

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
NEW DELHI
(Court No.2)**

**T.A NO. 596 of 2009
(WRIT PETITION (CIVIL) NO. 1155/2000)**

IN THE MATTER OF:

Sub. Major Satish Chander

.....APPLICANT

Through : Shri P.D.P. Deo, counsel for the applicant

Vs.

UNION OF INDIA AND OTHERS

...RESPONDENTS

Through: Dr. Ashwini Bhardwaj and Mr. Romil Pathak, counsels for the respondents

CORAM:

**HON'BLE MR. JUSTICE MANAK MOHTA, JUDICIAL MEMBER
HON'BLE LT. GEN. M.L. NAIDU, ADMINISTRATIVE MEMBER**

JUDGMENT

Date: 12.09.2011

1. The case was first filed in the Hon'ble High Court on 26.2.2000 and was subsequently transferred to the Armed Forces Tribunal on 05.12.2009.

2. The applicant vide this petition, has prayed for setting aside the Annual Confidential Report (ACR) for the period 1996-1997 initiated by the Lt. Col. Sunit Lala and reviewed by Air Cdr. B. Mukherjee. The applicant has also sought fresh consideration for promotion for honorary commission to the rank of Lieutenant based on his revised profile with consequential benefits.

3. Brief facts of the case are as follows. The applicant was enrolled on 14.01.1969 in Infantry (Rajputana Rifles). In due course, he was promoted to the rank of Subedar Major in 1996.

4. He was posted at PMO, DIPAC from 24.2.1996 to 5.2.2001. An ACR was initiated on the applicant covering the period 01.10.96 to 31.5.1997. During this period, Lt. Col. Sunit Lala was the Initiating Officer (IO) and Air Cdr. B. Mukherjee was the Reviewing Officer (RO). Both these officers had not given the applicant any counselling or warning. But on writing that report which the applicant came to know subsequently, they awarded him 'High Average' and 'Average' grading. The applicant has averred that throughout his career, the applicant has been receiving 'Outstanding' to 'Above Average' reports.

5. The individual preferred a statutory complaint on 22.2.99 which was disposed off as rejected by a non-speaking order on 10.9.99. The applicant also retired on 20.9.2000 as Subedar Major.

6. Ld. Counsel for the applicant argued that Lt. Col. Sunit Lala was not the Administrative Officer and therefore, technically incompetent to initiate the ACR. The applicant was working as Officer In-charge (Security) and also OIC of MT. It has submitted that since Lt. Col. Sunit Lala was appointed as administrative officer for a very short period as the regular administrative officer was posted out on 30.9.1996 and in April-May, 1996 another administrative officer came

on permanent posting, the applicant had not been able to serve under the said administrative officer for more than 90 days.

7. Ld. Counsel for the applicant argued that technically Lt. Col. Sunit Lala could not have initiated the ACR and ACR should have been sent to the previous Initiating Officer who had been remained administrative officer for a longer period.

8. Ld. Counsel for the applicant further contended that the RO was influenced by the award of marks by the IO and thus, he got an 'Average Grading' from the RO.

9. Ld. Counsel for the applicant stated that the statutory complaint preferred by the applicant on 22.2.99 was disposed off without application of mind by the Competent Authority in a most mechanical manner by a non-speaking order on 10.9.99. He further argued that the applicant in his entire career was always graded as 'Outstanding' to 'High Average' and he has not got any grading level below 'Above Average'. Therefore, to say that suddenly his performance has gone down during 1996-1997 is inconceivable.

10. Ld. Counsel for the respondents stated that there are no disputes in the facts of the case. However, to say that the IO was technically not qualified to write the ACR is not correct. The period of absence of the IO from duties has not been for more than 16 days in between 01 October 1996 to 31 May 97 and this period of absence

does not constitute his ineligibility for writing the ACR. The applicant in his additional affidavit has placed on record, leave of absence for 12 days from 14.10.96 to 25.10.96 and by discounting that period of absence also, the applicant still makes more than 90 days under the IO, Lt. Col. Sunit Lala.

11. Ld. Counsel for the respondents also stated that in para 5(c) of the statutory complaint dated 22.2.99 preferred by the applicant, the applicant has stated as under:-

“During my entire service of 30 years I have not been given any verbal/written warning. I have completed 30 years of service unblemished. My administrative officer has told me that he is not happy with my work and even he told that you have been correctly graded in the ACR as you are just Average JCO. I am very surprise to hear such wording of my senior officer under whom I have served. In case I have been graded average grading in my ACR for the year 1997. This would be an aberration in my career and record. I will be retiring from the service w.e.f. 28 Feb. 2000 and if actually I have been given average grading in the said ACR I shall not be considered for honorary commission on the occasion of Independence Day 1999 and Republic Day 2000.”

12. Ld. Counsel for the respondent also stated that the entire service record of the applicant was perused by the Competent Authority and his statutory complaint was duly disposed off as rejected on 10.9.1999.

13. Having heard both the parties at length and examined the documents in original especially the ACRs of the applicant, we observe that till 1996 the applicant was consistently graded 'outstanding' or 'above average'. It is obvious that this was the first time in his entire career profile he was graded 'high average' and 'average'. Therefore, when the representation was made, the Competent Authority before rejecting the case should have compared his grading with the past profile and come to the conclusion that the grading awarded in ACR of 1996-97 was not in consonance with his overall profile. In fact, the down grading was for more than two steps compared to the last two ACRs of 1994-95 and 1995-96 and thus, the competent authority should have intervened accordingly.

14. We have also examined the subsequent ACRs that the applicant had obtained in the same organisation of DIPAC in the same position under different IO and same RO, and next year under the different IO and same RO, in which he has been graded 'Above Average' by both the IO and the same RO.

15. In view of the above, it is clearly seen that the report initiated by the IO on 31 May 1997 was not commensurate with the profile of the applicant. Besides, in 1996-97 the applicant was governed by the Army Order AO-5/90 in which though it was not mandatory for the IO or the RO to inform the JCO of the 'Average Grading' which had no adverse remarks in the pen picture, as was the case in the case of

applicant, a letter of 30.9.1997 issued by the Army HQ had laid down instructions as under:-

“It is for the information of all concerned that Average Grading awarded to a JCO/NCO has an adverse affect on the career prospects, hence to know the shortcoming, it is mandatory on the part of IO/RO to elaborate the same and communicate to the concerned JCO/NCO. In this connection Army HQ Letter No.A/20178/Org.8 (I of R)(a) dated 21 Oct 93 and Para 6(b) of Appx to AO 5/90 refers.”

16. This letter clearly clarifies that ‘Average Grading’ awarded to a JCO or an NCO which is likely to have an adverse affect on his career should have been counselled/warned and should be shown to the individual. Instructions were apparently passed vide a letter dated 21 Oct. 1993. However, this was not done in this case.

17. In view of the foregoing, we feel that the applicant was not given due counselling or warning to improve himself despite the instructions issued by the Army HQ vide their letter of 21 Oct. 1993 and therefore, this ACR covering the period 01.10.96 to 31.5.1997 needs to be set aside.

18. In view of the above, we allowed the application and direct that the ACR pertaining to the period 1996-1997 of the applicant be set aside. All the consequential benefits in terms of re-consideration for promotion to the rank of Hony. Lieutenant with the revised profile will follow.

19. The above exercise may be completed within 180 days of the issue of this order. In case of success, he will be entitled for financial benefits of that rank. The application is allowed. No order as to costs.

(M.L. NAIDU)
(Administrative Member)

(MANAK MOHTA)
(Judicial Member)

Announced in the open Court
on this 12 day of September, 2011.