

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

**T.A NO. 233 of 2009  
W.P.(C) No.7710 of 2009**

**IN THE MATTER OF:**

**Lt. Col. K.D. Sharma** .....**APPLICANT**  
Through : Mr. Alok Kishor, counsel for the applicant

**Vs.**

**UNION OF INDIA AND OTHERS** ...**RESPONDENTS**  
Through: Mr. R. Balasubramanin, Asstt. Solicitor General for the  
respondents with Mr. J.S. Yadav, advocate

**CORAM:**

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

**JUDGMENT**

**Date: 19.08.2011**

1. This case was originally filed in the Hon'ble High Court of Delhi on 16.3.2009 and on formation of Armed Forces Tribunal, it was transferred to this Tribunal on 05.11.2009.

2. The applicant through his petition has prayed for quashing of the subjective and biased ACR for the impugned period i.e. 01 June 2004 to 31 August 2005 being technically incorrect, biased and inconsistent. The applicant has also sought quashing of the Government of India order dated 14.2.2008 (Annexure P-1). The applicant has further prayed that the ICR for the period from 01 June 2004 to 11 December 2004 be considered as ACR for the said period. Consequent to the

relief, he has prayed that he be considered afresh for promotion to the rank of Colonel.

3. The applicant was commissioned into the Army in September 1987. His performance through out his career is of high order and he maintained his good record all through. He was considered for promotion to the rank of Colonel in May 2006. Despite his 'above average' ACRs throughout his career, he was not selected in the said Selection Board. Suspecting that one of his Commanding Officer i.e. Col. Surinder Puri had become vindictive against him which can be the cause of his supersession, he submitted a statutory complaint on 18 Jan 2007 against the impugned ACR covering the period from 01.6.2004 to 31.8.2005. The said complaint was rejected by the Government of India on 14.2.2008. The said rejection order was cryptic in reply and was not a speaking order and no mind was applied to it.

4. The applicant submitted a letter dated 21.5.2008 (Annexure-P-2) seeking a review of the disposal of the Statutory Complaint which was not allowed.

5. As per the case of the applicant, in June 2004 the applicant was posted to 5221 ASC Battalion Babina Cantt. During this period, Col. R. Subhash was his Commanding Officer from 01 Jun 2004 to 11 Dec 2004. Col. Surinder Puri was posted as Commanding Officer from 12

Dec 2004 onwards. After posting out of Col R. Subhash, the applicant's ICR was initiated by him as per the rules which covered the period 01.6.2004 to 11.12.2005. In this report he was adjudged outstanding.

6. On the other hand, Col. Surinder Puri initiated an ACR covering the period 01.6.2004 to 31.8.2005 i.e. for 15 months. Thus, the report was arbitrary and also covered the period which was covered in the ICR by the previous IO. Hence, it was technically infirm. In this report, Col. Puri had assessed the applicant rather harshly and being a good soldier, the applicant did not put up complaint but verbally told the IO that he was assessed higher by his predecessor in the ACR that he initiated.

7. It has further been stated by the applicant that in August 2005 an incident took place in which during the visit of the Corps Commander to the Station, the Commanding Officer left on temporary duty and the applicant being the senior most officer of the unit was required to satisfy the Corps Commander qua the Commanding Officer's absence which he was unable to do so. The Commanding Officer felt that the applicant has by design or purpose, not convinced the Corps Commander regarding the genuineness of his absence during the visit. He thus became vindictive in the ACR which covered the period from 01.6.2004 to 31.8.2005.

8. Ld. Counsel for the applicant argued that the IO covered the period from 01.6.2004 till 31.8.2005 whereas the IO was posted as the Commanding Officer only on 12.12.2004 onwards. As such, the ACR that had been initiated by the IO to cover the period 01.6.2004 to 31.8.2005 was technically infirm since the applicant has already received an ICR to cover the period 01.6.2004 to 11.12.2004.

9. Ld. Counsel for the applicant further argued that in the impugned ACR, the RO and the SRO are the same. Only the IO had changed and when compared to the earlier ICR received in the same order, the inconsistency in the report can be clearly made out because the IO had become biased and had given him very poor rating. Besides, it is alleged that by giving the incorrect dates in the ACR forms for the period being covered, the IO was intentionally trying to harm the applicant.

10. Ld. Counsel for the applicant states that consequent to a RTI application, the applicant received the information which gave out the period of ACR which was submitted by the IO which states the coverage period as "01.6.2004 to 31.8.2005". He has also received a letter dated 13.9.2005 which states that the "ACR covering the period from 01.6.2004 to 31.8.2005 is in respect of IC-46019X Lt Col Kulinder Dev Sharma of this unit is re-submitted herewith duly rectified the observations raised vide your letter under reference please.".

11. Ld. Counsel for the applicant further argued that the ACR was returned vide letter dated 10.9.2005 to the IO to correct the following:-

- (a) *IO has not initialled at page 3 of IO/FTO's columns.*
- (b) *RO/HTO has assumed the appt on 05 Apr 2005. Hence the pd under RO/HTO should be from 05 Apr 2005 to 31 Aug 05.*

12. Ld. Counsel for the respondents produced before us the original records of the applicant with regard to the ACRs. Ld. Counsel further argued that the acknowledgment forms are to be filled up by the Ratee officer himself and in this case would have been filled by the applicant. The acknowledgement card is then signed and sent back to the Ratee officer. He argued that the dates of the IO have been correctly filled up in para 3 of the ACR forms which states that the physical service under the IO is from 12.1.2004 to 31.8.2005. Besides, the ICR initiated by the previous IO on 01.6.2004 to 11.12.2004 was correctly mentioned in para 4 of the same ACR form. The ACR form was sent back by the RO to the IO for rectification of the dates of the STO/RO which was done and as averred by the applicant was duly rectified and returned on 13.9.2005.

13. Ld. Counsel for the respondents further stated that consequent to the statutory complaint lodged by the applicant, his past profile was compared with the impugned ACR. The impugned ACR was 'above average' and there is no adverse remark. In some qualities, the officer

had been graded 'above average' with figurative assessment of '7'. Besides, he has been recommended for promotion in the relevant columns although the applicant has averred that he has not been recommended for promotion by the IO. Ld. Counsel further submits that both the ICR and ACR were considered by the Promotion Board.

14. The averment made by the applicant that the ICR be treated as ACR cannot be acceded to, since he was due for an ACR by the IO on 31.8.2005 covering the period 12.12.2004 to 31.8.2005 which was correctly written by the IO. The ACR form is invariably submitted by the applicant himself which is also reviewed by the RO in the chain. Therefore, the question of mistakes taking place is minimum.

15. Ld. Counsel for the respondents further argued that the assessment of the IO was shown to the applicant which he signed without any reservations/objections. The basis of allegation of bias made by the applicant for the low grading as alleged to have been given by the IO is not sustainable as the IO (CO) was already above the age of 45 years and therefore, exempt from taking the BPET. Thus, the averment made by the applicant in this regard is imaginary.

16. Ld. Counsel for the respondents further stated that consequent to his statutory complaint his past profile was also examined and it was found that his performance has been consistent which can be seen

from the Master Data Sheet (MDS), which he produced before the Court to examine.

17. Ld. Counsel for the respondents further stated that the applicant was considered for promotion in April 2005 and September 2005. He was not approved for promotion in both these Boards. In April 2006 special review was carried out which treated him as a fresh case.

18. Ld. Counsel for the respondents cited the judgment of **AFT** passed in the **OA No.217/2009 dated 8.4.2010 in the matter of Brig. Rakesh Sharma Vs Union of India and others** wherein it is clearly stated that *“....In any case figure ‘7’ is an “above average” grading and cannot be construed as adverse..... The hierarchy as one goes up in the armed forces is very competitive and the organisation being pyramidcal at some stage, ‘7s’ though above average may bring down the comparative merit of candidate. This has perhaps happened in the present case and we do not find any reason to interfere with the merit list or with expunging the QAP as they stand otherwise.”*

19. In another judgment of **AFT dated 4.5.2010 in the matter of Col. P.K. Nair Vs Union of India and ors.**, it was observed that *“Considering the limitations of the steep pyramidal hierarchy, competition in comparative merit is very natural. The markings may or may not have relevance in absolute terms except when compared within the peer group.”*

20. Having heard both the parties at length and having examined all the documents in original including the ACRs and the Master Data Sheet, we are of the opinion that the period covered by the impugned ACR has been correctly reflected by the IO and is properly endorsed by the RO and the SRO. There is no ambiguity in the period covered by the impugned ACR. Therefore, there is no technical infirmity qua the impugned ACR.

21. We have also seen the impugned ACR in which the applicant has been given 'above average' grading by the IO and the RO and the SRO. Therefore, there is no rationale for us to infer that the applicant deserves anything more or less than 'above average'.

22. Consequent to the representations made by the applicant we have examined his past record and found that there is a thread of consistency in his records and gradings. Undoubtedly, he has been graded consistently as 'above average' in all his reports. However, we are not in a position to substitute the markings in the individual qualities in the ACR which has been awarded to the applicant by the IO, RO and the SRO. The case made out against the IO in terms of bias and subjectivity has not been established. Therefore, there is no reason to conclude that the impugned ACR was subjective and biased as far as the IO's report was concerned. It is obvious that the IO also has given an 'above average' grading which has been endorsed by the RO and the SRO.



23. In view of the foregoing, we are not inclined to interfere in the case.

24. The TA is dismissed. No order as to costs.

(M.L. NAIDU)  
(Administrative Member)

(MANAK MOHTA)  
(Judicial Member)

Announced in the open Court  
on this 19<sup>th</sup> day of August, 2011.