

**COURT NO. 2, ARMED FORCES TRIBUNAL,  
PRINCIPAL BENCH, NEW DELHI  
O.A. NO. 202 OF 2010**

**IN THE MATTER OF:**

**Lt. Col Sandeep Chandorkar** .....**Applicant**  
Through : Mr. S.S. Pandey, counsel for the Applicant

Versus

**Union of India and Others** .....**Respondents**  
Through: Mr. Ankur Chhibbder, counsel for the Respondents

**CORAM:**

**HON'BLE MR JUSTICE MANAK MOHTA, JUDICIAL MEMBER,  
HON'BLE LT GEN M.L. NAIDU, ADMINISTRATIVE MEMBER**

**JUDGMENT**

**Date: 05.09.2011**

1. The OA was filed before this Tribunal on 30.03.2010.
2. The applicant vide his application has prayed for quashing the impugned remarks of the Reviewing Officer (RO) in the CR for the period 24.10.1999 to 31.05.2000 as well as the order dated 08.02.2010 (**Annexure A-1**) passed by respondent no.1 on the statutory complaint of the applicant. It is also prayed by the applicant that respondents may be directed to consider the applicant for promotion by the first available Selection Board by treating him as a fresh case after removing the impugned assessment in the CR.

3. The brief facts of the case are that the applicant was commissioned in the Army on 09.06.1990. On 20.02.2000, he was detailed as the Officer Commanding of Advance Party of his Unit to go to Jammu & Kashmir and commence handing taking over for the Main Body to arrive. The main body of the unit arrived in location on 09.04.2000.

4. The ACR was initiated by his CO being IO covering the period 24.10.1999 to 31.05.2000. However ACR was endorsed by the RO who was the Brigade Cdr in the new location under whom the applicant had not completed 75 days of service.

5. In October, 2006 the applicant was considered by the Promotion Board and was rejected. Therefore, he initiated a non statutory complaint against his non empanelment on 30.10.2006. This complaint was rejected on 09.04.2007. On 28.09.2007, the applicant preferred a statutory complaint which was again rejected on 10.04.2008.

6. On 14.10.2008, the applicant came to know for the first time that there is a technical infirmity in the writing of the impugned ACR when the RO endorsed the same. Consequently, he preferred a second statutory complaint. This complaint was also rejected on 08.02.2010 (**Annexure A-1**).

7. Learned counsel for the applicant stated that prior to 14.10.2008, the applicant was not aware of the two policy letters issued by the MS Branch dated 07.04.1995 and 23.01.1996. The first letter of 07.04.1995 deals with *“computation of physical service : officers forming part of rear parties/detachments”*. It states that *“Para 14 (a) of the Pamphlet Instructions for Renditions of Confidential Reports for officers – 1989 may be amended further as under :*

*(a) Read “Period spent as an Officer-in-Charge or as a member of Advance Party at new station or as a Officer-in-Charge or as a member of Rear Party of Detachment at previous station is to be counted towards physical service. The officer while performing these duties functions under the command of his Officer Commanding and are accountable to the latter for all his activities. Hence, this period will count towards physical service.”*

8. The letter of 23.01.1996 deals with *“computation of physical service : officer forming part of advance parties”*. This letter clarifies that IO's IO will be the RO. Para 3 of this letter reads as under :

3. *It is hereby clarified that the IO's IO will be the RO for the Officer Commanding as also members of the Advance party. As such, till such the main HQ of the unit along with the Commanding Officer remains under the jurisdiction of the Fmn HQ at the earlier location, the IO of the CO remains the RO for the OC and the members of the Advance party.”*

9. Learned counsel for the applicant further argued that the computation of physical service in respect of the RO in the new location should have commenced on 09.04.2000 when the main body arrived. However since the applicant was not aware of these policy letters, he inadvertently filled up the details of physical service under the RO as from 20.02.2000 to 31.05.2000. In case as per the policy letters of 23.01.1996, computation should have been from 09.04.2000 then he would not have 75 days of service under the new RO, therefore, his report should have been endorsed by the previous RO. As such the report is technical infirm and the RO's remarks needs to be expunged.

10. Learned counsel for the respondents states that there are several judgments on the point that a review of the reporting channel cannot be undertaken this late i.e. in 2011 when the matter was of 2000. It is almost 11 years old. To support his contention he cited the **judgment dated 06.05.2011 passed by Hon'ble Court no. 1 of the Armed Forces Tribunal in the case titled "Col. C.R. Dalal Versus Union of India & Ors. bearing OA No. 644/2010"** in which it was observed that:

*"Therefore, we are satisfied that the petitioner himself is responsible for not challenging the impugned ACR at the right point of time and allowed it to be considered. Learned counsel for the petitioner also submitted that when he filed a statutory complaint and which was considered by the*

*authorities but while rejecting the same, the respondents did not pass speaking order. We have perused the order and brief reasons given therein clearly state that the impugned CR was compared with the other ACRs and the impugned ACR is not inconsistent with the other ACRs. In this view of the matter, we do not find any ground to interfere with this ACR. The present petition is accordingly dismissed. No order as to costs."*

11. Leaned counsel for the respondents also cited another judgment passed by **Hon'ble Court no. 1 of Armed Forces Tribunal on 04.05.2011 in the case tiled "Col P. Prem Kumar Versus Union of India & Ors. bearing OA No. 371/2010"** wherein it was held that:

*"The ACR is necessary input for selection and if incumbent does not challenge the same in time and after the selection has taken place, then at that belated stage, he cannot be permitted to challenge the same. If the petitioner was of the opinion that this may be construed adverse to him, why he did not take an action immediately. It is only when he could not make it to the post of Brigadier, he woke up in 2008 and filed a statutory and non-statutory complaint and now he has approached this Tribunal. The selection process has already taken place and the persons who were considered suitable were promoted to the post of Brigadier. If any order is passed at this belated stage, the resultant would be that the peace of the persons who are already selected is likely to be disturbed. Therefore, no orders can be passed at this belated stage."*

12. Learned counsel for the respondents argued that there is no dispute as regards to the facts of the case. He argued that the ACR form was submitted by the applicant himself and he has authenticated not only the dates but also rendered a certificate of physical service under the IO and RO. As such at this belated stage, he cannot claim that he did not have the knowledge of the order and also claim review stroke/redressal. He for the first time highlighted technical infirmity on 14.10.2008 during his second statutory complaint.

13. Learned counsel for the applicant argued that in this case, the second statutory complaint dated 14.10.08 was rejected on the grounds of merit and not due to delay. He cited the judgement of **Hon'ble Tribunal Court no. 1 order dated 16.02.2010 in respect of the Lt. Col. Subodh Shukla Vs. Union of India & Ors. bearing OA No. 201 of 2009** in which it was observed as under:

*"The statutory complaint after judgment of learned Single Judge was entertained by the respondent and was disposed of on 06.11.2008. If they had rejected it on the ground of delay, perhaps there would have been some substance in the arguments of learned counsel for the respondents but it was considered and rejected on merit, therefore, delay so far as the present case is concerned is of no consequences."*

14. Learned counsel for the applicant further argued that in his case, the competent authority has rejected the statutory complaint on

merit. The speaking order (impugned order) dated 08.02.2010 states as under :

*“3. The contention of the officer to set aside CR 10/99-05/00 on grounds of technical invalidity has been examined. The complainant himself has authenticated the details of his service under the RO in the impugned CR. As such the CR 10/99-05/00 becomes irrevocable under provision of Para 13 of MS Branch letter No. A/17154/MS4 Coord dated 4.5.2000. After consideration of all aspects of the complaint and viewing it against the redress sought, it has emerged that CR 10/99-05/00 is fair, objective, well corroborated, performance based and technically valid.”*

**15.** Having heard both the parties at length and examined the documents in original, we are of the opinion that the MS Branch policy letters of 07.04.1995 and 23.01.1996 make it absolutely clear that the Officer Commanding Advance Party of a Unit will be under his IO even though he has reached the new location. It further states that IO's IO will be the RO provided officer has worked under the RO for 75 days. The arrival of the Main Body in the new location will be taken into account for computation of the days under the new RO.

**16.** Though this policy/clarification was issued in 1995-1996, it is not expected that everyone was familiar with the instructions or the amendments to the original *“Instruction for Rendition of confidential report officers 1989”* especially so, since the letter of 23.01.1996 was issued as a clarification and not as an amendment to the said

Instructions of 1989. We also feel that it is equally incumbent on the RO and the Staff Officers in the MS Branch to have vetted the dates and other details. The RO should have himself declined to endorse the ACR since the applicant had not done 75 days of physical service after the main body has arrived. As such only the applicant cannot be blamed for ignorance of said orders. The onus of endorsing the ACR and checking the correctness of details also lie with the RO and other officers in the chain of Command.

**17.** Be that as it may, since the applicant had highlighted this anomaly in his second statutory complaint dated 14.10.2008, the respondents should have taken note and arrived at a proper decision having investigated the lapse thereof. Therefore, the criteria for rejecting the statutory complaint and making only the applicant responsible for the technical infirmity is incorrect.

**18.** We further observe that reasons for rejecting the statutory complaint dated 14.10.2008 vide the orders dated 08.02.2010 has been on merit and not because of delay. Hence the argument of the learned counsel for the respondents cannot be accepted. In case the complaint would have been rejected on grounds of delay, perhaps there could have been some substance in the argument. Since the complaint was rejected on merit, therefore, delay so far as the present case is concerned is of no consequence.



**19.** In view of the foregoing, we allow the application. Only the remarks of the RO in the impugned ACR covering the period 24.10.1999 to 31.05.2000 being technically infirm stands expunged. All consequential benefits will, therefore, follow. No orders as to costs.

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

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

**Announced in the open Court**  
**on this 05<sup>th</sup> day of September, 2011**