

**COURT NO. 3, ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
T.A. No. 426 of 2009
W.P.(C) No. 3239 of 1998 of Delhi High Court**

IN THE MATTER OF:

Maj A.N. Pandey**Applicant**
Through : Mr. A.K. Mishra, 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 M.L. NAIDU, ADMINISTRATIVE MEMBER**

JUDGMENT

Date: 23.05.2011

1. The petition was filed in the Delhi High Court as W.P.(C) No. 3239/1998 and subsequently it was transferred to the Armed Forces Tribunal on 24.11.2009.

2. The applicant vide this petition has sought that the ACRs for the periods 23.03.1988 to 27.03.1989 and 27.03.1989 to 12.12.1989, Interim CR (ICR) covering the period 01.06.1991 to 29.09.1991 and ACR covering the period 01.06.1992 to 06.03.1993 and ACR for the period 01.01.1984 to 31.12.1984 be set aside. Further he has prayed that he should be reconsidered for the rank of Lt Col as fresh case along with his batch mates and consequently also to the rank of Col.

3. The brief facts of the case are that applicant was commissioned in the Army on 10.06.1978. He was promoted to the rank of Lt, Capt and Maj in due course. However for the promotion to the next higher rank of Lt Col, he was considered by the Selection Board during the period between 01.08.1995 to 11.08.1995. The relevant period for consideration by the Selection Board for the applicant was from 1985 to 1995. The applicant was not selected. He represented via non statutory complaint on 12.10.1995 against ACRs for the period 23.03.1988 to 27.03.1989 and 27.03.1989 to 12.12.1989, ICR for the period 01.06.1991 to 29.09.1991 and ACR covering the 01.06.1992 to 06.03.1993. The same was rejected on 22.05.1996 (**Annexure C**).

4. The applicant put up a statutory complaint against the same ACRs. This time he also included the ACR covering the period 01.01.1984 to 31.12.1984. The statutory complaint was rejected on 02.05.1997. Meanwhile, the Review Selection Board had also taken place and he was finally superseded in 1997.

5. The applicant again represented on 22.09.1997 via a statutory complaint against his supersession. In this complaint he pointed out that for the ACR covering the period 23.03.1988 to 27.03.1989 he was a Capt and was posted as Officer Commanding (OC), 411 Petroleum Platoon, ASC. Therefore, as an OC of the Platoon, competent IO should have been Deputy Director Supplies and Transport (DDST) of 61 Independent Sub Area, Jaipur while the report was initiated by

Maj R.S. Rathi who was the OC, 201, Petroleum Platoon, ASC which was an equivalent appointment as that of the applicant. Therefore, the report is technically invalid.

6. As regards the ACR for the period 27.03.1989 to 12.12.1989, I.O. for this period was Col PMK Mohan Rao. There was a Court of Inquiry against Brig. S.C. Mahajan, relating to container filling facility installation in 411 Petroleum Platoon in which applicant was a witness and Brig. S.C. Mahajan and I.O. Col PMK Mohan Rao pressurized him to destroy the CR record. Thus, I.O. was biased. Therefore, this ACR deserves to be set aside.

7. As regards, the ICR for the period 01.06.1991 to 29.09.1991, it was initiated by an IO against whom applicant had brought out discrepancy in stores and documents during the handing taking over the depot from the reporting officer in Sep, 1991. Staff Court of Inquiry was finally ordered by the authority based on the report made by the applicant on 22.04.1992.

8. As regards the ACR for the period 01.06.1992 to 06.03.1993, the applicant was posted as the Catering Officer at Defence Services Staff College (DSCC), Wellington in December, 1991 and three CRs were initiated by the three different IOs but were reviewed by only two ROs. These reports were not consistent with his past performance and there have been dips which need to be rectified.

9. For the CR covering the period 01.01.1984 to 31.12.1984, the CR was initiated by officer against whom the applicant has deposed in a Court of Inquiry as a witness in which Army Rule 180 was invoked and, therefore, I.O. was not entitled to initiate the report.

10. Despite the facts and details brought before the authorities as part of the representation and statutory complaints, the statutory complaints were rejected in a routine manner stating that *“after examination of relevant record is satisfied that no injustice has been done to him in this regard.”*

11. Learned counsel for the applicant submitted that in the first instance, the IO Maj R.S. Rathi, being an independent Platoon Cdr of the same status as that of the applicant though applicant was a Capt but he was also OC of the 411 Petroleum Platoon, ASC and thus was not working directly under Maj R.S. Rathi. Therefore, Maj R.S. Rathi should not have been initiated the report. Thus this report needs to be set aside on technical ground. Learned counsel for the applicant drew our attention to the posting order of the applicant as also the Part I Order of 411 Petroleum Platoon, ASC.

12. Learned counsel further argued that during the year 1989-90, the Court of Inquiry was under progress in which the applicant had deposed for the discrepancies in the documents and stores which was against Col PMK Mohan Rao. Col PMK Mohan Rao initiated his report as the IO despite being ineligible to write because Court of Inquiry was

in progress. Hence, the said ACR should also be set aside on technical grounds.

13. Learned counsel for the applicant further contended that as regards the ACR for the period Dec. 1989 to 29.09.1991, including the ICR for the period 01.06.1991 to 29.09.1991, three reports were initiated by Lt Col A.K. Trehan. During the last report, Court of Inquiry was under way and, therefore, Col A.K. Trehan was not entitled to write the report and as such all the reports are technical invalid.

14. The report pertaining to year 1992-1993 need to be compared with his past profile as these reports are not matching. However the applicant has been granted Col (Time Scale) w.e.f 31.08.2001.

15. Learned counsel for the respondents stated that as regards the ACR covering the period from 1988 to 1989 when the applicant was posted as OC, 411 Petroleum Platoon, ASC as a Capt he was co-located with 201 Petroleum Platoon, ASC where Maj R.S. Rathi was the OC. The Command HQ in order to enhance operational efficiency had amalgamated both these Petroleum Platoons with Maj R.S. Rathi being designated as the OC. Since the applicant was working directly under Maj R.S. Rathi and, therefore, Maj R.S. Rathi had correctly become the IO.

16. Learned counsel for the respondents further argued that in none of his complaints whether statutory or non statutory the officer has brought these aspects of technical invalidity. All the same, the order

from HQ Southern Command to amalgamate the working of both the Petroleum Platoons which was co-located in Jodhpur for operational functioning are produced in original for perusal of the Court.

17. Regarding the ACR covering the period 27.03.1989 to 12.12.1989 in his non-statutory complaint, there were no allegations against the IO and RO. Again in the statutory complaint, there were no allegations against the IO. In any case, no officer has been made party as respondent in this case. Therefore, to invoke personal bias is incorrect.

18. As regards, the CR of 1991, learned counsel for the respondent stated that when Col A.K. Trehan was handing over the charge and some discrepancy were reported which led to order of a Court of Inquiry on 18.04.1992. The discrepancy were reported actually by the new CO and not by the applicant, therefore, to say that Lt Col A.K. Trehan was biased against the applicant is incorrect. Also the ACR was written much earlier before Court of Inquiry was ordered.

19. As regards report for the period 01.06.1992 to 06.03.1993 is concerned, the applicant was posted as the Catering Officer at DSCC, Wellington. Learned counsel for the respondents stated that his reports were based on his performance during the year and, therefore, no interference is warranted as no personal bias or subjectivity has been established.

20. Having heard both the parties at length and having examined all the documents in detail, we are of the opinion that for the ACR covering the period 01.01.1984 to 31.12.1984, no link can be established against IO since the applicant was only responsible to produce certain documents before the Court of Inquiry which was in progress against certain deficiencies. There were no allegations against the applicant in the Court of Inquiry nor he was a witness in the investigation but was only concerned for producing the documents which were under his charge, therefore, no subjectivity can be construed. Furthermore, this ACR was not within zone of consideration for the promotion.

21. As regards the ACR covering the period 23.03.1988 to 27.03.1989 when Maj R.S. Rathi was OC 201 Petroleum Platoon, ASC initiated the ACR while the applicant was OC 411 Petroleum Platoon, ASC. These are separate platoons and are, therefore, two separate entities. It is in no doubt that it is within the purview of the respondents to merge these two platoons for operational efficiency which was done in this particular case by HQ Southern Command. However, there is also a requirement to change the “channel of reporting” when such an arrangement for operational necessity takes place.

22. The HQ Southern Command order cannot automatically empower the senior amongst two to initiate the report of the junior officer. It requires formalization and change in the “reporting channel”

which has to be promulgated by the MS Branch of the Army HQ. The respondents failed to produce such promulgation and, therefore, it is evident that report initiated by Maj R.S. Rathi is technical invalid. This report for the period 23.03.1988 to 27.03.1989 needs to be set aside.

23. As regards the ACR covering the period 27.03.1989 to 12.12.1989 is concerned, the IO Col PMK Mohan Rao who was the DDST was not involved in the Court of Inquiry which had been ordered by HQ Southern Command. The Inquiry was related to "Container Filling Facility" installation in 411 Petroleum Platoon, ASC and applicant was merely asked to produce the documents during the Court of Inquiry. As such, no subjectivity has been established between the applicant and the IO. Contentions placed in this respect by applicant are not sustainable.

24. As regards the ACR covering the period Dec. 1989 to 29.09.1991 including ICR of 01.06.1991 to 29.09.1991 is concerned, Lt Col A.K. Trehan has initiated three reports and there is nothing to prove that the IO was biased or there was some subjectivity in the report. Though Court of Inquiry was ordered against Lt Col A.K. Trehan but Inquiry was ordered in April, 1992 much before the report was written and, therefore, no malafide can be construed. No concerned persons, against whom the allegations have been made, are named as the respondents.

25. As regards the ACR covering the period from 01.06.1992 to 06.03.1993 while he was posted as the Catering Officer to DSSC Wellington, Brig M.C. Sabastian has initiated the report and it is evident that his report is based on his overall functioning during the said period.

26. In view of the foregoing, we hold that the report covering the period 23.03.1988 to 27.03.1989 initiated by Maj R.S. Rathi OC 201 Petroleum Platoon, ASC when the applicant was OC 411 Petroleum Platoon, ASC as Capt is technical invalid and needs to be set aside and is hereby set aside. No other ACRs merit interference. The applicant will be considered for promotion based on his revised profile and should he get selected he will be entitled to all consequential benefits. This exercise should be completed preferably within 90 days from the passing of this judgment and applicant be informed of outcome accordingly.

27. Accordingly, the T.A. is partially allowed. No orders as to costs.

M.L. NAIDU
(Administrative Member)

MANAK MOHTA
(Judicial Member)

Announced in the open Court
on this 23rd day of May, 2011