

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
NEW DELHI.

T.A.No. 160 of 2009

[Arising out of WP(C)No. 212 of 1996 of Delhi High Court]

Col. Amar Narwat

...Petitioner

Versus

Union of India & Ors.

...Respondents

For the Petitioner : Petitioner-in-person

For the Respondents: Ms. Jyoti Singh, Advocate.

C O R A M:

HON'BLE MR. JUSTICE A.K.MATHUR, CHAIRPERSON

HON'BLE LT.GEN. M.L.NAIDU, ADMINISTRATIVE MEMBER

JUDGMENT

1. Petitioner by this Writ Petition has prayed that by Writ of Mandamus or Writ of Certiorari the petitioner's non-selection for promotion to the post of Brigadier be set aside and similarly rejection of his statutory complaint be quashed and

petitioner be promoted to the post of Brigadier with effect from the date when the officers junior to him were promoted. He should also be considered for promotion with effect from 1968, when his batch mates were considered for promotion and all adverse remarks, if any, in his records may be expunged.

2. The petitioner was commissioned in the rank of Second Lieutenant on 2nd March, 1968. Petitioner served at the high altitude areas of Sikkim facing China. Petitioner was promoted to the rank of Captain in 1971 and he took part in Indo-Pak war in Fazilka Sector. Petitioner was commissioned in 1973 and he was promoted to the rank of Major. He was awarded the Commendation Certificate and other awards from time to time.
3. The case of petitioner was considered for promotion to the post of Brigadier in 1994 along with the batch of 1968, but, he was not recommended for promotion. The case of the petitioner was again considered in 1995, but, he was again not recommended for promotion. Petitioner superannuated in

1996. Therefore, the grievance of the petitioner is that he has not been fairly considered by the Selection Committee for promotion to the post of Brigadier, as such, he has chosen to file the present Writ Petition before the High Court, which was transferred to this Tribunal, after being formed.

4. Petitioner's submission is that he had good ACRs and no adverse remarks have been communicated to him. Despite that he has not been found suitable for selection. He has also filed a Statutory Complaint, which was rejected. Therefore, his case should be reconsidered by Selection Committee and adverse remarks, if any, should be expunged.
5. The respondent has filed the reply and contested the matter and submitted that his case was duly considered. There were no adverse ACRs. After comparing his record with other incumbents of his batch-mates he was not recommended fit for overall and comparative merit. Therefore, he was not recommended for promotion.

6. Petitioner in his rejoinder has pointed that one of the officers Lt. General Dias, who reviewed his ACR as S.R.O.(Senior Reviewing Officer), had no occasion to see the petitioner and he has endorsed the ACR without knowledge and in that connection petitioner invited our attention to paras 147 and 148 of special instructions for the reporting officers which reads as under:

“147.The reporting officers must resist the tendency of rendering reports based on inadequate knowledge of the subject officer.....

148.It is advisable that the reporting officers prepare a list of officers whose reports they will be required to endorse after the reporting year and make it a point to visit these officers and observe their performance during the reporting period, in addition to studying their record of service. The reporting officers should endorse the reports only when they know the officer sufficiently enough to carry out independent and meaningful assessment without leaning on the assessment of their subordinate reporting officers otherwise they should be candid enough to state “unable to comment due to inadequate knowledge, “or” I did not have occasion to observe the officer in sufficient detail hence no comment.”

7. We have heard learned counsel for the parties and perused the record. Learned counsel for the petitioner has invited our attention to the various decisions of Hon'ble Supreme Court viz. '*U.P. Jal Nigam and Ors. v. Prabhat Chandra Jain and Ors.* [1996 (2) SCC 363], '*K.I. Shephard & Ors. etc. etc. v. Union of India & Ors.* [AIR 1988 SC 686], '*Swadeshi Cotton Mills v. Union of India*' [AIR 1981 SC 818], '*S.N. Mukherjee v. Union of India*' [1990 (4) SCC 594], '*Mrs. Maneka Gandhi v. Union of India & Anr.*' [1978 (1) SCC 248], '*Canara Bank v. VK Awasthy*' [2005 (6) SCC 321] and '*Kumaon Mandal Vikas Nigam Ltd. V. Girja Shankar Pant and Ors.* [2001 (1) SCC 182].
8. Submission of the learned counsel for the petitioner is that Hon'ble Supreme Court in various decisions has said that if there are any adverse entries, then the incumbent should be given opportunity to comment. Learned counsel also invited out attention to U.P. Jal Nigam's case (supra), where, their Lordships has said that in case of extreme variations in gradation from 'outstanding' to 'satisfactory', the officer should

be given opportunity to explain the downgrading of his ACR in the year following.

9. We have bestowed our consideration to the submission made by learned counsel and perused the various decisions submitted by the learned counsel for the petitioner. In case if there has been downgrading of the ACR from 'outstanding' to 'satisfactory' then in such a situation matter can be reviewed. But that is not the case here. In the present case there is no question of downgrading of the ACR of the petitioner. He has been rated 'above average' and 'high average', which is the normal grading in the ACR grading of the army officers. The hierarchy of officers for reviewing the ACRs has been created, the Initiating Officer, then, Reviewing Officer and S.R.O. These three channels have been created through which the ACR of the incumbent is filtered. Normally the Initiating Officer initiates the ACR on the basis of his performance. Then, same is reviewed by the next higher authority, who has also seen the performance of the incumbent while working under him and the top hierarchy is S.R.O., who assesses the

grading of the Initiating Officer and Reviewing Officers and, thereafter, going through the other performances of the incumbent reviews the performance.

10. So far as the S.R.O. is concerned he need not physically come in contact with the incumbent. In the hierarchy of the functioning it may not be possible for the S.R.O. to be in touch with the junior officers. Therefore, he has to assess the remarks given by both the officers after going through the profile of the incumbent. Normally the ACR form, the officer's whose ACR to be written, has to give his self-appraisal and on that the Initiating Officer makes his remarks and, thereafter, same is reviewed by the next in command. Therefore, on the basis of the two remarks i.e. one by the Initiating Officer and other by the Reviewing Officer and looking to the overall profile of the incumbent the S.R.O. makes his assessment. Therefore, the submission of learned counsel with reference to the para 148 of Special Instructions for the Reporting Officers (supra) that since General Dias did not see him physically, therefore, he should not have written his ACR and should

have been left it that he had no knowledge, therefore, he would not like to make any comment.

10. This is not the correct approach. The para 148 of circular especially meant for Initiating Officer or for Reviewing Officer, but, so far as the SRO is concerned he is the highest authority in the hierarchy of the administration and it is he who has to assess that to what extent the remarks given by the Initiating Officer and by the Reviewing Officer should be accepted or it requires any moderation. Sometimes there can be a conflict between Initiating Officer and Reviewing Officer regarding remarks. There also SRO has to adjudicate that who is more right and who is more wrong. Therefore, it is not necessary that in every case SRO should have physically seen the performance of every officer working in his command. He has to see the remark of the Initiating Officer, Reviewing Officer and the profile of the officer, given by him on the basis of his self-appraisal report, and, thereafter, he can make his own assessment.

11. We have called ACRs of the petitioner and perused ourselves. General Dias was the SRO and has given remarks in his ACR. On the basis of those ACRs the case of petitioner was considered by the Selection Committee and Selection Committee did not find him suitable for appointment, after going through his ACR and other performance. Therefore, no fault can be found with that. Thus, in this view of the matter we are of the opinion that this case does not call for any interference. Consequently, we do not find any merit in this petition and accordingly dismissed. No order as to costs.

[Justice A.K. Mathur]
Chairperson

[Lt. Genl. ML Naidu]
Member (A)

New Delhi
19th January, 2010