

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

T.A. No. 272/2010

[W.P. (C) No.17493/2006 of Delhi High Court]

Brig. Devinder Singh .....Petitioner

Versus

Union of India & Others .....Respondents

For petitioner: Maj. K. Ramesh (Retd.), Advocate with petitioner

For respondents: Ms. Jyoti Singh, Advocate with Lt. Col. S. George

**CORAM:**

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

**O R D E R  
17.05.2010**

1. The present petition has been transferred from Hon'ble Delhi High Court to this Tribunal on its formation.

2. Petitioner by this petition has prayed to direct the respondents to pass an order addressing with clarity the vital issues raised by him in statutory complaint dated 27.03.2002 at paragraphs 8 to 10 and 12 thereof. It is also prayed that part of order dated 18.05.2004 rejecting his statutory complaint may be

quashed. It is also prayed that balance of confidential reports by the Reviewing Officer and the Senior Reviewing Officer for the periods 11/98 to 06/99, 07/99 to 06/2000 and 07/2000 to 10/2000 may be set aside. It is also prayed that by writ of mandamus, respondents may be directed to correct the official records pertaining to him, at paragraph 192 of HQ 15 Corps 'After Action Report on Op Vijay', paragraphs 37 and 38 of Army HQ Military Operations Directorate 'Op Vijay-Account of War in Kargil Volume III' and paragraph 4.9 of the Report of the Kargil Review Committee. It is also prayed that any other negative official reports or endorsements made as a result of the factually untrue and biased viewing of his battle performance and role during Kargil War and associated period as entered in his confidential dossier or in any other records/findings impacting on his military profile and reputation may be set aside. It is also prayed that order superseding him for promotion as Major General be set aside.

3. Petitioner was granted commission in the regular Army on 20.12.1970 on successful completion of training at National Defence Academy and Indian Military Academy. He had a very good record and he was promoted to the post of Colonel and

thereafter, to the post of Brigadier in May, 1998. He was further selected for General Cadre stream which is a distinction in itself. He assumed the command of 70 Infantry Brigade then deployed in Kashmir Valley in counter insurgency duties in operation Rakshak. He with his Brigade Headquarter was moved from Kashmir Valley to Ladakh Sector and came under Headquarter 3 Infantry Division. On 06.04.1999 a war game was held at HQ 15 Corps and he as an enemy commander forecasted the pattern of Kargil intrusion. His projections were summarily dismissed by respondents no.3 and 4 for being unrealistic. However, his projections were proved right when the intrusion took place in a similar manner a month later. Petitioner's Brigade Headquarter moved to Drass and reached on 05.05.1999 and meanwhile, enemy intrusion was detected in the Batalik sector. The orders were changed and he was asked to immediately assume control of the intruded area in the Batalik sector. He moved out from Drass without having assumed any responsibility for the Line of Control in that Sector. He assumed command and control of remote Batalik sector and systematically recovered the ambushed patrols, contained the enemy intrusion and prepared the ground for evicting the intrusion, awaiting the availability of the requisite troops and other resources. On

10.06.1999, the Chief of Army Staff visited petitioner's sector and sought his assessment of the strength of the enemy intrusion. The petitioner assessed it as 600 regular Pakistani troops whereas the respondent no.4 assessed as 45 only and that too only militants rather than regular troops but subsequently, petitioner was proved right. In war, petitioner took calculated risks and put in whatever best of ability he has. He received formal appreciation from the Chief of Army Staff through Military Operations Directorate. Though he was cited for award of Maha Vir Chakra but eventually he was given Vishisht Seva Medal.

4. The grievance of the petitioner in this petition is two folds. One is that his performance in the Kargil War should be correctly recorded and second is that his Annual Confidential Report (in short ACR) written by Lt Gen Kishan Pal (respondent no.4) should be expunged.

5. Learned counsel for petitioner has taken us to various records/reports including Battle Performance Report, After Action Reports, report of Army Headquarters Military Operations

Directorate and reports submitted by the High Power Committee of the Government of India regarding Kargil War.

6. We do not want to comment on these reports because they are secret communications and it will not be appropriate to disclose the contents of these reports.

7. However, so far as petitioner is concerned, his main grievance is against the Reviewing Officer (in short RO) Lt Gen Kishan Pal who is respondent no.4 in the petition. The main contention of the petitioner is that RO instead of correctly exhibiting his performance in whole operation has tried to belittle him and tried to give the credit to an other officer namely Brig Ashok Dugal and in his dispatches to Military Headquarters has gone to the extent by saying that Brig Ashok Dugal was superimposed upon him and also gave poor ACR because he was not bonafidely motivated against him. It is alleged that because of difference of assessment with petitioner as he was annoyed with him, therefore, as RO he has not given due credit to the petitioner in accomplishing the Kargil war successfully. He filed a statutory

complaint against dispatches made by the Lt Gen Kishan Pal as well as report of the history of events.

8. In pursuance of statutory complaint filed by the petitioner part of his grievance was redressed by the respondents and respondents have expunged the remark given by respondent no.4. RO as General Officer Command (in short GOC) 15 Corps in Battle Performance Report (BPR) which reads as under:-

*'success in operations, particularly in last ten to twelve days came about by superimposing Brigadier Ashok Dugal, Deputy GOC 3 Infantry Division who positioned himself at Ganasok (up front) and ahead and helped in conduct of the operations'*

The impression sought to be given was that the credit goes to Brig Ashok Dugal who was Deputy GOC and not to petitioner who was commanding 70 Infantry Brigade and In-charge of all operations.

9. As a result of expunging of above mentioned remark by the Ministry of Defence in pursuance of statutory complaint filed by the petitioner, the credit which was sought to be given to the Brig Ashok Dugal for entire operation has been expunged. It is also submitted that likewise the extract given in para no.192 of the 'After

Action Report' wherein also the impression was sought to be given that petitioner was only In-charge of the Western Flank and Eastern Flank was headed by the Brig Ashok Dugal and because of Brig Ashok Dugal participation they could accomplish success in this operation.

10. Much debate was made on the issue *whether Brig Ashok Dugal who was Deputy GCO, was In-charge or whether the entire operation was conducted by the 70, Infantry Brigade headed by the petitioner.* In this connection, lot of references and extracts were made but the immediate Superior Officer of the petitioner was Maj Gen Budhwar who was GOC of 3 Infantry Division and he was also all the time coordinating and looking after the whole operation. He had also sent a report to Lt Gen Kishan Pal and Lt Gen Kishan Pal in turn sent a report to the Headquarters as well as to the Army Commander. After Action Report and other reports have been made on the basis of report sent by Lt Gen Kishan Pal. The grievance of the petitioner is that Lt Gen Kishan Pal always tried to belittle him and not put the history straight and by that his career is at stake and his Military honour has been prejudiced.

11. Learned counsel for the respondents has made available to us the comments sent by the Maj Gen Budhwar on the petition filed by the petitioner and in that Maj Gen Budhwar while sending his comments has clearly mentioned the role played by the petitioner viz-a-viz Brig Ashok Dugal. Maj Gen Budhwar in comments to this petition has said in para 8 (d) which will be useful to reproduce here :-

*“8 (d) Brigadier Devinder Singh was called back with operations along the Western Flank having been partially successful. On arrival back at Ganasok, Brigadier Dugal reverted back to Kargil. Both officers carried out the tasks assigned to them. Brigadier Dugal was not superimposed. He was temporarily given charge of the Eastern Flank to coordinate and assist Deputy Commander 70 Infantry Brigade in the conduct of operations and to take my directions.*

12. Maj Gen Budhwar has stated that petitioner was the person In-charge of the whole operation and he was the first witness to the whole operation under him. Therefore, whatever Maj Gen Budhwar says has to be accepted without any reservation. From his comments which were sent by him to this petition to the respondents makes it abundantly clear that Brig Ashok Dugal was given temporarily charge of the Eastern Flank to coordinate and assist the 70 Infantry Brigade and not to superimpose upon the

petitioner. This shows that the entire operation was in the hands of the petitioner and Brig Ashok Dugal was not superimposed. This version has been accepted by the Government when they have already expunged remarks given in the extract of the endorsement by Reviewing Officer, GOC, 15 Core in Battle Performance Report. This shows that there was no question of superimposition of Brig Ashok Dugal in the whole operation. This leaves no doubt in our minds.

13. The question now is that what is the effect of Para 192 of the Headquarters, 15 Corps 'After Action Report' wherein the impression sought to be given that the Eastern Flank was operated by Deputy GOC, 3 Infantry Division i.e. Brig Ashok Dugal. But as per the report given by Maj Gen Budhwar, GOC of 3 Infantry Division that Brig Ashok Dugal was only called to coordinate and assist the Eastern Flank and he was not superimposed upon the petitioner. Therefore, this 'After Action Report' should be accordingly corrected.

14. Likewise extracts given in paragraphs 37 and 38 of Army Headquarters Military Operations Directorate 'OP VIJAY –

Account of War in Kargil Volume III' should be moderated. The paragraph 37 reads as under:-

“While Commander 70 Infantry Brigade controlled operations on the Western Flank (Jubar Complex), Deputy GOC 3 Infantry Division controlled the Stangba-Khalubar Ridge operations.”

This also shows that 70, Infantry Brigade controlled operations on the Western Flank and entire Eastern Flank was controlled by Deputy GOC, 3 Infantry which also appears to be not a correct statement. When Maj Gen Budhwar who was GOC has clearly mentioned that Brig Ashok Dugal was called to assist and coordinate, therefore the extracts given in paragraphs 37 and 38 also needs to be properly modified in the light of comments of GOC Maj Gen Budhwar. We direct that the records may be put in correct perspective in the light of the evidence of the GOC Maj Gen Budhawar.

15. Next question is with regard to the expunging of remarks given by Lt Gen Kishan Pal as a Reviewing Officer. Maj Gen Budhwar was the Initiating Officer, Lt Gen Kishan Pal was the Reviewing Officer and Lt Gen H.M. Khanna was the Senior Reviewing Officer. Because of the differences in the assessment

of war front Lt Gen Kishan Pal was not very favourably motivated towards the petitioner. Prior to this also his ACR for the period 07/98 to 11/98 written by Lt Gen Kishan Pal as RO was set aside by the Government. The entire BPR written by the RO covering the period 5/99 to 7/99 was expunged by the Government. Likewise his ACR written by Lt. Gen. Kishan Pal as RO for the period 11/98 to 06/99 was also expunged by the respondents i.e. 9 qualities out of 16 qualities. When more than 50% of the qualities written by RO i.e. Lt Gen Kishan Pal has already been expunged that means heart was taken out and what remained was the skeleton. In view of the fact that Lt Gen Kishan Pal was not favourably motivated towards petitioner as he had made attempts to tailor reports to suggest that Brig Ashok Dugal was superimposed and thus belittling the achievement of the petitioner, we therefore, cannot trust the report rendered by Lt Gen Kishan Pal as objectively written, with regard to the ACR for period in question. It is difficult to fathom the mind of the person who in a subtle manner spoils the ACR of the incumbent, more so he has already exposed himself. In these given facts, it is obvious that the assessment of Lt Gen Kishan Pal was not an objective assessment of the petitioner and more so respondents have already expunged

more than 50% of his remarks. It only shows that the ACR were not written in an objective and unbiased manner. A person who writes the ACR in biased manner, cannot be allowed to sustain. Accordingly, we direct the ACR from 11/98 to 06/99 should be expunged to the extent of Reviewing Officer.

16. Accordingly, we allow this petition in part and direct that facts should be correctly entered in the reports at relevant place and the petitioner's ACR written by Lt Gen Kishan Pal as Reviewing Officer for the period 11/98 to 06/99 may be expunged as a whole for aforesaid period. No order as to costs.

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

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

**New Delhi**  
**May 17, 2010.**