

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

9.

**O. A. No. 371 of 2010**

**Col. P. Prem Kumar**

**.....Petitioner**

**Versus**

**Union of India & Ors.**

**.....Respondents**

**For petitioner:** Sh. S. S. Pandey, Advocate.

**For respondents:** Sh. Ankur Chhibber, Advocate.

**CORAM:**

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

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

**ORDER**  
**4.5.2011**

The petitioner, by this petition has prayed that the order dated 23.3.2010 passed by respondent no. 1 while disposing of the statutory complaint of the petitioner may be quashed and the respondents may be directed to consider the case of the petitioner for promotion by the first available appropriate selection board by treating it as a special review fresh case after removing/expunging the CR for the period from January, 2002 to August, 2002 in its entirety for being technically invalid and the assessment of the Reviewing Officer in the CR for the period from March, 2007 to August 2007 due to its subjectivity and inconsistency.

2. The petitioner was a commissioned officer in Indian Army and was commissioned on 13.3.1982 in the rank of Lieutenant in the corps of EME. The

Contd.....2/-

petitioner, during 1982 to 2002, performed his duties well and earned his promotion from time to time and became Lt. Col. and Col. On getting promotion to the rank of Colonel, he was posted as Commanding Officer 6003 (Independent) Armoured Workshop on 21.1.2002. After the petitioner took over the command and he accepted the challenge to put the maximum tank on road as the OP PARAKARM was in progress at that time. The petitioner achieved almost 100% road worthy of the equipment. However, an unfortunate incident happened on 14.5.2002 wherein a terrorist had targeted the family members of the Armed Forces personnel near Jammu. The Court of Inquiry was held regarding the same and it found that the two Sentries who did not perform their duties properly were tried by Court Martial and punished. The Court of Inquiry was also held about the incident at Kaluchak on 14.5.2002 and in that Court of Inquiry, show cause notice was given to the petitioner, who filed his reply dated 31.10.2002, the extracts of which read as under:

**"As a Commanding Officer I am fully responsible for all assets and liabilities in my area of responsibility. It is unfortunate that an incident like Kaluchak terrorists attack took place. I am prepared for any punitive action as decided for me by GOC, 16 Corps. However, I submit that a lenient view may please be taken giving due consideration to the fact that I have acted in good faith in keeping with the Military traditions."**

Contd.....3/-

3. On the basis of this, the petitioner was given only a punishment of severe displeasure non-recordable and his CR for this period i. e. from March, 2002 to August, 2002 was also rated "Very good" and the IO has given 8 marks which has been endorsed by the reviewing officer also and he was communicated box 'Grading' '8'. Thereafter, the petitioner has also challenged the CR pertaining to the period March, 2007 to August, 2007 and this, according to the petitioner, was inconsistent with the earlier CR, therefore, he has also sought directions to the respondents for setting aside of the same and he accepted that.

4. The respondents have filed a reply and contested the matter. They have submitted that so far as the period of January, 2002 to August, 2002 is concerned, the petitioner has never challenged it before. It is only when the petitioner could not make to the promotion to the post of Brigadier, he has challenged this CR at this distance of time. Previous to that, he filed a statutory and non-statutory complaint, which was rejected and he accepted that.

5. We have heard learned counsel for the parties and perused the record.

6. Learned counsel for the petitioner strenuously argued before us that during the time the petitioner's CR was written, the Court of Inquiry was there and no approval had been sought from SRO for writing this CR as he was already facing a disciplinary case. Firstly, the CR written by the IO and the RO are not adverse and



box grading is 8 and the IO has written very good which has been substantively endorsed by the RO except that the RO stated that he needs "little improvement in man management, unit administration and security" and the same in any way cannot be said to be adverse. Be that as it may, the fact remains that the petitioner has accepted it. Since he could not make it to the promotion to the post of Brigadier in selection in 2008, he has challenged this CR at this distance of time. This cannot be permitted. 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 file 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. Learned counsel for the petitioner also submits that this so called tainted CR was not considered earlier but was considered in 2008 and so he filed a statutory and non statutory complaint in 2008. But this contention of learned counsel for the petitioner is rejected because had the petitioner been vigilant, he should have raised objection at the relevant point of time. We are not inclined to accede to this type of belated request of the petitioner. Therefore, so far

as the CR for the period January, 2002 to August, 2002 is concerned, we reject the challenge of the petitioner.

7. Next question is the CR for the period March, 2007 to August, 2007 is concerned, this is an assessment of a Technical Officer. The first CR was written by the Technical Officer Major General A. K. S. Chandela. Thereafter, another CR was written by Major General Oberoi, another Technical Officer. There is a small variation in their assessment about the technical knowledge of the petitioner. There is not much variation in that. Hence, we do not find any reason to interfere in this CR also. Consequently, we do not find any merit in this petition. The petition is accordingly dismissed. No order as to costs.

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

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

**New Delhi**  
**May 4, 2011**