

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
NEW DELHI**

**T.A NO. 544 OF 2009
(Writ Petition (C) No. 1482 of 2008)**

Hav Baljeet Singh **... Petitioner**

Versus

Union of India and others **... Respondents**

For petitioner **:** **Mr. D.S Kauntae,
Advocate**

For respondents **:** **Mr. Anil Gautam
Advocate**

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

**J U D G M E N T
18.7.2011**

S.S Dhillon, Member:

1. This application has been filed by the applicant against his non-approval of promotion to the rank of Nb Sub. He seeks setting aside of the impugned Annual Confidential Report (ACR) for the year 2006 as subjective and reconsideration by a fresh Departmental Promotion Committee (DPC) for the rank of Nb Sub after setting aside the impugned ACR for the year 2006.

2. The applicant was enrolled in the Indian Army on 20.7.1986 and was promoted to the rank of Havildar in December 2001. In April 2006, he appeared for his promotion examination from Hav to Nb Sub and successfully completed the same. However, unfortunately, in December 2006, when his ACR was initiated, he was given a high average report, thereby making him ineligible for promotion to the rank of Nb Sub. The applicant put in a statutory complaint on 25.9.2007

and he was informed on 1.2.2008 that his statutory complaint had been rejected. The DPC was held in November 2007 and he was not empanelled, primarily due to the ACR earned by him in December 2006. The applicant stated that he had got an 'A' grading on the QM course and had also been awarded a commendation card by the General Officer Commanding in Chief, Northern Command in November 1999. Other than this, all through his career, he had good profile.

3. The appellant argued that in 2005, the CO (Col A.K Rohilla) asked him to arrange non-vegetarian meals for his personal guests, which he was unable to organise and he expressed his inability to fulfil the desires of the said officer and was accordingly charged on 16.4.2005 for an offence under Army Act Section 63 and awarded 7 days pay fine. It was also argued that he was unaware of this punishment and got

to know about it only on 10.2.2007, when he was preparing his statutory complaint.

4. Regarding the impugned ACR for 2006, the appellant stated that in accordance with Army Order 1/2002/MP, which laid down the rules for confidential reports for JCOs and NCOs, he should have been communicated the adverse remarks which were endorsed by his IO and RO, which was not done. There was a specific provision in Paragraphs 31 to 35 of the ibid Army Order, wherein it is stated that prior notice for initiating adverse report is to be given to the ratee, after which he is to be given 60 days to show improvement and only then an adverse report can be initiated on him. Not only was this not done in his case, but he was also communicated the adverse remarks very late i.e. on 23.6.2007. The appellant also argued that the figurative assessment of 4 was inconsistent with his earlier performance

and there was a marked dip in his overall rating by this ACR. The appellant also argued that the so called performance counselling that was supposed to have been given to him on 28.9.2006 was actually given to him sometime in May/June 2007, when his CO realized that the appellant was putting up a statutory complaint and, therefore, decided to give him this back-dated performance counselling so as to justify the adverse report which was initiated on him in December 2006.

5. Counsel for the applicant also stated that although he had been performing the duties of Mess Hav since 2004, it was only in June 2007 for the first time that an Annual Stock Taking Board was held, wherein some deficiencies in the property of the officers mess were detected and the applicant was made to pay Rs.21,338.20. This was against the provisions contained in Regulation 518, wherein the stock taking Board is to be held every year.

6. Counsel for the respondents first rebutted the allegations about the ACR for the year 2006 by stating that Paragraphs 31 to 35 of the ibid Army Order deal with an "adverse report", which is different from an "adverse remark". These two aspects are totally different and cannot be inter-related or confused and the criteria for an adverse report cannot be super-imposed for an adverse remark. The provisions for adverse remark and the methodology of communicating the adverse remark to the ratee are contained in Paragraphs 42 and 44 of the same Army Order, which are appended below:

Communication of weak points/adverse remarks/advisory remarks and "Low Average/Below Average" assessment to the Ratee.

42. The following aspects, whether endorsed in the pen picture, figurative assessment or overall grading, will be communicated to the Ratee by the IO:-

- (a) Weak points
- (b) Adverse remarks
- (c) Advisory remarks
- (d) "Low Average" or "Below Average" assessment whether in figurative assessment or overall grading.

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COMMUNICATION OF "AVERAGE" GRADING

44. "Average" assessment in any personal quality or demonstrated performance or in overall grading is not an adverse grading, thus, needs no justification in the pen picture. However, since "Average" grading adversely effects promotion prospects of a JCO/NCO including grant of honorary commission/rank, it will be communicated. However, where a Ratee has though been graded "Average" but "Not Recommended" for promotion, the same will be justified in the pen picture by the Reporting Officer(s) and the grading including pen picture will be communicated to the Ratee.

7. It was, therefore, argued that an average ACR is not required to be communicated to the ratee except where such

report also contained a negative recommendation for promotion. It was admitted that in this case, since the ACR for 2006 was an average ACR and contained negative recommendation for promotion, it should have been communicated to the ratee, but due to an administrative lapse, it was not communicated immediately after writing the ACR. When the ACR went to the Records Section and this administrative error was detected, the adverse remarks were duly communicated to the ratee on 23.6.2007. Moreover, it was argued that Paragraphs 42 and 44 of the ibid Army Order do not give any period within which these adverse remarks are to be communicated. Suffice it to say that these remarks were communicated once the authorities realized that the same was required to be done. It was also urged that such late communication of adverse remarks, by approximately six months, does not in any manner materially affect the facts of

the case. Counsel also urged that although the applicant has made baseless allegations that the CO desired non-vegetarian meals to be served to his guests, no such averment had been made in the statutory complaint and, therefore, this so called order to serve non-vegetarian food was an afterthought. The respondents also argued that in the year 2005, the CO had given him a 5 point average report and in the year 2006, he obtained a 4 point average report. Therefore, there was no such sharp dip in his performance as was being alleged by the appellant.

8. Counsel for the respondents also produced the entire records of the ACRs and the counselling letter which was perused by the Court, wherein it was apparent that the signatures of the appellant appear on the counselling letter dated 28.9.2006. It was also clarified by the counsel that in the case of an average report, there was no necessity of issuing

any performance counselling and even this counselling letter of 28.12.2006 had been done, as a matter of abundant caution. However, Paragraph 44 of the ibid Army Order places a responsibility on the IO and the RO to justify an average not recommended ACR in the pen picture, and this has been complied with both by the IO and the RO in the ACR for 2006, wherein in the pen picture, they have specifically alluded to the fact that the appellant requires supervision and is not capable of performing independent task.

9. With reference to the summary punishment of 16.4.2005, the respondents stated that the summary punishment was under Army Act Section 63 for failing to carry requisite items to establish the Officers Mess and had nothing to do with not serving non-veg food to the guests of the CO. This punishment was given in the presence of Maj HSS Krishna Kumar, Capt Gajendra Singh and Sub Maj Dharam Pal. The pay

fine of seven days was subsequently deducted from the salary of the appellant and he would have been aware of this punishment and its consequence. The respondents also argued that the CO was very judicious and fair in his assessment and did not permit this summary punishment to colour his assessment of the appellant. Therefore, in the ACR initiated by the CO on 11.11.2005, he has given him an Average Report and recommended him for promotion.

10. With regard to the penal deduction of Rs.21,338.20, counsel for the respondents stated that such Annual Stock Taking Board is not required to be done every year when the unit is in a field/active field area and, therefore, when the unit returned to a peace station in 2007, the Annual Stock Taking Board was held in June 2007, wherein deficiency in the mess property were ascertained. The appellant, realizing

his mistake, paid the entire amount without any representation.

11. Counsel for the respondents argued that from the time of the summary punishment in April 2005 till paying the fine for lost property in June 2007, the CO had, in a very transparent, judicious and correct manner, assessed the performance of the appellant. He had not permitted the summary punishment of April 2005 to colour his assessment of the appellant. However, he was constrained to issue a performance counselling on 28.9.2006 followed by the four point Average ACR in December 2006, which was communicated to the ratee on 23.6.2007. Therefore, there was no arbitrary action but a very considered, consistent and judicious assessment of the appellant. Also, the relevant rules for initiating and communicating an ACR/adverse remark had been complied with and the late communication of the

adverse remark did not, in any manner, affect the material facts of the case.

12. Keeping in view the above, we do not feel the necessity to interfere with the matter. The application is dismissed without any order as to costs.

A.K MATHUR
(Chairperson)

S.S DHILLON
(Member)

Pronounced in open Court
on 18th July 2011