

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
NEW DELHI.

O.A.No. 400 of 2010

Colonel Jagmohan Durgapal

...Petitioner

Versus

Union of India & Anr.

...Respondent

For the Petitioner : Shri S.R.Kalkal, Advocate

For the Respondents: Ms. Jyoti Singh, Advocate

C O R A M:

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

HON'BLE LT.GEN. S.S.DHILLON, MEMBER (A)

JUDGEMENT
28.02.2011

1. Petitioner by this petition has prayed that his ACR for a period of 5th March, 2004 to 31st August, 2004 be set aside, being inconsistent on the part of IO, RO's review being subjective based on personal dislike for innovations by a unit and without inputs of FTO, FTO/HTO not following mandatory requirement of communicating

relevant portion of CR to applicant which is against the laid down policy on the subject and also MS Branch not following the Army Order for setting aside technically defective CR. It is further prayed that directions may be given to the Respondent to consider the tenure of the Group Commander Electronic Support Group in NSG as command criteria as is being followed for Infantry officers posted to NSG and thereby consider the case of the applicant a fresh for promotion to the post of Brigadier and give notional promotion & seniority.

2. Petitioner was granted regular commission in the Army on 15-12-1984 in the rank of Lieutenant in Corps of Signals and was granted ante-date seniority w.e.f.25.12.1982 and applicant served at various places in field and operational areas and held different staff and regimental appointments in the Army. During the course of his more than 26 years of service he has put in his best performance to the entire satisfaction of his seniors. The

applicant did his Defence Services Staff College Course in 1995-96 where he was awarded commendations also. He has been assessed as above average / outstanding in his ACRs for the last 10 years. He was Commanding Officer of 20 Mountain Division Signal Regiment w.e.f.16.06.2001 to 16.09.2004 and he performed his duty as Commanding Officer for 39 months. His last ACR of his command tenure of 20 Mountain Division Signal Regiment w.e.f.05.03.2004 to 31.08.2004 (less than six months) was initiated by Major General VDI Devararan, SM, VSM, GOC 20 Mountain Division. He had all commendable service to his credit. He has outstanding performance during the PRAKRAM as well as conventional operations during OP RHINO. It is alleged that applicant should have been rated '9' but instead he was rated '8' which to the best of his memory is the lowest in his last 10 ACRS by any IO. Therefore, it is a major contradiction or inconsistency. It is alleged that

applicant's Reviewing Officer for the same period was GOC 33 Corps, Lt. Gen. Deepak Kapoor, SM, VSM and his visit to the applicant's unit took place on 16.09.2004 which was also on the last day of applicant's command of that unit and in that station. It is alleged that his innovations has been of great service to the formations. The petitioner submitted that he has not completed mandatory 90 days under Brigadier Anjum Shahab, VVM, Chief Signal Officer 33 Corps, therefore, Chief Signal Officer of Eastern Command Maj.Gen. B.C. Dhaundial became the First Technical Officer who initiated ACR of the applicant and applicant had hardly any direct contact with him. Therefore, it is alleged that ACR written by him is technically unsustainable as the aim of writing of the ACR is to have an objective assessment of an officer's competence and the communication of the first level of reporting officer is the basic principle. Therefore, it is submitted that basic aim of ACR is defeated if its relevant

portions of the assessment are not communicated by first reporting officer to ratee. It is alleged that procedure adopted by the Military Secretary Branch in case of any discrepancy found in the ACR of any officer, such ACR while carrying out scrutiny should be put under observation till the objection is removed but the same was not done. It is alleged that Military Secretary Branch should have sent back his ACR written by Major Gen. BC Dhaundial as it did not bear signature of the ratee which was obligatory on his part. Therefore, the applicant replied to MS Branch later that it was incorrect on the part of MS Branch to ask for signature at such a late date and he did not sign the extract. It is also pointed out that when all the ACRs which were brought to the MS Branch are subject to scrutiny to check the correct entitlement, channel of reporting, completion of CR forms in all respects and objectivity in reporting and whenever there is a technical defect, then the clarification is to be sought

from the ratee and in case no satisfactory reply is received from the concerned officer, such invalid CRs are set aside. It is alleged that after completion of tenure of command, the applicant was again posted as Group Commander of Electronic Support Group in NSG w.e.f.01.10.2004 to 29.10.2007. It is alleged that appointment of Group Commander of a group in NSG is similar to job of Commanding Officer of a major unit in the Army.

3. It is pointed out that the criteria appointments means appointments where an officer commands a body of troop called unit / subunit having a direct operational role and where commanding officer's leadership qualities are exhibited and tested and for that a maximum weightage is awarded to the ACRs earned during these periods. It is alleged that ACR earned during criteria appointment are 50% and 10% for present selection board and last selection board and respectively marks allotted to ACR

during the other appointment constitute only 30%. It is alleged that most of the Officers get a Command posting once for a period of two years, but petitioner had two successive command postings, one at 20 Mountain Division Signals Regiment w.e.f. 16.06.2001 to 16.09.2004 (39 months) and second at Electronic Support Group in NSG from 01.10.2004 to 29.10.2007 (37 months). Therefore, the grievance of the petitioner was that he held two command postings, therefore, he is entitled to weightage for holding two command postings. It is alleged that during the selection for promotion held from 15 to 17 April, 2009, the applicant was not empanelled for the rank of Brigadier, therefore, he felt aggrieved and made a grievance but without any result, therefore, he was driven to file the present petition and prayed for quashing of the Selection Board and consider the case of the petitioner to the post of Brigadier along with his batch.

4. A reply was field by the Respondent and respondent pointed out in their reply that the Army has a pyramidical rank structure. The number of vacancies in the higher ranks are limited and those persons whose record is meritorious make it to the higher ranks. As per the promotion policy which was applicable till 15.12.2004, promotions in the Army upto the rank of Major was by time scale and from Major to Lt.Col and above was decided through Selection Boards. However, after implementation of AVSC-1 recommendations, promotions up to Lt.Col. are by time scale. It was pointed out that ACRs are regulated by SAO 3/S/89 which has now been replaced in January, 2002 by Army Order 45/2001/MS and ratings are numerical from 1 to 9. The assessment of an officer in any ACR consists of assessment by three different Reporting Officers i.e. Initiating Officer (IO), Reviewing Officer (RO) and Senior Reviewing Officer

(SRO). The Selection Committee consider a number of factors like War/operational reports, Course Reports, ACR performance in command and staff appointments, honours and awards, disciplinary background and not only the ACR alone. All these factors are taken cumulatively into consideration. It is alleged that petitioner did not make the grade to the rank of Brigadier based on his overall profile as evaluated by the Selection Board , therefore, he could not be promoted to the post of Brigadier. It is alleged that applicant's impugned assessment of the Higher Technical Officer (HTO) as First Technical Officer (FTO) in the CR 03/04 to 8/04 was communicated to him by MS Branch by its letter dated 31.10.2005 but he did not made any complaint and now when he is not selected, he has made this grievance. He has grievances against Lt. General Deepak Kapoor also, which cannot be taken into consideration as he is not party in the petition.

5. It is also pointed out that petitioner has earned 15 Confidential Reports. In these CRs, he has been graded 'Outstanding' eight times and "Above Average" (box 8), 19 times by the first level of reporting officers and the first level officers have rated the applicant 'Outstanding', the higher tier reporting officers have opined that IO was liberal in five of the Confidential reports. The applicant commanded 20 Mountain Division Signal Regiment from 19.05.2001 to 16.09.2004 and the 39 months command is normal in peace area. It is also submitted that Confidential Report of 05.03.2004 to 31.08.2004 was initiated by Maj.Gen. VDI Devavaram, VSM, GOC. The Initiating Officer (IO) has endorsed box '8' in the Confidential report and his Confidential report is in consonance with its past profile as well as its three previous confidential reports earned by him as a Commanding Officer in 20 Mtn. Div. The applicant had been assessed 'Above average' by Maj. Gen VDI

Devavaram based on performance of the ratee. The Devavaram has rated him based on his performance and there is no inconsistency or mismatch in the assessment of the applicant from his previous ACRs.

6. So far as the assessment by Lt.Gen.Deepak Kapoor is concerned he has rated him above average and gave a positive recommendation for his promotion and SRO also has given him 'Above Average'. Therefore, the allegations against the Lt.Gen.Kapoor was totally unwarranted. So far as the ACR given by Major General BC Dhoundial is concerned, he was HTO (Higher Technical Officer) as he had not worked more than 90 days under the FTO. The extracts were communicated by the MS Branch to the ratee for authentication and they were required to be returned back by the ratee duly signed but he did not do so. So far as HTO is concerned. he is not required to communicate his assessment, it is only the First Technical Officer, but in the present case, First Technical Officer

was not competent to do so as applicant has not completed 90 days under him. Therefore, it was written by the HTO and same was communicated to the petitioner by MS Branch for his information but he did not react on that. The allegations against HTO are also unfounded as he has already given him good ACR which is consistent with his past record i.e. 'Above Average', therefore, as such there was no inconsistency between these two ACRs. So far as quantified system of selection policy for various Selection Boards was promulgated by the MS Branch on 31.12.2008 and this policy has been uniformly followed for everybody.

7. It is also pointed out that so far as the criteria appointment is concerned one has to do this for a minimum tenure of 20 months and additional criteria appointments will not entitle him for any separate marks for it. The list of the criteria appointments for various arms and services has been selected by the competent

authorities based on operational, training and administrative requirements and is now laid down by MS Branch by their policy letter dated 28.04.2008 and this is a comprehensive list of criteria appointments and is being uniformly applied. In these circumstances it is alleged that since petitioner's case was considered in the light of the policy and on the basis of his ACR and he was not able to make the mark vis-a-vis other officers, therefore, he was not selected.

8. We have heard learned counsel for the parties and perused the record. Learned Counsel for the petitioner strenuously urged before us that his ACR was not properly assessed and he has throughout been outstanding, and ACR written by Maj.Gen.Daundiya and others should be set aside and his case should be reconsidered. We called the original ACRs of the petitioner and perused the same and after going through them we found that ACRs of the petitioner were not

having any inconsistency and were assessed properly. We found that he had been given numerical rating 8 and 9 and sometimes he had 'Above Average' and sometimes he got 'Outstanding' but despite that grading he could not make it in comparison to other officers of his batch. We have read out some of the remarks given in the ACR to the petitioner also. Therefore, we are satisfied that as far as the ACR of the petitioner is concerned we don't find any inconsistency or any serious variation so as to warrant any interference in the matter.

9. Learned Counsel next submitted very strenuously that a 50% weightage is given for the criteria appointment and petitioner had done two criteria appointments, one in 20 Mountain Division and other in NSG, therefore, he is entitled to weightage of these two criteria appointments and in that connection learned counsel has tried to show that some of the persons who were working below him were getting double weightage for criteria appointment

whereas petitioner has been given weightage as of one criteria appointment only.

10. Respondent in its reply very categorically stated that any officer may have any number of tenures in criteria appointments, but minimum criteria is for 20 months appointment for further consideration. We directed the respondent to file an affidavit to this affect that no person has been given a weightage more than 50% for criteria appointment for holding more than one criteria appointment. An affidavit in this context has been filed by the Lt.Col. Manish Kumar, MS Legal, Military Secretary Branch and it is clarified that the confidential reports for the rank of Colonel, criteria appointment carries a weightate of 50% marks, reports of criteria appointments in r/o Lt. Col carries 10 marks, 30 marks are given to staff/instructional and other reports of reckonable profile. This is the distribution of 90 marks and it was clearly mentioned that any officer who holds the criteria


appointment for two years and earns a report covering period of 20 months becomes entitled to be considered for further promotion. It is also pointed out in the additional affidavit that applicant posted as a Group Commander (NSG) was not holding a criteria appointment and that cannot be counted over and above 50 marks. This tenure was staff appointment and not a criteria appointment and this appointment does not fall in the criteria appointment in the list mentioned along with the reply R-3. It was further clarified in Para-4 that 50 marks are allocated for criteria appointment in the rank of Colonel, irrespective of the duration of criteria appointment held and no officer would ever get weightage of more than 50 marks. The relevant part of this paragraph reads as under:

"It is submitted that 50 marks are allocated to criteria appointment to criteria appointment in the rank of Col, irrespective of the duration of criteria appointment held and no officer would ever get weightage of more than 50 marks. It further clarified and submitted that in case second criteria appointment posting is given to any officer, that officer will not get weightage again of 50 marks. The maximum weightage of criteria appointment in the rank of Colonel will never be more than 50 marks and this policy is uniformly followed. It is further submitted that not a single officer has got weightage more than


50 marks. The maximum weightage of criteria appointment in the rank of Colonel will never be more than 50 marks as was contended by the Applicant's counsel during arguments".

11. The insistence of the learned counsel for the petitioner that he held the second criteria appointment was also denied and it was specifically mentioned that criteria appointment has been mentioned in Annexure R-3 and it is further clarified that 50 marks have been fixed as the maximum weightage for the criteria appointment in the rank of Colonel, and this is the policy uniformly followed. Therefore, whether petitioner had held a criteria appointment in NSG or not is not of much significance. Since any Colonel who had held criteria appointment for 20 months, his ACR for that period will be taken into consideration and total 50% of that weightage shall be given for that, irrespective of the fact that he might have held any other criteria appointment. Therefore, this makes it clear that as a policy, not more than 50 marks will be considered for criteria appointment, irrespective of

any number of criteria appointments held by any incumbent. Therefore, in view of this affidavit filed by the respondent, the matter is clinched that incumbent will not get more than 50% weightage for criteria appointments. In view of the aforesaid affidavit we are satisfied that as per the policy no incumbent is entitled to more than 50% of weightage of the criteria appointment as such petitioner is also not entitled to. Consequently, we don't find any merit in this petition and same is dismissed. No order as to costs.



[Justice A.K. Mathur]
Chairperson



[Lt. Genl. SS DHILLON]
Member (A)

New Delhi
28th February, 2011