

16

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

**T.A. No. 155 OF 2009  
(Delhi High Court W.P (C) No. 6428 of 2007)**

**IN THE MATTER OF:**

**Lt Col Pankaj Kanwar**  
Through Mr. T.K. Joseph, counsel for the applicant

**.....Applicant**

**Versus**

**The Union of India and others**  
Through: Ms Jyoti Singh, counsel for respondents

**.....Respondents**

**CORAM :**

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

**Order**

**Date: 23-2-2010**

1. The applicant Lt Col Pankaj Kanwar who was commissioned in June 1982 had submitted a writ petition (civil) 6478 of 2007 in the Hon'ble Delhi High Court challenging two confidential reports for the

17

period 1.6.2001 to 6.2.2002 and 1.3.2003 to 31.8.2003. The same was transferred to this Tribunal under the Act of 2007.

2. Confidential report for the period 1.6.2001 to 6.2.2002. The applicant was not empanelled for promotion to the rank of Lieutenant Colonel in a promotion board held in September 2000. He was posted to 739 Intelligence & Field Surveillance Group in November 2000 and respondent No. 7, an officer junior to him was posted as his commanding officer. At that point of time Chief of Army Staff granted him partial redressal. He was considered as a fresh case on 11.9.2001 and approved for promotion to the rank of Lieutenant Colonel. At this point of time since his seniority had been restored he should have been posted out but was not done and continued to serve under his junior who initiated the confidential report from 1.6.2001 to 6.2.2002. The confidential report was thus initiated by a junior batch mate and competitor (Respondent No. 6) who was considered along with the applicant for promotion to the rank of colonel. The applicant also contented that the assessment of the reviewing officer (respondent No. 4) was also biased. The Chief of Army Staff while disposing off his non statutory complaint dated

18

24.7.2002 had expunged some portions of reviewing officer and senior reviewing officer assessments in certain critical qualities due to inconsistency. The main grievance about the initiating officer's assessment was however maintained. The applicant claims that even after his complaint was accepted by the Chief of Army Staff and he was approved by a promotion board he should have immediately been posted out but this was not done and he continued to serve under a junior batch mate who being his competitor was biased when he initiated the report on him. This report therefore required to be expunged.

3. Confidential report 1.3.2003 to 31.8.2003. In his confidential report for the period 1.3.2003 to 31.8.2003 professional differences had arisen between the applicant and his initiating officer (respondent No. 7). His initiating officer had given him over all grades of 8.3 and 8.6 in his previous two confidential reports. He however substantially brought down his grade to 7.5 in the impugned confidential report. The applicant has pointed out that the area of difference centred on certain maps which the applicant had down loaded from the internet and forwarded to lower formations which his initiating officer did not appreciate. The applicant sensing that his career would be damaged had applied to the Military



19

Secretary requesting that his confidential report be initiated by his reviewing officer and not by initiating officer (respondent No. 7). This plea was not accepted. This report was also biased and should be expunged.

4. The applicant states that his statutory complaints dated 27.6.2006 and 30.6.2006 against the impugned confidential reports have been rejected vide impugned orders both dated 2.1.2007 (**Annexure 1 & 2**).

5. The applicant has prayed for a writ of certiorari to quash Govt of India, Ministry of Defence orders dated 2.1.2007 against the statutory complaints dated 27.6.2006 and 30.6.2006 pertaining to confidential reports from 1.6.2001 to 6.2.2002 and 1.3.2003 to 31.8.2003 and for mandamus direction. The applicant be considered as a Special Review (fresh) case of June 1982 batch, and if approved, be promoted with all consequential benefits.

6. The respondents in their reply have argued that the applicant was not initially empanelled for promotion to Lt Colonel due to his overall

20

profile and merit within his batch. The applicant cannot argue that he was made to serve and earn a confidential report from a commanding officer junior to him. The applicant at that point of time was not empanelled, whereas his commanding officer, being empanelled, had become senior and was entitled to initiate a confidential report on him. The applicant was subsequently approved for promotion by a review board in August 2001 but was only medically cleared by a special review board in December 2001. Thus there was no intentional delay in posting him out on promotion.

7. The respondents in their reply have stated that the applicant has challenged confidential report for the period 1.3.2003 to 31.8.2003 purely on the grounds that respondent No. 7, his initiating officer was biased basically because of the episode regarding maps. The applicant had incorrectly stated the date of his presentation to General Officer Commanding, 17 Mountain Division in June 2003 with intention to show bias in the impugned confidential report. Actually the presentation was held in February 2003.

21

8. We have perused the records including confidential report dossier and heard the arguments at length. We have also perused the judgments given in the cases of *A.K. Kraipak and Others Vs. Union of India AIR 1970 SC 150 (V 57 C 35)* and *Major Prithviraj Patnaik Vs. UOI & others W.P.(C) 5378 of 2002* cited by the learned counsel for applicant in support of his contention. The applicant and respondent reiterated the arguments put forward earlier. The applicant initially not being empanelled had to serve under an officer who at one point of time was junior to him. However, on his approval for promotion on 1.9.2001 he was posted out on 1.3.2002. The delay was due to the fact that the applicant became medically fit for promotion only in December 2001. The applicant had already been given partial redress in impugned confidential report from 1.6.2001 to 6.2.2002. The applicant had not been able to prove the bias towards him. There are thus no grounds for interference and there is no infirmity in earlier grant of partial redress. We also do not find any subjectivity in his second impugned confidential report from 1.3.2003 to 31.8.2003. The applicant has not been able to show bias, or perversity in justifying a review. The judgments cited by the applicant in the cases of AK Kraipak and Maj Prithviraj Patnaik (supra) do not help the contention of the applicant as in this case he has



not been able to show any bias or infirmity in the impugned orders. The statutory petitions submitted by the applicant have been properly dealt with. No ground for interference is made of. The application is dismissed. No orders as to costs.

MANAK MOHTA  
(Judicial Member)

Z.U. SHAH  
(Administrative Member)

Announced in the open court  
Dated: 23-2-2010