Article 226 of the Constitution of India, we find no reason to interfere with the impugned judgment, which is well-reasoned and based on records and law.

31. Writ petition is accordingly dismissed along with pending application.

JYOTI SINGH, J

GURVINDER PAL SINGH, J

NOVEMBER 25, 2026/*bh/YA*

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