

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI
06.**

O. A. No. 377 of 2011

Brigadier V.G. Gole

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Mr. S.S. Pandey, Advocate

For respondents: Ms. Barkha Babbar, Advocate

CORAM:

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

HON'BLE LT. GEN. S.S. DHILLON, MEMBER.

ORDER

15.12.2011

The petitioner vide his petition has prayed that the relevant records may be called and order of respondent effacing the ACR given by the IO for the period from January, 2009 to June, 2009 may be set aside and the original marking given by the IO may be restored and his case may be considered afresh for promotion to the rank of Major General.

The petitioner was commissioned in the Indian Army on 09.06.1979 and over passage of time he reached the rank of Brigadier in 2006. He was posted as DDG (Personnel) in the Engineer-in-Chief Branch at New Delhi on 01.10.2008 and he was handling postings and promotions. Petitioner has been graded as outstanding with a box grading of 9 for his efficient work. Thereafter in 2008 a Quantification System of selection was introduced and due weightage was given to the ACRs. Petitioner was considered for the rank of Maj Gen by a Selection Board convened between 19.05.2010 and 21.05.2010. The result of the selection board was declassified on 17.09.2010 and to the shock of the Petitioner he was not empanelled for promotion. Therefore, being aggrieved by his non empanelment, he preferred a statutory

complaint on 12.10.2010 and pointed out various illegalities in consideration of the applicant which denied and deprived him the promotion. His statutory complaint was decided on 16.09.2011. Petitioner has pointed out that he had been getting an outstanding report but IO's portion in his ACR for the period from January, 2009 to June, 2009 has been erased, which was absolutely illegal, arbitrary and without jurisdiction. Therefore, the petitioner has approached this court by filing the present petition.

A reply has been filed by the respondents contesting the position and took resort to a policy decision at Para 137 of Army Order 45/2001/MS which gives them power to efface the assessment if it is found that the ACR of the incumbent is grossly inconsistent or with inflationary/deflationary/ subjective reporting. This effacing could be done after due approval of the Chief of Army Staff. In this case, the ACR was found grossly inconsistent, therefore, IO's assessment was expunged after approval of the Chief of Army Staff.

We called upon the respondents to produce the original record before us and after perusing the record, we are constrained to observe that the powers exercised by the respondents is arbitrary. We have seen the ACR record of the petitioner from 2006 to 2010 and we find that during this period he has earned seven ACRs and has not secured less than 8 marks in any of the qualities mentioned in the ACR. We also found that the IO's assessment in the ACR from January, 2009 to June, 2009 has been totally effaced. We do not know how much marks were given by the IO but at least we have seen the RO's assessment in which petitioner was given 8 marks in 5 qualities while in the remaining 12 qualities he has obtained 9 marks. Subsequently, even in the ACR from July, 2009 to November, 2009 he has received almost identical

8 or 9 marks. From February, 2010 to June, 2010, we find that petitioner has again secured 8 & 9 marks in all the qualities.

The explanation given by the respondents is hardly satisfactory. Learned counsel for the respondents has produced before us a minute sheet to justify their stand, but we regret to say that it is a totally arbitrary and if we may say malafide in law also. This kind of arbitrary action would have gone unnoticed had the Tribunal not been constituted and all the original record would not have been perused by us. It speaks volumes that such kind of illegality can be committed against an officer. This is a serious matter and we are constrained to observe that it requires deeper consideration by the higher authority and they should pinpoint the officer responsible who has played foul thereby affecting the career of the officer. We allow this petition and expunge the effacing of the ACR of the petitioner for the period from January, 2009 to June, 2009 given by the IO. The marks should be restored back and petitioner should be reconsidered for promotion to the post of Maj Gen in accordance with rules. The impending retirement will not come in the way of consideration of the petitioner for promotion to the post of Maj Gen. The petition is allowed with cost of Rs.10,000/-.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
December 15, 2011

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