

**COURT NO. 3, ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
T.A. No. 411 of 2010
(Delhi High Court W.P (C) No. 9813 of 2009)**

IN THE MATTER OF:

Commander Preekshit Mahajan**Applicant**
Through Shri Sukhjinder Singh, counsel for the Applicant.

Versus

Union of India and Others**Respondents**
Through: Mr R Balasubramanian, counsel for the Respondents

CORAM:

**HON'BLE MR JUSTICE MANAK MOHTA, JUDICIAL MEMBER,
HON'BLE LT GEN Z.U. SHAH, ADMINISTRATIVE MEMBER**

JUDGMENT

Date: 14-02-2011

1. The applicant had filed WP (C) 9813/2009 in the Hon'ble Delhi High Court. The same was transferred to this tribunal on 17/11/2009. The applicant has prayed that the Govt of India orders dated 21/08/2008 (**Annexure P-4**) and 06/10/2008 (**Annexure P-5**) rejecting his representations be quashed. The

applicant had also prayed that the ACR for the period from 31/12/2006 to 27/05/2007 be expunged and a special report in terms of Para 206 of Naval Order 05/2005 be initiated without moderation by the Chief of Naval Staff.

2. The applicant was commissioned in the Indian Navy on 01/07/1994 and is a qualified Flying Instructor. The applicant in the year 2006/2007, while commanding Navy Seaward Defence Boat (INSDB-T56), at Chennai, obtained adverse remarks from his IO, Naval Officer Incharge (Tamil Nadu) NOIC (TN) in his CR for the period 31/12/2006 to 27/05/2007. The applicant contends that the adverse remarks were endorsed without prior counselling in violation of Para 0410 of Navy Order 05/2005. The ACR reflected the applicant's trial by a Court Martial, for which he had been honourably acquitted.

3. The applicant states that his earlier Court Martial, in which he had been acquitted pertained to allegations that he had thrown a Sailor, Steward Shankar Shaw into the sea on night 10/11 Apr 2007. In actual facts the Sailor jumped into the sea himself and deserted the ship. The Sailor Shankar Shaw swam ashore and complained against the applicant as a result of which a Board of

Inquiry (BOI) was held on 13/04/2007. The applicant states that his IO, NOIC (TN) reported the matter to the FOC-in-C Eastern fleet who was visiting Chennai at that time. The FOC-in-C removed the applicant from Command of his ship on 04/05/2007.

4. The applicant made a representation to the FOC-in-C on 14/02/2007 but his complaint was not acted upon. The applicant has also alleged that his promotion, which was due on 01/08/2007, was withheld pending court martial proceedings against him from 07/08/2007 to 24/09/2007. The applicant contends that he was subsequently honourably acquitted.

5. The applicant states that on 25/09/2007 he was asked to submit his ACR form for the period 31/12/2006 to 27/05/2007. The IO, on 08/10/2007, although he had endorsed adverse remarks in the ACR also promoted him to Commander on the same day. The applicant was subsequently transferred to the Port Blair. The applicant submitted two statutory representations dated 04/08/2008 and 06/12/2008 and both were rejected. The applicant states that his IO, from the very beginning, had been biased against him. The applicant on his posting to Chennai had requested for married accommodation and the same fell vacant in

1st week of Jan 2007 but was not allotted to him. The NOIC (TN) allotted the accommodation out of turn to one Lt D Nath. The applicant submitted Redressal of Grievances (ROG) for which the NOIC (TN) nursed grudge against him in the matter of Sailor Shankar Shaw deserting the ship. The NOIC (TN), without obtaining his comments or investigating the matter, gave his recommendations to the FOC-in-C Eastern fleet vide Fax 236 dated 04/05/2007 (**Annexure P-2**). A signal was subsequently issued on 04/05/2007 (**Annexure P-2**) removing the applicant from Command of the ship and attaching him to INS Adyar.

6. The applicant states that FOC-in-C Eastern Naval Command ordered a Board of Inquiry (BOI) on 13/04/2007. The applicant alleges that the BOI was staged managed by the NOIC(TN). The presiding officer and the members detailed for the BOI were working directly under the NOIC (TN) and one witness was coerced into deposing against the applicant. The BOI culminated in the applicant's court martial from 07/08/2007 to 24/09/2007 wherein the applicant was acquitted. The very next day, the applicant was asked to submit his ACR form but his promotion, due with effect from 01/08/2007, was delayed. The

applicant contends that he contacted IHQ of MOD (Navy) which ordered his immediate promotion.

7. The applicant states that on 08/10/2007 he was asked to sign the Performance Appraisal Discussion (PAD) of the ACR form which , as per the applicant's version, contained the following adverse remarks:-

“All good work done by him on the ship has been masked by the running away of a sailor which led to his court martial. The officer is advised to improve upon his man-management”.

The adverse remarks were endorsed without prior counselling and violated Navy Order (Special) 05/2005 (Annexure P-6). The applicant asked for extract of adverse remarks which was refused.

8. The applicant states that although he had been acquitted by the court martial the IO made mention of the same in the impugned CR and thus it was a case of bias and double jeopardy. The applicant submitted a representation to the Chief of Naval Staff on 29/01/2008 (Annexure P-3) and to the Ministry of Defence on 04/08/2008. Both representations were rejected vide orders dated 21/08/2008 and 06/10/2008 (Annexure P-4 and P-5).

9. Respondents 1, 2 and 3 in the counter affidavit have stated that the impugned ACR was moderated by the Performance Appraisal Review Board (PARB) which moderates ACRs not in keeping with overall profile of officers.

10. The applicant was removed from command of the ship under the authority of Statutory Regulations 141 of the Navy. Subsequent to the BOI investigation, which, prime facie established veracity of the complaint of Sailor Shankar Shaw that he had been thrown over board the ship by the applicant. The applicant was subsequently court martialled. He was acquitted of the charge because he was given benefit of doubt. After the trial the applicant submitted his ACR form for the period 30/12/2006 to 27/05/2007. It was initiated by NOIC (TN) and reviewed by FOC-in-C, Eastern Fleet.

11. The applicant submitted his representation against the ACR and also requested that he be given re-command of a ship. The application was rejected since the gradings of IO and RO had already been modified by PARB.

12. In his counter affidavit Respondent No 4 has stated that the applicant reported as CO of ship INSDB- T56 on 27/05/2006 and applied for married accommodation. The applicant specifically mentioned that he did not want to be considered for Type B (Lts) accommodation vide his application at R-1. Subsequently the applicant requested for deferment of allotment of accommodation for 05 months from i.e 15/07/2006 to 15/12/2006. In mid December 2006 Type A accommodation fell vacant and the applicant being out of station in Vijag was informed telephonically. The applicant did not depute any one to take over the accommodation so it was allotted to next officer on the Lt Cdr roster. The seniority of the applicant was however protected and he was not relegated in the seniority list of the accommodation. In Feb 2007 the applicant intimated that B Type accommodation was acceptable to him and the same was thus allotted.

13. On night 10/11 Apr 2007 Sailor Shankar Shaw was thrown over board the applicant's ship. He swam ashore and complained of ill treatment. A Board of Inquiry was ordered to investigate the matter. Respondent No 4 also brought out that the applicant frequently used foul and abusive language to persons under his

command. On one occasion he also hit Steward I Ravinder Singh with a shoe. Lt G R Jadhav under command of the applicant also complained of verbal abuse and being man handled. These persons did not press charges and thus their complaints were not followed up. Respondent No 4 states that he counselled the applicant on earlier occasions. The ordering of BOI, after the incidents of Sailor Shankar Shaw was the prerogative of competent administrative authority who was FOC-in-C, Eastern Naval Command. The Presiding Officer and the Members of the BOI were also nominated by the FOC-in-C. The members were from nearby units and were nominated keeping in mind approximaty and administrative convenience. Based on the findings of the BOI Respondent No 4 recommended to the FOC-in-C, Eastern Fleet that the applicant be attached to the INS, Adyar. The applicant was removed from Command in accordance with Regulations 144 of Navy Part (iii).

14. Respondent No 4 states that the copy of the BOI was given to the applicant only after clarification from HQ Eastern Naval Command was obtained. The applicant was due to promotion to Commander with effect from 01/08/2007. This was however

subject to no disciplinary case against the applicant. His promotion was therefore withheld during pendency of the court martial and Respondent No 4 was not responsible for withholding the same. The applicant's ACR for the period 31/12/2006 to 27/05/2007 was delayed as the officer himself submitted his ACR form late only in Oct 2007 instead of July 2007. Respondent No 4 further states that the applicant was given adequate counselling to improve his man management and the remarks in the ACR truly reflected personal traits of the applicant that were required to be improved. The ACR was reviewed by FOC-in-C, Eastern Naval Command and subsequently moderated by PARB. Respondent No 4 maintains that the remarks in the ACR were not adverse and not required to be given to the ratee in terms of Para 041 (b) of Naval Order (Special) 05/1965.

15. In his rejoinder the applicant has reiterated the points made by him earlier and stressed that no prior counselling was given to him.

16. We have heard the arguments and perused the records specially the impugned ACR. The Initiation Officer i.e NOIC (TN) has adequately brought out the reasons for late allotment of

accommodation primarily because of the applicant had stated in his application that lower grade of accommodation was not acceptable to him. The applicant's promotion to Commander was also delayed since Court Martial proceedings were in progress. The IO was not responsible for delay in both these matters. We have perused the impugned ACR. The endorsement was made on conclusion of the Court Martial proceedings and refer to the Court Martial of the applicant. The IO was undoubtedly influenced by the Court Martial and reflected the same in the ACR. A degree of subjectivity is, therefore, likely. No subjectivity is however discernable in the endorsement of the RO. We, therefore, direct that the following endorsement of the IO be expunged:-

“pending disciplinary proceedings for ill treatment of a sailor which led him to jump over board and swim ashore from anchorage while on deployment with Palk Bg. The subsequent court martial acquitted the officer of all charges legally. However, the officer has displayed traits of rude behaviour towards subordinates in terms of language and use of physical force which is not good OLQs especially when in command.”

and

“The officer is therefore not recommended for future command appointments/key assignments.”

17. Subsequently, the impugned ACRs be re-evaluated again by the PARB. The assessment of the RO, however, should stand and reviewed in the light of the revised endorsement of the IO. There is no requirement of a Special report on the officer to replace the impugned ACR. Application is partially allowed. No costs.

Z.U. SHAH
(Administrative Member)

MANAK MOHTA
(Judicial Member)

Announced in the open Court
on this 14th day of February 2011