

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI
13.

O.A.No. 561 of 2010

Lt. Col. Arun Yadav

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Sh. P.D.P. Deo, Advocate.

For respondents: Col. Devender Singh.

CORAM:

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

HON'BLE LT. GEN. M.L. NAIDU, MEMBER.

ORDER

08.03.2011

1. The petitioner, by this petition has prayed that the respondents may be directed to produce records relating to the respondents in which statutory complaint dated 10.12.2008 submitted by the petitioner was rejected and it is also prayed that the respondents may be directed to produce the Selection Board Record held on 15.5.2008 and quash the order dated 20.11.2008.

2. The petitioner was commissioned on 26.8.1989 in the Indian Army in 9 Madras (Travancore) and served the nation with great zeal as per the full satisfaction of his superiors. He was awarded many commendations by the Chief of Army Staff. The petitioner, on 3.11.2004, represented through Statutory Complaint against his ACR for the period 1st June, 1998 to 31st May, 1999 initiated by Col. V. S. Rajput. On 20.1.2006, he was granted a partial relief by the Government of India, Ministry of Defence wherein Initiating Officer's assessment in moral courage, integrity and loyalty were expunged on the ground of inconsistency. In September 2006 Selection

Board for the empanelment for the post of Col. was held but the petitioner could not make it and, therefore, he filed a non-statutory complaint against his non-empanelment and requested that the remarks column in ACR for period 1.6.1998 to 31.5.1999 may be expunged being inconsistent and biased but the non-statutory complaint was rejected on 30th October 2006. Then he filed a statutory complaint which was also rejected. He also agitated the assessment of ACRs for 1999-2000 and 2000-2001 initiated by Col. V.S. Rajput being inconsistent and subjective. Now, he has filed this petition challenging the ACRs for 1998-1999 with the pen picture of 1999-2000 being not proper and that the same may be expunged.

3. Reply has been filed by the respondents who contested the petition and it is submitted that wherever the ACRs were inconsistent that have been expunged and so far as the pen picture is concerned, it is consistent with his performance. Learned counsel appearing for the respondents has placed before us the original ACR and proceedings of the Selection Board.

4. We have bestowed our consideration to the rival submissions of both the parties and perused the record.

5. Learned counsel for the petitioner emphasized that grading of the petitioner at various columns and his pen picture is not consistent and he submits that there should be consistency between the two. Learned counsel for the petitioner submitted that in some places he has received a grading of 8 or 9 but still he has been awarded 'above average'.

6. There are only two circumstances normally which qualify interference in the ACR grading i.e. when there is malice and second when there is a great mis-match in two ACRs. In the case of malice then of course such kind of ACR cannot be sustained or if it is found that there is a great mis-match i.e. a great variance with regard to ACR or there is some statutory violation then alone it can be interfered with. In case where the grading is given on the basis of the overall performance of the person then in that case it cannot be interfered with unless it is found actuated with the grounds mentioned above. In the present case, we have seen the petitioner's ACR grading plus all pen pictures and the quantification. After seeing all the ACRs we cannot say that there is a great mis-match or there is malice or there is statutory violation in the assessment of the individual. Therefore, we do not find that the grading given by the respondents on the basis of his variable factors and on the basis of pen picture, there is any mis-match with his pen picture.

7. Hence, we do not find any merit in this petition and the same is consequently dismissed with no orders as to costs.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
March 08, 2011