

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

T.A. No. 198/2010

[W.P. (C) No. 11698 of 2005 of Delhi High Court]

Col. P.K. NairPetitioner

Versus

Union of India & OthersRespondents

For petitioner: Col. (Retd.) K. Digamber Singh, Advocate.

For respondents: Col. (Retd.) R. Balasubramaniam,
Advocate with Lt. Col. S. George.

CORAM:

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

JUDGMENT :

1. This case was originally filed in Hon'ble Delhi High Court as Writ Petition (C) No.11698/2005 and was transferred to this Tribunal on 05.11.2009.

2. Brief facts of the case are that petitioner was commissioned as an Officer in the Indian Army on 15th June, 1975. During his career he tenated several important appointments. He also attended several professional courses in

which he excelled himself. He was selected to become Lt. Col. and commanded 69 Field Regiment in Kargil from 10.08.1995 to 03.10.1997. Thereafter, as full Colonel, he again commanded 290, Medium Regiment from 01.06.1998 to 20.08.2003. However, the petitioner was not selected for the rank of Brigadier in 2004. When the petitioner was not approved for the rank of Brigadier, he put in a statutory complaint against this Annual Confidential Report (ACR) covering the period from June, 1995 to May, 1996 and Interim Confidential Report (ICR) from 01st June, 1996 to 20th September, 1996 which was rejected by the Central Government on 12.10.2004. He therefore, now seeks the order dated 12th October, 2004 be quashed and that he be reconsidered for promotion to the rank of Brigadier as a fresh case.

3. Before the arguments could start, we observed that the Initiation Officer (IO) and the Reporting Officer (RO) had not been named by the petitioner in his petition as the respondents. We gave an option to the learned counsel for the petitioner that should he want to make any allegations against the IO and the RO of the impugned ACR/ICR, he may amend the petition or withdraw the petition with permission to file it afresh. Learned

counsel for the petitioner confirmed that he does not want to raise any issues of malafide against the IO/RO of the impugned ACR/ICR and there is no requirement of amending the writ petition for this purpose.

4. Learned counsel for the petitioner argued that Initiating Officer rendered the Confidential Report in which he gave certain adverse points which implies '6' numbers in certain traits and qualities; and in the pen picture he wrote down that he had verbally counselled the officer regarding his short comings and that he has also given him counselling in writing, which was not the case. The record of the Officer earlier to 1995-96 was Outstanding to Above Average and similarly record after this period was again Outstanding to Above Average. Therefore, keeping in view overall profile of the Officer, he submitted that the impugned ACR is not commensurate with the overall profile and needs to be expunged being biased. Learned counsel further argued that the ICR covering the period 01st June, 1996 to 20th September, 1996 was improved upon by the very same IO, which was initiated in January, 1997. Therefore, it is obvious that the ACR of May, 1995 to June, 1996 was unduly harsh and biased.

Learned counsel for the petitioner also pointed out that, though Brigade Headquarters and the Unit Headquarters was closely located, he was intimated regarding the ACR by a written communication which is not normal, since both the IO and the Officer were present and in close proximity. Normal course would have been for the Commanding Officer to be summoned by the Brigade Commander and shown the report as also make the officer sign in the places which he is required to see. Second issue which was raised by the learned counsel for the petitioner that the ICR which was due in September, 1996 was initiated by the Brigade Commander in January, 1997 after delay of four months. This also indicates that perhaps there was something amiss in the report that was written.

5. Learned counsel for the respondents stated that the Officer was intimated about the ACR of May, 1995 to June, 1996 in a written communication, since it was not possible for the Commanding Officer to be called to Brigade Headquarters to sign the ACR. Perhaps, it was not operationally expedient for the Commanding Officer to be summoned to Brigade Headquarters to see and sign his report. He produced the original documents

which clearly showed that the officer had received the communication in writing to which he had signed and returned, and which is so pasted on the dossier. Similarly is the ICR for the period from 01st June, 1996 to 20th September, 1996, relevant extracts were sent to the Officer for signatures since the Unit had moved out of the Sector. The extracts duly signed were also held on record.

6. Learned counsel for the respondents stated that very fact with the reports of 1995 and 1996 enabled the petitioner to be selected to become full Colonel, shows that nothing adverse emerges in the reports so far. Besides, he produced the Master Data Sheet in respect of the officer for our perusal.

7. We observed that the petitioner was graded Above Average to High Average in the impugned ACR. The ICR from 01st June, 1996 to 20th September, 1996 was certainly an improvement vis-a-vis ACR of 01st June, 1995 to 31st May, 1996 in which the Officer was graded Above Average and all his qualities. We further examined the Master Data Sheet and ascertained that the officer has been given Outstanding, Above Average and High

Average ratings prior to this report also. Similarly, he has also been graded Outstanding, Above Average and High Average subsequently to this period of 1995-96. Therefore, the grading in the impugned ACR of 1995-96 appeared to be well corroborated and consistent with his overall profile.

8. We are of the opinion that the ACR/ICR specifically covers the performance demonstrated by the Officer during the period of reporting. Therefore, to say that an officer has been graded Outstanding in the past, it implies that he has performed and exhibited such qualities to be graded as such during the period of reporting. We are conscious of the fact that factors like conditions of service, the task at hand and several other factors reflect on the performance. As such, to say that an Officer who has been graded Outstanding in his past, cannot be graded Above Average or High Average in the subsequent years, is incorrect. Unless there is a serious drop in his performance that one can make-out a case of the report being inconsistent and uncorroborated.

9. Their Lordships in their judgment (2001) 10 Supreme Court Cases 424 – Lt. Col. Amrik Singh v. Union of India & others have ruled similarly. Relevant portion of the judgment reads as under :-

“Although before the year 1985-86 and even subsequently the performance of the appellant had been so good that he got marks 7,8 and 9 in a number of years, but ultimately, what is relevant for the purpose of the present case are ACRs for 5 years prior to 1990 which includes the year 1985-86 and that contains one adverse remark. That adverse remark in the present case cannot be said to be an irrelevant matter for the purpose of consideration of the appellant for promotion as Lt. Colonel along with his batchmates in 1990.....

.....Therefore, it is not possible to grant any relief to the appellant in spite of the fact that his performance in the subsequent years has been shown to be very good and his ratings were very high. Ultimately the single adverse remark of 1985-86 by the Reviewing Officer had stood in his way, not only at the time of original consideration but also when the matter considered afresh pursuant to the directions of the High Court. The result may be unfortunate. But the scope of the jurisdiction of the High Court being very limited, one cannot go into the correctness of the adverse remarks nor into the assessment made by the Selection Board on the two occasions.”

10. In this case, the ACR obtained by the petitioner covering the period June, 1995 to May, 1996 and the ICR

covering the period June, 1996 to September, 1996 seems to be in keeping with his overall profile. The report is well articulated by the IO as also well moderated by the RO and the Senior Reviewing Officer. The markings in the character qualities and demonstrated performance appear to be in keeping with his performance, as also the profile that has been assessed subsequently. Therefore, we feel that the assessment of the IO and RO in the impugned ACR and ICR are fair, objective and well corroborated.

11. To say that marking of '6' is adverse, is not correct. The '6's are High Average. Undisputedly, when being selected for higher ranks, in this case as a Brigadier, the competition will naturally be keener. Those who get 'High Average' markings may get eliminated in the comparative merit. As one comes up for selection to higher ranks, for example to a Major General or Lieutenant General, even markings of '8' which is Above Average may not qualify an officer for promotion to the next rank. Considering the limitations of the steep pyramidal hierarchy, competition in comparative merit is very natural. The markings

may or may not have relevance in absolute terms except when compared within the peer group.

12. In view of the foregoing, we find that there is no case for us to intervene in the matter. Accordingly, petition is dismissed. No order as to costs.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
May 04, 2010.