

**COURT NO. 3, ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
T.A. No.355 of 2010
W.P.(C) No.7816 of 2002 of Delhi High Court**

IN THE MATTER OF:

Lt. Cdr. K.K. Jha**Applicant**
Through: Mr. Yatish Mohan, Counsel for the applicant

Versus

Union of India & Ors.**Respondents**
Through: Ms Anjana Gosian, Counsel for the respondents

CORAM:

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

JUDGMENT

Date: 15.02.2011

1. The petition was originally filed in the Hon'ble High Court on 04.12.2002. It was subsequently transferred to this Tribunal on its formation on 12.11.2009.

2. The petitioner/applicant vide this petition/ application has prayed for calling of records of the case and declaring the appointment of Performance Appraisal Review Board

(PARB) dated 08.06.1988 as illegal, invalid, unconstitutional and contrary to the provisions of Navy Act, 1957 and Navy Order (Special) 3/90. The applicant has also prayed for a direction to the respondents to reconsider him for promotion w.e.f. May, 2000 on the basis of available confidential report without having been moderated by PARB and promote him if found suitable.

3. Brief facts of the case are that the applicant was commissioned in the Indian Navy in July, 1985. The applicant continued to get regular promotion and was promoted as a Lt. Commander in March, 1996. In May, 1996 the applicant was transferred to INS Ratnagiri as a Executive Officer. He was awarded several commendation certificates by the Flag Officer Commanding-in-Chief, Western Command, Mumbai.

4. The petitioner stated that he was shocked to be informed that he was considered for staff college course in 1998-99 on merit/record of service though having qualified on merit was not selected. The applicant, thus, aggrieved preferred the statutory Redress of Grievance (ROG) dated

21.10.1999 (**Annexure P-2**), which was disposed of by the authorities on 09.12.1999 (**Annexure P-3**), rejecting his plea. While the ROG was being processed the applicant received another commendation from the Chief of Naval Staff on 04.12.1999 for the good work he had done while posted at Works Officer, INS India, New Delhi.

5. The applicant further stated that his batch was considered for promotion to the rank of Commander in May, 2000. He did not make the grade and he was not told about his shortcomings. It defied the applicant's imagination as to the fact that he was given commendation by the authorities i.e. Flag Officer, Commanding-in-Chief and later by Chief of Naval Staff for his outstanding work during the year, but on the other hand he was neither selected for doing his staff college course nor was he approved for promotion to the rank of Commander.

6. The applicant once again preferred a ROG dated 05.06.2000 (**Annexure P-5**), which was disposed of by the authorities on 02.08.2000 (**Annexure P-6**). Meanwhile, the applicant rationalised that perhaps the ACR pertaining to the

period covering July, 1997 to October, 1997, when he was posted on broad INS Ratnagiri, may have been the cause for his rejections. This impugned report was rendered by Lt. Commander Ajay Makkar, who was the Commanding Officer of the same rank as that of the applicant and as per the administrative practice an ACR report should be initiated by an officer superior in rank. Also as per the orders no sanction of the next superior officer was obtained by the Commanding Officer to enable him to initiate report of the applicant being of the same rank. The applicant apprehended that the ACR rendered by this initiating officer was inimical to him. Therefore, he made another ROG dated 07.02.2001 (**Annexure P-7**). This was disposed of by the authorities on 22.05.2001 in which his grievance was rejected (**Annexure P-8**). Against this rejection, the applicant once again through proper channel made a representation to the Ministry of Defence on 18.06.2001 (**Annexure P-9**). The applicant was informed on 28.08.2001 that the applicant's representation was upheld and the IO's portion of the report for the period covering June, 1997 to October, 1997 stood expunged on the grounds that during that particular period

the Flag Officer Commanding-in-Chief had given a commendation to the applicant for displaying utmost dedication, commitment and proficiency of a very high order **(Annexure P-10)**.

7. While these ROGs were pending, the applicant was considered by the promotion board held in the year 2002 and again was rejected for promotion. The applicant thereafter proceeded on deputation with Cabinet Secretariat when he had filed this petition/application.

8. Learned counsel for the applicant submitted that a clear cut case of malafide was seen in the case of the applicant because the first ROG was rejected by the Ministry of Defence while second representation was upheld and the IO's remarks on the impugned ACR were expunged thereby giving him partial redressal. It is further submitted that though the Government gave a partial redressal in term of the letter dated 28.08.2001, Naval Headquarter intimated to the applicant on 22.02.2002 that his case was still pending with the Ministry of Defence, thus, showing their malafide. It is further submitted by learned counsel for the applicant that

the applicant was informed vide letter dated 09.08.2002 (**Annexure P-14**) that his case was considered after expunging ACRs and despite that the applicant was found below.

9. He further argued that after having given the partial redress his case should have been considered with his original batch as a fresh case as on May, 2000 and subsequently in May, 2001 and May, 2002. The citation of both the commendation cards were also produced by learned counsel for the applicant which stated that the commendation was being awarded by the Flag Officer Commanding-in-Chief and the Chief of Naval Staff were for outstanding contribution to service during the years. Therefore, submits that it is unconceivable that the applicant's grading was so low that he could not make the grade in the overall order of merit for promotion to the rank of Commander.

10. Learned counsel for the respondents states that the policy letter of 1990, which is also covered by the Naval Order (Special) 3/90 in para 6, states that the officer reported upon and the initiating officer of the report cannot be of the

same rank unless a special sanction to that effect is obtained from the reviewing officer. But the same policy vide para 9 lays down as under: -

“9. Unless otherwise authorised by the Administrative Authority or Naval Headquarters, all reports will be initiated by an officer who is at least one rank higher (acting or substantive) than the officer reported upon. If an officer holding an equivalent rank is authorised to initiate reports, a copy of the authority letter is to be attached to the report. **This restriction will not apply in the following cases: -**

(a) **Commanding Officers** who are authorised to initiate reports on officers under their command, **irrespective of their rank and seniority.”**

11. Therefore, it was held that the impugned ACR was technically correct. However, the Ministry of Defence granted the redressal to the applicant based on the inconsistencies of the report when compared with the commendation awarded to him by the Flag Officer Commanding-in-Chief.

12. The respondents affirm that the applicant was brought before the selection board afresh after having expunged the impugned ACR and in the overall order of merit

(OOM), but he still did not make the grade. The position of the applicant both before and after the expunging of his report and the number of officers selected to the next rank were tabulated by the respondents, which is as under:-

“D. Representation (ROG) dt 18 Jun 2001:- Same issue is an representation dated 7 Feb 01. ROG examined by MoD and CR for the period Jun 97 to Oct 97 from Ratnagiri expunged. Consequent to expunction of CR by MoD, Officers profile reviewed by PARB. Post review, the officer was reconsidered for promotion. Position improved but still remained below respective thresholds of all three looks. Improved position vis-a-vis thresholds are as under: -

PB	Selection Threshold	Petitioner's initial position	Post Expunction Position
3/00	84	132	103
3/01	79	113	99
3/02	79	103	96

13. Learned counsel for the respondents also stated that the procedure of PARB as promulgated by the Ministry of Defence for promotion boards of the Navy has been time tested and the other services are also following similar systems. The PARB process has been in use for the last more than 20 years and has been upheld by Hon'ble Delhi High Court in its judgment in **Commodore v. Ravindra**

Nathan VSM vs. Union of India & Ors. in W.P. (C) 17454/2006 decided on 14.03.2008.

14. We have heard both the counsel at length and having examined the documents in original. The first contention raised by the applicant that prior sanction of next superior was necessary to initiate report by the officer of the same rank, but looking to para 9(a) of the Naval Order (Special) 3/90 as Initiating Officer being C.O. in that case there was no need of prior sanction to initiate report. This contention is not sustainable. We have also considered the main contention that the applicant was granted partial redressal in the impugned ACR covering the period July, 1997 to October, 1997. The applicant was given three looks with his original batch i.e. in May 2000, May, 2001 & May 2002. In all these three promotion boards even with the revised profile the applicant did not make the grade in the overall order of merit (OOM) as stated aforesaid and, therefore, was not selected.

15. As regards the arguments qua the PARB system is concerned, we are of the opinion that the said system has

been tested. Besides, the other two services have also now moved on to this kind of system. The PARB system appears to be scientific and fair to the incumbents who are operating under different conditions. The same came before the Hon'ble Delhi High Court in case of **Commodore v. Ravindra Nathan VSM** (supra) and was maintained.

16. In view of the aforesaid discussion, the application is dismissed. No orders as to costs.

M.L. NAIDU
(Administrative Member)

MANAK MOHTA
(Judicial Member)

**Announced in the open Court
on the day of 15th February, 2011**