

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT
NEW DELHI**

O.A. No. 18/2010

Lt Col P.S. ShekhawatApplicant

Versus

Union of India & OthersRespondents

For applicant : Sh.C.M. Khanna, Advocate with applicant.

For respondents: Ms.Tinu Bajwa, Advocate with Col. Devender
Singh, Advocate.

CORAM:

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

**ORDER
06.05.2010**

1. The applicant had filed WP(C) No. 14922/06 in Hon'ble Delhi High Court on the same issues and the petition was transferred to this Tribunal. However, during the pendency of the case, a fresh cause of action had accrued for which the petitioner had submitted a representation dated 16.03.2009 to respondent no.2 which was rejected on 14.10.2009. Hence, the petitioner prayed for amending the petition, which was granted on 04.11.2009, in which the petitioner was permitted to withdraw the

petition with liberty to file fresh petition. Hence, this original application.

2. Brief facts of the case are that the applicant was commissioned as General Service Officer in the Army on 20.07.1984 after a long and distinguished service in the ranks. The applicant acquitted himself creditably as an Officer while serving in various units and terrain. In due course, the applicant passed all the mandatory promotion examinations and attended several essential professional courses. He was promoted to the rank of Lieutenant Colonel, accordingly.

3. The applicant was not empanelled by No.3 Selection Board held in February, 2004 for promotion to the rank of a Colonel.

4. The applicant preferred a non-statutory representation to the Chief of Army Staff (COAS) against the reports pertaining to 01/95 to 05/95, 06/95 to 05/96 and 06/2000 to 05/2001 on grounds of inconsistency. The COAS granted his partial redress by holding inconsistency in the Annual Confidential Report (ACR)

covering the period 06/95 to 05/96 in respect of four qualities vide Army Headquarters letter dated 01.04.2005.

5. Thereafter, the applicant was considered for promotion to a Colonel afresh in April, 2005. He was again not empanelled for promotion.

6. The applicant, submitted a statutory complaint on 27.01.2005, which has been decided by the respondent no.1 on 06.01.2006 and hence, filed the petition before the Hon'ble Delhi High Court.

7. The applicant was considered again in for promotion in December, 2007 and April, 2008. He was again not empanelled. He, therefore, seeks that impugned order of respondent no.3 dated 16.03.2009 be quashed and he be granted the rank of a Colonel with original seniority, set aside remarks of Reviewing Officer/Senior Reviewing Officer (RO/SRO) for the entire assessment in ACR, covering the period 06/95 to 05/96, 01/95 to 05/95 and 06/2000 to 05/2001, and reconsider the applicant for promotion as a fresh case with 1984 batch.

8. The learned counsel for the applicant argued that partial redress granted by the COAS in the ACR covering the period 06/95 and 05/96 is bad in law because, the assessment of the RO on all these aspects is an integrated “one” task, which is based on overall mental assessment established in the mind of the Reporting Officer. If bias/inconsistency is established in relation to any of these aspects, then it cannot be said that the assessment as a whole is not affected by the same bias/inconsistency.

9. He further argued that SRO being far removed from the ratee has very little or no interaction and is usually guided by the assessment of the Initiating Officer (IO) and RO. Consequently, the bias in mind is further perpetuated. Furthermore, the ACR was endorsed by the SRO after a gap of nearly one year, reflecting the bias.

10. Col Devender Singh represented the respondents and argued that in the ACR for the period 06/95 to 05/96, the RO had initiated the report and SRO had reviewed it. He produced the

dossier in original and the notes that analyses the applicant's non-statutory representation which resulted in partial redress given by the COAS.

11. The relevant paras of the redress granted by the COAS vide Army Headquarters letter of 01.04.2005 reads as under:-

“4. The COAS has therefore directed that justified relief be granted to the officer by way of expunction of the following assessments of the RO in CR 06/95-05/96:-

(a) Para 11(f) - Ingenuity and initiative.

(b) Para 12 (d)- Ability to Motivate His Command.

(c) Para 12 (e) - Effectiveness in Carrying Out Administration of His Command.

(d) Para 12 (f) - Equipment Management and Ability to Utilise Resources Economically.

5. The COAS has further directed that the said aberrations be removed from the CR Dossier of the officer and he be considered for promotion by an appropriate Selection Board in accordance with the existing rules and regulations.

12. We examined the original dossier, notes on file leading to the partial redress by COAS and the Master Data Sheet, and observed that the COAS has refrained from interfering with remarks which are 'Above Average' as pertaining to the ACR covering the period 05/95 to 06/95. The reason being that the

markings of 'Above Average' are consistent with the applicant's overall profile, and the remarks are well corroborated and consistent.

13. We are of the considered opinion that the ACR form is well laid out. The various columns specify to predicate the assessing officers in the chain, to make a comprehensive analysis of the ratee's qualities with reference to the assessment scale. This approach is well established and an important tool for human resource development especially in a leadership oriented organisation like the Armed Forces. In fact, the various qualities listed out in detail preclude an assessing officer from being biased, by compelling the assessing officer to assess each quality separately. In instant case, the aberrations that were noticed were expunged by the COAS and therefore, nothing remains in the argument.

14. The learned counsel for respondents confirmed the date of endorsement by the SRO, to say that it was inordinately delayed. No reason was assigned by the SRO in the movement of ACR form, hence he was unable to comment. We opine that

though delay in endorsement by SRO is not in order but it does not reflect bias, in any case the perceived inconsistency has been removed by the COAS vide order of 01.04.2005.

15. As regards the ACRs covering the period 01/95 to 05/95, 06/2000 to 05/2001, we observed from the Master Data Sheet and the Dossier that the applicant has been graded from 'outstanding' to 'above average'. Therefore, arguments for setting aside the reports or remarks of IO/RO/SRO do not hold any merit.

16. The learned counsel for the applicant further argued that in case of his client, the ACRs were initiated as per the laid down 'channel of reporting' as promulgated by the Army Headquarters. On the other hand some of his batch-mates who were similarly situated had obtained an unfair advantage by securing reports not strictly as per prescribed channel of reporting.

17. We pointed out to the learned counsel that since the Officers who have alleged to have secured unfair advantage, have

not been made as respondents in the original application, therefore this submission cannot be entertained in their back.

18. In view of the foregoing reasons, we do not find any merit in this original application and same is dismissed. No order to cost.

**A.K. MATHUR
(Chairperson)**

**M.L. NAIDU
(Member)**

**New Delhi
May 06, 2010.**