

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH, NEW DELHI**

**11**

**O.A. 361 OF 2010**

**Lt Col G.S. Walia**

**.....Applicant**

Versus

**Union of India and Others**

**.....Respondents**

For Petitioner : Ms. Jyoti Singh, Sr. Advocate with  
Ms. Tinu Bajwa, Advocate

For Respondents : Ms. Veronica Mohan, Advocate with  
Col Devender Singh

**CORAM:**

**HON'BLE MR JUSTICE A.K. MATHUR, CHAIRPERSON**

**HON'BLE LT GEN Z.U.SHAH, MEMBER**

**ORDER**  
**03.05.2011**

1. The petitioner vide this petition has prayed that the order dated 19.01.2009 be quashed by which the petitioner's statutory complaint was disposed of by the Government. It is also prayed that order dated 20.12.2007 rejecting his non statutory complaint also be quashed. It is also prayed that ICR covering the period June, 2004 to February, 2005 be set aside due to technical infirmity and reports with regard to January 2000 to May 2000, July 2002 to May 2003 and June 2004 to

February 2005 be thoroughly scrutinized and in case of any inconsistency by any of the Reporting Officers the same may be expunged on the ground of inconsistency and subjectivity. Respondents be also directed to consider the case of the petitioner as a Special Review Fresh Case by the next Selection Board for promotion to the post of Substantive Col.

**2.** The brief facts of the case are that petitioner was commissioned into Inf (22 Grenadiers) on 16.12.1989 and served the Army at various places. He has also served in 'OP Rakshak' (J&K) for two tenures and took part in 'Operation Chara-e-Sharif'. He was also awarded the COAS Commendation Card, 'Op Vijay' and 'Op Parakram'. Despite being injured during 'Op Vijay', he refused to leave the men in the finest traditions of the Army and continued to take part in the battle. The petitioner is recipient of wound medal on both occasions and became a Battle Casualty. He has done 6 professional courses and graded "Above Average". His CR profile to the best of his perception has been 8 and 9 except in the impugned CRs. He has held the appointment of General Staff Office 3 Op. in 26 Inf. Division and was Public Relation Officer as additional duties of the Division despite being so young in age.

3. The Selection Board No. 3 for promotion to the rank of Col was held in May, 2007 but unfortunately petitioner was not empanelled. He apprehended that these ACRs may have been the reason for his non-empanelment. He filed a non statutory complaint on 06.08.2007 which was rejected on 20.12.2007. Then he filed a statutory complaint dated 20.08.2008 which was also rejected on 19.01.2009. Hence, the petitioner being aggrieved by these orders filed the present petition.

4. The first submission of the learned counsel for the petitioner was that in the extract of Part II Order which was communicated to him does find mention that officer could not join his Unit in the fwd area which has been wrongly recorded. Officer could not join his Unit in the fwd area because of the injury whereas according to the petitioner he was very much part of it and it is apparent from the subsequent mention that he refused to leave the Unit and kept on pushing vital stores of the Unit LOC, toiling day and night, till the end of Operation.

5. Learned counsel submitted that expression that he could not join the Unit in the fwd area is not correct. He was very much part of the fwd area and with all his physical disability, he continued to push vital stores in the Unit, therefore, this line has been wrongly mentioned that he was not the part of the Unit in the fwd area. In that, she has also invited our attention to Situation Report (sitrep) in which it is clearly mentioned that Maj G.S. Walia suffered blunt trauma sacral spine comma as well as injury on both the knee due to enemy shelling at

about 23:35 Hrs on 05.07.1999. This shows that the petitioner was part of the Unit and this omission according to the petitioner is seriously affected his military pride.

**6.** We have bestowed our best consideration. Though it is a very belated objection with regard to this reference being not there in Part II Order but reading the Situation Report along with whole of the extract show that the petitioner was a part of the Unit and it may be a bonafide omission. We are of the opinion that since the CO has already mentioned who was at the time relevant the control of the situation and petitioner having not agitated this matter for this long period, therefore, it will not be proper for now to interfere with the Part II Order. The CO at the controlling time was best person to judge his report. Therefore, this contention of the petitioner cannot be entertained.

**7.** The next submission of the learned counsel for the applicant is that ACRs were written before applicant completed his training, therefore, these ICR have been written by them was not proper as in the technical reports in which he has been given '7' marking was not correct because he has been changed from Grenadier to AOC. This is the assessment of the officers that whether the person has acquired the technical ability or not. For undergoing the ICR prior to undergoing the training will have no bearing his ICR. The technical inability of the individual can only judge by the technical officer where he has given him a good report of 8 or higher. So far as his technical infirmity is

concerned in which he is found that he is not coming up to the mark, therefore, he is awarded 7 marks that can not be endorsed on that account.

8. Learned counsel for applicant very strenuously averred before us that there is a technical problem with regard to ICR for the period from June 2004 to February 2005 as at the relevant time Lt Col S.P. Vishwanath was the CO and he was working under him and in case as per Para (C) he could not written his ACR, therefore, ACR was written by the RO Col C.S. Sree Ramulu but in this ACR permission has been sought from the SRO but there is no permission which has been brought to our notice from the original record. As per the Para 24(a) of Army Order 45/2001, a permission has to be sought from the SRO permitting the RO to write the ACR for the same reasons IO cannot write the ACR. The extract of Para 24 (a) of the AO 45/2001 reads as under :

***“(a) IO Posted But Not Entitled RO may initiate a CR (Annual/Early/Interim), excluding Delayed CR whenever it becomes due; in all cases where IO is posted but not entitled to initiate due to limitations of various provisions of this AO. Sanction of SRO will be obtained before initiation of CRs. However, no Early CR/ICR can be initiated by the RO on posting out of the IO, except in cases, as covered under paragraph 73 of this AO.”***

**9.** As per this provision, the CR can be initiated by RO in case where IO is posted but not entitled due to limitations of various provisions of this AO. In that case, sanction of SRO will be obtained before initiating the CR.

**10.** As per Para 20(b) of the AO 45/2001, Lt Col (Selection Board) may initiate reports of officers of the rank of Lt Col (Time Scale) serving under him in appointments tenable by Maj. As per Para 20 (c) of the AO 45/2001 when an officer is holding a rank equivalent to, or the same as that of his immediate superior officer, his report will be initiated by an officer who would have initiated report on his immediate superior officer. Such ACR will be placed under provisions of Para 20(c) of the AO. In both the situations since the IO was Lt Col S.P. Vishwanath would not initiate the report of the petitioner then in that case as per Para 24 (a) reproduced above, permission should have been sought from the SRO. This aspect has been highlighted by the petitioner in the statutory complaint dated 20.08.2008. Also in paragraph no. 8 he brought out the technical infirmity of this ICR covering the period June 2004 to Feb 2005 and specifically brought to the notice of the authorities that there is no permission from the SRO which he only came to know after he got information that he has not been empanelled for the post of Col. When this fact was brought to the notice of authority, authority should have apply their mind and consider in replying his statutory complaint.

11. The purpose of statutory complaint is to bring out to the notice of Government the technical defect and factual aspect and respondents are under obligation to examine the statutory complaint on objective manner. The statutory complaint was examined by the respondents in detail and they rejected the same but so far as this technical aspect is concerned, there is no answer is given in replying the statutory complaint.

12. Learned counsel for the respondents has seriously objected on the ground of delay and in that connection highlighted the judgment given in the case of **Major Aroon Kumar Sinha Versus Union of India and Others” (2001) 6 SCC 235** wherein Lordship has held that statutory complaint/non statutory complaint should be filed within 60 and 90 days and if this is not done this should not be interfered. True we could not have interfered as the complaint is filed by the petitioner belatedly but the fact that the petitioner got case of omission when he was not selected by the Selection Board and he filed statutory complaint which was disposed of somewhere in 2009. As such, he highlighted this technical infirmity in the ICR covering the period June 2004 to Feb 2005 but the authority did not take serious note of it and dismiss the statutory complaint, therefore, the petitioner left with no remedy except to approach the Tribunal.

**13.** We have bestowed our best consideration and we find that this technical defect raised by the petitioner is correct. As per their own circular AO 45/2001 which clearly contemplates that in such situation wherein IO is not competent to write the CR then the same can be written by the RO but prior permission of the SRO has to be sought. In the present case the respondents were given opportunity to produce the record to substantiate that whether such permission was sought or not. The record have been produced before us but they are not able to show whether such permission was sought or not. Whereas as per record, there is a correspondence on the record which shows that steps were taken to seek such permission but authority has failed to point out whether such permission at all was given or not. As such the ICR for the period June 2004 to Feb 2005 suffers from this technical irregularity and as such it has to be set aside. We direct the authority to take up this ICR in the proper way and take all necessary steps to write this ICR in accordance with the rules. Thereafter if ICR either merits and if required reconsideration for selection to the post of Col then authority may take necessary steps. The petition is allowed only to this extent.



**14.** The petition stands disposed of accordingly. No orders as to costs.

**A.K. MATHUR  
(Chairperson)**

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

**New Delhi  
May 03, 2011**