

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

**T.A. No. 486 of 2010**

**(Delhi High Court W.P (C) No. 7726 of 2008)**

**IN THE MATTER OF:**

**Col. A.K Singh** .....**Applicant**  
Through Mr Rajiv Manglik, counsel for the Applicant .

Versus

**Union of India and Others** .....**Respondents**  
Through: Col (Retd) R Balasubramanian, counsel for the  
Respondents.

**CORAM:**

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

**JUDGMENT**

**Date: 16-12-2010**

1. The applicant had filed WP (C) 7726/2008 in Hon'ble Delhi High Court and the same was transferred to this tribunal on 03/12/2009. The applicant had prayed the assessment of the IO and the SRO in his ACRs May 2001 to Aug 2001 and Sep 2001 to Jul 2002 be set aside. The applicant has prayed the quashing of the order dated 27/02/2008 (Annexure P-1) rejecting his statutory complaint against non empanelment to the rank of Brigadier (Annexure P-1), order dated 31/08/2007 rejecting his non statutory

complaint dated 17/03/2007 (Annexure P-5) and order dated 24/12/2002 rejecting his statutory complaint against ACR May 2001 to Aug 2001 (Annexure P-2) . The applicant has also prayed that relief be granted and he be considered for promotion by special review board with all consequential benefits.

2. The applicant states that he was commissioned in the Army on 09/06/1979 and has a very high profile having completed a missile course in USSR in 1985. He has also done a UN assignment in Cambodia in 1993 and posted to MS Branch Army Headquarters where only officers with very high profile are posted.

3. The officer assumed the Command of his Regiment in June 1999 as Lt Col and subsequently was promoted Colonel.

4. The applicant states that on 06/10/2001, GOC 11 Corps Lt Gen S Choudhry visited his unit and gave directions for shifting of the unit Mandir to a Central location within the unit line. This was to be completed within one week. The applicant states that he consulted the unit religious teacher and the men of his unit. They were all opposed to shifting the Mandir. The applicant therefore apprised his IO Bring Sunil Dhawan, Commander AD Brigade of the problems in shifting the Mandir due to sentiments of his troops. The

applicant states that his IO assured him that he would apprise the Corps Commander of the problem.

5. On 16/10/2001 when his Corps Commander (RO) was visiting another unit of the station he enquired from Brigadier Sunil Dhawan, if the shifting of the Mandir had been completed. The applicant avers that his Brigade Commander, IO instead of conveying the factual position replied "CO has some problems in shifting". This obviously annoyed his RO who in Oct/Nov 2001 graded him average/low average in his ACR for the period May 2001 to Aug 2001. The applicant is also apprehensive that his IO gave him lukewarm assessment in the unseen portion of the ACR, under pressure from his RO.

6. The applicant states that in Sep 2002 he was not selected for HC/LDMC Course. This was obviously the result of the impugned CR. He therefore filed a statutory complaint against CR May 2001 to Aug 2001 and the same was rejected on 24/12/2002 (Annexure P-2).

7. The applicant states that the subsequently the same IO had again given a lukewarm CR for the period Sep 2001 to Jul 2002.

This time the RO had changed but was obviously influenced by the IO's assessment.

8. The applicant states that in Jan 2007 he was not empanelled for promotion to the rank of Brigadier. He therefore filed the statutory complaint on 18/10/2007. The same was rejected on 27/02/2008(Annexure P-1).

9. The applicant avers that his RO Lt Gen S Choudhry never interacted with him during the period of impugned CR from Sep 2001 to Jul 2002. The RO Lt Gen S Choudhry, however, subsequently in his capacity as Army Commander ARTRAC and VCOAS realised that he had been instrumental in causing injustice to the applicant and tried to take corrective action.

10. In the counter affidavit the respondents have stated that the applicant was commissioned in the Army on 09/06/1979. He was promoted Lt Col in 1996 and Colonel in 1999.

11. The respondents maintain that the impugned CR from May 2001 to Aug 2001 and CR from Sep 2001 to Jul 2002 were above average and the applicant's assertion that the ACR were lukewarm is his own perception. The applicant has alleged malafide against his IO and RO but has not impleaded them as respondents. In case

the officer was dissatisfied he should have represented at an earlier time frame. The respondents have recommended that the application be rejected.

12. In a rejoinder to the counter affidavit the applicant has stated that it was not necessary to make his RO party to pleading because the RO himself has acknowledged that injustice was done to the applicant. The applicant states that the award of 07 points cannot be treated as above average as 07 is rejection criteria. The applicant states that his statutory complaint dated 18/10/2007 has been rejected without considering comments of the RO.

13. We have heard the arguments and perused the CR dossier of the applicant. We find that the ACR from May 01 to Aug 2001 was initiated by Brigadier Sunil Dhawan and reviewed by Lt Gen S Choudhry. The later visited the applicant unit in Oct 2001 and wrote the ACR well beyond the period covered by the impugned ACR. In all probability the IO and RO were influenced by the Mandir shifting incident which was outside the period of the impugned ACR and the assessments of the IO and RO are in all probability likely to have been subjective and the applicant should be given relief.

14. The second impugned CR was again initiated by the same IO, Brigadier Sunil Dhawan and reviewed by the new RO Lt Gen Nagraj. Both IO and RO have awarded 07 marks to the applicant in the quality "tolerance for ambiguity" in Para 24 (d) of the ACR Form. This is also not in consonance with overall profile of the officer. This report therefore is also subjective and the applicant deserves relief. The contention that the IO and RO have not been made parties in the application is not relevant as the allegations are not personal.

15. In view of above observation relief is given to the applicant. We therefore direct that the complete assessment of the IO and RO in both ACRs for May 2001 to Aug 2001 and Sep 2001 to Jul 2002 be expunged and rejection orders pertaining to these impugned CRs along with order dated 27/02/2008 be quashed. The applicant be reviewed by fresh selection board and if empanelled be granted all consequential benefits. The application is allowed. No costs.

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

**MANAK MOHTA**  
**(Judicial Member)**

**Announced in the open Court**  
**on the day of 16<sup>th</sup> December, 2010**