

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH  
NEW DELHI.

T.A.No. 444 of 2009

[Arising out of WP(C)No. 2932 of 1998 of Delhi High Court]

Lt. Col. SS Oberoi

...Petitioner

Versus

Union of India & Ors.

...Respondents

For the Petitioner :

Mr. Anil Kumar Bakshi, Advocate

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. This Writ Petition has been transferred from Delhi High Court.
2. Petitioner by this Writ Petition has sought Writ of Mandamus directing respondents to quash the order dated 28<sup>th</sup> March, 1990 passed in the matter of Second Statutory Complaint dated 7<sup>th</sup>

21

November, 1989 and reconsider the case of petitioner for promotion by reconvening the Selection Board.

3. The petitioner was a regular commissioned officer of the Regiment of Artillery on 21<sup>st</sup> December, 1968. He was promoted as a substantive rank of Major on 21<sup>st</sup> December, 1981 and he was approved for promotion to the rank of Acting Lt. Colonel by Selection Board on 28<sup>th</sup> February, 1986.
4. Petitioner was to get acting rank of Colonel pursuant to recommendation of Selection Board, but, while serving in the 65 Field Regiment petitioner received a show cause notice dated 9<sup>th</sup> December, 1988 asking him to explain why action be not taken against him for the rash and negligent act causing damage to a gun during live fire practice being conducted under his supervision on 31<sup>st</sup> October, 1986. As a result of the said incident, gun became unserviceable and caused loss to the tune of Rs.11,71,930/- to the State. As per finding of the Court of Enquiry the cause of accident was that the round which burst in the barrel was fired in the plugged condition, this finding was confirmed by the Directorate of Inspection.

2✓

5. Petitioner refuted this allegation and denied his negligence before Court of Enquiry. The petitioner was given a **recordable 'severe displeasure'** and this **censure** was adversely affected his career and chances of promotion. Therefore, he filed a Writ Petition before the High Court challenging the aforesaid censure on ground of breach of principle of natural justice.
6. The petitioner was contested by the respondent in High Court and the learned single Judge, after hearing the matter at length, came to the conclusion that punishment of '**censure**' i.e. **recordable warning** was in breach of principle of natural justice and accordingly **severe displeasure (recordable)** was set aside and it was observed that "... ... *The impugned order thereby awarding the "severe displeasure (recordable), therefore, cannot be sustained. The same is accordingly set aside. On the setting aside of the censure the petitioner will be entitled to all the consequential benefits including reconsideration of his promotion of the relevant year which the authorities will de horse this censure."*



23

7. Thereafter, petitioner filed a Contempt Petition and the same was considered by the learned single Judge and learned single Judge on the basis of assurance given by the counsel for the Union of India disposed of the contempt petition on 6<sup>th</sup> May, 1998. It was clearly stated on behalf of the respondent that his case will be considered de hors the penalty which has been set aside by the High Court. In view of the assurance given by the respondent the petition was accordingly disposed of. Thereafter, the case of the petitioner was considered by the Selection Board and he was not found suitable for the post of Colonel/Brigadier.
8. Aggrieved against non-selection petitioner filed the present writ petition before the High Court. It is alleged by the petitioner that his Annual Confidential Reports initiated on 1<sup>st</sup> June, 1987 and 1<sup>st</sup> June, 1988 reflected the incident of 31<sup>st</sup> October, 1986 and that completely marred his chances of promotion. It is also alleged that petitioner's case was considered by the Selection Board on 21<sup>st</sup> November & 7<sup>th</sup> December, 1998 and considered the petitioner as fresh with 1968 batch cases, but, inspite of his excellent and unblemished record upto 30<sup>th</sup> October, 1986, it was rejected and

24

Annual Confidential Reports dated 1<sup>st</sup> June 1987, 1<sup>st</sup> June, 1988 and Special Reports called for by Respondent Nos. 2 and 3 had already prejudged the petitioner as blameworthy prior to 7<sup>th</sup> December 1988 of the accident of 31<sup>st</sup> October, 1986. Therefore, the petitioner approached High Court that his Annual Confidential Reports for 1986-87 has shadow of that accident and that should be expunged likewise the 1987-88 and 1988-89 and in that connection learned counsel for petitioner invited our attention to '**Special Army Order NO. SAO 10/S/83 – Instructions for Rendering Confidential Reports on Officers**' para Nos. 23 and 24, which reads as under:

*"Initiation of Confidential Reports on Officers involved in Disciplinary Cases."*

23. When an officer is the subject of a disciplinary case, a Confidential Report will be initiated on him only after finalisation of the case. Where, however, such a case is not finalised for more than one year and the officer has been performing regular duties in a specific appointment, an Annual Confidential Report will be initiated. It will, however, be ensured that the report is objective and does not contain reference of the disciplinary case.
24. When a report cannot be initiated because of a disciplinary case, a non-initiation form giving detailed reasons will be forwarded to the

Military Secretary's Branch through the prescribed reporting channels."

9. Learned counsel for the petitioner strenuously urged that all these Annual Confidential Reports should not have been written because he was facing disciplinary proceedings and he was punished. Therefore, all the Annual Confidential Reports reflects the so called incident, but, when he was cleared by the High Court and his remarks were expunged, those Annual Confidential Reports ought not to have written as per clause 23 as reproduced above. Therefore, the submission of the learned counsel for petitioner that ACRs should not have been written and his case should be reconsidered without three ACRs. As against this learned counsel for respondent has raised a technical objection that the petitioner has not challenged the expunging of remarks of Annual Confidential Reports in this present Writ Petition and whatever the grievance petitioner had it was considered and it is only during the course of the arguments this argument was raised. The Original Annual Confidential Reports for all the three years were placed before us and we may mention it very clearly that in all the three



Annual Confidential Reports he has been recorded *above average*. It is also submitted that petitioner himself has submitted his self-appraisal report, filled by him, and on that the ACRs were initiated by the Initiating Officer, thereafter, by the Reviewing Officer & SRO. The ACRs were not challenged by the petitioner, but, now he is challenging these ACRs when he has not been selected.

10. Learned counsel for the respondent read out that the prayer that there is no prayer for expunging of ACRs nor there is no argument raised by the petitioner in light of the Special Army Order No. SAO10/S/83. Be that as it may, still, for the satisfaction of the learned counsel for the petitioner we heard the arguments at length and perused the record.
11. So far as the clause 23 of the Special Army Order is concerned, bare reading of the clause 23 makes it clear that if the disciplinary enquiry is not completed and finalised within one year and the officer is regularly performing his duties in a specific appointment, the Annual Confidential Report will be initiated with a rider that report should be written in objective

manner and should not contain any disciplinary enquiry. In the present case the disciplinary enquiry could not be completed as along with petitioner many more persons were also charged and petitioner was allowed to function with his rank. The petitioner himself submitted a self-appraisal report and on the basis of self-appraisal report the concerned authorities has assessed the same and given the necessary marking. Therefore, the submission of learned counsel that as per clause 23 all the ACRs ought not to have been written cannot be sustained. There is no prohibition that if the disciplinary enquiry goes beyond one year and the petitioner is working, then, this rule rather permits the authorities to initiate his ACR.

12. Had this is a case that the enquiry has been completed before expiry of one year then it could have been something to say. More so, these are administrative instructions and not statutory provisions. The period during which it was written, though the court of enquiry was current, but, it has taken a long time for finalisation. Therefore, initiation of his ACR on the basis of his self-appraisal cannot be faulted and petitioner cannot be heard



to say that his ACR for the period 1986-87 or other period should not have been initiated at all.

13. If he was so conscious about it and he ought not to have submitted the self-appraisal but he himself volunteer to do it during period in question, it does not lie in his mouth now to say it should not have been initiated at all. Even if 1986-87 ACR is ignored there is no reason to overlook 1987-88 and 1988-89. This has been definitely initiated after a period of one year. Even if there is a breach of Administrative Instruction, that does not give any right to petitioner to challenge the same. More so, in all three ACRs petitioner himself has submitted his self-appraisal report and this was not even specifically challenged in the present petition, it is only during the course of the arguments this argument was sought to be made but we still permitted to argue the matter. But, having regard to the facts we are of the opinion that even if the 1986-87 ACR, which is above average, there is no reason to ignore that ACR by the Selection Committee. More so, 1987-88 and 1988-89 also they are good ACRs and on that basis petitioner has not been

29

selected and no fault could be found for non-selection.  
Consequently we do not find any merit in this petition and same  
is accordingly dismissed. No order as to costs.

---

[Justice A.K. Mathur]  
Chairperson

---

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

New Delhi  
18<sup>th</sup> January, 2010