

**COURT NO. 3,  
ARMED FORCES TRIBUNAL,  
PRINCIPAL BENCH, NEW DELHI**

**O.A. 04 OF 2010**

**IN THE MATTER OF:**

**Lt.Col. Jagnar Singh** .....**Applicant**  
Through Maj (Retd) K Ramesh, counsel for the applicant

Versus

**The Union of India and others** .....**Respondents**  
Through: Col R. Balasubramanian, counsel for respondents

**CORAM:**

**HON'BLE MR JUSTICE MANAK MOHTA, JUDICIAL MEMBER,  
HON'BLE LT GEN Z.U.SHAH, ADMINISTRATIVE MEMBER**

**JUDGMENT**

**Date: 30-06-2010**

1. The applicant has submitted OA 04/10 to the Armed Forces Tribunal against his non empanelment for the rank of colonel (Col).
  
2. The applicant was commissioned in the ARTILLERY on 19/12/1987 and subsequently, on his application, was transferred to the Intelligence Corps in 2000. He was subsequently promoted to the rank of Lt Col but was not empanelled for the rank of Col, in September 2006. His statutory complaint against the same was

rejected vide Ministry of Defence letter dated 12/03/2008  
( Annexure A-5)

3. The applicant avers that during his service he has earned seven outstanding ACR's and five Commendation Cards. The remaining have been above average except for some aberrations which are not matching when compared with his overall profile.

4. The applicant states that his Interim confidential report covering the period Jun 1996 to Jan 1997 had 7s in several personal qualities. These gradings must have been endorsed by his Reviewing Officer (RO) also. The applicant however submits that in the next report, in the same appointment, covering the period July 1997 to December 1997 a different IO had graded him "Outstanding". The applicant is certain that this time his RO must have given an improved endorsement which only proves the assessment of the RO is directly proportional to the assessment of the IO. The applicant has brought out that if an officer gets a 7 in an ACR then MS branch, in its subsequent internal assessments, blanks out all outstanding assessments of 9.

5. The applicant avers that his IO, Col MS Joseph during the period Feb 1998 to May 1999, when he was awarded the

commendation card of the Army Commander and was recommended for permanent transfer to the Intelligence Corps, was biased against him because he could not ensure the admission of the son of the Reviewing Officer, Brig Amrik Singh, to Meerut College. During this period ACR for Feb 1998 to Jun 1999 was initiated and this would have adversely affected his report.

6. The applicant avers that during the period of ACR for Jun 2002 to May 2003 he had excellent relations with his IO and RO. He however had no interaction with his SRO, Maj Gen Madan Gopal, who harboured an old grudge against him and his assessment, if subjective, needs to be expunged. The applicant has cited the judgement given in the case of **Col Mahendra Pratap Singh Vs Union of India CPW No 2146/1996 by the Hon'ble Rajasthan High Court**, wherein the impugned assessment of the SRO was set aside on the same grounds i.e *"inadequate knowledge"*.

7. The applicant has prayed that in view of his profile and the awards earned by him the ACRs for the period Jun 1996 to Jan 1997, Feb 1998 to Jun 1999 and Jun 2002 to May 2003 and the impugned orders of Ministry of Defence dated 12/03/2008 be quashed and he be considered afresh for promotion to the rank of Col with all consequential benefits.

8. The respondents in their counter affidavit have stated that the applicant, in Jan 2009, had filed a writ petition in the Hon'ble High court of Delhi on the same subject matter but has not acknowledged submission of the same. The application therefore should be rejected on grounds of concealing facts. The applicant has also challenged Govt of India order dated 12 /03/2008 rejecting his statutory complaint after a gap of 21 months and ACRs have been challenged after more than 8 years. The application, therefore, is not maintainable on grounds of delay and latches.

9. The respondents aver that the original date of seniority of the applicant was 19/12/ 1987 which was later brought down to 11/1/ 1988 due to delay in passing promotion examination Part D.

10. It is stated that the applicant has made allegations against Col MS Joseph, Brig Amrik Singh and Maj Gen Madan Gopal but has not made them as respondents. On grounds of non joining of respondents the application be dismissed.

11. The respondents have stated that the applicant has challenged ACRs 1997 and 1999 respectively after 10 and 8 years from the date of initiation/intimation to him and therefore suffer

from delay and latches. These reports are "above average", are objective and well corroborated. Respondents submit that all ACRs are endorsed by RO & SRO. **The applicant has claimed that he earned several outstanding ACRs. This is incorrect since an outstanding report from the IO alone does not make it outstanding. The outstanding assessment has to be also endorsed by the RO and SRO. The applicant has not done Staff College or senior command course and has lost seniority due to delay in qualifying on promotion examination Part D.** He was awarded five commendation cards but his ACR profile is sprinkled with several 7s. The applicant was considered thrice for promotion to the rank of colonel and was not empanelled because of his relative merit within his batch. The respondents recommend that the application should be rejected.

12. In a rejoinder affidavit the applicant has stated that a writ petition had been filed in the Delhi High Court but was subsequently withdrawn at initial stage. The applicant avers that he got delayed in passing promotion examination Part D by 24 days because at that time he had just got transferred to the Intelligence Corps and was on probation. He also lost chances to appear for staff college. He has also averred that in the case of Intelligence

Corps only after approval for promotion to Cols, officers are detailed for Senior Command Course.

13. We have heard the arguments and perused the records, especially the ACR profile of the applicant. During course of arguments learned counsel for the applicant reiterated the grounds stated earlier and submitted that the concerned ACRs are suffering from subjectivity and bias. They deserve to be expunged and applicant is entitled for promotion. On the other hand, learned counsel for the respondent contended that ACRs of 1997 and 1999 were challenged after inordinate delay. The allegations are made against IO, RO & SRO but they have not been made parties. Further writ was withdrawn without permission of Hon'ble Delhi High Court. It was also stated that ACRs are well corroborated and in consonance with his overall profile. The awards pertain to a different period. The ACR is not related to that period. Further grant of awards are not ACR related. He also cited judgment given by Apex Court in the case of **Amrik Singh VS. Union of India and Others (2001) 10 SCC 424** and judgement of this Tribunal in the case of **Col. Amar Narwat VS. Union of India and Others (TA No. 160/2009 in WP(C) No. 212 of 1996) of 19-01-2010** in support of his contentions. The officer has a large number of 7s in his ACRs before his transfer to the Intelligence Corps. We

have considered the contentions placed with regard to ACR 6/96 to 1/97. The remarks given by the IO were intimated to him on 08-04-1997 but he had not made any protest at that time. After a period of ten years he has challenged the same by filing statutory complaint on 15-10-2007. Further he has not been able to establish the allegation of bias and subjective against IO and RO. Thus the contentions are not tenable. The ACR's of 2/98 to 5/99 are also challenged. The remarks were conveyed to him on 09-08-1999 but protest was made in 2007 after a delay of eight years. The contentions of challenge are not sustainable. His ACRs in the Intelligence Corps, however, are all above average except in the impugned ACR for Jun 02 to May 03 where the SRO has awarded him 7s in three individual qualities. The officer has earned five commendation cards. These were on record at the time of consideration. These awards are given due weightage by promotion boards but despite the same he still remains low in the comparative merit. We have considered the contentions raised in this respect, but from the perusal of record it is not established that SRO was biased and not having adequate knowledge. The SRO has not merely endorsed the remark given by IO & RO but has made his own assessment. The judgement cited by the applicant given in the case of **Col Mahendra Pratap Singh (supra)** is not helping his contentions. On the other hand judgement cited by the

respondent side given by this Tribunal in the case of **Col. Amar Narwat VS. Union of India and Others (Supra)** is more relevant. In that case it was observed that SRO has to adjudicate the remarks of IO and RO and it was not necessary to have physically seen the performance of every officering working in his command. We have also perused another judgement cited by respondent in the case of **Amrik Singh VS. Union of India and Others (Supra)**. That judgment also supports our conclusion. The overall profile of the officer is the reason for his non empanelment and there are no grounds for interference. Application dismissed. No costs.

**MANAK MOHTA**  
**(Judicial Member)**

**Z.U.SHAH**  
**(Administrative Member)**

**Announced in the open court**  
**Dated: 30-6-2010**