

SUPREME COURT OF INDIA

Commodore P.K. Banerjee

Vs.

Union of India

C.A.No.1843 of 2018

(A.K.Sikri and Ashok Bhushan,JJ.,)

12.02.2018

JUDGMENT

A.K. Sikri,J.,

1. Leave to appeal granted.

2. This appeal is preferred by Commodore P.K. Banerjee under Section 32 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as the 'Act') questioning the correctness and legality of the judgment and order dated September 14, 2017 passed by the Armed Forces Tribunal (for short 'AFT') in O.A. No. 392 of 2014 and order dated December 10, 2017 in M.A. No. 1219 of 2017 filed in O.A. No. 392 of 2014 passed by

3. Vide Order dated September 14, 2017, the AFT has dismissed the O.A. No. 392 of 2014 which was instituted by the appellant questioning the gradings given to him in Annual Confidential Reports (ACRs) of some of the years recorded by his superiors which, according to him, had adversely affected his career progression by denying him the promotion to the next rank, i.e. Rear Admiral in Indian Navy. Insofar as the Order dated October 12, 2017 passed in M.A. No. 1219 of 2017 in O.A. No. 392 of 2014 is concerned, by means of this Order, the AFT has rejected leave to appeal the judgement dated September 14, 2017.

4. The appellant claims that right from his initial training of Cadet days through the junior and middle rank appointments till promotion to the rank of Captain on August 30, 2004 has always been amongst the top few in his batch. Litmus Test for any Naval Officer is his Sea Command of a warship and the appellant happens to be the only officer in his entire 'original batch' who commanded the most premium ships in every rank (as a Lt. Cdr., Commander and Captain) with distinction, and without any incidents/accidents.

5. The appellant also claimed that being at the top of his batch, the appellant got command of the most premium and at that time, the latest Talwar class ship, INS Tabar in December,

2007 and performed outstandingly in this command as well. Even in the Sea Board Merit List in mid, 2007, the appellant was at the top of his batch that resulted in his getting command of INS Tabar, but things went wrong after this Sea Command of the appellant. However, very severe Adverse Remarks inserted by the appellant's Reviewing Officer (RO) in the ACR in 2009, that were not communicated by the RO as per Navy Rules, and in total contradiction to the Report rendered by the Initiating Officer (IO) quietly brought an end to the promising career of the appellant who was not even aware of such illegalities (that resulted in the appellant becoming the last officer in Overall Order of Merit (OOM) amongst his original batch who commanded ships in the rank of Captain) until the appellant missed his promotion to the rank of Rear Admiral in Promotion Board 01/2012 in April 2012.

6. It is the case of the appellant that as the Commanding Officer of INS Tabar - a frontline stealth warship of Western Naval Command, the appellant was deployed in the Gulf of Aden in end October 2008. This was the appellant's fourth command of a warship in his career, the last, i.e., the third command being of INS Kulish - a frontline warship of the Indian Navy where the ship was nominated as the best performing ship of the Eastern Fleet earning an excellent Report in 2004 from his then Fleet Commander FOCEF (Initiating Officer) who wrote in the ACR - "A professional and extremely effective CO who ran one of the best ships of the Fleet". This ACR was backed up by the Appellant's then Reviewing Officer, the FOCINC Eastern Naval Command who wrote - "The ship has done very well under command of Benerjee".

7. On October 27, 2008, INS Tabar returned to Mumbai after patrolling duty in the Persian Gulf and was deployed for anti-piracy operations off the coast of Somalia at one day's notice after Diwali on October 29, 2008. The appellant boasts about the fact that 10 other major warships were in the harbour and in prime operational state and could have been deployed for the task but were not, speaks about the trust the Indian Navy had on the Commanding Officer and crew of INS Tabar. The anti-piracy operation was the first instance where the Indian Navy would be operating in International waters far away from the country and in hostile environment. The ship proceeded with despatch to the operational area and within a month's patrol duty, managed to save the Indian merchant ship MV Jag Arnav and a Saudi Arabian merchant ship MV NCC Tihama on November 11, 2008 from getting hijacked by Somali Pirates and neutralised a suspect pirate mother vessel to great accolades all over.

8. Stating further about his laudable work, the appellant states that the performance of the ship was also lauded by the Indian Navy and the Fleet Commander (Western Fleet) in his Reporting as the appellant's IO in the ACR (10.12.2007 to 28.11.2008) gave an Outstanding Report and recommended the appellant for the most prestigious Second Sea Command reserved only for the best Commanding Officers of the Fleet. The new Fleet Commander who had also overseen INS Tabar's maiden anti-piracy operations off Somalia as the Deputy of the FOC-in-C, Western Naval Command in the capacity of RO's Chief of Staff of Headquarters Western Naval Command recommended the appellant for the award of

a gallantry award Shaurya Chakra. The appellant's ship INS Tabar was at sea for over 200 days in 2008 without a single incident/accident or mishap, in contrast to what Indian Navy Ships actually perform.

9. According to the appellant, he is dismayed to find that despite all of the above, when INS Tabar returned to Mumbai after its anti-piracy mission, not even the customary debrief was conducted by the FOCINC (Flag Officer Commanding-in-Chief) West or the CNS (Chief of the Naval Staff) of the operation (a standard operating procedure in the Navy), even when this was a first of its kind operation for the Navy. On the face of it, the Reviewing Officer ('RO') personally complimented the ship captained by the appellant on November 19, 2008 (almost at the end of the deployment) in a Signal stating "that was well executed, you have done the WNC and Navy proud" , yet less than two months later the RO in the ACR pertaining to the very same operational deployment in Gulf of Aden and in the period in which an outstanding report was given by the IO, wrote vague, unsubstantiated adverse remarks in Section V of the appellants ACR, stating - "On more than one occasion during this deployment, the officer displayed indecisiveness and had to be backseat driven" and "I would not rate Banerjee an operational guy, best suited for desk assignments" – These remarks did not cite any incident which illustrated these adverse remarks and were at total variance to IO's Outstanding Remarks. The RO also simultaneously downgraded the Numerical Gradings in the ACR given by the IO – by 0.3 marks each in PQ (Performance Qualities) and in PP (Promotion Potential) i.e., a total of 0.6 marks.

10. The grievance of the appellant is that breaking all rules of communication of Adverse Remarks to the Reportee (Appellant), the RO sent the ACR to the Senior Reviewing Officer, i.e., CNS for his report. The CNS himself, instead of following laid down rules and procedures for communication of Adverse Remarks and returning the ACR to the RO, commented that the ship had performed poorly and agreed with the RO's remarks by writing, "A poor report from an operational ship by the RO – at some variance with the IO's remarks Going by the RO's judgments, the officer deserves 7.5/7.6" , thus, abetting the illegal act of the RO.

11. These adverse remarks and the consequential numerical downgrading were not communicated to the appellant in contravention of para 0410(d) of Navy Order (Special) 05/2005, as well as the settled position of law this Hon' ble Court has reiterated in *Dev Dutt v. Union of India and Others* , then in *Abhijit Ghosh Dastidar v. Union of India and others*² and again in *Prabhu Dayal Khandelwal v. Chairman, U.P.S.C. & Ors.*³

12. The appellant also asserts that in all subsequent postings also he performed exceptionally well and in each and every case where the IO, RO or SRO did not have access to the appellant's dossier (previous ACR's), they gave the appellant outstanding reports. Yet, the Next Senior Reviewing Officer ('NSRO')/CNS, who had access to the appellant's dossier, numerically downgraded the ACR having been influenced by the previous ACR's numerical downgrading.

13. The appellant has endeavoured to demonstrate the same by stating his gradings given by different officers, i.e., from IO to RO to SRO/NSRO with his own remarks, in a tabulated form which is as under:

Sl	Rank	Appoin tment	Perio d of Repo rt	Gradin g (P.P./P Q) IO RO SRO/N SRO	ACRR EMA RKS	Profile
1.	Captain	Comm anding officer-INS Tabar	10.12 .2007 28.11 .2008 7.7/7. 8	7.7/78	7.4/7. 5	7.5/7. 6 IO rated highest Among st over Adozen Fleet Captain s, recom mende d for Second Sea Command reserved for the best, IO rated highest among st over ad ozen Fleet Captain s, recom mended for Second Sea Command reserved for the best,and for prestigi ous NDC Course. RO inserted Severe Adverse Remarks and not commu ni-cated as per Rules. His exact Remarks – “On more than one occasionduring this deployment, the officer displayed inde-cis iveness and had to be backse

							<p>atdrive n” & “I would not rate Banerjee and operational guy, best suited for best assignments”</p> <p>at total variance to IO’s Remark SRO/N SRO wrote – “A poor report from an operati onal ship by the RO —at some varianc e with the IO’s remark s...Going by the RO’s judgments. The officer deserv es 7.5/7.6</p>	
	Cmde	Princip al Directo r Naval TYrain i ng (PDNT) in NHQ	02.01 .2 009 To01. 0 6.200 9	7.6/7.6 (Here IO had access to the appella nts dossier	7.6/7. 6	7.6/7. 6	IO was custodi an of Dossiers, Appellants Appoint er and Member Secretary of Promotion Boards, Knew the Thresh olds. He gave Numerical Gradings in tune with Faulty Profile – he did not factor the actual task delivered	7.6/7.6
3	Cmde	Naval Advise r , High Commi ssion Londo n	31.08 .2 009 To 28.02 .2 010	8.0/8.0 (1st CR In Londo n)	-- (no RO)	7.9/7. 9	7.6/7.7	IO to SRO – Outstandi g Report by DCNS was Brought down by

								<p>NSRO/ CNS to Match with Faulty Profile. SRO/CN S wrote – “Concu r with pen picture. However, the numerical assessmen t is too high and has been moderated keeping the profile in perspectiv e This is despite the fact the Head of MissionL ondon had Reported on me on IN Form 475-D for the same period and sent it directly to the SRO/D CNS –</p>
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								thus making SRO's Reporting More objective and without any bias of previous knowledge of the applicant.
4.	Cmde		01.03 .2 010 To 08.08 .2 010		7.9/	7.9	All subsequent CRs of NA London That were rated Excellent by SRO Were downgraded by the same CNS to match with the faulty profile– all because of the uncommuicated Adverse Remarks in ACR of INS Tabar in 2008 That was against Rule in Navy and Illegal In 475 D ACR By Head of Mission London quantified with 13attributes in 2010 And direct First Hand inputs of Head of Mission available with SRO/D CNS for each period of ACR Reporting	7.7/7.7

5	Cmde		09.08 .2010 To 04.02 .2011		7.0/ 7.9	7.7/7. 7		7.7/7.7
6.	Cmde		01.03 .2 011 To 27.01 .2 012		7.8/7. 8	7.8/7. 8		7.7/7.8

NOTE : It is very clear from that the uncommunicated Adverse Remarks in 2007-2008 ACR of INS Tabar by the RO not lowered in Appellants profile, but it had a direct cascading effect on all his subsequent ACRs.”

14. That analogy that is sought to be drawn by the appellant is that severe adverse remarks which were given by his RO for the period 10.12.2007 to 28.11.2008 had a cascading effect in future as well inasmuch as though his IOs, who had been giving very high grading, each time the same is toned down and downgraded by the SRO/NSRO, influenced by the adverse remarks recorded in his ACR for the period 10.12.2007 to 28.11.2008.

15. After seeking departmental redressal by making grievances to the higher authorities for expunging the severe adverse remarks and for upgrading his ACRs which did not result in any positive outcome, the appellant approached the AFT in the form of OA No. 392 of 2014. The AFT after hearing the matter finally agreed with the submission of the appellant insofar as it pertained to the adverse remarks for the period 10.12.2007 to 28.11.2008, and expunged the said adverse remarks. However, a partial relief only to the aforesaid extent is granted by the AFT and the other reliefs which were sought in respect of numerical grading given to the appellant for the subsequent period have been declined with the observations that adverse remarks for the aforesaid period had no bearing on the numerical grading given for the period thereafter and it did not have any adverse effect while considering his case for next higher rank. The discussion is encapsulated in para 18 of the judgement which reads as under:

“18. We have heard the learned counsel for the parties and perused the original records. We are of the opinion that the applicant’s impugned Annual Confidential Report for the period 10.12.2007 to 28.11.2008 has ‘Adverse Remarks’ in the pen picture by the Reviewing Officer (Respondent no. 5) in the form of comments like ‘indecisive’ ‘back seat driver’ and ‘not an operational guy’ and, therefore, the same should have been communicated to the Ratee in accordance with the provisions of Navy order 5/2005. Since it has not been done, the same thus needs

to be set aside and the applicant is entitled a fresh consideration for promotion to the rank of Rear Admiral. We have also perused the reports of the period 29.08.2009 to 30.09.2012 and find (sic.) that these have been initiated/reviewed by different Initiating, Reviewing and Senior Reviewing Officers and are in consonance with the ratee's profile before and after that period. The argument that one particular confidential report has affected all successive reports by all Initiating and Reviewing Officers does not stand its ground and is dismissed as mere apprehensions of the applicant. It is clear from the records of No. 1 Selection Board held in 2012, 2013 and 2014 produced before us in which the applicant was screened, that he has not been empanelled purely on his comparative merit in these boards. The applicant trying to clean up his entire profile since 2008 when the impugned adverse report was endorsed by the Reviewing Officer in his confidential report cannot be allowed. It is, however, opined that the Indian Navy should have a relook at their appraisal/moderation system, especially when the Reporting Officers from other services/organisations have been involved in assessing the ratee's as Initiating/Reviewing Officers. We also feel that this Tribunal has no jurisdiction into adjudicating on who should get gallantry/distinguished awards, nor do we intend delving into the same."

16. Mr. Prashant Bhushan, learned counsel appearing for the appellant, made a very passionate plea, with all vehemence at his command, to the effect that the aforesaid approach of the AFT was clearly erroneous inasmuch as recording of adverse remarks for the period 10.12.2007 to 28.11.2008 had definite cascading effect insofar as reports of later period from 29.08.2009 to 30.09.2012 is concerned. He submitted that the manner in which ACRs were recorded was clear evidence to demonstrate the official biasness of SRO/NSRO, went by the so-called pen-picture and kept on downgrading the ACR of the appellant even when, on an independent assessment of appellant's work and conduct in those periods by I.O., all the I.Os. had given the appellant higher numerical grading. Therefore, the AFT could not dismiss the argument of the appellant by terming it as 'mere apprehensions of the applicant'. In order to demonstrate the same, Mr. Bhushan pointed out the following features from the table already reproduced above:

“(a) Insofar as period of 02.01.2009 to 01.06.2009 is concerned, numerical grading of 7.6/7.6 is occasioned because of the reasons that the IO who had given this grading was influenced by appellant's dossier which was in his possession, though he was not supposed to peep into that. Otherwise, for subsequent periods, I.Os./R.Os. had given much higher grading.

(b) For the period from 31.08.2009 to 28.02.2010, I.O. had given outstanding report by giving marks of 8.0/8.0 and even the SRO recorded the grading of 7.9/7.9. Likewise, for subsequent period, i.e., 01.03.2010 to 08.08.2010 and 09.08.2010 to 04.02.2011, SRO had given the grading of 7.9/7.9 in each of these periods. However, in respect of all the aforesaid three periods, NSRO downgraded the appellant by lowering the marks to 7.6/7.7, 7.7/7.7 and 7.7/7.7 respectively. This was done in spite of the fact that NSRO concurred with the pen-picture/profile of the appellant.

However, only on the ground that numerical assessment was too high could not be a valid excuse to lower it down by taking umbrage of the so-called moderation and recording that it “has been moderated keeping the profile in perspective” .

(c)Mr. Bhushan also submitted that the appellant had been an outstanding officer who always earned high commendation and praise for his outstanding performance from the very beginning and even in earlier years, i.e., period prior to 10.12.2007, he had been earning outstanding grading. Therefore, there was no reason for the AFT, argued the learned counsel, to maintain the aforesaid final rating recorded by the NSRO and it should have been brought at par with that of SRO.

17) Proceeding on that basis, related submission of Mr. Bhushan was that even in the merit list prepared for promotion to the higher rank, the aforesaid lowering down of the grading had adverse impact thereupon. The appellant, who was at number 1 in the merit list of 2007 was slipped down to the position at No. 22 which resulted in denial of promotion of the appellant to the post of Rear Admiral. It was submitted that all the officers who were promoted to the said post by the Promotion Board in January, 2012 were below in merit in the year 2007 and they stole march over the appellant because of lowering down his numerical grading during aforesaid period. He pointed out that the Promotion Board examines the ACR of the last five years and on the basis of his ACRs of the aforesaid period, his ACR average came down to 15.32. He further pointed out that if the marks given by SRO during the aforesaid period are taken into consideration, instead of NSRO, the ACR average of the appellant for the aforesaid period would be 15.70 and in this manner he would rank on the top of the merit list, which he demonstrated from the following table: "The Order of Merit (OOM) worked out at present for Appellant’ s Batch including 5% Value Judgement Marks awarded by Promotion Board 01/2012 (page 178 of Annexure A-18 of Petition) is as follows:

Sl. No.	NAME*	ACR AVERAGE OUT OF (9+9=18 MARKS)	WEIGHTED ACT MARKS (95%)	VALUE JUDGEMENT MARKS	WEIGHTED AVERAGE	ORDER OF MERIT (OOM)	REMARKS
1.	Officer 1	15.57	82.18	4.5	86.68	1	*Serials 1 to 8 promoted to Rear Admiral by the Promotion Board 01/2012 in May

							2012.
2	Officer 2	15.52	81.91	4.4	86.31	2	
3	Officer 3	15.50	81.81	4.3	86.11	3	
4	Officer 4	15.50	81.81	4.3	86.11	4	
5	Officer 5	15.49	81.75	4.3	86.05	5	
6	Officer 6	15.47	81.65	4.3	86.95	6	
7	Officer 7	15.44	81.48	4.3	86.79	7	
8	Officer 8	15.40	81.28	4.3	86.68	8	
9	Officer 9	15.41	81.33	4.4	86.43	9	
10	Appellant (Earlier)	15.31#	8.86	3.1	83.96	22	#The ACR Average Marks of Appellant in Sl.10 is worked out by average of his SRO/NS RO (CNS) marks from Annexure A-4 (Pages 58-59): $5.1+15.2+15.3+15.4+15.4+15.5=91.9$ divided by 6= 15.32
Revised ACR Average Marks of 15.70 obtained in Para 1 above inserted in the Original PB 01/2012 results in Fresh OOM of Appellant							
10A	Appellant (Fresh)	15.70	82.86	4.5@	87.36	Ahead of OOM	This jump in Appellant's Revised

							OOM to No. 1, is also in tune with Captain's Sea Board Merit List of Batch inm id-2007 , after which his career was Remarks by RO/SOR in Impugne d ACR. destroye d due to illegal uncomm unicated Adverse
<p>@ In reality, the appellant could have received higher than 4.5 marks in 5% Value Judgment by PB Members if the Gallantry Award and associated recognition legitimately due in preceding 5 years before PB 01/2012, during his Sea Command of INS Tabar in mpugned Act, which were deliberately denied by the RO (just to remain in sync with his "Now Illegal" Adverse Remarks that have since been admitted by Navy at last, and finally expunged by Hon'ble AFT).</p>							

@ In reality, the appellant could have received higher than 4.5 marks in 5% Value Judgment by PB Members if the Gallantry Award and associated recognition legitimately due in preceding 5 years before PB 01/2012, during his Sea Command of INS Tabar in Impugned Act, which were deliberately denied by the RO (just to remain in sync with his "Now Illegal" Adverse Remarks that have since been admitted by Navy at last, and finally expunged by Hon' ble AFT).

18. Mr. Maninder Singh, learned Additional Solicitor General appearing for the respondents, refuted the aforesaid submissions and defended the order of the AFT on the ground that the AFT had formed a correct opinion after perusal of the original records, which fact is

specifically recorded in the impugned order. His submission was that even if the adverse remark in the report for the period December 10, 2007 to November 28, 2008 was expunged, it had no bearing on the final ACRs recorded for the subsequent period by NSRO. To buttress this submission, the learned ASG argued that fundamental premise/ basis on which the case was built by the appellant, itself was wrong. In this behalf, he pointed out the following factors:

“a)The ACRs of the appellant for the period prior to the year 2007 were not Outstanding/Excellent or with higher numerical grading as contended by him. In support, he produced the ACR record of the appellant right from January 01, 1986 and submitted that the overall record of the appellant would show that he was getting the same kind of grading which was given to him for the disputed period.

b) It was also wrong on the part of the appellant to state that in the Merit List of the year 2007 the appellant was placed at S.No.1. The learned ASG produced Weighted Merit List - First Sea Command Merit of 2007, as per which the appellant was placed at S.No.5.

c) In the Promotion Board 2/04 (Aug 04), which was constituted for promotions from Cdr. to Captain and as per which the appellant was selected for the said post, his rank was No.9 and as on that date, as per OOM (Weighted Merit), he was at No.11. Therefore, his claim that he was always getting top rank in the Merit List was not factually correct.

d) Mr. Maninder Singh refuted the appellant’ s submission that for the period January 02, 2009 to June 01, 2009 giving grading of 7.6/7.6 by the IO was for the reason that he had access to the dossier of the appellant, by referring to the instructions for rendering Confidential Reports of the Naval Officers issued Vide Naval Order (Special) 05/2005 which, inter alia, provided as under:

"0405. Performance in Appointment. An officer is to be assessed in the appointment actually held by him/her during the period under report and, as far as possible, in comparison with other officers of same rank and seniority. The assessment should not be influenced by any incident prior to the period of the report ’ ’ His submission was that the aforesaid instructions are strictly adhered to and, therefore, the IO could not have seen the ACR record of the appellant for the earlier period and it was nothing but figment of imagination of the appellant.

19) According to the learned ASG, the real reason for giving specific grading by the NSRO was that he had moderated the same keeping in mind the overall profile of the appellant, which is specifically recorded as well, as admitted by the appellant himself. It was argued that this moderation is done as per Chapter 25 of the Regulations for the Navy, 1965 Part-I, which contains unique system of ‘Performance Appraisal Review Board’ (PARB). As per

Navy Instructions 20/90 regarding the said Chapter, amended on January 01, 2000, the provision regarding PARB reads thus:

“Performance Appraisal Review - (1) All reports on Naval Officers of the rank of Lt. Cdr. and Cdr. will undergo a ‘Performance Appraisal Review Board’ (PARB) with a view to analyse instances of wide deviation from their previous overall career profile. The reporting/reviewing officers will be required to support very high/low marking in the remarks column. While reviewing the reports at Naval Headquarters, numerical grades may be suitably moderated on the recommendations of the PARB with the approval of the Chief of the Naval Staff so as to bring them in tune with officers’ demonstrated past performance. CNS will lay down detailed guidelines to be followed for this purpose.

(2) A similar review of the records of all naval officers of the rank of Capt. And above will be undertaken and gradings suitably moderated by the Chief of the Naval Staff as Senior Reviewing Officer/Next Senior Reviewing Officer.”

20. Based on the aforesaid, contention of the learned ASG was that the purpose of PARB is to analyse instances of wide deviation from their previous overall career profile. Thus, wherever it is found that the Reporting/Review Officer has given a very high or very low grading, as compared to the previous overall career profile, PARB recommends such ranking to be suitably moderated with the approval of the Chief of the Naval Staff so as to bring them in tune with Officers’ demonstrated past performance. According to him, keeping in view the overall profile, the grading was, thus, moderated by NSRO, who was nonelse but the Chief of the Naval Staff himself. There was no question of doubting his bona fides nor such a case was pleaded by the appellant.

21. Insofar as promotion of the appellant to the rank of Rear Admiral is concerned, he submitted that the case of the appellant was considered by the Promotion Board No.1A (X/GS)/2012 for the first time as Fresh Look case along with all his batch mates of Select List Year 2004. He could not make the grade being much below the threshold. He was reconsidered by subsequent two Promotion Boards as R-1 and R-2 case by Promotion Board 1A(X/GS)/2013 and Promotion Board 1A(X/GS)/2014. However, the officer could not be empanelled due to his lower overall comparative merit vis-a-vis those selected. Aggrieved by this, the appellant had put up representations, i.e. Redressal of Grievance (ROG) dated August 22, 2012 against his non-promotion, which was examined by the Integrated Headquarters, Ministry of Defence (Navy), Redressal and Complaint Advisory Board (RACAB) and disposed of by the Chief of the Naval Staff vide reply letter No. RS/7831/ROG/ OA&R/12 dated January 31, 2013. The appellant had preferred his 2nd ROG dated October 18, 2013 on similar issues which was examined at the Integrated Headquarters, Ministry of Defence (Navy) and Competent Authority of Ministry of Defence had disposed of the same vide Ministry of Defence letter No. 93/US(P)/D(N-II)/2014 dated October 07, 2014 and forwarded vide IHQ MoD (N) letter RS/7869/ROG/HD/OA&R/13 dated October 10, 2014. His 3rd ROG dated January 16, 2017 directly addressed to the

Defence Secretary and the Minister of Defence had also been examined and was found to be devoid of merit and was rejected by the Ministry of Defence vide Order No. 93/US(P)/ D(N-II)/2014 dated November 29, 2017 and forwarded by IGQ MoD (N) letter RS/7831/ROG/OA&R/12 dated December 06, 2017. It was, thus, argued that the grievance of the appellant as regards his non-promotion has been considered by the Competent Authority on three different occasions and the same was rejected as he had lower comparative merit.

22. Therefore, argued the learned ASG, that going by the overall profile of the appellant, the AFT has rightly held that no prejudice is caused to the appellant.

23. After considering the respective submissions and going through the records produced before us, we find the order of the AFT without blemish and there is no justification to interfere with the same. The AFT has rightly held that one particular adverse report (which stands expunged) has not affected the succeeding Reports.

24. No doubt, for the periods from January 02, 2009 to January 27, 2012, the appellant has been given higher numerical grading by the IO and even by the NSRO. However, the NSRO moderated the same keeping in mind the overall profile of the appellant. We have gone through the ACRs of the appellant and find force in the submission of the respondents in this behalf as the ACRs of the disputed period recorded by NSRO are in tune with the ACRs of the appellant recorded in the previous years. It is to be kept in mind that for the period in question, the appellant was on deputation and there may be a possibility of recording higher grading by the IOs during that period. It is significant to mention that for the earlier period even the IOs have not given such high grading. System of PARB which is unique to Navy has been introduced precisely for achieving such moderation. The Chief of the Naval Staff, in his capacity of SRO/NSRO, is competent to undertake review of Confidential Report gradings of Captain/Cmde. and above rank officers for moderation of grades, if required. This is provided in NI 01/2000, contents of which are reproduced as under:

“(i) All reports on Naval Officers of the rank of Lt. Cdr. and Cdr. will undergo a ‘Performance Appraisal Review’ at Naval Headquarters by a Performance Appraisal Review Board (PARB) with a view to analyse instance of wide deviations from their previous overall career profile. The reporting/ reviewing officers will be required to support very high/ low markings in the remarks column. While reviewing the reports at Naval Headquarters, numerical grades may be suitably moderated on the recommendations of the PARB with the approval of the Chief of the Naval Staff so as to bring them in tune with officers’ demonstrated past performance. CNS will lay down detailed guidelines to be followed for this purpose.

(ii) A similar review of the reports of all naval officers of the rank of Capt. and above will be undertaken and gradings suitably moderated by the Chief of the Naval Staff as Senior Reviewing Officer/Next Senior Reviewing Officer.”

25. No doubt, the appellant is a good officer, which can be seen from his performance, commendations which he earned from time to time and the coveted postings which he has been given. However, his assertion that prior to 2009 he was at No.1 in the Merit List is not correct.

26. It is also not correct that persons promoted to the rank of Rear Admiral were below him in that merit. This claim of the appellant stands disproved by the documents produced by the respondents. It is also pertinent to point out that all those who were promoted were senior to the appellant and it is not a case where any junior has superseded the appellant. These are the considerations which influence us not to interdict the conclusion arrived by the AFT. We are, therefore, not inclined to interfere with the judgment of the AFT.

27. At the same time, before we part, we deem it necessary to make some observations.

28. The work record of the appellant shows that he is a very good officer. It also reflects that from time to time he has been given important assignments which he has been able to accomplish and discharge to the satisfaction of his superiors. It is because of these reasons he has earned commendations insofar as performance of his duties is concerned. May be he has nurtured the impression that he is the best, and that is not factually correct. However, it also cannot be denied that he has proved to be a useful officer to the Navy. Such a person deserves to get what is legitimately due to him. We, therefore, hope that the respondents would keep in mind the aforesaid factors and give him the promotion in his turn without delaying the same and his promising career would not be put in jeopardy.

29. The appeal stands disposed of in the aforesaid terms.