

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

O.A.No. 600 of 2010

Gp Capt. VT Parnaik

...Petitioner

Versus

Union of India & Anr.

...Respondent

For the Petitioner : Shri Rajiv Manglik, Advocate

**For the Respondents: Ms. Jyoti Singh, Adv(R.No.1,2,&4)
Sh.Akshay Ringe, Advocate and
Ms. Megha Mukherjee, Adv(R.No.3)**

C O R A M:

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

**ORDER
04.02.2011**

1. Petitioner by this petition has prayed that directions be issued to the respondent that moderation of ARs by Respondent no.2 for the periods October 2006 to September 2007, October 2007 to March 2008, March 2008 to September 2008, October 2008 to February 2009 and March 2009 to September 2009, be set aside and to restore the

original grading given by IO/RO/SRO as the final grading, and quash the impugned orders rejecting his non-statutory complaint and quash and set aside the results of promotion boards held in 2008 and 2010 as notified by order dated 07.01.2009 and 17.02.2010.

2. Petitioner was commissioned in the Indian Air Force on 11.12.1981 in the education branch in the rank of Pilot Officer and with passage of time he reached the rank of Group Captain on 07.01.2005. The applicant was posted in an Inter-service organisation as Principal, Sainik School, Nagrota and it is alleged by the petitioner that the applicant was selected for Principal Sainik School Nagrota on 03.03.2006 after being duly approved by Raksha Rajya Mantri. He was also recommended for coveted award of 'Vishisht Seva Medal' on 13.9.2008 and due to outstanding results and overall contribution was posted as Inspecting Officer Sainik School Society on 25.08.2008 under the control of Chairman who is Raksha Rajya Mantri.

3. The petitioner was considered for promotion to the rank of Air Cde. for the first time in 2008, the result of which was declared on 07.07.2009 and the applicant was not declared successful and Gp.Captain P Mullick was promoted as Air Cmde. The applicant was again considered by the Promotion Board in the year 2010 and again he was declared not successful. Therefore, applicant filed a non-statutory complaint which was rejected without any reason. After rejection of the non-statutory complaint, he filed a petition before the tribunal i.e. OA No.255 of 2010 which was disposed off on 22.04.2010 with the directions to the applicant to file a statutory complaint to Respondent No.1, thereafter he can file a fresh applicant before this tribunal, if it was needed. The applicant filed a statutory complaint on 26.04.2010 against his non-empanelment by the respondent for the post of Air Cmde. which was rejected without any reason. Therefore, now petitioner has filed this petition challenging his non-selection for the post of Air Cde and promotion of the Gp. Captain S.N. Mukherjee and Gp. Captain P. Mullick as Air Cmde on the ground that his

Appraisal Reports(s) (ARs) should be compared in an objective manner and same cannot be watered down by downgrading in the name of review / moderation by the Air Hq. It is alleged that by such moderation and review of the AR by the Air HQ, they have violated the provisions of Air Force Orders. It is also pointed out that review carried out by PSO, Air HQ in respect of the applicant is based on past performance alone and such action is illegal.

4. A reply has been filed by the respondent and who contested the position and submitted that the case of the petitioner was considered on both the occasions and his Appraisal Reports were duly moderated as per the policy of Air HQ but he could not make the grade vis-a-vis other selected candidates. It was also pointed out that proper moderation was done as per the rules prevalent and similarly moderation of ARs were also done in the cases of Gp. Captain S.N.Mukherjee and Gp. Captain P. Mullick.
5. It is further submitted that this is a normal policy which is being followed. The ARs of such officials were subjected to

a mandatory review at Air HQ in line with the existing policy as per Para 17 of AFO 50/97 and Paras 18, 48 and 49 of AFO 2/2008. The specific purpose of this mandatory review is to check assessments, recommendations and remarks of the reporting officers for inconsistencies and anomalies, if any. Another purpose of the review is to get the ARs of officers of IAF on deputation to outside organisations in line with the appraisal philosophy and assessment standards of the IAF. Standardization of assessment by different appraising officers in a mammoth organisation like the IAF is an extremely difficult task. The human assessment of a situation or a person tends to get clouded by differing perceptions and due to the influence of various psycho social factors on the appraising officers. Appraising officers hail from different backgrounds and social set ups and are subjected to different value systems during their growth in service. This leads to application of different and self created scale of assessment by each IO. Occasionally, an officer is faced with a dilemma on the personal front that may hamper his output on the professional front for a short while.

Such event if left unmoderated, may lead to long term effects on an officer's career. There may also be cases wherein personal biases on the part of reporting officers come into play while the appraisal is conducted. The appraisal philosophy and methodology of Tri-Service or civil organisations is different from that of the IAF which manifests in the IAF officers on deputation to such organizations being assessed on a different scale. It is also pointed out that even within the organisation, there are many posts that are low risk and high visibility and vice-versa. The officers occupying their posts may get assessment disproportionate to their level of work and caliber. The process of variation review in Air HQ has been devised to rectify all the aforesaid errors and is carried out when a large variation upwards or downwards is noticed between the numerical grading awarded when compared to the AR average for the preceding five years. This policy is uniformly applied to the ARs of all officers. The AR grading for a particular year is considered final only after the AR has been reviewed at Air HQ.

6. Petitioner's request to consider his AR gradings before moderation would not only tantamount to considering incomplete ARs or ARs whose processing has not been completed, and would lead to discrimination vis-a-vis other officers whose ARs are subjected to mandatory review as per policy. The policy at para 17 of AFO 50/97 is annexed which reads as under:

"Review of ARs at Air HQs / Command HQ

17. In cases where the three levels of assessment are completed before the arrival of the report at Air HQs / Command HQ, the PSOs / AOsC-in-C respective Functional Heads may give their comments in the space provided for this purpose. If a need is felt to chance the numerical grading given by the SRO, this may be done alongside the grading given by the SRO. The review of ARs at Air HQs/Command HQ should be done in the following manner:-

- (a) The ARs of all officers of the rank of Gp Capt. And above should be reviewed by AOs C-in-C at Command HQ and by PSOs at Air HQs for units directly under Air HQ. This is not applicable at re-employed officers.
- (b) The ARs of all officers upto the rank of Wg Cdr. should be reviewed by the senior most officer working under the respective PSO at Command HQ. These reviewing Officers should be delegated by name by the AOs C-in-C of respective Command in writing. Letter authorising these officers for review at Command level should be sent to JDPO (B) at Air HQs.
- (c) However, the appraisal reports of Wg Cdrs. Holding Units/Stations / Wings should be reviewed by the respective PSOs at Air HQs and the AOs C-in-C at the Command HQ. This is not applicable to Re-employed / Time Scale Wg Cdrs holding any of these appointments. ARs of Sqn Ldrs/Flt Lts. Holding the appointments of Cos of units should be reviewed at the level of respective PSOs at Command HQ.
- (d) At all times it must be ensured that the rank of reviewing officer at Air HQs/Command HQ is at least the same as that of the last reviewing officer in the appraisal channel. If the reviewing officer so detailed is junior in service to the officer who last reviewed the AR before him then he should endorse the report, if in agreement. In case he is not in agreement with the last reviewing officer, he is to put up the report to the PSO for moderation as required.
- (e) All ARs with average grading of clear 7.5 and above in either Professional factors or Behavioural factors are to be reviewed by respective PSOs at Air HQs or AOsC-in-C at Command HQ.
- (f) A station wise rank wise and branch wise analysis of Above the Average' ARs be put up for perusal of AOsC-in-C. Similar procedure be adopted in respect of Directorates and branches at Air HQ. The AOsC-in-C / PSOs are to reconfirm and

- satisfy themselves with the 'Above the Average' assessments given within their Command / Branch respectively.
- (g) All the Adverse Reports are to be reviewed by respective PSOs at Air HQs or AOsC-in-C at Command HQ."

7. In view of this general policy, the ARs of the all the other candidates who were considered vis-a-vis with the petitioner was moderated and after due moderation the cases of all the eligible candidates were considered. Therefore, the grievance of the petitioner that his AR should have been considered as it is without moderation cannot be accepted.

8. In this connection, our attention was also invited to the necessary paragraphs of the Air Force Order No.2/2008 and in that connection our attention was invited to Para-48 and 49 which reads as under:

"Para 48.

Mandatory review of all ARs must be carried out at Air HQs / Command HQs. The ARs of all officers up to the rank of Gp Capt (TS) should be reviewed by the senior most officer working under the respective PSO at Command HQ. These reviewing officers should be delegated by name by the AOC-in-C of respective Command in writing. Letter authorising these officers for review at Command level should be sent to DPO-4 at Air HQs. The ARs of all officers of the rank of Gp Capt (Select) and above should be reviewed by AOsC-in-C at Command HQ and by PSOs at Air HQs for units directly under Air HQ. This is not applicable for reemployed officers.

Para 49.

Whenever the RO / SRO are posted at the Command HQ / Air HQ, their review would be construed as Command HQ / Air HQ review. The reviewing officers at Air HQs / Command HQ should check correctness of the AR as mentioned in this AFO and should also include the following in their review:

- (a) ARs of Wg Cdrs holding appointments of Unit Commander, COO, CEO and C Adm O at Units / Stations / Wings should be reviewed by the AOsC-in-C at the Command HQ and the respective PSOs at Air HQs. This is not applicable to Re-employed officers holding any of these appointments. ARs of Sqn Ldrs. / Flt. Holding the appointments of CO of units should be reviewed at the level of respective PSOs at Command HQ.
- (b) The rank of reviewing officer at Air HQ / Command HQs should at least be the same as that of the last reviewing officer in the appraisal channel. If the reviewing officer so detailed is junior in service to the officer who last reviewed the AR, then he should endorse the report if in agreement. In case he is not in agreement with the last reviewing officer, he is to put up the report for review to the concerned PSO.
- (c) Check assessments, recommendations and remarks of the reporting officers for inconsistencies and anomalies, if any.
- (d) Reviewing officers at Command HQ / Air HQ, who are not IO/RO/SRO, may give their overall assessment in Professional / Behavioural traits. They should enter their numerical grading in the boxes provided in their remarks column only if they are not in agreement with the SRO's grading. If they are in agreement with the SRO's assessment then they should put a cross mark in the boxes. Whenever a reviewing officer wants to change the numerical assessment given by the previous reporting officer, reasons for doing so must be adequately justified in narrative form in the remarks column.
- (e) All ARs with grading 7.5 and above in either Professional factors or in Behavioural factors and all Adverse Reports are to be reviewed by AOsC-in-C at Command HQ or respective PSOs at Air HQs."

9. As per these two policies, the case of petitioner and others were reviewed and the original papers were also placed before us for perusal and after going through the proceedings of the minutes we find that infact the petitioner

stood benefited by review of these ARs but unfortunately, he marginally lost out in comparison with his other contenders.

10. It was also submitted that the normal zone of consideration is 3 persons against one post, but it also caters for the eventuality that if the zone of consideration extends to the next course, then all officers from that course would be considered. All the second and third timers will necessarily form part of zone of consideration, irrespective of number of vacancies. The idea being that, persons who have already been considered and not found suitable, should be given one more chance, which may increase the zone of consideration, but this is done because persons superseded if have improved their performance then they should not for all time to come be denied the consideration. In this connection our attention was invited to necessary provisions of the policy of AFO 50/97 as well as Air Force Order dated 20th February, 2008 (Para A & B) which reads as under:

- (a) *Zone of consideration will be three time the number of vacancies occurring. However, if Zone of consideration extends to that next course then all officers who have retained their seniority from that course would be considered.*
- (b) *All the second and third timers will necessarily form part of zone of consideration, irrespective of the number of vacancies.*

11. Therefore, the idea is that normally three persons will be considered against one vacancy, but zone of consideration can increase in a given situation where a person who has been passed over is also taken into consideration, so as to ascertain if he has improved his performance in the next following year. Therefore, the persons once passed over will not for all time to come stand superseded and will also provide incentive for such persons to improve.
12. Therefore, from both these aspects, having considering the policy and seeing the original ARs, we are satisfied that the policy of moderation and policy of zone of consideration were made applicable evenly for all selections and in the petitioner's case it was also considered in light of same policy, but because of the fact that he lost out marginally he could not make the grade vis-a-vis other two candidates.

10. Consequently, in view of reasons mentioned above, we don't find any merit in the petition and the same is dismissed. No order as to costs.

[Justice A.K. Mathur]
Chairperson

[Lt. Gen. SS Dhillon]
Member (A)

New Delhi
4th February, 2011