

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

O.A. No.439/2010

Gp. Capt. A.K. DwivediApplicant

Versus

Union of India & OthersRespondents

For applicant: Sh. Keshav Kaushik with Ms. Kanica,
Advocates.

For respondents: Sh. Ankur Chibber, Advocate.

CORAM:

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

ORDER
15.09.2010

1. Applicant by this petition has prayed that respondents may be directed to consider the applicant taking into consideration his appraisal reports and the promotion policy of the respondents in this regard and the applicant be promoted to the rank of Air Commodore along with his batch mates and juniors were considered and promoted by PB-I 2009 thereby quashing the impugned order dated 18.02.2009, 18.02.2010 and finally impugned order dated 01.06.2010.

2. Applicant was commissioned in Indian Air Force as Pilot Officer. In the month of March, 1984, applicant on completion of his operational training, he was posted to the Front Line Fighters Squadron at Bhatinda in March, 1984 and he completed his Forward Air Controller Course in support of Army Operations in September, 1984. Applicant became Fighter Bomber Indoctrination Course, qualified in September, 1985. During this period applicant concentrated on his Fighter Tactics experience and keeping in view his expertise and services of the highest order, the applicant was posted to Sirsa in MIG-21 Squadron in June, 1986. Applicant was then in March, 1986 promoted to the rank of Flt. Lieutenant and he participated in Operation Meghdoot in Siachen. He had earned many achievements during his career and in 1992 he was promoted to the post of Sqn. Leader. He qualified for Staff Course at Defence Services Staff College, Wellington and he successfully passed the same. Thereafter, he earned commendations from the Chief of Air Staff and other higher ups for his performance. Thereafter, he was promoted as Wing Commander and was posted back to Mirage-2000 base. He participated in 2002 in the Operation Parakaram. Thereafter he was promoted as a Group Captain on

01st September, 2005. But prior to that in May, 2005, he was detailed from the highest level i.e. Prime Minister's Office to go on deputation to National Technical Research Organisation (NTRO) and he remained there up to 2009. However, during 2009 when the Promotion Board met for promotion to the post of Air Commodore, he could not make it on the basis of appraisal reports.

3. The grievance of the applicant is that respondents might have manipulated and forged the appraisal reports of the applicant in unlawful manner. On account of non selection, he filed a statutory complaint dated on 02nd/03rd December, 2009 under Section 27 of the Air Force Act, 1950 before the Authorities and on 27th January, 2010 in order to defeat the lawful claim of the applicant in the Promotion Board of the year 2010 again applicant was not considered fairly and reasonably and he could not make to the rank of Air Commodore. Thereafter, he approached this Tribunal by filing an OA No. 145/2010 and this Tribunal directed the applicant to request the Central Government to dispose of his statutory complaint. The statutory complaint was disposed of and same was rejected. Therefore, applicant has approached this

Tribunal by filing the present petition seeking to set aside his super cession for the post of Air Commodore.

4. The grievance of applicant was basically in the petition is his ACRs have been manipulated and illegally tampered with which has resulted in super cession. It is also pointed out that the moderation is not warranted for the ACR which was written by NTRO, therefore, he has been superceded by so called moderation of Air Force Headquarters.

5. Respondents in their reply have submitted that the case of the applicant was considered on merits and respondents have placed before us original proceedings for our perusal. It is also pointed that the applicant worked in NTRO from 2005-2008 and in that one Mr. Rao, Chairman has written as RO and SRO also whereas he was not SRO. He has wrongly written remarks in the SRO column. It is further submitted that in fact the ACR written during that time by the Chairman of NTRO was moderated in favour of the applicant.

6. We have heard learned counsels for the parties and perused the record.

7. We called the original record from the Air Force and after perusing of the 10 years ACRs, we find that there is no manipulation or any kind of tempering with the ACRs of applicant. Case of the applicant was considered objectively and he could not make it vis-à-vis his other colleagues. We do not want to disclose marks given in the original minutes. But suffice it to say that last person who was selected in the year 2009 as well as 2010 secured higher marks than that of the applicant. Therefore, grievance of the applicant that his ACR have been manipulated or tampered, is totally misplaced. We have seen the original ACRs, the markings and the list of the persons who have made to the rank of Air Commodore and found that no injustice has been done and the whole exercise has been done in objective manner and with transparency. We are therefore, do not find any merit in petition. Petition is dismissed with no order as costs.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
September 15, 2010.