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IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

OA No. 17/2009

Brigadier H.S. Shekhon .....Petitioner

Versus

Union of India & Others .....Respondents

For petitioner: Col.(Retd.) A.S. Chauhan, Advocate

For respondents: Col. (Retd.) R. Balasubramanium, Advocate

CORAM:

HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON
HON'BLE LT. GEN. M.L. NAIDU, MEMBER

ORDER
09.12.2009

1. This petition was transferred from Hon'ble Delhi High Court to this Tribunal.

2. By this writ petition, petitioner has prayed that respondents may be directed to set aside the impugned interim confidential report of the petitioner for the period from 04.09.2006

to 23.12.2006 being void 'ab initio' and respondents may directed to consider the petitioner afresh after setting aside the impugned confidential report by holding Special Quality Assurance Selection Board 1 (QASB1) at the earliest with retrospective seniority in view of his impending retirement in March 2010.

3. Petitioner was commissioned on 15.12.1976 in the Corps of Electrical and Mechanical Engineers (EME) with ante date seniority of 23.12.1974. He was selected on his own merits and permanently seconded to Directorate General of Quality Assurance (DGQA) and posted in the rank of Major and subsequently, promoted as Lt Col (Lt Col in the appointment of Deputy Controller at CQA (OFV) at Jabalpur till August, 1999). Thereafter, he was transferred to Headquarters DQA(V) at Delhi in the same rank and remained there till August, 2001. On 14.06.2006, he as Brigadier was posted to the Directorate General (DG) EME to undertake preliminary technical and administrative actions for smooth transfer of indigenization responsibility. Petitioner was placed under the then Additional Director General (ADG) EME, Maj Gen A.K.S. Chandele and remained so posted as Deputy Director General (DDG), IND, EME

till May, 2007 and remained there for one year. After that he was posted back to HQ DQA(CV) Avadi by the order dated 24.05.2007. However, his interim confidential report for the aforesaid period was initiated by Maj Gen B.S. Yadav DQA(V) under whom he did not serve during the stated period. The case of the petitioner is that through out the currency of this period of annual confidential report i.e. 2006 to 2007 he did not work under Maj Gen B.S. Yadav DQA(V) and he was directly working under Maj Gen A K S Chandele, ADG(EME). Therefore, the annual confidential report which was initiated by Maj Gen B.S. Yadav DQA(V) was not proper and Maj Gen A K S Chandele, ADG(EME) was only competent to write this. In this connection learned counsel for petitioner invited our attention to note sheet of Maj Gen A K S Chandele, ADG(EME) where it is clearly mentioned that this officer is functioning under him with effect from 14.06.2006. Therefore, the contention of learned counsel for petitioner is that Maj Gen B.S. Yadav DQA(V) had no occasion to assess the performance of petitioner but it was only Maj Gen A K S Chandele, ADG(EME) under whom petitioner worked directly and he is only competent to assess his performance. As such he submits that annual confidential report written by Maj Gen B.S.

Yadav DQA(V) be expunged and matter be remitted back to the competent authority to write his annual confidential report. As against this learned counsel for respondents pointed out that at that relevant time petitioner remained for all purposes under the administrative control of DGQA and he invited our attention to letter dated 20.11.2006 issued by Government of India, Ministry of Defence in which it was pointed out that *service officers and AFHQ cadre officers shall continue to function in their respective cadres, as they were when working in DGQA.* It was also pointed that *all officials from DGQA shall be under the cadre controlling authority of DGQA for their service conditions, promotions and transfers.* Therefore, it was submitted that for all purposes the controlling authority shall continue to be DGQA though his services have been given to the DGEME for the project of indigenization. Hence, it is submitted by learned counsel for respondents that for all purposes the controlling authority continues to be DGQA. He has also brought to our notice the subsequent letter dated 29.05.2007 where it was clearly mentioned that *ACR channel in respect of permanently seconded service officers and the civilian officers of DGQA during their tenure in DGEME commencing from ACR period 2007-08 has*

been indicated in Appendix-A and B respectively. Therefore, now as per the changed policy by the order dated 29.05.2007 the ACR for the period 2007-08, the competent authority for initiation shall be Cdr Base Workshop Group, the reviewing officer shall be DGEME and the senior reviewing officer shall be Master General Ordnance for the rank of a Brigadier. For other ranks like Col, Lt Col different channels have been assigned. So far as we are concerned, the competent authority for Brigadiers as per order dated 29.05.2007 shall be Cdr Base Workshop Group and reviewing officer shall be DGEME and senior reviewing officer shall be MGO but this order came into force from 29.06.2007 i.e. these channels of initiating officer, reviewing officer and senior reviewing officer is for the ACR for the period 2007-08. However, we are concerned in the present case is ACR for the period 2006-07. For this period the controlling authority continues to be DGQA for all purposes and that was the competent authority. Since the services of petitioner were on deputation with DGEME, DGEME was alone competent to review his performance. Since he was working under DGEME, therefore he could only have initiated his ACR and sent to controlling authority for endorsement. Since the controlling authority remains for all purposes the competent

authority but if the officer is on deputation then deputationist authority has full occasion to see and review the performance of officer and that authority can only assess the performance and working of the officer working under it. Therefore, that authority should have written the ACR and sent it for endorsement to controlling authority but in the present case Maj Gen B.S. Yadav DQA(V) who was though the controlling authority but petitioner was not working under him directly. At that time he was working under ADGEME Maj Gen A K S Chandele, he should have initiated his ACR and sent it to controlling authority i.e. DGQA for endorsement. This was not done in the present case. Therefore, in the present case only small flaw is that department where petitioner was working on deputation has only occasion to review his performance and that should have been forwarded to the competent authority i.e. DGQA which was the controlling authority and DGQA was only competent to endorse the ACR or assess the same on the basis of assessment made by Maj Gen A K S Chandele, ADG(EME) under whom incumbent worked directly. Therefore, under these facts and circumstances, we are set aside the ACR given by the Maj Gen B.S. Yadav DQA(V) and we direct that let the ACR be written by Maj Gen A K S Chandele,

ADG(EME) and send it to the controlling authority i.e. DGQA who may endorse the assessment made by Maj Gen A K S Chandele, ADG(EME) under whom petitioner worked or record his own findings. Since the officer is going to retire shortly, this should be done expeditiously. The petition is accordingly disposed of with no order as to costs.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
December 9, 2009