

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
NEW DELHI
(Court No.2)**

O.A NO. 75 of 2010

IN THE MATTER OF:

Lt. Col. Ashutosh Kumar**APPLICANT**
Through : Mr. S.S. Pandey, counsel for the applicant

Vs.

UNION OF INDIA AND OTHERS ...**RESPONDENTS**
Through: Mr. Ankur Chibber, counsel for the respondents

CORAM:

HON'BLE MR. JUSTICE MANAK MOHTA, JUDICIAL MEMBER
HON'BLE LT. GEN. M.L. NAIDU, ADMINISTRATIVE MEMBER

JUDGMENT

Date: 11 .10.2011

1. The OA No.75/2010 was filed in the Armed Forces Tribunal on 25.01.2010.
2. Vide this OA, the applicant has prayed for quashing of the orders passed on the complaints made by him including the order of 20.8.2009 (Annexure P-13). He has also prayed that his ACRs covering the period 06/98 to 05/99 and 06/99 to 02/2000 be expunged on technical invalidity as well as on grounds of subjectivity, and further to be considered for promotion afresh based on the changed profile.

3. Brief facts of the case are that the applicant was commissioned in the Indian Army on 16 Dec.1989. He was promoted as Lt. Col. In 1996. In Jun 1997, he was posted to the National Security Guards (NSG) at Manesar.

4. While with the NSG, he attended the JC Course and availed annual leave in the second half of 1998. In the first week of Jan 1999, he was sent on an operational assignment to HQ 'D' Force and he remained there till Jun 99. During this assignment, a case was initiated for change in the reporting channels as he was not co-located with the Initiating Officer (IO) or the Reviewing Officer (RO) and it was contended that since the applicant was working directly under the GOC 'D' Force for operations, the GOC should be the IO. The case was turned down by the MS Br. Army HQ and the CRs of the applicant covering the period 6/98 to 5/99 was initiated in Aug 99 by the IO through the NSG Channels. During this period the applicant had a brief visit by the RO and SRO who visited him in operations for 40 mins.

5. In Jun 99, because of Kargil War, Group HQ NSG was deployed at Banihal. Thus, he again did not serve under the RO as mandated for earning a Report. He was posted back to his parent unit 4 Sikh in Feb. 2000.

6. He was overlooked by a Promotion Board in May-Jun 06. The applicant preferred a non-statutory complaint on 07.06.2006 in which

the ACRs covering the period 6/98 to 5/99 and 6/99 to 2/00 were specifically assailed. He again preferred a non-statutory complaint against the same ACRs on grounds of technical validity and on grounds of subjectivity and biasness.

7. The respondents disposed off the complaint of 14.06.2006 vide their order of 29.09.2006 to say that the impugned ACRs have been changed to 'non-criterion' reports.

8. In Oct 06, the applicant was considered by the Promotion Board to Colonel but was not found fit.

9. The applicant submitted a Statutory complaint on 16 oct. 06 against his non-empanelment and again assailed the impugned said ACRs. On 18 Oct. 06, he submitted a supplementary complaint. The respondents disposed off the complaint on 16 Nov. 07. The applicant submitted a fresh statutory complaint on 15 Jun 2009 (Annexure P-12) which was rejected on 20 Aug 2009 (Annexure P-13).

10. Ld. Counsel for the applicant argued that the spirit and letter of AO 13/5/89 is very clear. The IO must have closely supervised the performance of the Ratee for atleast 90 days. So much so, even temporary duties/absence of more than 10 days is excluded in computation of the period. In this case, the Ratee was away on an operational assignment under GOC 'D' Force for more than six months. Similarly, the RO should have observed the Ratee for at least

75 days. In this case the RO visited the Ratee only once in the operational area for about 45 mins.

11. The learned counsel for the applicant further argued that that since the Ratee was away from IO and RO, he did not secure a good report. While the same IO and RO had given him a near outstanding report covering the period 6/97 to 5/98. Obviously, there was subjectivity and bias on the part of the IO and RO. The profile of the applicant could be compared with this past and subsequent performance assessed to pin-point the aberrations in the impugned reports.

12. Learned counsel for the respondents stated that all points projected by the applicant were considered by the respondents before disposing off the various complaints. Detailed speaking orders were passed and intimated. He further argued that from perusal of the impugned ACRs, his past profile and subsequent performance has been consistent. There has been no subjectivity or bias. As regards the technical validity of the impugned ACRs, he drew our attention to a policy letter dated 17 Dec 98. Relevant para 3 of the said letter states:-

“3. The position is clarified as under:-

(a) Temporary duties on training/sports/competitions commitments concerning the unit/formation under the jurisdiction of command will constitute towards physical service for the purpose of initiating/endorsement of CRs.

(b) Temporary duties concerning the operational role of the unit/formation including operational reconnaissance involving intra/inter-command moves of officers will count towards physical service under IO/RO for the purpose of initiation/endorsement of CRs.”

13. Learned counsel for the respondents also cited AFT Judgment in TA No.198/2010 dated 4 May 2010 given in case of Col P.K. Nair Vs Union of India & Ors., which laid down that **“undisputedly, when being selected for higher ranks, in this case as a Brigadier, the competition will naturally be keener. Those who get ‘High Average’ marking may get eliminated in the comparative merit.”**

14. Having heard both the parties at length and having examined the ACRs and the Master Data Sheet, we are of the opinion that in view of the policy issued by the respondents on 17 Dec 98, the impugned ACRs do not suffer from technical infirmity. The ACRs are correctly instituted and reviewed by the competent officers. The allegations of subjectivity and biasness are not supported by strong grounds. Thus, the contentions raised in respect of ACRs are overlooked.

15. We have also examined the ACRs of the applicant in original including the impugned ACRs. We are satisfied that the applicant has maintained an ‘Above Average’ profile throughout his service. The impugned ACRs do not indicate any subjectivity or bias. There are no adverse remarks. All numerical gradings are ‘Above Average’. The IO,

RO and the SRO have graded the applicant 'Above Average' with figure of '8' in the 'box'. However, the RO has also awarded '7' in certain character qualities. Careful examination of these qualities with the applicants past profile and subsequent performance indicate that the applicant has been similarly rated in the same very qualities as rated by the RO in the impugned ACRs. As such, it does not constitute an aberration. In any case the RO has rated the applicant "Above Average" in all the qualities. His non-statutory and statutory complaints were properly dealt with and rejected. We have also considered the averments made by the applicant in additional affidavit but they do not give any grounds to interfere the impugned orders. Thus, the affidavit does not help his contentions. In view of the foregoing, we are not inclined to interfere in the case as no case is made out for any directions.

16. The OA is dismissed. No order as to costs.

(M.L. NAIDU)
(Administrative Member)

(MANAK MOHTA)
(Judicial Member)

Announced in the open Court
on this 11th day of October, 2011.