

**COURT NO.2, ARMED FORCES TRIBUNAL,  
PRINCIPAL BENCH, NEW DELHI  
T.A. No.421 of 2009  
W.P.(C) No.440 of 1999 of Delhi High Court**

**IN THE MATTER OF:**

**Ex. MWO Sarjeet Singh** .....**Applicant**  
Through: Mr. D.K. Sharma, Counsel for the applicant

Versus

**Union of India & Ors.** .....**Respondents**  
Through: Mr. Ankur Chibber, Counsel for the respondents

**CORAM:**

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

**JUDGMENT**

**Date: 12.08.2011**

1. The petitioner/applicant filed the above-mentioned writ petition before the Hon'ble High Court for quashing the AFCO Policy No.2/91 **(Annexure P-1)**. He made a further prayer that he be promoted to the rank of Master Warrant Officer (MWO) with effect from 1995 by expunging any adverse remarks/ recommendations in the ACRs pertaining to the years 1990 to 1994 along with his assessment shown as "below grade" with all consequential benefits including Honorary

Commission. Notice to the petition was issued. Counter affidavit as well as rejoinder were filed. Thereafter the case was transferred on 01.12.2009 to this Tribunal on its formation.

2. Brief relevant facts for the just disposal of this case are enunciated in the succeeding paragraphs.

3. From the perusal of the record it is revealed that the applicant was enrolled in Indian Air Force as an Airman on 25.06.1962. In due course of time he was promoted in the rank of Warrant Officer w.e.f. 01.06.1989 and thereafter he became eligible for promotion to the rank of Master Warrant Officer (MWO) in 1995. It is further submitted that in Indian Air Force promotion to the rank of MWO is governed by AFI 12/S/48 and Air Headquarters letter No.AHQs/40651/5/PA(CPC) dated 31.01.1995. In that policy, criteria for promotion to the rank of MWO specified is that officer should have scored minimum 495 marks out of 660 marks in preceding 5 years ACRs failing which he will not be considered for promotion. It is further mentioned that respondents have also issued a policy letter Air Force Confidential Order (AFCO) 2/91 directing the assessing authority to the effect that percentage of "exceptional" should be restricted to 10% and "above average" not to exceed 30%. It was submitted that this policy letter AFCO 2/91 is unjust,

unfair and has adversely affected promotional avenues. Thus it was submitted that this policy be set aside. It was submitted by the applicant that he was always having “excellent” or “above average” ACRs and was never conveyed any adverse remarks. He submitted details of marks awarded in preceding years’ ACRs as under :

<b>Year</b>	<b>Marks</b>
1990	98
1991	88
1992	73
1993	103
1994	96
<b>Total</b>	<b>458</b>

4. It is further submitted that he was considered for promotion to the rank of MWO in 1995-96 and 1996-97 but was not promoted as he had not scored the requisite marks in the preceding 5 years ACRs. It is submitted that ultimately in 1997-98 he was promoted to the rank of MWO w.e.f. 01.08.1997 but was discharged on 30.10.1997. Thus he could not qualify even for minimum required period of 10 months for pensionable service in the said rank. The applicant also contended that one Warrant Officer B.S. Randhawa was promoted despite adverse report.

5. It was submitted by the applicant that he is having an excellent record and he was never conveyed adverse remarks. He has, however, been graded below his performance, therefore, adverse remarks or recommendations made in the ACR in the concerned years 1990-94 be expunged and he be considered for the rank of MWO with all consequential benefits. He may also be considered for Honorary Commission. It was submitted by the applicant that he also filed representations and last representation was filed on 04.03.1998 (**Annexure A-3**) but that was not properly considered and was rejected on 08.10.1998 (**Annexure A-5**).

6. From respondent side, counter affidavit was filed denying all the allegations made in the petition. The respondents submitted that as per Air HQ letter No. Air HQ/40651/3/PA(CPC) dated 31.01.1995 a WO is required to score minimum 495 marks out of 660 marks in the preceding 5 years ACRs for grant of MWO rank (**Annexure R-1**) failing which he will be declared as "Below Grade" (BG) and he will not be entitled to promotion. It was further submitted that the applicant was considered for promotion for the rank of MWO during the promotion year 1995-96 and 1996-97, respectively, but he failed to secure 495 marks in the preceding 5 years ACRs, therefore, he could not be promoted. During the promotional panel for the year 1997-98 the

applicant was again considered and was promoted to the acting rank of MWO w.e.f. 01.08.1997 on making the grade as per seniority list and merit. In the reply it was contended that no junior personnel was promoted to the rank of MWO prior to him. His case was also considered for honorary commission, but he was not found fit. The applicant was, thereafter, discharged from Air Force w.e.f. 31.10.1997. It was submitted that AFCO Policy No.2/91 stipulates the guidelines for assessing the overall performance of the Airman during the year which applies equally to all Airmen. Thus, it could not be termed as unfair and unjust and no injustice has been caused to the applicant. It was also submitted that as per preceding 5 years ACRs, the applicant was considered "below grade". It is further contended that only in case a person is assessed as "below average" as per paragraph 12 of the Air Force Confidential Order No.2/91 remarks are required to be conveyed. The applicant was never awarded "below average" as per Para 12 of the said AFCO Policy No.2/91, therefore, there was no justification of conveying remarks to him. It was also contended that the applicant was not promoted as he failed to score 495 marks out of 660 marks in the last 5 years' ACRs. It was also contended that AFCO 2/91 stipulated that if an Airman who is assessed "below average" is considered as adversely reported upon and only such Airman is to be warned and informed all his weaknesses in writing as per paragraph 12

of the AFCO 2/91. It is further contended that the applicant was never adversely reported upon, therefore, no warning of adverse remarks was required to be given to the applicant. In reply it was also contended that promotion of Warrant Officer B.S. Randhawa to the rank of MWO is not correct. He was retired from service on 31.11.1997 in the rank of Warrant Officer.

7. Rejoinder to the counter was filed reiterating the grounds stated earlier. Again it was stated that the applicant should have been promoted w.e.f. 1995, but due to the adverse effect of the said policy, he was denied promotion and thereafter he was promoted but he could not complete the requisite period of 10 months for pensionable service.

8. Arguments were heard and record was perused.

9. During the course of arguments again learned counsel for the applicant submitted that he has been wrongly deprived from the promotion to the higher rank of MWO in time. He further contended that AFCO 2/91 affected his promotion avenues because this policy restricted the assessing authority from awarding appropriate grade as the applicant's service record was excellent and he was deserving promotion. A request was made that if any adverse remarks are found

in the concerned ACR, they may be quashed and he may be directed to be promoted from 1995 along with his batch-mates.

10. On the contrary, learned counsel for the respondents submitted that the applicant was considered for promotion in 1995-96 and 1996-97, but he could not score the requisite marks as per policy of 1995 and that is why he was declared as "below grade". Thereafter, in 1997-98 he was approved and subsequently promoted. The concerned policy i.e. AFCO 2/91 is not, in any way, arbitrary, unjust and unfair but gives guidance for assessing personnel and is applicable to all. A recommendation was made to dismiss the application.

11. We have considered the rival submissions and perused the relevant policies. The contention raised in respect of AFCO 2/91 was considered. Relevant portion, for which the applicant is agitating, is quoted as under:

"3. It may be ensured that percentage of 'Exceptional' should be restricted to 10% and 'Above Average' not to exceed 30%. The common/error/omission noticed in the ACRs are given in the Appendix to this letter."

12. The applicant's contention is that this policy is arbitrary, unjust and unfair, but looking at the nature of the policy it is revealed that the

same is more or less a guidance to assessing authority. It is applied to all and is not, in any way, discriminatory. Requirements of marks are provided in policy of 1995. Therefore, the contention raised in this regard is not sustainable. The said policy AFCO 2/91 is not found arbitrary on this basis. We have considered the contentions with regard to ACR. In the AFCO 2/91 in para No.12, which has been referred in the counter affidavit, there is a provision as to how adverse remarks are to be communicated and how "below average" grading is to be determined. In case concerned personnel gets marks within 44 to 65 marks then they are to be graded as "below average". Particularly, in this case, the applicant has always been awarded higher marks than the marks shown for "below average". Therefore, before writing ACR neither any warning or counselling was needed nor communication of remarks to applicant was necessary. The relevant portion is quoted as under:

"12. Under no circumstances, the Confidential Report is to be shown to the MWO/WO/JWO reported upon. However, before the Adverse Report is rendered, the particular aspect of the failings leading to the adverse comments/assessments is to be brought to the notice of the MWO/WO/JWO concerned, in writing by the officer rendering Adverse Report. A copy of the same duly signed by the MWO/WO/JWO is to be attached to the IAFF (P) 12 (Revised). As far as possible, the failings are to be brought to the notice of the individual concerned well before the report is due, in order to give him a chance



to improve himself. If at the time of the rendition of the report it is felt that the warnings administered have been of no avail, this point is to be specifically mentioned in the Report as per Appendix 'C' to this order and is to be treated as adverse comments on the performance of the JWO/WO/MWO concerned.

13. Part V – The specialist officer at Command/Air Headquarters, will confine his remarks to the assessment in paras 10(a) and 12 of Form IAFF (P) 12.

14. Part VI – the AOC-in-C/PSO at Air HQs, if he wishes to comment.

15. Gradings – While rendering reports, Warrant ranks are to be graded in the following manner.

(a) Exceptional – From 121 to 132 marks.

All Commanding Officer are to ensure that reports in this category are not to exceed 10% in each rank.

(b) Above Average – 100 to 120 marks.

Reports in this category are not to exceed 35% in each rank.

(c) Average – From 66 to 99 marks.

(d) Below Average – 44 to 65 marks. This grading will be treated as 'Adverse Report'.

(e) Inferior – 43 marks and below. This Grading will be treated as 'Adverse Report'.

16. Confidential Report is a privileged document, which is strictly Confidential. Under no circumstances, copies of the same are to be made."

13. Thus, the contention raised in this respect that adverse ACR remarks be quashed are not sustainable. As per record the applicant was never awarded any adverse remarks, but on the basis of preceding

5 years ACRs, he could not make the grade. Therefore, he was graded as “below grade”, which cannot be equated with “below average”. We have also considered the other contentions with regard to promotion, but on the basis of preceding 5 years’ ACRs the applicant could not earn the requisite 495 marks out of 660 for getting promotion. Therefore, he could not be promoted in the years 1995-96 & 1996-97, but subsequently he had been promoted. His case was considered for honourary commission, but he was not found fit.

14. Considering all the contentions we do not find any irregularity, illegality or infirmity in not promoting the applicant at the relevant time. We also do not find any infirmity in the AFCCO 2/91.

15. On the basis of the aforesaid discussion, the application stands dismissed. No orders as to costs.

**Z.U. SHAH**  
**(Administrative Member)**

**MANAK MOHTA**  
**(Judicial Member)**

**Announced in the open Court**  
**on this 12<sup>th</sup> day of August, 2011**