

**COURT No.1, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

O.A Nos. 1112 and 1113 of 2015

O.A No. 1112 of 2015:

Cdr S.S. Luthra **Applicant**
Versus
Union of India& Ors. **Respondents**

For Applicant : Mr Ankur Chhibber, Advocate
For Respondents :Mr. K.S Bhati, Sr. CGSC for R 1-3 & 7
R4 in Person
None for R 5-6

O.A No. 1113 of 2015:

Cdr Ajay Zadoo **Applicant**
Versus
Union of India& Ors. **Respondents**

For Applicant : Mr Sukhjinder Singh, Advocate
For Respondents :Mr. K.S Bhati, Sr. CGSC for R 1-3 & 7
R4 in Person
None for R 5-6

CORAM:

HON'BLE MR. JUSTICE VIRENDER SINGH, CHAIRPERSON
HON'BLE LT. GEN. SANJIV LANGER, MEMBER (A)

ORDER
31.07.2017

These two O.As under **Section 14** of the Armed Forces Tribunal Act 2007, have been filed by the applicants, who are both Naval officers, aggrieved by the fact that they have not been promoted to the rank of Captain in the Navy, consequent to their promotion boards and they, being aggrieved of that, have moved this Tribunal.

2. When this matter was taken up by this Tribunal at first on 15.02.2016 and had been placed before a coordinate Bench, during the completion of the pleadings on 10.03.2017, brother Lt. Gen. S.K. Singh, Member (A) had recused himself from hearing the matter, consequently, it is taken up by the present Bench. The arguments in these clubbed matters concluded on 13.04.2017 and order was reserved, as it required indepth perusal of the relevant record for arriving at the just conclusion of the case, therefore, it has consumed some time.

3. The case concerns two officers viz. Cdr. S.S. Luthra (Engr. Br.) and Cdr. Ajai Zadoo (Elec. Branch) of the Indian Navy. The lead case being that of Cdr. Luthra, the facts and issues of his case are being dealt with at first. The officer has, in his O.A, raised challenge not only to respondents 1 and 2, Ministry of Defence and Chief of Naval Staff, but private respondents 3 to 7 are also made parties.

Outline Facts of the Case (O.A No. 1112 of 2015):

4. The Navy had inducted two nuclear submarines – INS Chakra and INS Arihant. INS Chakra was the first nuclear submarine and it was leased from Russia to India. A total of seven officers were trained as Reactor Operators in Russia. The applicant was one of those seven officers. INS Arihant is the submarine which was made in India and the crew had been trained, however, domestically. The applicant was sent to Russia twice for a total duration of

approximately 40 months for his training. The applicant has claimed that the Senior Reviewing Officer (SRO), whose assessment/marks are finally considered for promotion, in his case was Respondent No. 3 Vice Admiral P.K. Chatterjee, Inspector General, Nuclear Safety (IGNS). He was SRO for both the submarine (officers in chain) INS Chakra and INS Arihant. From the year 2010 to 2012, Respondent No. 3 was, in his capacity as SRO, writing ACRs for officers of both the submarines. One of the Reactor Operators on board INS Arihant was Respondent No. 4 Capt. A.V. Agashe, who is son-in-law of Respondent No. 3. The applicant has stated that Respondent No. 3 manipulated not only the ACRs, but also the reporting system in such a way that other officers considered in the same promotion board, as his son-in-law were made to stand at a disadvantage, and this was proved by the results of Promotion Board 2B/14, where no Reactor Operator other than his son-in-law Capt. A.V. Agashe, was promoted. In PB 2B/14 and PB 2/15, no Reactor Operator from INS Chakra was promoted.

5. The applicant has compared important milestones and criteria required for promotion of Submarine Operators, and has stated that he had more sea experience, advanced training, varied profile and specialization compared to those officers who were promoted. The applicant has stated that he has reason to believe that he did not get promoted due to conflict of interest at SRO level, who

ensured promotion of his own son-in-law and sacrificed many other officers who were in competition. Consequently, Mr. Chhibber, learned counsel for the applicant took up detailed arguments and vehemently contended that not only was Capt. Agashe given preferential treatment by Respondent No. 3, his father-in-law, there had also been a protracted past precedence of favouritism to him, including waiving off sea time and transfer to Mumbai, despite all other officers of his background posted in Delhi and Visakhapatnam. He also stated that IGNS, during his capacity as SRO, systematically reduced ACR marks of technical officers of INS Chakra, having superior profile and in direct reckoning with his son-in-law, Respondent No. 4. The learned counsel thereafter chose to highlight the excellence of the applicant, yard tenures and sea time undertaken by him, as well as the fact that he was specially selected to be part of the commissioning crew for the first ever nuclear submarine to be brought in by the Indian Navy as a major landmark. He also highlighted his tenures, commendations and merit based postings like DSSC.

6. Related to his ACR, the learned counsel claimed that in the past 18 years, at no stage, has the applicant been counselled for any adverse trait or remark by his IO/RO. Thereafter, the counsel deliberated on the import of NO (Spl)/2012 Naval Order, which talks about selection of officers, the approach paper formulated for boards and the entire system of promotion to higher ranks.

7. In sharp comparison to Respondent No. 4, he brought in focus the fact that unlike Respondent No. 4, he had been selected for DSSC, had been selected for training in Russia and had done more sea time compared to Respondent No. 4, as well as his peers considered in PB 02/14. The counsel thereafter strenuously stated that the appraisal system in the Navy was totally opaque and secretive. In the absence of speaking orders, when grievances are raised, the system of ROGs, etc. appears to an empty formality.

8. Learned counsel then argued that Reactor Operators of nuclear submarines are highly specialized officers. It is not understood how in PB 02/14 the only officer being selected for Captain rank was then Cdr. Agashe, while all other Reactor Operators in INS Chakra and INS Arihant were not promoted. This clearly demonstrated the fact that unfair advantage had been given to his son-in-law by Respondent No. 3. He thereafter stated that Respondent No. 4, has never operated the nuclear reactor on board INS Arihant, as he was transferred out prior to achieving criticality/first startup of the reactor. He enjoyed a preferential tenure because of his father-in-law's influence on the personnel branch, since he was the only officer to be posted at HQ, Western Naval Command, Mumbai against a general billet, while other similarly placed officers could only be posted to Visakhapatnam/Delhi in specialized nuclear/SPV billets. He was also sent on deputation as an observer for INS Chakra and despite his

prolonged stay in Russia, he was transferred from INS Arihant prior to criticality/first start up, on the main power plant.

9. The learned counsel submitted that while the crew of INS Chakra were undertaking sea training/trials from mid-2010 to early 2012 at Russia, the SRO being stationed in India was not in a position to assess the officers on whom he reported. Further he stated that during the visits of the IGNS, due to paucity of time, he did not personally interact with any of the officers being appraised. Further, the counsel stated, due to secrecy of the project, many achievements of the officers cannot be projected. Due to repeated intervention of the SRO, the overall profile of the applicant was lowered and due to low PARBing of the applicant's ACR, the value judgment marks also operated adversely against him overlooking his entire career profile.

10. The learned counsel thereafter went into the aspects of the PARB system as well as the fact that there was violation of Section 23 of the Navy Act, etc. However, in this particular case, the learned counsel stated that he chose not to challenge the PARBing system and reviewing of reports within Navy. Going into the various aspects of Reporting Officers, their responsibilities as well as manner of writing and recording ACRs, the counsel focused on the fact that repeated intervention by Respondent No. 3, had ensured that his son-in-law (Respondent No. 4), achieves an unreasonably higher level of ACRs, over a protracted period that the counsel claims, was close to a period

of eight years. To the contrary, the same SRO Respondent No. 3 intervened adversely, in the case of other similarly placed officers ensuring no competition, to his son-in-law and lowering the profile deliberately of officers in competition with Respondent No. 4 such as the applicant himself.

11. Learned counsel submitted that the principles of natural justice are firmly grounded in Articles 14 and 21 of the Constitution of India and that no one could be a judge in his own cause; therefore, an SRO rendering CR on his own son-in-law has translated into operative prejudice towards others in the same Promotion Board, especially Reactor Operators who were in direct reckoning with Respondent No. 4. Consequently, the results of the Promotion Board are tainted and partial, since Respondent No. 4 has made the promotion board. Further, he added that Respondent No. 3 as IGNS was IO of the applicant's reviewing officer, RADM P. Ashokan (and others in chain as IOs and ROs), and consequently exercised influence on them. He also stated that he manipulated channels of reporting so as to interspace himself and write ACRs on the applicant when, in fact, he did not have jurisdiction to do so.

12. The learned counsel for the applicant states that the applicant has not been given the opportunity to have his say in the matter. The applicant had submitted a case for consideration to the Redressal and Complaint Advisory Board (RACAB), but it remained

opaque and non-transparent. The applicant has reason to believe that RACAB had recommended his case but was side-tracked by Respondent No. 2.

13. It has also been pointed out that when nuclear propulsion is being inducted in the Indian Navy to "write off" so many officers who the Navy has invested millions of dollars in training is a tremendous loss to the nation. The consequences of a nuclear accident are not restricted to the Navy but can have global implications. Foot prints of the pioneers in special propulsion projects, should be the stepping stones for the next generation of reactor operators. In the larger interest of the service and keeping in mind the future requirements of nuclear training and procurement, the outcome of PB 2B/14 needs to be thoroughly probed in the background of close family relationship of Respondents 3 and 4.

14. Further, experience is an important ingredient of submarine training and operations, therefore, a well-trained set of officers in nuclear reactor operations and safety, must not be sacrificed qua the stage managed promotion of Respondent No. 4 by his father in law. Clout of Respondent No. 3 is so pervasive that he went to the extent of blocking the effectuation of the transfer of the applicant to IHQ, Delhi as is revealed from the communications dated 10.08.2015, 30.09.2015, 05.10.2015 and 13.10.2015.

15. Consequently, the following reliefs are sought for:

- (a) *Impugned orders, Promotion Boards 2B/14 and 2/15 be set aside and quashed to the extent applicable to the applicant vis-à-vis Respondents No. 4, 5 and 6 and all other affected technical officers from Chakra and Arihant whose reports were reviewed by Respondent No. 3, for the period from 2010 to 2012;*
- (b) *The applicant's ACRs for the year 2010 to 2012 to the extent reviewed by Respondent No. 3 as SRO and RO respectively vis-à-vis Respondents 4, 5 and 6 and all other affected Technical Officers be set aside and quashed along with his PARBing records/assessment and value based assessments with reference to suitability in War, Peer Group Assessment and his overall profile;*
- (c) *ACRs of Respondent No. 4 from 2008 to 2012 and ACRs of Respondent No. 5 and 6 for the period from 2010-2012 as reviewed and influenced by Respondent No. 3 through their respective IOs/ROs be quashed and set aside in entirety being biased, null and void;*
- (d) *The applicant be assessed 'de novo' for promotion to the rank of Capt on the basis of reports rendered for the year 2010-2012 by IOs, after removing the tainted effect of ACRs, reviewed by Respondent No. 3 and after reworking out, inter se merit, based upon uninfluenced reports of all affected officers, after taking steps at prayers (a) to (c) above and applicant be promoted with the seniority PB2/2014, if he is above the last officer promoted therein;*
- (e) *Respondents No. 3 and 4 be brought to justice for in terms of Sections 54 and 74 of the Navy Act, 1957;*
- (f) *Redressal and Complaints Advisory Board be quashed and set aside being violative of Section 23 of the Navy Act, 1957 read with Regulations 235 to 239, Regs Navy Part-II (Statutory);*

- (g) Performance Appraisal Review Board (PARB) be quashed and set aside, having no locus standi in the eyes of law, since Board Members have no occasion to observe/assess the performance of the officers and the Board operates in vacuum at the bidding of Respondent No. 2;*
- (h) 5% marks allowed to the Promotion Board for value judgment be quantified for each elements in a scientific way i.e. suitability in War (ii) Peer Group Assessment (iii) Overall profile based on awards and specific achievements, doubtful elements like naval requirement be eliminated to obviate subjective assessment; and*
- (i) any other relief(s) which this Hon'ble Tribunal may deem appropriate, just and proper in the interest of justice and in the facts and circumstances of the case may also be granted to the applicant.*

16. In **O.A No. 1113 of 2015(Cdr. Ajay Zadoo)**, the applicant was trained as a Power and Distribution Systems Specialist for INS Chakra at Russia and he was an officer of the Electrical Branch of the Submarine Arm. His SRO also was the same Respondent No. 3. Claiming similar grounds, the applicant sought to highlight that he had forwarded his first redressal of grievance on 30.10.2014, which was rejected by the Chief of Naval Staff on 05.02.2015 and the second RoG on 28.05.2015, which was rejected on 26.08.2015.

17. Mr. Sukhjinder Singh, learned counsel for the applicant, has highlighted similar issues as the previous applicant (Cdr. Luthra) since his milestones related to INS Chakra were similar. He has also

highlighted his achievements, sea time as well as awards. He has consistently stated that he had fallen below par due to conflict of interest at the SRO level. He contends that his gradings in the ACR during the period from 2010 to 2012 were drastically reduced by the SRO. He claims that his performance as part of the commissioning crew of INS Chakra during the period from 2010 to 2012 has been validated by the IO and the RO as outstanding. According to him, many deserving officers, including himself, have been sacrificed in PB 2/14 by calculated and systematic rendering of comparative low reports, between 2010 and 2012 at SRO level, to give unfair advantage to a few. The PB 2B/14 results of Technical Officers from Arihant and Chakra are thus highly biased due to subjective numerical assessment at SRO level. This has ensured promotion of all Technical Officers of Arihant including Respondent No. 4 Capt Agashe making them available for future promotions in this vertically specialized stream, as no Technical Officer from INS Chakra has been selected in PB2/14. Further, the other submarine officers promoted in PB 2B/14 are relatively lower in merits to him, as they were selected in the subsequent Technical Sea Boards. During the period 2008-10 also as Flag Officer Submarine, Respondent No. 3 reviewed the ACRs of Respondent No. 4 in his capacity of SRO. These ACRs thus became a datum/basis for his upward curve of ACRs for PARBing for future promotion and worked in reverse order for his competitors.

Respondent No. 3 thus in his capacity as SRO (IGNS) systematically lowered the marks of the technical officers having superior profile and in direct reckoning with his son-in-law.

18. Mr. Singh, the learned counsel for the applicant in O.A No. 1113 of 2015, contends that the technical officers from INS Arihant and INS Chakra were highly biased due to subjective numerical assessment at SRO level, which not only ensured promotion of Respondent No.4 (Capt Agashe) and technical officers of Arihant, but also made them the only candidate available for future promotions in the vertically specialized stream. To justify his contention that there was reasonable biasness, he has relied on the decisions in:

- (i) *Ranjit Thakur v. Union of India and others* (1987) 4 SCC 611;
- (ii) *S. Parthasarathi v. State of Andhra Pradesh* (1974) 3 SCC 459;
- (iii) *State of Punjab v. V.K. Khanna and others* (2001) 2 SCC 330; and
- (iv) *A.K. Kraipak and others v. Union of India and others* (1969 SLR (SC) 445)

19. Consequently, in O.A No. 1113 of 2015, the applicant has sought the following reliefs:

- (a) *Impugned orders, Promotion Boards 2B/14 and 2/15 be set aside and quashed to the extent applicable to the applicant vis-à-vis Respondents No. 4, 5 and 6 and all other affected technical officers from Chakra and Arihant whose reports were reviewed by Respondent No. 3, for the period from 2010 to 2012;*

- (b) *The applicant's ACRs for the year 2010 to 2012 to the extent reviewed by Respondent No. 3 as SRO and RO respectively vis-à-vis Respondents 4, 5 and 6 and all other affected Technical Officers be set aside and quashed along with his PARBing records/assessment and value based assessments with reference to suitability in War, Peer Group Assessment and his overall profile;*
- (c) *ACRs of Respondent No. 4 from 2008 to 2012 and ACRs of Respondent No. 5 and 6 for the period from 2010-2012 as reviewed and influenced by Respondent No. 3 through their respective IOs/ROs be quashed and set aside in entirety being biased, null and void;*
- (d) *The applicant be assessed 'de novo' for promotion to the rank of Capt on the basis of reports rendered for the year 2010-2012 by IOs, after removing the tainted effect of ACRs, reviewed by Respondent No. 3 and after reworking out, inter se merit, based upon uninfluenced reports of all affected officers, after taking steps at prayers (a) to (c) above and applicant be promoted with the seniority of PB2/2014, if he is above the last officer promoted therein;*
- (e) *Respondents No. 3 and 4 be brought to justice for in terms of Sections 54 and 74 of the Navy Act, 1957;*
- (f) *Redressal and Complaints Advisory Board be quashed and set aside being violative of Section 23 of the Navy Act, 1957 read with Regulations 235 to 239, Regs Navy Part-II (Statutory);*
- (g) *Performance Appraisal Review Board (PARB) be quashed and set aside, having no locus standi in the eyes of law, since Board Members have no occasion to observe/assess the performance of the officers*

and the Board operates in vacuum at the bidding of Respondent No. 2;

- (h) 5% marks allowed to the Promotion Board for value judgment be quantified for each elements in a scientific way i.e. suitability in War (ii) Peer Group Assessment (iii) Overall profile based on awards and specific achievements, doubtful elements like naval requirement be eliminated to obviate subjective assessment; and*
- (i) any other relief(s) which this Hon'ble Tribunal may deem appropriate, just and proper in the interest of justice and in the facts and circumstances of the case may also be granted to the applicant.*

In summation of the arguments, both the learned counsel after putting their respective submissions across, stated the following, which would help the Tribunal in adjudication of these two cases:

- (a) The scrutiny of the RECAB Board proceedings held in relation to the officer(s);
- (b) The fact that indeed, Respondent No. 3 had reviewed and downgraded CRs of the applicants and at the same time, inflated the CRs of Respondent No. 4;
- (c) When not authorized to intervene in the reporting channel of the two applicants, the fact that indeed Respondent No. 3 had interposed himself in the reporting chain to provide himself the opportunity to initiate reports on the two applicants, who were in competition with Respondent No. 4, to the detriment of both the applicants; and
- (d) Calling for all the original records and scrutinize them in order to substantiate the case of the applicants.

Arguments put forth by the Respondents:

20. Per contra, Mr. Bhati, Senior Central Government Standing Counsel appearing for the respondents, at the outset, placing reliance on the policy and the procedure regarding promotion to the rank from Cdr. to Capt. in the Indian Navy, has submitted that the said policy and procedure had been promulgated under the authority of Respondent No. 2, which is contained in Navy Order (Special) 01/2012. In terms of the said Navy Order, the cases of all the officers under consideration were placed before a Promotion Board No. 2, consisting of senior Naval officers, which is mandated to submit appropriate recommendations finally approved by Respondent No. 2.

21. The Promotion Board is guided by an approach paper duly approved by Respondent No. 2, which broadly lays down the procedure to be followed by the Board, batches to be considered, number of officers to be select listed based on the long term perspective and other policy decisions as applicable. The Promotion Board is required to assess the comparative merit of officers under consideration, which is decided based upon the totality of performance afloat and ashore, among other factors with the sole objective of selecting the best suited officers among the officers being considered. The detailed policy guidelines are contained in Para 21 of Annexure R1.

22. For the purpose of deciding the comparative merit of the officers for promotion to the rank of Capt. the Board is required to assess the officers' performance, qualities and promotion potential from the confidential reports. The detailed instructions for rendering confidential reports of Naval officers are contained in Navy Order (Special) No. 05/05 and other executive instructions issued for amplifying any changes, as may be required to meet the changing needs for Human Resource Management of the Navy. Further, in order to ensure the appraisal system of the officers in the Navy and to ensure that such system does not suffer from any major fluctuations in the overall profile of the officer, due to differences in style or standards of different appraising officers and other factors, a Centralized Performance Appraisal Review by a Performance Appraisal Review Board (PARB), duly constituted by Respondent No. 2 has been introduced in the service. The composition, functions and powers of the said Board are contained in Paragraphs 24 to 27 of Annexure R1.

23. The learned counsel submitted that the appraisal system in the Navy is designed to provide regular inputs on professional abilities and performance, personal qualities and attitudes to ensure that the assessment of the officer is carried out in a scientific and objective manner as possible. For allocating 95% marks to each officer, final numerical values as approved by Respondent No. 2 and other factors contained in Para 21 of Annexure R1 are also taken into

account by the Promotion Board. Thereafter a comparative merit list is prepared after allocating 5% marks awarded as value-judgment by the Board Members. The provision of 5% marks has been enunciated vide policy letters dated 05.06.2013 and 14.05.2009.

24. It has also been submitted by the learned counsel that the merit of the officer depends upon his consistent performance and not on the performance in one or two reports, and it is the totality of performance, and not any single report that decides the overall merit. Therefore, it is stated that the claim of the applicants is based upon misdirected understanding of the Naval provisions on Appraisal System, including intervention of Performance Appraisal Review Board (PARB) and rules regarding promotion.

25. While dealing with the contention of the applicant that V Adm P.K. Chatterjee was the SRO for both INS Arihant and INS Chakra during 2010-12, it is stated that a total of four reports were generated in respect of the applicant, in which on three occasions, V Adm P.K Chatterjee was the SRO of the applicant, whereas during the corresponding period, V Adm P.K. Chatterjee was the SRO of Respondent No. 3, who was borne in INS Arihant only once viz. for the period 01.11.2011 and 31.03.2012 (a report of four months). **The contention of the applicant that V Adm P.K. Chatterjee had manipulated the Naval system in such a way that he was either RO or SRO for his own son-in-law, on various occasions is incorrect.** There

were other officers also who were RO and SRO in respect of the applicant as well as Respondent No. 4 on many occasions. In Indian Navy, promotion up to the rank of Cdr. Is purely time based. In the selection to the rank of Captain, where ACR gradings have significant role, Respondent No. 3 had done justice to the applicant as well as Respondent No. 4. Further, rebutting the allegation levelled against Respondent No. 3, it is stated that in his official capacity, Respondent No. 3 had no role in waiving off of sea time and transfer of Respondent No. 4 to Mumbai, as the same was within the purview of Directorate of Personnel and Respondent No. 3 was not part of it. Minor variation in the reporting officers does not have any impact on the career of an officer. The learned counsel for the respondents also denied the allegation of the applicant that IGNS during his capacity as SRO systematically reduced ACR marks of technical officers having superior profile in direct reckoning with his son-in-law. It is totality of consistent performance, and not one or two reports which is decisive for drawing the merit by the Promotion Board. He also denied the allegation that Respondent No. 3 reviewed the ACRs of Respondent No. 4 during the period 2008-10 in the capacity as SRO, which formed the basis of his upward curve for PARBing, and this was based on a misplaced conception of PARBing.

26. While denying the contention of the applicant that Respondent No. 3 reviewed the ACRs of Respondent No. 4 during the

period 2008-10 in the capacity as SRO, which formed basis of his upward curve for PARBing and that during the said period, Respondent No. 3 reviewed only one ACR of Respondent No. 4, which was consistent with the grading of IO and RO and the same was not the basis for his PARBing in the rank of Cdr.

27. In response to the case of Cdr. Zadoo(O.A No. 1113 of 2015), the pleadings state, that during 2010-12, a total of five reports were generated in respect of the applicant, in which on three occasions, V Adm P.K. Chatterjee was the SRO of the applicant, whereas during the corresponding period, V Adm P.K. Chatterjee was the SRO of Cdr. Agashe, who was borne in INS Arihant in only one occasion viz. for the period from 01.11.2011 to 31.03.2012 (a report of four months). Therefore, he denied the contention of the applicant that V Adm P.K. Chatterjee had manipulated the Naval system in such a way that he had been either RO or SRO for his own son-in-law on various occasions. It is the contention of the learned counsel for the respondents that in Indian Navy, promotion up to the rank of Cdr is purely time based and in the selection to the rank of Capt, where ACRs gradings have significant role, Respondent No. 3 had done justice to the applicant as well as to Respondent No. 4.

28. It is also stated that Respondent No. 3 was in no way involved in the proceedings of PB 2B/14 and 2/15 for promotion to the rank of Capt. Promotion Boards 2B/14 and 2/15 took cognizance of

the comparative merit of the officers considered in these Selection Boards based on pure merit derived from 95% marks allotted on the basis of overall performance of an officer in the rank of Cdr and 5% marks allotted as value judgment. The fact of the situation is an inescapable reality of lower number of higher billets against large number of candidates. Further, IGNS was not the SRO for all reports in respect of officers borne in Arihant during the period 2010-12. The reporting channel of Capt Agashe and Cdr Zadoo are given below:

Capt Ajay Zadoo

RANK	UNIT	PERIOD	CHANNEL OF REPORTING
Cdr	P-21045 Cell	17.06.10 – 31.10.10	IO : Capt KG Ramkumar RO : Capt P Ashokan SRO: V Adm PK Chatterjee
Cdr	P-21045 Cell	01.11.10 – 31.03.11	IO : Capt KG Ramkumar RO : Capt P Ashokan SRO: V Adm PK Chatterjee
Cdr	Chakra	01.04.11 – 31.03.12	IO : Capt KG Ramkumar RO : Capt P Ashokan SRO: V Adm PK Chatterjee
Cdr	Chakra	01.04.12 – 31.07.12	IO : Capt KG Ramkumar RO : Capt P Ashokan SRO: V Adm PK Chatterjee
Cdr	Jyoti	01.08.12 – 31.03.13	IO : Capt Srinivas Ganapathi RO : R Adm Ajit Kumar P SRO: V Adm Anil Chopra

Capt A.V Agashe

RANK	UNIT	PERIOD	CHANNEL OF REPORTING
Cdr	Arihant	17.05.10 – 09.01.11	IO : Cdr GK Kathpalia RO : Capt S Mahinderu SRO: R Adm MT Moraes
Cdr	Arihant	10.01.11 – 31.10.11	IO : Cdr GK Kathpalia RO : Cmde S Mahinderu SRO: R Adm Srikant
Cdr	Arihant	01.11.11 – 31.03.12	IO : Cmde S Mahindru RO : R Adm Srikant SRO: V Adm PK Chatterjee NSRO: V Adm Anil Chopra
Cdr	Arihant	01.04.12 – 31.03.13	IO : Cmde S Mahindru RO : R Adm SV Bhokare SRO: V Adm MT Moraes NSRO: V Adm Anil Chopra

29. Consequent to perusal of all pleadings and hearing of the arguments of all the counsel to include Respondent No. 3 represented by Sr. CGSC and Respondent No. 4 in person, (less Respondents 5 and 6, for whom none appeared despite notice), we record the following consideration:

Consideration by the Court:

30. We may make it clear that in recording the arguments, as well as in the consideration, it is clarified that issues related to the reliefs sought, in Para 16(f), (g), (h), 19 (f), (g) and (h) are not being dealt with since both the learned counsel for the applicants have stated that they will not agitate these reliefs.

31. In consideration of the case projected by the applicants, we would like to deliberate first on the case that has been argued in great detail i.e. of Cdr. Luthra (O.A No. 1112 of 2015).

32. The specific questions that arise before this Tribunal in the adjudication of this case and, indeed, within whose answer would lie the outcome of the O.A are enumerated below:

- (a) It not being an improbable situation, does the Navy have any provisions to safeguard against circumstances of this nature wherein reports of related people are initiated or reviewed within the system?

- (b) Have the facts, as narrated by the counsel for the applicants, been borne out by the documentary evidence, with relation to RECAP, annual CRs and evaluation of the applicant Cdr. Luthra by the SRO (Respondent No. 3);
- (c) Has the SRO's assessments been detrimental to the career profile of the applicant, while simultaneously being beneficial to Respondent No. 4 during their service?
- (c) Has such biased assessment (if found), been mala fide, with the intend of giving an unfair advantage to Respondent No. 4 over the applicant in the Promotion Boards, that have been held concurrently for both the officers?

33. Related to the first aspect, upon repeated questioning of the respondents in this issue, it has emerged that the Navy has no regulations, policy or, indeed, caution within its system to prevent occurrence of such a predicament, whereby, in this case the SRO has successively reported upon his son-in-law. On clarification once again, it has emerged that the Air Force has a detailed order addressing the same circumstances and in the case of Army, there are detailed policy letters, which safeguard against such circumstances. It is also surprising to us and disturbing that at no stage over the years has

either Respondent No. 3 or Respondent No. 4 represented to the system that such a predicament prevails and, indeed, in the discharge of high office, as in the case of Respondent No. 3, he should have procedurally recused himself from initiation of reports on his son-in-law. Far less, neither Respondent No. 3 nor Respondent No. 4, has ever brought this to the notice of the authorities, be it the Personal Branch or, indeed, the office of various CNC's or the CNS's.

34. We have, with great deliberation, gone through the recommendations of the RECAB (an autonomous Redressal and Complaints Advisory Board) of the Indian Navy. In consideration of this, we have perused also Navy Order No. 24-25 of 2007, which deals with the constitution and conduct of RECABs. It needs to be borne in mind that this is an autonomous body, to which cases specifically are recommended for consideration. In consideration of these specific issues, the RECAB, which came to its conclusion on 23.03.2015, had examined all aspects projected by the aggrieved officer, the present applicant Cdr. Luthra. He has also clearly outlined in his representation conflict of interest at the SRO level by review of reports of Respondent No. 4 by Respondent No. 3 and a corresponding detrimental down-gradation of his reports simultaneously.

35. The RECAB had examined all aspects and in its conclusion, in Paragraphs 7 and 8, as in Paragraphs 7(a), (b) and (c), clearly

brought out that it does not in any way concur with the views of the Personal Branch (given in their brief to RECAB), and while these documents are of a confidential nature, we find it necessary to re-produce Paragraphs 7(a), (b) and (c).

"7. **RECAB's views.** RECAB does not concur with views of Personnel Branch, due to following:

(a) PARBing of Reports from the Rank of Lt Cdr in the case of Cdr SS Luthra needs review as the Bench Marking in this Rank does not seem to be in accordance with established norms.

(b) The SRO (highlighted at Table 2), as is evident in the case of Cdr SS Luthra, has reduced the numerical grading when the IOs / ROs have consistently numerically graded him high with a matching P/W Comparison as A/A. Further, the textual remarks by the SRO in the Reports do not explicitly bring out reasons for reducing the numerical grading given by the RO. This fact has resulted in the Officer not being PARBed upwards.

(c) RECAB, does not intend to highlight, as to why Cdr A V Agashe was promoted. Rather, RECAB aims to bring into focus, the SRO's inconsistency whilst moderating ACRs in the case of Cdr SS Luthra. This may have caused the Officer's non-selection for promotion to the Rank of Captain by PB 2B/14."

Based on these findings, the RECAB had considered and recommended that:

8. **Recommendation.** RECAB, based on its independent review as summarized at Paras 6 and 7, recommends that the ROG submitted by Cdr SS Luthra (41884-R) be reviewed as follows:-

(a) PARBing starting from the Rank of Lt Cdr be re-evaluated to revised numerical gradings in accordance with norms.

(b) Low 'Numerical Gradings' given by the SRO (as V Adm PK Chatterjee) in the case of Cdr SS Luthra even when the Officer has had higher P/W Comparisons / Numerical Gradings

from IOs / ROs, be reviewed (Table 2 and Notes 1 to 3 are relevant).

*(c) If Para 8(a) and (b) are approved by the CNS, Personnel Branch may review Cdr SS Luthra's 'Position in Merit' after recommended moderation and his case be considered for **Promotion with ante-dated Seniority.**"*

36. Thereafter, the Chairman, RECAB, who was a Deputy Chief of Naval Staff, recommended the case to the Chief of Naval Staff. It is strange here now to see that a RECAB, which is an autonomous independent body, appointed by CNS, which, in any case, is given all its inputs and briefs from the Personal Branch, before it commences examination of an issue, and, indeed, during the period of its examining of the issue, has full access to the advice of the Personal Branch, when coming to a conclusion, as in this case, wherein it has disagreed completely with the opinion expressed by the Personal Branch, the CNS has found it necessary to send the recommendations of the RECAB once again back to the Personal Branch and they, in their re-consideration of the issue, once again contrary to the opinion expressed by RECAB came to a conclusion as given below:

"4. **Conclusion.** *In light of the details enumerated in para 3 above re-PARBing of reports in the rank of Lt Cdr is not recommended. A comparative assessment of the officer's report along with other officers of his batch reveals that a common yardstick has been applied by the PARB with no evidence of any prejudice against the officer. Hence re-PARBing of reports in the rank of Cdr is not recommended. Further, there is no evidence of a selective prejudice by the SRO V Adm Chatterjee against the officer and hence status quo is recommended.*

5. In light of the details enumerated above, it is recommended that representation submitted by the officer be rejected."

Further, in dealing with this, the Personal Branch, in their letter of 13.06.2015, addressed to the Flag Officer, Commanding-in-Chief, Eastern Naval Command, responding to the representation, has said in Para 3 the following:

"3. In accordance with NO 24/07, the officer's case was referred to the autonomous Redressal and Complaints Advisory Board (RECAB) for a de-novo examination. The RECAB came to the conclusion that no injustice has been done to the officer."

We find that this opinion, as enumerated above, is completely incorrect and contrary to what the RECAB had recorded and recommended.

37. At the commencement, we would like to outline the fact, as raised by the applicant, that in fact, Respondent No. 3 should not have been in the chain of reporting of the applicant when he was overseas. A chain of reporting was producing and that showed that in fact the reports at the level of SRO needed to be initiated by CWP&A and not Respondent No. 3. The respondents (Indian Navy) have produced Order No. P21045 of 18.01.2011, whereby a classified chain of reporting has been shown and, indeed, in this, as claimed by the applicant, the chain of reporting has been amended and the SRO was, in fact, Respondent No. 3. Given the structure, nature of tasks as well as the office of authority of Respondent No. 3, we find no fault in laying down channel of reporting relating to the office of Respondent

No. 3 (and not his person), and as such, the issue raised by the applicant that such channel was illegal, and contrary to the Navy orders, cannot be sustained.

38. Prior to examining the CR profile of the officers, we would like to make it clear that we do not agree with the contention of the respondents that slight variations in the CR quantification does not have any effect on Promotion Boards. It is the experience of the Bench, in many matters, that due to extreme bunching up of profiles, Boards have to go up to the second decimal place, to find variations in profiles in certain cases. Definitely, the decimal values are of critical importance and can vary the outcome of a Selection Board (Promotion) conclusively. In short, not only the whole figure quantification, but decimal points matters. We are also aware that the Navy follows a close system of reporting, whereby the quantification of CRs is not known to the assessee, unless it involves adverse remarks or issues. Consequently, while having scrutinized the records and being fully aware of the full quantification figures in this matter, in this order, we will place forward the specific issues only based on these, in the interest of propriety and confidentiality.

39. In the CR profile of Cdr. Luthra, we find in the CRs just prior to the initiation of the first CR by Respondent No. 3 as SRO, the quantified value of the officer was held up to 1.1 value higher by the IO and 0.2 values higher by the ROs (repeatedly), there being no

SRO. In the first report reviewed by Respondent No. 3 as SRO, the IO has held the officer 3 decimal points higher and the RO 2 decimal points higher; while the SRO, without any justification (in the pen picture), has dropped the officer to 2 decimal points below the RO and 3 decimal points below the IO. He has also reduced assessments in critical PQs, which run contrary to the pen pictures of the IO and RO, w/o any justification of its own. Thereafter consistently in the CRs reviewed by this SRO (Respondent No. 3), wherein the IO and the RO over the years have consistently held higher values, the SRO has consistently reduced the values by 1-2 decimal point with no qualifications for reduction. There have also been drops in PQ qualities both in stand-alone assessments, as well as by reducing the overall PQ value. It has also been observed that for the period immediately after Respondent No. 3 has ceased to be in his reporting chain, the overall profile of this officer has elevated considerably and when compared to the assessment held by Respondent No. 3 in his last CR as SRO; it has been increased by the IO up to 4 decimal points higher, RO up to 3 decimal points higher and SRO 1-2 decimal points higher. We find that Respondent No. 3 immediately on entry into the chain of reporting, had made a large unjustified reduction (numerically), and thereafter, has rather intelligently kept the officer consistently at a lower level, being aware that this overall

depression,would have a major cascading effect, impacting upon the applicant's Board.

40. While examining the profile of Caprt Agashe, once again, just before the first initiation by Respondent No. 3, we find that the ACRs reported on by the IOs and ROs, which have held the officer in some cases up to five decimal points lower, than the first endorsement by Respondent No. 3 on Respondent No. 4 (wherein he has increased the assessment by up to 4 decimal points), compared to the two earlier reports. In contrast to the ACR just before, there is an increase of 3 decimal points. It is, therefore, evident that the moment Respondent No. 3 has become part of the reporting chain as SRO, there has been a positive input to raise up his CR profile. It is equally evident that the IO and the RO, in the first such ACR, under this SRO (Respondent No. 3) (CR of 01.11.2006 to 31.10.2007); have increased their quantified assessments by up to three to four decimal points compared to the CRs just before Respondent No. 3 became the SRO. In this CR of 2006-07, we also find that the SRO Respondent No. 3 has indisputably jumped the pen picture as a positive assessment. This being followed up by other CRs with laudatory assessment and the subsequent CRs have once again raised the profile. This consistent increase in profile has remained in place duly supported by IOs and ROs for at least five CRs. In the last of this batch of five CRs that of 01.11.2011 to 31.03.2012, Respondent No. 4

has been carried to a higher whole number quantification by the IO, RO and the SRO (Respondent No. 3). It has been argued before us that one of the best ways in increasing the profile of an officer, if such is the intention, is to consistently upgrade and hold values over the years so that this then becomes part of their datum, and raises the overall profile to a higher value. We find in the case of Respondent No. 4 that, indeed, it has been done ever since Respondent No. 4 came into his reporting chain, and has been able to exercise his wider influence. We find evidence of both direct action as well as influence by Respondent No. 3, in the case of Respondent No. 4.

41. What emerges from the above is that not only has Respondent No. 3 intervened in the case of the applicant and brought down his quantitative assessment convincingly, but he has in the same period steeply upgraded the quantitative assessment of Respondent No. 4, his son-in-law. Further what emerges is that all officers in the chain of reporting of Respondent No. 4 are officers who in themselves have to take reports, or be reviewed by Respondent No. 3, by virtue of him being the Inspector General, Nuclear Submarines. In the case of his son-in-law, Respondent No. 4, it is evident that the chain has been kept rather fixed related to his IO and RO, over a period of time and his IO and RO (i.e. of Capt. Agashe) have elevated the officer's profile.

42. Consequent to this, we have examined the three Promotion Boards held in relation to the applicant. It is clear that the applicant and Respondent No. 4 were considered together in the Board of 2014. In the period of the CRs we find that Respondent No. 3 had depleted the quantitative assessment of the applicant while simultaneously enhancing the quantitative assessment of Respondent No. 4. In the Promotion Board of 2014, it is also interesting to see that while the applicant stood based on quantitative merit at a position well above some selected serials; due to value judgment, he was not selected in the Board. We do not want to comment on the conduct of this Board, or on value judgment. Suffice it to say that the officer had sufficient merit despite his depleted quantitative profile, which now emerges clearly as an orchestration by his SRO (Respondent No. 3).

43. We would now come to the following conclusions:

- (a) **It is disturbing and surprising that the Indian Navy does not have an inbuilt system to ensure such probable occurrence between relatives are addressed institutionally, so that such a situation, as occurred in this case, does not manifest;**
- (b) **Respondent No. 3, who is a three-star high ranking officer of the Navy, at no stage has made known to Navy the fact that he was consistently reporting on his son-in-law and when not reporting was fully in the**

position of influencing the CR chain of his son-in-law (Respondent No. 4);

- (c) It is apparent to us that a substantial CR profile has been influenced by Respondent No. 3 in relation to Respondent No. 4, so much so, at this stage, we are not really sure whether the officer who stands promoted to the rank of Captain is truly represented by his profile;**
- (d) We are in full conformity with the recommendations of the RECAB and find their application of mind independent, judicious and in the best interest of the Service. We find the manner in which they have gone about their tasks, independently, uninfluenced and in the best interest of the Service, as a shining example of professionalism, justice and courage of conviction;**
- (e) There is clear mala fide on the part of Respondent No. 3 related to the applicant, which emerges, further aggravated and pronounced by the fact that at the same time, he has consciously upgraded the profile of his son in law (Respondent No. 4) repeatedly, thereby benefiting him, the profile being critical to him, crossing the bar for the rank of Captain.**

44. We now advert to O.A No. 1113 of 2015 (Cdr. Zadoo), in which we have perused the RECAB Board proceedings, personal records of the officer as well as the three Boards held. On perusal of

the personal records, while undoubtedly Respondent No. 3 has been the SRO of the officer, we find that there is no discernible bias or indeed interference that is visible to us. Similarly, in the conduct of the Promotion Boards, it is evident that while the officer may have been in the zone of consideration for promotion, the Board, based on their judgment and his merit, have found the officer unable to make the qualification for selection to promotion. We find no fault in either the conduct of the Board or indeed, in the endorsement of CRs pointedly those in which Respondent No. 3 is the SRO.

45. In our consideration of O.A No. 1113 of 2015 (Cdr. Zadoo), a scrutiny of RECAB as well as his personal data and performance profile, which is being undertaken, we find related to the allegations raised, no evidence of mala fide or orchestration. The RECAB has raised its observations, however, these pertain to procedural aspects of PARB and do not, in any way, indicate any form of adverse interference in the profile of the officer. We must observe herein that, in our independent examination of the CRs and the record of service, we find that while, indeed, the officers' SRO Respondent No. 3 has initiated CRs, but none of those reveal any form of unjustified grading or disproportionate interference in the CRs. In fact, his profile is in consonance with the reports raised by the IOs and the ROs in relation to the applicant (Cdr. Zadoo). Consequently, related to the reliefs that have been specified in Para 19(a) to (i), in our

considered view, the basis for the reliefs in Para 19(a), (b) and (c) does not exist at all.

46. The principles governing the "doctrine of bias" are well settled (also refer to Para 18 hereinabove). The Hon'ble Supreme Court has held that "*no man shall be a judge in his own cause and justice should not only be done but manifestly and undoubtedly seem to be done*". These two maxims yield the result that a person is subject to a bias in favour of, or against, any party to a dispute, or is in such a position that bias must be assumed to exist, he ought not to take part in the decision. What is required to be seen is whether there is reasonable ground for believing that a person is likely to have been biased. A mere suspicion of bias is not sufficient. There has to be reasonable likelihood of bias. It was emphasised that while deciding the question of bias, the Court is required to take into consideration human probabilities and ordinary course of human conduct.

47. In these two cases on hand, we, after going into indepth perusal of the factual records so as to arrive at a justdefinite conclusion as to in which case bias is apparent on record, are now in a position to hold conclusively that the case of Cdr. Zadoo is not suffering from the malice of bias at all, whereas the bias is writ large in the case of Cdr. Luthra. We may also observe here that Cdr. Zadoo is an Electrical Branch officer and does not stand in competition for vacancies in Engineering Branch, consideration for vacancy being

separate altogether. There is, on the contrary, a sharp convergence between the applicant of O.A No. 1112 of 2015 (Cdr. Luthra) and Respondent No. 4 (Capt. Agashe), related to the Engineering Branch, both in reporting, as well as in the conduct of the Boards, and competition for vacancies, since both Cdr. Luthra and Capt. Agashe are officers of the same branch competing for the same vacancies, in the same Boards, this convergence does not occur in the case of Cdr. Zadoo. We thus find no reason to intervene so far as Cdr. Zadoo's case is concerned, therefore decline to give him any relief as asked for in O.A No. 1113 of 2015.

48. To summarise, it is manifest and clearly evident that Respondent No. 3 has interfered in a mala fide and unjustified manner in the CRs of Cdr. Luthra. It is equally apparent to us that the profile of Respondent No. 4 Capt Agashe has been positively affected and enhanced in an unjustified manner by Respondent No. 3, they being related, this fact not having been noted or interfered by Navy. While Respondent No. 4 now stands promoted to the rank of Captain, we do not wish to interfere with that, however, the Navy has to keep in view these facts, and the resultant profile of Respondent No. 4 that has been unjustifiably upwardly moderated needs to be reviewed and corrected.

49. As a sequel to the aforesaid detailed discussion, we order the following:

- (1) All assessments of the SRO (Respondent No. 3) in the CRs of Cdr. Luthra are hereby struck down and will be expunged from the officer's records and his quantified merit be re-calculated in entirety;
- (2) Cdr. Luthra shall be considered for his promotion to the rank of Captain with his original batch i.e. Board of 02/14 (as a fresh case in his original seniority). The Board, apart from dealing with his profile, which carries the expungement ordered in (1) above, shall also keep in view the fact that based on quantified assessment, the officer stood very high in the merit during the Board of 02/14 and with his quantified merit being further enhanced (now), he may, in all likelihood, when compared to the merit of that batch, stand well above his peers. Further, the Board will take into consideration, the inflated profile of Respondent No. 4 when conducting the Board of the applicant;
- (3) Since the officer has, of his own volition, already proceeded on PMR; if approved for promotion, the officer will be granted his rank from the original date of his batch, and will be entitled to full pension and all terminal benefits in his enhanced rank;
- (4) Since Respondent No. 4 (Capt. Agashe) has been shown favour by none else but his father-in-law only (Respondent No. 3), which fact has not been noted by the Navy, we, without interfering with the promotion of Respondent No. 4 to the rank of Captain, direct that Respondents 1 and 2 that they shall keep in view these facts, and the resultant profile of Respondent No. 4, in the next Promotion Boards;

50. The next issue falls for our consideration is, whether the applicant (Cdr. Luthra) in O.A No. 1112 of 2015 deserves to be

compensated in any manner for the hardship faced by him on account of an undue favour shown by Respondent No. 3 to Respondent No. 4. We find that possibly, as a consequence of his despondence with his circumstances and the system, he, rather than serving superseded by others, has chosen to proceed on premature retirement. In doing so, while he may have exercised his personal choice, albeit in trying circumstances, however, on the contrary, the Indian Navy has lost a highly specialized officer, on whom admittedly a huge cost and time has been invested, for super specialization in the complex domain of nuclear submarines (as evident from his record of service). Such a loss to the Navy and consequently to the Nation is disturbing. After the issue being clearly articulated in the Court by us, the least we can do in compensating an aggrieved individual is slapping of costs upon Respondent No. 3 (Vice Admiral (Retd)) to be paid to the applicant (Cdr. Luthra). We thus direct:

- (5) Respondent No.3 shall pay an amount of Rs.5,00,000/- (Rupees five lakhs) as costs to the applicant Cdr. Luthra, which is directed to be deposited with the Principal Registrar of this Tribunal within three months from today, in turn it shall be disbursed to Cdr. Luthra against proper receipt.

51. Before parting with the judgment, we may observe here that Navy shall ensure that such like circumstances, which are completely avoidable, do not occur and in doing so, will specify orders and policies, to ensure that there is no recurrence of such a

possibility, which being unacceptable in any Government department, in a service like Navy and Armed Forces of the Union; even a hint of such a convergence must never be allowed to manifest.

52. The net result is, O.A No. 1112 of 2015 (*Cdr S.S. Luthra v. Union of India and others*) is allowed to the above extent, with costs as indicated herein above; and O.A No. 1112 of 2015 (*Cdr Ajay Zadoo v. Union of India and others*) is dismissed, with no order as to costs.

53. A copy of this order shall be sent to the Chief of the Naval Staff for his consideration and necessary action by the Principal Registrar of this Tribunal forthwith.

54. Record retained by us for our perusal is returned to Naval Legal Department.

**(VIRENDER SINGH)
CHAIRPERSON**

**(SANJIV LANGER)
MEMBER (A)**

Alex

**COURT No.1, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

O.A Nos. 1112 of 2015

Cdr S.S. Luthra **Applicant**

Versus

Union of India& Ors. **Respondents**

For Applicant : Mr Ankur Chhibber, Advocate
For Respondents :Mr. K.S Bhati, Sr. CGSC for R 1-3 & 7
R4 in Person
None for R 5-6

CORAM:

**HON'BLE MR. JUSTICE VIRENDER SINGH, CHAIRPERSON
HON'BLE LT. GEN. SANJIV LANGER, MEMBER (A)**

ORDER
31.07.2017

Vide our separate detailed judgment of even date, O.A No. 1112 of 2015 (Cdr. S.S. Luthra v. Union of India and others) stands allowed with costs as indicated in our order. Faced with this position, Mr. Karan Singh Bhati, Senior Central Government Standing Counsel appearing for Respondents 1 to 3 and 7 made an oral prayer for grant of leave in terms of Sections 30 and 31 of the Armed Forces Tribunal Act 2007 for moving Hon'ble Supreme Court challenging our judgment.

2. Since we have decided the instant matter by going into indepth perusal of the records only made available to us during the course of

arguments, we do not find any point of law, much less of point of law of general public importance, involved in it for granting leave to appeal as asked for. The prayer thus stands declined.

**(VIRENDER SINGH)
CHAIRPERSON**

**(SANJIV LANGER)
MEMBER (A)**

Alex