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

**T.A. NO. 354 OF 2009
(WP(C) No. 15938 OF 2006 of Delhi High Court)**

IN THE MATTER OF:

Lt Col PC Jena**Applicant**
Through Sh. M.G. Kapoor, counsel for the applicant

Versus

The Union of India and others**Respondents**
Through: Sh. A.K. Bhardwaj, counsel for respondents

CORAM :

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

JUDGMENT

Dated: 11-1-2010

1. The applicant had submitted a Writ Petition (Civil) 15938 of 2006 in the Hon'ble High Court of Delhi praying for quashing Government of India (GOI) order dated 18.5.2006 rejecting his statutory complaints. He also made prayer to set aside his ACRs for the year 1993-94 and 1996-97 and directions be given to the

respondents to notionally consider him for promotion to the rank of Lt Col as a fresh case. During the pendency of the Writ Petition on creation of Armed Forces Tribunal the case was transferred to this Tribunal on 25-11-2009.

2. The relevant facts stated by the applicant and the respondents are given in the succeeding paragraphs.

3. The applicant was commissioned in the Regiment of Artillery on 12-6-1982. The applicant suffered an injury of permanent nature during the Kargil operation. The applicant's performance especially during operations "Vijay" and "Rakshak" was of a high order. Initiating Officer who was also his commanding officer had initiated ACR for 1993-94. The initiating officer agrees (**Annexure P-3**) that he had graded him lower than what he deserved. He was unduly strict but had assured him that it was for the petitioner's own good that he got progressive reports. It was better that getting an eight to nine point report.

4. Subsequently his ACR for 1996-97 was luke warm since he had not acceded to his Commanding Officers (CO) suggestion to exchange married accommodation. The applicant had put up a non statutory

complaint dated 31.7.1997 against the said ACR of 1996-97 and he was granted partial redressal by GoC-in-C Western Command vide (**Annexure P-4**) dated 24.1.1998. There after the applicant had put up a statutory complaint on 2-6-1998 which was rejected by the GOI on 16.7.1998. In the meanwhile in August 1999 the applicant was also considered for promotion to higher rank of Lt Col but was not empanelled. On 10.12.1999 he made a non statutory complaint against said suppression which was rejected.

5. The applicant again made a statutory complaint on 30.3.2002 against his suppression. The same was rejected on 2.5.2002. Subsequently realising that the reasons for suppression was his ACRs for 1993-94 and 1996-97 the applicant again made a statutory complaint on 28.6.2005(**Annexure P-5**) against the same but the statutory complaint was also rejected 18.5.2006. (**Annexure P-6**).

6. The applicant contends that since partial redress had been given to him in the ACR for 1996-97 vide letter dated 24.1.1998 (**Annexure P-4**) the whole ACR should be set aside as the whole assessment in interlinked to the pen picture and low box grading.

7. On the basis of aforesaid submissions a prayer was made to quash the order dated 18.5.2006 rejecting his statutory complaint and to set aside the ACRs for the year 1993-94 and 1996-97 with all consequential benefits including direction for notional consideration for the rank of Lt Col with his batch mates as he had already been promoted to Lt Col on 22.12.2003.

8. The respondents in their counter affidavit have stated that the petitioner was considered thrice by the different promotion boards in August 1999, February 2001 and September 2002 but was not empanelled on the basis of his overall profile. It was also stated that all statutory complaints filed by the applicant against the ACRs and supersession have been rejected after due consideration by the Government of India. The present application is suffering from long delay and laches and is liable to be dismissed on these grounds alone. It was also submitted that selection/rejection by a promotion board is based on the overall profile of an officer and comparative merit within his batch but thrice the officer was not empanelled for promotion based on his overall profile. A submission was made to dismiss the application.

9. During course of arguments learned counsel for the applicant contended that ACR for 1993-94 was not a true reflection of his performance. The commanding officer himself admitted that he had graded him lower than what he deserved. An attention was drawn towards letter dated 10.8.1994 (**Annexure P-3**) written by commanding officer in this respect. But it was contended that statutory complaint was not properly considered in right perspective. Thus it deserves to be set aside. Learned counsel also contended that his non statutory complaint with regard to ACR 1996-97 had been partially accepted and partial redress has been granted hence the whole ACR should have been set aside as all parts are inter linked. He drew our attention towards policy letter 15.3.1993 (**Annexure P-7**) in this respect. Thus it is contended that his statutory complaint was wrongly rejected. Reiterating the grounds as stated in the application a prayer was made to allow the application and the reliefs claimed. On the other hand counsel on behalf of the respondent rebutted the contentions and submitted that the case of the petitioner was thrice considered but he was not found fit for promotion on the basis of overall profile. He also supported the impugned order by which his statutory complaint was rejected. He also submitted that from the perusal of the record it is clear that statutory complaint was made in 2005 in respect of ACR for the year 1993-94 after a gap of 12 years. In support of his contention

he had cited the Hon'ble Supreme Court judgment in the case of *Maj AK Sinha Vs. UOI (Civil appeal No. 4663 of 2001)*. During the course of the arguments the respondent has filed a number of judgments on record to support his contention of which are *Maj Aroon Kumar Sinha Vs. UOI & Ors (2001) 6 SCC235*, *Col Narender Singh Vs. UOI & Ors. W.P. (C) No. 7196 of 2005*, *UOI & Ors. Vs. Maj Bahadur Singh, Civil Appeal No. 4482 of 2003 delivered on 22.11.2005*, *Maj Satya Prakash Bhardwaj Vs. UOI & Anr WP (C) No. 3025 of 1994 delivered on 20.4.2007* and *Lt col T.s. Tomar Vs. UOI & Ors W.P. (C) 18971 of 2006 delivered on 3.11.2008*. The relief sought is not admissible. Petition is suffering with long delay and latches. He also contended that promotion to a selection rank it is not only on ACRs alone but also a number of other factors such as war/operational reports, course reports, ACR performance in command and staff appointments, honors and awards, disciplinary background. Selection/ rejection is based on comparative merit within the batch as evaluated by Selection Bard. It was also contended that some allegations has been made against the reporting officer but they have not been made parties to the application. The contents of the 1993-94 ACR was well within the knowledge of the applicant. On the basis of the aforesaid submission a prayer was made to dismiss the petition.

10. We have heard the arguments at length and we had gone through the citations submitted by the respondents and perusal of the records and perused the confidential report dossiers of the officer and found that his ACRs for the year 1993-94 and 1996-97 match his previous and subsequent profiles. The applicant has represented against 1993-94 ACR in the year 2005 after a very long period of 12 years. Considering submission placed in this respect we are not convinced by the applicant. His plea does not warrant any interference in the impugned order. The case is dismissed. No orders as to costs.

MANAK MOHTA
(Judicial Member)

Z.U. SHAH
(Administrative Member)

Announced in the open court
Dated: 11-1-2010