



\$~33

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

% *Date of Decision : 27.02.2026*

+ **W.P.(C) 2620/2026 & CM APPL. 12747/2026**

UNION OF INDIA AND OTHERSPetitioners
Through: Mr. Sandeep Kumar Mahapatra,
CGSC.

versus

BRIG. SUSHIL KUMAR KAUSHIKRespondent
Through: Mr. Ankur Chhibber, Adv.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

V. KAMESWAR RAO, J. (ORAL)

1. This writ petition lays a challenge to the order dated 29.10.2025 passed by the Armed Forces Tribunal, Principal Bench ('Tribunal') in OA No. 5206/2024 ('O.A', for short) filed by the respondent herein, whereby, the Tribunal has allowed the OA by stating in paragraph no.21 of the order as under:-

"21. In view of the above, it is directed that the entire assessment of the IO in the impugned CR of 2019 be set aside and the applicant be afforded a Special Promotion Board (AFMS) based on his changed profile. The said board be conducted within three months from the date of the order and a report made to this Tribunal."

2. The OA was filed by respondent seeking following prayers:-

"i. Quash and set aside the impugned result of the board



proceedings of the Promotion Board (Medical) No.1, issued vide result order dated 22.09.2023 for the Promotion Board (Medical) No.1 convened on 07.09.2023, result Order dated 16.03.2023 for the Promotion Board (Medical) No.1 convened on 10.01.2023, result Order dated 01 .07.2022 for the Promotion Board (Medical) No.1 convened on 22.03.2022 and result order dated 22.09.2023 for the Review Promotion Board (AFMS) No. 1 convened on 07.09.2023 to the extent that the Applicant was not empanelled for promotion to the rank of Major General as he was placed under "NS" i.e. Not Selected Category for the said purpose.;

ii. Quash and set aside the order dated 10.05.2024 whereby Applicant's statutory complaint dated 11.12.2023 against the result order dated 22.09.2023 of Promotion Board (Medical) No.1 convened on 07.09.2023 was rejected, order dated 09.08.2023 whereby the Applicant's statutory complaint dated 12.04.2023 against result Order dated 16.03.2023 for the Promotion Board (Medical) No.1 convened on 10.01.2023 was rejected, order dated 02.11.2022 whereby Applicant's statutory complaint dated 14.07.2022 against result order dated 01.07.2022 for the Promotion Board (Medical) No.1 convened on 22.03.2022 was rejected;

iii. Call for the records pertaining to the ACR of the Applicant and consider the tenability of the gradings awarded in the ACRs that were under the zone of consideration and (l to expunge the grading awarded by the Initiating officer in ACR for assessment period 01.01.2019-02.10.2019 and grading awarded by Reviewing Office in ACR for assessment period 01.01.2020 to 14.08.2020 which are inconsistent with the gradings that are consistently awarded to the Applicant; and

iv. Call for the records based on which impugned results dated 22.09.2023, 16.03.2023, 01.07.2022 pertaining to the Regular Promotion Board (AFMS) No.1 and Result dated 22.09.2023 pertaining to Review Promotion Board (AFMS) No.1, were passed by the Respondents grading the Applicant "Not Selected" for promotion to the rank of Major General on



respective occasions and thereafter quash them all; and

v. Direct the Respondents to order for conducting a Special Promotion Board (AFMS) in respect of the Applicant, consider him afresh for promotion to the rank of Major General in AMC pursuant to the improved ACR grading and the corresponding revision in the value judgment marks; and

vi. Direct the Respondents to grant all such consequential benefits admissible to the Applicant retrospectively;

vii. Pass any other order/orders as deemed appropriate by this Hon'ble Tribunal in the facts and circumstances of the present case.”

3. The facts as averred in the OA are that the respondent is a serving officer of Army Medical Corps (AMC), who was commissioned in the AMC of the Indian Army on 28.06.1989, and he was getting promotions from time to time and attained the rank of Brigadier (Brig) on getting Select Rank Promotion on 16.08.2018.

4. It was his case that, he was eligible for promotion to the next rank of Major General and when he was considered to the said rank by the Promotion Board (AFMS) held on 22.03.2022 and reconciled on 02.05.2022, in terms of promotion policy dated 05.02.2016, the result of the said Promotion Board were declassified on 01.07.2022 when it was found the respondent was not empanelled for promotion.

5. Aggrieved by the non-empanelment, the respondent filed a Statutory Complaint dated 14.07.2022, seeking review of his CRs from 2018-2020. The said Statutory Complaint was rejected vide order dated 02.11.2022.



6. The case of respondent was again considered by the Promotion Board (AFMS) held on 10.01.2023 as a second chance in which the respondent's ACRs for the years 2017 to 2021 were considered. The result of this Promotion Board was declassified on 16.03.2023 when it was found the respondent was again not empanelled for promotion to the rank of Major General. Against on his non-empanelment, the respondent again submitted a Statutory Complaint dated 12.04.2023 challenging the assessment and grading awarded by IO & First Technical Officer (FTO) in the ACR 2019 to the Competent Authority, wherein, the respondent was granted partial redress *vide* order dated 09.08.2023 whereby the assessment of Reporting Officer (RO) & FTO in ACR of the respondent for the year 2019 were expunged on the ground of inconsistency.

7. The aforesaid expunction of the assessment of RO & FTO in the ACR 2019 of the respondent necessitated a review of his case for promotion to the rank of Major General and Review Promotion Board was held on 07.09.2023 against first and second chances. In the said Promotion Board, the respondent's ACRs for the years 2018 to 2023 were taken into consideration. However, when the result of the said Review Board was declassified on 22.09.2023, the respondent was again not empanelled for promotion. This led to filing of another Statutory Complaint dated 11.12.2023 and impugning the assessment made by IO and SRO in his ACR for the year 2019 and assessment made by RO & SRO in his ACR for the year 2020. The said Statutory Complaint was considered by the Competent Authority and was rejected *vide* order dated 10.05.2024.



8. Suffice to state, the respondent had made certain allegations against Lt. Gen. A.K. Jindal (Retd.) [then Brig. A.K. Jindal] as he was the IO for ACR of 2019, though we may state that the allegations of *mala-fide* / bias were not sustained before the Tribunal. In any case, the Tribunal in paragraph nos.18 & 19 was of the following view:-

“18. We have perused all the three Statutory Complaints filed by the applicant and the connected files disposing off the Statutory Complaints. The second Statutory Complaint of the applicant dated 12.04.2023 had provided partial relief to the applicant in which the entire assessment of the RO & the FTO were expunged by the Central Government vide its order dated 09.08.2023. The FTO (same as 10) had awarded him 8.5 grading which according to the Central Govt.'s analysis in the file disposing off his Statutory Complaint does not corroborate with his pen-picture written by the FTO. The Central Govt. has also noted in the 2nd Statutory Complaint file (filed on 12.04.2023) that the applicant has not been graded '8.5' assessments by way of the Reporting Officer in vertical and horizontal continuum in the reckonable profile and further opined that the applicant has been graded 'Near Exceptionally Outstanding' to 'Exceptionally Outstanding' in his reckonable profile.

19. The pen-picture of the applicant written by 10 was also scrutinised by us in the impugned CR of 2019. The applicant's pen-picture written by the 10 describes him to be an efficient officer and reads as under:-

“13. Remarks of 10

“A smart well turned out physically fit medical offr with good military bearing. The offr has commanded 155 BH in a befitting manner providing good patient OPD and indoor services to clientele in an around Tezpur garrison. The offr is endowed with good soft skills and has



exhibited quality organisational capability during his command.

Date: 22 Oct 19

Sdf A.K. Jindal AVM”

Moreover, the applicant in his entire reckonable profile has been graded 'Near exceptionally outstanding' to 'Exceptionally outstanding' and the assessment of 8.5 grading by the IO in the impugned CR of 2019 does not match with the applicant's overall profile as well as the pen-picture rendered by the IO in the impugned CR of 2019, and is set aside.

From the above, it is noted that the Tribunal has granted limited relief to the respondent, inasmuch as, it has set aside the ACR of the year 2019, primarily on the ground that the assessment of 8.50 grading by the IO in the impugned order does not match respondent's overall profile as well as pen-picture rendered by the IO in the impugned ACR of 2019.

9. The challenge in this petition is primarily to the extent that the Tribunal has allowed the OA of the respondent by expunging the grading of 8.60 of the ACR of the year 2019.

10. The Submission of Mr. Sandeep Kumar Mahapatra is primarily that the Tribunal has failed to appreciate the adequate redress had already been granted and acted upon, in view of the order of the Central Government dated 09.08.2023.

11. He states that the respondent's grievances were to ACR of 2019 and the assessment of the RO and FTO, and the same having been set aside by the Central Government on the ground of inconsistency, no further interference was called for in respect of the same ACR 2019. He submits further interference by the Tribunal without identifying any concrete



infirmary, perversity, extraneous consideration or violation of rules in the manner in which the IO assessed the officer, interference amounts to questioning a superior officer's professional discretion without any factual basis.

12. He submits, the grading is 8.60 by the IO in ACR-2019 is a high and positive grading, not an adverse or downgraded assessment. Further, the Tribunal by treating such a grading as inconsistent or unjustified, has overlooked the fundamental understanding of the military appraisal system. The Tribunal proceeds on an incorrect premise that the IO has awarded 8.50 in the ACR of 2019, whereas in fact, the IO had awarded a grading of 8.60 as borne from the official records. Such a conclusion is vitiated as being perverse. It is his submission that, 8.65 grading of ACR of 2020 has been upheld by the Tribunal. Hence, merely the IO has graded the officer at 8.60 cannot be construed as an inconsistency. He states that the scope of judicial review is very limited and the Tribunal could not sit as an Appellate Authority over the conclusion drawn by the IO in granting 8.60 grading to the respondent in the ACR of 2019.

13. That apart, he states that the respondent had given three statutory representations which have been rejected. It is his attempt to canvass that at no point of time did the respondent challenged the ACR of the year 2019. He seeks the prayer as made in the writ petition.

14. On the other hand, Mr. Ankur Chhibber, learned counsel for the respondent would justify the order passed by the Tribunal.

15. He submits that the Central Government has itself set aside the



grading given by the FTO/RO on the ground of inconsistency which has been acted upon to consider the case of promotion of the respondent to the rank of Major General by reviewing the earlier DPC. He also submits that the IO has graded the respondent at 8.60 and also that, never in the past, the respondent has achieved the grading of 8.60 and this grading of 8.60 being inconsistent with the profile of the petitioner for the past period, the Tribunal is justified in expunging the grading given by the IO for the ACR of 2019.

16. He states that, the expunging was on the similar ground which was invoked by the Central Government by treating the grading given by the FTO/ RO for the year 2020, on the ground of inconsistency. His submission is that, this grading by the IO has caused great prejudice to the respondent, as he was not granted promotion to the rank of Major General, on three occasions.

17. Having heard the learned counsel for the parties, to understand the issue which has arisen for consideration in this writ petition, it is necessary to reproduce the following chart:-

“RATING BY REPORTING OFFICER IN THE IMPUGNED CONFIDENTIAL REPORTS”

<u>CR</u>	<u>IO</u>	<u>RO</u>	<u>SRO</u>	<u>DGMS</u>	<u>DGAFMS</u>	<u>FTO</u>	<u>STO</u>	<u>HTO</u>	<u>APPOINTMENT</u>
ICR 2020	8.90	8.65	8.75	-	9.00	8.90	-	-	Brig, Brig Med, HQ 4 Corps
ICR 2019	8.60	8.50 Expunged vide Partial Redress granted to statutory complaint dated 12.04.2023 vide MoD	8.75	9.00	-	8.50 Expunged vide Partial Redress granted to statutory complaint dated 12.04.2023 vide MoD	8.90	-	Brig, Comdt, 155 Base Hospital



		<i>order dated</i> 09.08.2023.				<i>order dated</i> 09.08.2023.			
--	--	-----------------------------------	--	--	--	-----------------------------------	--	--	--

18. At the outset, we state that the Central Government *vide* order dated 09.08.2023 has expunged the entire assessment of RO and FTO of the ACR of 2019.

19. Having said that the Tribunal *vide* the impugned order, has also expunged the assessment made by the IO for the ACR of 2019. The issue which arises for consideration is whether the grading/assessment of 8.60 in the ACR 2019 by the IO is inconsistent with the profile of the respondent. There is no dispute that the grading/ assessment given by the Officers for the year 2018 are much above 8.60.

20. Having seen that the gradings of 2018 surely 8.60, is inconsistent. The only submission of Mr. Mahapatra is that, even the RO has graded the respondent with 8.65 marks for the ACR of 2020, which has been upheld and as such, 8.60 grading by the IO in the ACR of 2019 cannot be construed as inconsistent.

21. Surely, when 8.50 can be held to be inconsistent looking at the gradings of the respondent in the past, it can be concluded that, 8.60 is inconsistent with the profile of the respondent.

22. In that respect, the conclusion drawn by the Tribunal is not perverse. There is some basis for the Tribunal to conclude that there is inconsistency in the grading of 8.60 by the IO. It follows, this Court will not in exercise its jurisdiction under Article 226 of the Constitution of India, interfere with the decision of the Tribunal.



2026:DHC:1852-DB



23. In view of the limited issue which arises for consideration and noting the conclusion drawn by the Tribunal, the impugned order does not call for any interference. The writ petition being without any merit is dismissed.

24. Pending application is also dismissed as having become infructuous.

V. KAMESWAR RAO, J

MANMEET PRITAM SINGH ARORA, J

FEBRUARY 27, 2026

rk