

**COURT NO. 3, ARMED FORCES TRIBUNAL,  
PRINCIPAL BENCH, NEW DELHI  
O.A. No. 334 of 2010**

**IN THE MATTER OF:**

**Lt. Col. Anil Kumar Mishra** .....**Applicant**  
Through Mr. Anil Srivastava, counsel for the Applicant

Versus

**Union of India and Others** .....**Respondents**  
Through: Mr. R. Balasubramanian, counsel for the Respondents

**CORAM:**

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

**JUDGMENT**

**Date: 23-03-2011**

1. The present O.A. was filed by applicant on 18-05-2010 praying for expunging the entire CR for the period from 01-06-2004 to 25-04-2005 being illegal and subjective. He has also sought for setting aside the order dated 22-10-2007 (Annexure A-1) by which his statutory complaint was rejected. A prayer is also made to direct the respondents for promotion to the rank of Colonel (Col) with all consequential benefits.

2. The brief facts of the case are as follows. The applicant was commissioned in the Corps of EME on 11-06-1988. Having reached the rank of a Major, he was posted on deputation with SQAE (Vehicle)

under the Director General Quality Assurance (DGQA), Chennai w.e.f 26-05-2004. The applicant thereafter remained so posted till he was struck of strength w.e.f 26-04-2005 on the grounds of non-option to remain in the DGQA cadre.

3. During his tenure with the DGQA, the applicant, on the basis of recommendations of A.V. Singh Committee award, was promoted to the rank of Lt Col w.e.f. December, 2004. As per the policy, applicant was required to give his willingness to continue in the same appointment or seek reversion to the army from DGQA. The applicant gave his willingness for reversion to the army vide his communication dated March, 2005. The applicant also raised an issue of reporting channels of ACR as the Initiating Officer (IO) and the applicant were of the same rank on the date of initiation of ACR.

4. It is contended by the applicant that as per Army Order (AO) 45/2001/MS, there is a requirement to obtain specific sanction of the MS branch for the IO to initiate a CR in case the IO happens to be of the same rank as that of the officer reported upon. In this case, the report initiated covering the period 01-06-2004 to 26-04-2005, the IO was of the same rank as that of the applicant. No sanction was obtained by the IO to initiate the ACR contrary to the above mentioned AO.

5. He further contends that the ACR was handed over by the applicant to the IO and it was duly completed and forwarded to the RO (Reporting Officer). He did not hear of the ACRs till such time he was intimated by the MS Branch that there was a 'gap' in his reports. The applicant immediately approached the concerned authorities and he was advised to resubmit a fresh form as his original report initiated on 26-04-2005 was misplaced. The applicant accordingly complied with.

6. It is submitted that a Selection Board was held in April/May, 2006. The applicant was intimated that he has not been empanelled for promotion to the rank of Colonel (Col) on 19-05-2006. The applicant, therefore, preferred a non statutory complaint which was rejected by the respondents on 05-06-2007. He again preferred a statutory complaint in January, 2007 in which he raised the issue of non compliance of para 103 of AO 45/2001/MS pertaining to missing of ACR. He also raised the issue of Senior Reviewing Officer (SRO) having endorsed his report as he was not competent to do so. The statutory complaint was also rejected by the respondents in a mechanical manner.

7. On the basis of RTI on 30-07-2008, the applicant submitted another representation requesting for technical scrutiny of impugned CR. In response to the RTI query, MS branch informed the applicant

that since only one report was received by MS branch, they are not in a position to declare it technically infirm.

8. The applicant being not satisfied with the response, wrote a DO letter to the MS and sought his indulgence. Having conveyed his points, he was informed by the additional MS on 04-01-2010 that a Court of Inquiry was being undertaken under the aegis of DGQA for loss of original ACR.

9. Learned counsel for the applicant argued that the impugned ACR suffers from the following technical defects :

(a). Since the applicant had become a substantive Lt Col (Time Scale) w.e.f 16-12-2004, he was equivalent to the Senior Quality Assurance Officer (SQAQO). Therefore, there was a requirement for the IO to obtain prior sanction from the MS branch to initiate his report. This was not done in this case.

(b). The RO should have initiated the report and scored out the columns mentioned for IO after having received due permission from the SRO.

(c). Since the original ACR submitted by the applicant on 26-04-2005 was misplaced/lost as per the order existing, a court of enquiry should have been conducted under the aegis of DGQA and the responsibility be pinpointed. To say that only one ACR was

received by MS branch does not absolve them of their responsibility of ensuring a court of enquiry.

(d). Since the RO in this particular case had not completed 75 days of physical service which is a mandatory requirement for a RO to initiate/endorse a report, the report initiated by the RO is technically infirm.

**10.** Learned counsel for the respondents stated that ACR was initiated by the superior officer i.e. Senior QAO, Mr. Sundara Rao. The applicant was a Lt Col on 16-12-2004. As per the MS policy letter laying down channel of reporting vide para 3, the officers with DGQA are governed by the following channel :

*“3. Army Offrs Serving with DGQA Org. Confidential reports in respect of offrs serving with DGQA will be rendered on the channels of reporting promulgated vide Appx to Min of Def/DGQA letter No. 97118/DGQA/Adm-6B/ACR/Policy dated 28 Sep 94 amended vide letter of even No dated 15 Feb 96, reproduced below :-*

(a) .....

(b) .....

(c) Offrs Other Than Heads of Ests.

<b>Rank</b>	<b>Appt</b>	<b>IO</b>	<b>RO</b>	<b>SRO</b>	
<i>Lt Col/Eqvt</i>	(i)	<i>Dy Dirs</i>	<i>Joint Dir</i>	<i>Addl Dir</i>	<i>Tech Dir</i>
	(ii)	<i>Dy Controllers</i>	<i>Joint Controller</i>	<i>Controller</i>	<i>Tech Dir</i>
	(iii)	<i>QAO</i>	<i>SQAO</i>	<i>Tech Dir</i>	<i>DGQA</i>
<i>Maj/Eqvt</i>	(i)	<i>Asst Dir@</i>	<i>Dy Dir/ Joint Dir</i>	<i>Addl Dir</i>	<i>Director</i>
	(ii)	<i>Asst Controller</i>	<i>Dy Controller/ Joint Controller</i>	<i>Controller</i>	<i>Director</i>
	(iii)	<i>AQAO</i>	<i>QAO</i>	<i>SQAO</i>	<i>Director</i>

11. The respondent contended that as per above table, it is clear that a Lt Col who is equivalent to the QAO will be reported upon by SQAO as IO. The RO will be the Technical Director who in this case was Mr. B.P. Singh. The SRO will be the DGQA. Thus, the report has been correctly initiated and reported upon.

12. Learned counsel for the respondents further submitted that the applicant for the first time reported to the MS Branch that his ACR covering the period 01-06-2004 to 26-04-2005 was lost vide his letter on 27-04-2009. It is only after that action was initiated for a court of enquiry to be conducted by the DGQA. However since only one ACR had been received by the MS Branch which covers the period from

01-06-2004 to 25-04-2005, Army Headquarters (MS Branch) was not aware of the lost ACR.

**13.** Learned counsel for the respondents has now contended that since applicant was never upgraded to a QAO appointment; despite being promoted as Lt Col (Time Scale) he was still serving as AQAO, is an incorrect assumption because Lt Col or equivalent is termed as QAO and his immediate superior, therefore, becomes SQAQO who in this case was Mr. Sundara Rao. The IO, therefore, was correct in initiating the report since the applicant had 90 days of physical service under SQAQO Mr. Sundara Rao.

**14.** As regard the RO i.e. Technical Director Mr. B.P. Singh not having served for 75 days together are based on facts. Learned counsel did not want to contest this issue as documents clearly indicate that Mr. B.P. Singh had not done 75 days of physical service with the applicant before 25-04-2005.

**15.** Learned counsel for the respondents also drew our attention to the original records of the applicant to show us that applicant himself had signed and validated the days/period of service under the IO and RO respectively. Therefore, it was submitted by learned counsel that there was no reason to disbelieve the days of service together so projected and perhaps that is the reason the period of service of the RO together with the applicant escaped scrutiny.

16. Learned counsel for the applicant as a rejoinder made a point that vide the letter dated 24-12-2004, the DGQA had informed that there was no change in the establishment of the organization. The relevant portion of letter dated 24-12-2004 reads as under :

“1.....

2.....

3. *The above orders have been made applicable for those appointments held by Captains/Majors/Lt Cols in various Army Estts, units and formations. In so far as the implementation of the above mentioned Govt orders in DGQA Organization, we have taken upon a case with Deptt of Defence Production for upgrading the tenure posts earmarked for Majors on tenure basis to Lt Col on a personal basis, so that the present incumbents could be promoted in-situ. Upgradation of the post of Lt Col to Colonel (Time Scale) will not be necessitated since offices promoted to the rank of Colonel (Time Scale) will be held against the authorization of Lt Cols.*

4. *The above proposal is in the advanced stages of finalisation/approval. On approval by the Competent Authority, necessary confirmation will be given to MS Branch for issuing the promotion orders to all affected officers of the rank of Majors/Lt Cols.*

5.....”



**17.** Having heard both the parties at length and having examined the documents in original, we are of the opinion that the ACR was correctly initiated notwithstanding the issue of re-initiation i.e. IO was Mr. Sundara Rao, the SQAQO being the immediate superior officer and was thus entitled to initiate and report on the officer who was a Lt Col and considered equivalent to QAO. Therefore, the contentions raised by the applicant in this respect are not sustainable.

**18.** The endorsement of the RO Mr. B.P. Singh as a Technical Director is incorrect because he has not served for 75 days together with the applicant. This is borne out by the dates of his joining in that appointment which is on record. The position is not disputed by respondent side also. The fact that the applicant had submitted ACR form duly authenticated for re-initiation of the ACR does not absolve the RO from endorsing the ACR when he was not entitled to do so. Thus the portion of the RO report is technically infirm and deserves to be struck down.

**19.** The SRO has endorsed the ACR as per the Army Headquarter letter dated 15-02-1996.

**20.** In view of the above, the application is partially allowed. We direct that having expunged the endorsement of RO, applicant be reconsidered along with his original batch for promotion to the rank of full Col. No orders as to costs.

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

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

**Announced in the open Court**  
**on this 23<sup>rd</sup> day of March, 2011**