

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

**T.A. No. 468 OF 2009  
(Delhi High Court W.P (C) No. 470 of 2009)**

**IN THE MATTER OF:**

**Col RK Verma** .....Applicant  
Through Ms Rekha Palli with Ms Punam Singh, counsel for the applicant

Versus

**The Union of India and others** .....Respondents  
Through: Sh. Ankur Chhibber, counsel for respondents

**CORAM :**

**HON'BLE JUSTICE MANAK MOHTA, JUDICIAL MEMBER,  
HON'BLE LT GEN ZU SHAH, ADMINISTRATIVE MEMBER**

**JUDGMENT**

**Dated of Judgment: 18-1-2010**

1. The applicant had filed a writ petition (civil) No.470 of 2009 before the Hon'ble Delhi High Court. On creation of the Armed Forces Tribunal the same was transferred to this Tribunal. By way of the present petition the applicant

has challenged the Govt. of India Order dated 29.10.2007 (**Annexure P-7**) and order dated 8.9.2006 (**Annexure P-5**) by which his Statutory and Non Statutory complaints against ACRs and for the non empanelment to the rank of Brigadier were rejected. He has further prayed that Annual Confidential Reports (ACRs) for the period 6/1997 to 3/1998 and 5/2000 to 9/2000 be quashed along with order dated 4.4.2003 (**Annexure P-4**) vide which the applicant's ACR for the period 4.4.2002 to 31.8.2002 had been enfaced as "inflationary". He has also prayed seeking directions to the respondents to reconsider him for promotion to the rank of brigadier as a fresh case after setting aside the impugned ACRs. The relevant brief facts of the case are enumerated in succeeding paragraphs.

2. The applicant was commissioned in the Corps of Signals on 15.12.1976. He was promoted to the rank of colonel. The applicant also submitted that he was awarded the COAS commendation card four times and earned excellent war report, as commanding officer, during "Operation Vijay". The applicant has further contended the impugned ACRs are inconsistent and not in consonance with his service profile.

3. The applicant also submits that he was second in command of 18 Infantry Division Signal Regiment. In November 1996, he had differences with his

commanding officer on the publication of certain photographs in a newspaper showing ladies and children of the unit firing service weapons during a picnic. Because of these differences his commanding officer had given him lukewarm confidential report in April 1998 which was inconsistent with his previous record of service. It was stated that the remarks were biased but he had been assured by GOC of 18 Inf Div that his interests would be protected.

4. The applicant's ACR for the period 5/2000 to 9/2000 (for 90 days) was initiated by the initiating officer (Maj Gen S Thapliyal). The initiating officer had become biased towards the applicant when he was GOC (Designate). He under rated applicant's ACR when he took over as GOC. This was not a true reflection of his performance. The applicant filed a statutory complaint against the above mentioned ACR but that was rejected on 29.7.2002. Meanwhile he was twice considered in 2006 and 2007 for the rank of brigadier but was not empanelled. The applicant put up a non statutory complaint on 18.5.2006 against the aforesaid ACR and non empanelment which was rejected on 8.9.2006. Subsequently he also made statutory complaint on 24.7.2007 against non empanelment to the rank of brigadier but that was also rejected on 29.10.2007. A prayer was made to allow the application and to grant relief as claimed.

5. The respondents in their counter affidavit have denied the allegations made by the applicant. In reply they had supported the impugned orders. It was also stated that the results of selection board depend entirely on the record of service and relative merit of an officer within his batch. It is upto the selection board to assess the suitability of the applicants for promotion.

6. It was contended that the applicant had not made any representation against the ACR for 6/1997 to 3/1998 when the relevant portion of the ACR was communicated to him. The applicant had filed a statutory complaint against his ACR for the period 5/2000 to 9/2000 which was rejected after due consideration by the Govt. of India order dated 29.7.2002. It was submitted that the applicant did not challenge the said order and hence the same attained finality. The applicant was considered for promotion to the rank of brigadier in January 2006 but was not empanelled. He also made a non statutory complaint on 21.5.2006 but the same was rejected vide order dated 8.9.2006. The applicant was again considered for promotion by selection board as a review case in January 2007 but again he was not empanelled.

7. The applicant subsequently submitted a statutory complaint against his non empanelment to the rank of Brigadier. This was rejected after due consideration on 29.10.2007 (**Annexure P-7**). It was contended that the applicant was not empanelled for promotion based on his overall profile and relative merit within his batch. The submissions made against ACRs for the year 6/1997 to 3/1998 and 5/2000 to 9/2000 are an after thought and the application suffers from delay and latches. Hence the application is liable to be dismissed.

8. Arguments were heard at length and record of the case was gone through. During the course of arguments learned counsel for the applicant contended that the impugned ACRs are suffering from bias and subjectivity. It was also argued that the impugned ACRs are inconsistent with his overall service profile. They should be expunged. The applicant also placed reliance on judgment given by Hon'ble Delhi High Court in case of *Maj Prithviraj Patnaik Vs. UOI & Ors (WP (C) 5378 of 2002) decided on 11.1.2007* and also cited judgment given by this Tribunal in case of *Cmde AR Vardhan Vs. UOI (O.A. 77 of 2009) decided on 30.11.2009*. He further contended that the impugned ACRs were biased. His non statutory complaint and statutory complaint were not considered properly, and no speaking orders were passed. Hence the orders passed thereon are liable to be set aside. A prayer was made to direct the respondents to

reconsider him for the rank of brigadier. The learned counsel for respondents refuted the contentions and submitted that the allegations of bias are not sustainable. The applicant has made certain allegations against reporting officers but they were not made parties to the petition. It was also stated that the applicant had not filed any representation against the ACR of 1997-98. He had filed statutory complaint on 24.7.2007 against non empanelment. That was rejected after due consideration. The learned counsel for the respondents cited the following judgments (1) Amrik Singh Vs. UOI & Ors by the Apex Court in Civil Appeal No. 5651 of 97 decided on 16.11.2000, (2) Lt Col (TS) DS Pandey Vs. UOI, by Delhi High Court in WP (C) No. 6575 of 2002 decided on 31.5.2005, (3) Lt Col Krishan Chand Vs. UOI & Ors reported in 1996 VAD (Delhi) 199, (4) UOI & Anr Vs. Maj Bahadur Singh in Civil appeal No. 4482 of 2003 decided on 22.11.2005 by the Apex Court. (5) Maj Aroon Kumar Sinha Vs. UOI, (2001) 6 SCC 235, (6) Lt Col TS Parmar Vs. UOI and Others WP (C) 1897 of 2006 by Delhi High Court decided on 3.11.2008 and (7) UOI & Anr Vs. EG Nambudiri (1991) 3 SCC 38 in support of his contentions.

9. We have heard the arguments and gone through the record of the case and perused the overall profile of confidential reports of the applicant. We have also perused the judgments cited by the counsel for the parties. It is for consideration whether the impugned ACRs are suffering from bias and are not

in consonance with the petitioners overall profile. Firstly we have considered the contentions with regard to ACR for the period 1997-98. We have perused the overall service profile of the applicant and we do not find that the ACR is inconsistent with his overall profile. The applicant had made allegation of bias but this allegation was not substantiated. The applicant had not made any representation against the said report in time. The contention of the applicant that assurance was given by the GOC that he would be protected is having no force of law. Thus there is no ground for interference in the said ACR. We have also considered the contentions with regard to ACR for the period 5/2000 to 9/2000. Again we do not find inconsistency with the petitioners' overall service profile. The applicant was not able to establish the allegations of bias. From the record it is revealed that the applicant has filed statutory complaint against the said ACR but that was rejected on 29.7.2002. Thereafter he did not take any further step and likewise no representation has ever been made with regard to ACR for the period 4/2002 to 8/2002. We have also perused the judgment of *Maj Prithviraj Patnaik Vs. UOI & Ors (W.P. (C) 5378 of 2002 delivered on 11.1.2007 by the Delhi High Court* cited by the applicant. In this judgment the allegations of bias were well founded and confidential reports were contradicting. The concerned reporting officer was also party to the proceedings. These facts do not exist in the present case. We have also perused the judgment given in the case of Cmde AR Vardhan. That case is based on different points and do not help the contentions raised by the applicant. We

have also perused judgments cited by the respondents dealing with the scope of interference of the court in cases of ACR matters. On the basis of aforesaid discussion there are no grounds for interference in the impugned ACRs and impugned orders passed on non statutory complaint and on statutory complaint. No grounds exist for any direction on the said orders. On the basis of the aforesaid discussion the application is dismissed. No orders as to costs.

**MANAK MOHTA**  
(Judicial Member)

**Z.U. SHAH**  
(Administrative Member)

**Announced in the open court**  
**Dated: 18-1-2010**