

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI
07.

O.A. No. 491 of 2010

Col H S Sharma

.....Petitioner

Versus

Union of India

.....Respondents

For petitioner: Mr. S. S. Pandey, Advocate
For respondents: Ms. Anjana Gosain, Advocate.

CORAM:

HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.
HON'BLE LT. GEN. S.S.DHILLON, MEMBER.

ORDER
21.12.2011

1. Petitioner by this petition has prayed that the records of the ACRs for the years 2004 to 2008 may be called and set aside the ACRs which are technically invalid and incomplete due to non-endorsement by RO/SRO/FTO. He has also prayed that the records may be called and the Government of India, Ministry of Defence letter No. 15 (171)/09/D (Medical) dated 23rd November 2009 intimating non-grant of redress as prayed by the Petitioner in his statutory complaint may be set aside and the complaint against non-empanelment may be rejected. He has further prayed that directions may be issued to call for records of the Promotion Board No. 2 (Medical) held on 6th November 2008 and the selection held by the Promotion Board No. 2 (Medical) on 7th November 2008 may be set aside and the case of the Petitioner may be considered by the Selection Board.

2. Petitioner was granted the commission in Army Dental Corps on 14th September 1981. Because of his good career he was appointed as an

Examiner (Orthodontics) at the prestigious department of Dental Surgery and then was transferred to Command Military Dental Centre, Pune for a further period of two years as an affiliate post graduate instructor to continue teaching the trainees. Because of the outstanding performance of the Petitioner professionally he was promoted to the ranks of Captain, Major and Lt. Col. He was considered for promotion from Lt. Col. to Col and on promotion was posted as Commanding Officer, Military Dental Centre, Roorkee and thereafter to 4 Corps Dental Unit in a highly active counter insurgency area in operation Rhino. He was awarded so many commendations. It is also alleged that in fact Petitioner's technically invalid ACR of 2005 was considered which has caused him serious prejudice and he could not make up to the position of a Brigadier. It is also alleged that the ACRs of 2005 and 2006 were initiated but not properly completed and they were not correctly assessed by the Respondents which has seriously prejudiced his case for non-selection to the post of the Brigadier. In these circumstances, Petitioner has filed the present petition making the grievance especially with regard to ACRs for 2005 and 2006.

3. A reply has been filed by the Respondents and the Respondents contested the position and pointed out that so far as ACR of 2005 is concerned, the ACR was taken into consideration except the portion of the SRO. SRO has given him 7.80 marking. This has been completely cancelled whereas it should have been rounded up from 7.80 to 8 or the whole number should have been taken into consideration. So far as ACR for 2006 is concerned in that FTO portion which has been put whitener and new numerical assessment has been given under the various headings but the

HTO has given an overall rating of 8. We called both the ACRs for our perusal and we find that so far as ACR for 2006 given by the FTO is concerned there is whitener and after applying whitener 9 marking has been given by the FTO. This, in our opinion, is absolutely incorrect on the part of the FTO. Instructions have been already given under the Special Army Order SAO 8/S/91 para 11 of which reads as under:

"11. Erasures, overwriting and paper slips pasted to remove/block the original assessment, will render the reports technically invalid. In case it becomes absolutely essential to revise the assessment in exceptionally unavoidable circumstances, then following will be ensured:-

- (a) Both original and the revised assessment are legible. A line will, however, be drawn across the original assessment to indicate its invalidity.
- (b) Revised assessment will be authenticated by full signature of concerned reporting officer(s) and will bear the date of amendment."

4. Normally the IO/RO/SRO they are not supposed to put the whitener in the assessment given by them earlier. In exceptional cases if they want to change the marking then they cut out the same and give another marking with their full signature. But in the present case it appears that the FTO with complete disregard to para 11 of SAO 8/S/91 has put whitener on all categories mentioned by him and gave 9 marking and put his initials. This has been totally unwarranted of the FTO now Maj. Mahesh Chander. This

action of the FTO was totally unwarranted and he should be asked to explain his conduct and administrative actions may be initiated for this kind of action of action done by him in violation of para 11 of SAO 8/S/91. However, the HTO has already given whole number 9 which has been rightly taken into consideration by the Respondents and we do not think it necessary to amend the ACR which has been written by the HTO and the Respondents has rightly expunged the ACR of the FTO which was in serious violation of para 11 of SAO 8/S/91.

5. Now coming to the ACR of 2006, the SRO has given 7.80 marking. Our attention has been invited to the minutes of the internal assessment of the ACRs and in that Adjutant General K. M. Seth has worked out various contingencies and he ultimately said that in case wherein the ACR marking is not in whole number then the decimal may be rounded up to the nearest whole number and that will be the correct approach. He has rightly concluded in clause (d) of note 2 which is reproduced as under:

"2 (d) Wherever numerical assessment has been given in fraction, the same may be rounded off to the nearest whole number i.e. if assessment given in fraction is more than 0.50, it will be made next whole number, if it is 0.50 or less, it would be rounded off to the lower whole number."

6. It was circulated to the Chief of the Naval Staff as well as Chief of the Air Force. The Chief of the Naval Staff has endorsed it in toto whereas Chief of the Air Force agreed with him in principal but he has put a rider that whenever it is 8.0 or more then while making it to whole number the reasons should be given as marking 9 is exceptional and therefore an appropriate

explanation for that should be needed. The proposal made by the Adjutant General has been approved by the Chief of Air Force and the Chief of Naval Staff.

7. The Chief of Naval Staff and the Chief of Air Force has approved it but it appears that when the matter is again brought to the notice of the Chief of Army Staff he did not examine the previous page and approved the note given by the DGFAMS which appears to be contrary to the opinion of the Chief of Naval Staff and the Chief of Air Force. The proposal of the Adjutant General was earlier approved by the Chief of Army Staff and it was circulated for the opinion of the Chief of Naval Staff and Chief of Air Force but it appears that when proposal was again placed before the Chief of Army Staff he seems to have approved the opinion of the DGFAMS without looking the previous page. Be that as it may, the fact appears that the opinion which has been given by the Adjutant General and which has been approved by the Chief of Naval Staff and the Chief of Air Force appears to be justified.

8. The approach of the DGAFMS to completely do away with the marking would be unfair for the concerned officer as it is not the fault of the officer if the ACR is not recorded. ACR is recorded by a superior officer. If the ACR is not filled up then it is not his responsibility of incumbent and he cannot be punished for that. Then the only way worked out by the proposal given by the Adjutant General which has been approved by the Chief of Naval Staff and the Chief of Air Force is justified. The opinion of the DGAFMS that whenever there is a decimal marking it should be made the nearest whole number or expunge the entire ACR. If somebody is injured on the tip of his finger it does

not mean the whole of the finger should be chopped out. This surgical approach by the doctors is not warranted in administrative actions. We fully endorse the proposal given by the Adjutant General which has been approved by the Chief of Naval Staff and the Chief of Air Force and direct that since the Petitioner has received 7.80 marking it should be made the nearest whole number and thereafter the case of Petitioner with this modification will be reconsidered by the Selection Committee and if he is found suitable then all consequential benefits will be given to him. The petition is allowed in part. No order as to costs.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
December 21, 2011
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