

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI**  
**06.**

**T.A. No. 380 of 2010**  
**Writ Petition (Civil) No. 18598 of 2005**

**Col. R.S. Upadhayay**

**.....Petitioner**

**Versus**

**Union of India & Ors.**

**.....Respondents**

**For petitioner:** Mr. PDP Deo with Ms. Monica Nagi, Advocates.  
**For respondents:** Mr. Ankur Chhibber, Advocate.

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

**ORDER**  
**18.11.2011**

The petitioner has prayed to quash the order dated 03.09.2004, 28.02.2005 and 20.09.2005 to the extent wherein respondent no. 1 has not quashed the CRs for the period from April, 1998 to March, 1999 where respondent no. 5 was the RO/Accepting authority being eclipsed by subjectivity and biased with prejudiced mind. He has also prayed to quash all the observations of RO/Accepting Authority in ACRs pertaining to period from 01.04.2002 to 31.03.2003, 01.04.2003 to 31.03.2004 and 01.06.2004 to 28.02.2005 on the same ground. It is also prayed that order dated 20.10.2001 whereby he has been awarded Displeasure by Respondent no.4 being arbitrary and without any speaking order be quashed. He has claimed compensation for harassing the petitioner. It is also prayed that petitioner

should be considered for promotion for the post of Brigadier and may be given benefits from 01.10.2002 with all consequential benefits.

Petitioner was commissioned in the Army in the year 1970 in Corps of Ordnance branch. With the passage of time, he was promoted to the rank of Lt Col in Corps of Ordnance and after completion of 23 years of service, he was posted to Quality Assurance Organization of Ministry of Defence Production & Supplies in the year 1993 and was selected by Quality Assurance Selection Board (QASB) for permanent absorption in Director General of Quality Assurance organization of Ministry of Defence, Deptt of Defence Production & Supplies in September 1995. He was also promoted to the rank of Col by Promotion Board held in November 1997 based on ACRs upto March 1997. While he was serving in the Quality Assurance Organization, he was humiliated and denied his further promotion on account of false case for 18 months when he was attached with the Army and outcome of which was award of Displeasure for the sake of closing the case without giving any reason for the said award. There have been allegations of bias and malafides against IO/RO and Accepting Officers.

It is alleged that during 1997 petitioner was posted at Ludhiana as Quality Assurance Officer (QAO) and officiating as SQAQ at New Delhi from February 1997 to August 1997. That a golf tournament was organised by DGQA for which 75 Sport Shirts were required costing above Rs 20000/-. Maj Gen Amarjit Singh who was Director Quality Assurance Stores and was to organise the said tournament asked petitioner to arrange for the above sport shirts in June 1997. That petitioner asked for the money, however Maj Gen Amarjeet Singh got annoyed and told him that it was every year's affair and so far no one has asked for money. He further told petitioner that if he

was unable to procure he would have to suffer and face the consequences. Petitioner however did not accede to the unreasonable order of Maj Gen Amarjeet Singh and further asked him to identify the fund from which shirts were to be bought. On this he got annoyed and thereafter the petitioner was wrongfully attached on fabricated case and continued damage to his ACRs from July 1997 onwards till date. Immediately, after this incident in October 1997, Maj Gen Amarjeet Singh took vindictive action against the petitioner and directed Board of Officers to somehow make a case against the petitioner. On 15.10.1997, a Board of Officers was ordered by the then DQA (S), Maj Gen Amarjeet Singh who was RO of petitioner, for the purpose of writing his ACRs during 1997 to 2001. Maj Gen Amarjeet Singh had been petitioner's IO, RO and Accepting Authority at different stages for the purpose of ACR from 1997 to 2001. Consequent to the Board of Officers, petitioner was attached with HQ 612 (I) Mech. AD Brigade on 11.11.1999 for initiating disciplinary action against him for carrying out unrepresentative sampling. A tentative charge sheet was framed against petitioner at the behest of Maj Gen Amarjeet Singh and the charge was heard on 09.09.2000. After hearing the charge, recording of summary of evidence was ordered which started on 25.09.2000 and concluded on 23.12.2000. Thereafter, on 02.06.2001, after keeping him attached for 19 months, petitioner was reverted back to his unit without taking any action against him as nothing came in evidence warranting disciplinary action against him.

The allegation of petitioner is that his attachment for 19 months was serious violation of his fundamental rights. Petitioner was issued show cause notice on 19.07.2001. He filed reply to the show cause notice and refuted all the allegations levelled against him. He was only given a Displeasure non-

recordable without any speaking order. The serious grievance of the petitioner is against the malafide action of respondents in detaining for 19 months and then holding the court of enquiry and summary of evidence resulting Displeasure non-recordable. Petitioner also challenged the ACRs for various periods written by him.

A reply has been filed by the respondents and they contested the matter. They pointed out that as far all the so-called ACRs and so-called recorded warnings are concerned, that has already been set aside by the order dated 03.09.2004 which reads as under :

*“PC 1 TO MF A/94832/IC-32347/RSU/DGQA/ADM.4/1325/04/D (QA)*

*Government of India*

*Ministry of Defence*

*Department of Defence Production*

*New Delhi, the 3<sup>rd</sup> September, 2004*

**ORDER**

*Col RS Upadhyay (IC 32347 A), AOC, of DGQA Organisation has submitted a **Statutory Complaint** requesting that ACRs for the period from April, 1997 – March 1998, April 1998 – March 99, April 99 – Nov 1999 & June 2001 – Oct 2001 be quashed being initiated and reviewed with biased and prejudiced mind.*

*2. The complaint of the officer has been considered. After examination of the relevant records, the following has been declared :*

*a) **ACR for the period 1.4.97 to 28.7.97** : All the observations made by IO and RO in the ACR in August 2000 stands expunged.*

*b) **ACR for the period 29.7.97 to 31.3.98** : All the observations made by RO and the Accepting Authority in August 2000 stand expunged.*

*c) **ACR for the period April 99 to November 99** : All the observations of IO and RO in the ACR in August 2000 stand expunged.*

d) **ACR for the period June 2001 to Oct 2001** : All the observations made by RO and the Accepting Authority in June 2002 stand expunged.

e) The non-recordable warning given by the Army, after conducting the disciplinary proceedings shall be removed from the CR of the officer.

3. All previous QASBs in which decisions were taken based on ACRs mentioned above be put up in the next QASB for review.

**(S.Pattanayak)**  
**Director (SI)**

**To**

Col RS Upadhyay (IC 32347 A), AOC  
JD (TCP) & O I/C, HQ SR Cell,  
DGQA (through DGQA)

Copy to :

**DGQA -** for information and necessary action in consonance with the decision of the Competent Authority”

The ACR for the period from 01.04.1997 to 28.07.1997 has been expunged. The ACR for the period from 29.07.97 to 31.03.1998 and from April,1999 to Novemebr,1999 have also been expunged and ACR for June, 2001 to October, 2001 has also been expunged. The non-recordable warning given by the Army after conducting the disciplinary proceedings shall be removed from ACR of the officer. All previous Quality Assurance Selection Board in which the decisions were taken based upon the aforesaid ACRs, the same was put up for next review Quality Assurance Board. The only grievance made by the petitioner with regard to ACR from 01.04.98 to 31.03.1999 which has not been expunged. Learned Counsel for the

respondents has made serious objections with regard to maintainability of petition before this Tribunal. We need not to go into that aspect but that aspect has been fully covered by our decision given in the case of **“Major General S B Akali etc. Versus Union of India & Ors bearing T A No. 125 of 2010 and T A No. 221 of 2010.”** Therefore we need not to repeat but suffice it to say that there is a dual control on the officers from the Army who has permanently given quality control and in this connection our attention has been invited to the relevant circulars bearing on the subject dated 21.02.1980, 31.10.1994, 12.04.2001 and 28.10.1978. We considered all these circulars and our judgment and we are of the opinion that there is a dual control. If any action has been taken under the Army Act then of course that can be subject to review by this Tribunal but for all other matters Tribunal will have no jurisdiction. So far as the petitioner is concerned, Ld counsel for the petitioner specifically insisted that the recorded warning which has been directed by the order dated 03.09.2004 to be removed from the ACR does not mean that it amounts to quashing of the ACR. We are of the opinion that the so far as the recorded warning given by the Army is concerned order dated 03.09.2004 nullifies the same and technically it stands quashed also. The authority has removed the recorded warning from the ACR and effect of this will have no bearing on the ACR of the petitioner, therefore, it is only a crumbling of the words that quashing should be written instead of removing in the ACR. But in our opinion effect is same. The punishment awarded by the Army stand expunged and it will have no bearing for consideration of the petitioner for promotion in the matter.

Now, coming to the question of ACRs, it has already been expunged. So far as the ACR from 01.04.1998 to 31.03.1999, the petitioner also made a

representation against this ACR and it has also been disposed of by the order dated 28.02.2005. In that order, the Government has clearly mentioned that ACR from April,1998 to March,1999 does not need further examination since decision has been taken after due consideration. We do not want to comment on this because this ACR has been written by the Quality Control Assurance Board and has also mentioned so far as the disciplinary control of these officers are concerned, it remains with the DGQA and only limited jurisdiction of the Army is that when any offence is committed under Army Act then it has to be taken by the Army otherwise all other matters such as consideration for promotion and its performance that has to be covered by the CCS Rules. In this connection, our specific attention has been drawn to the Circular of the Government dated 12.04.2001 which clearly reads as under :-

“No.0315/ACR/194/D(QA)

Government of India

Ministry of Defence

Deptt. Of Defence Production & Supplies

New Delhi, 12 April, 2001

To,

The Director General of Quality Assurance,  
New Delhi.

Subject : Annual Confidential Report – Service Officers Permanently  
Seconded to DGQA - Instructions

Sir,

The following instructions are issued for the guidance of all concerned on the cited above :-

The Annual Confidential Reports of the Permanently Seconded Service Officers in DGQA are written in the form modelled after the one prescribed by the Department of Personnel & Training (DOP&T). Any representation made by an officer against adverse remarks entered in his ACR will be dealt with according to the instructions issued by DOP&T. Cases warranting expunction of adverse remarks in the ACRs based on representation received from the aggrieved officer will be decided by the Competent Authority in accordance with the guidelines issued by the DOP&T. No ACR will be set aside as such a provision does not exist in the scheme of DOP&T instructions. All adverse remarks will be communicated to the concerned officer within the prescribed time limit.

Yours faithfully,

(S.N. Tripathi)

Under Secretary to the Govt. Of India”

It clearly states that the Annual Confidential Reports of the Permanently Seconded Service Officers in DGQA will be written in the form modelled after the one prescribed by the Department of Personnel & Training. The DGQA will be competent to write the ACR of Seconded Officers. Therefore, we do not want to make any observation with regard to argument raised by the petitioner pertaining to this ACR. If he wants to challenge the same for one reason or another, it will be open for him to take recourse before proper Forum. So far as the findings given by the Army are concerned, the same have already been revoked and it will have no bearing on his consideration for promotion to the post of Brigadier. To this extent, the petition is allowed and for rest of the grievance with regard to ACR of 01.04.1998 to 31.03.1999 is concerned, it is open for the petitioner to choose the appropriate Forum. So far as the request for compensation is concerned, in



our opinion, it need not to be given in the present case. Therefore, request for compensation is rejected. The petition is disposed of accordingly. No order as to costs.

**A.K. MATHUR**  
**(Chairperson)**

**S.S. DHILLON**  
**(Member)**

**New Delhi**  
**November 18, 2011**