

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
NEW DELHI.

O.A.No.155 of 2011

Gp Capt TM Rao ...Petitioner

Versus

Union of India & Ors. ...Respondent

For the Petitioner : Shri S.M.Dalal, Advocate

For the Respondents: Shri Ajai Bhalla, Advocate for R-1 to 3

C O R A M:

HON'BLE MR. JUSTICE A.K.MATHUR, CHAIRPERSON

HON'BLE LT.GEN. S.S.DHILLON, MEMBER (A)

JUDGMENT

06.01.2012

BY CHAIRPERSON:

1. Petitioner by this writ petition has prayed that Appraisal Reports of the applicant for a period from September 1999 to 2008 may be called for and the moderation effected by the Principal Staff Officer(PSO) in the ACRs from October, 2001 to 2007 be quashed and the original

appraisal report may be restored and his merit in Promotion Board be re-fixed and he be promoted to the rank of Air Commodore alongwith consequential benefits. He also prayed that para 17 of AFO 50/97 may be declared as arbitrary. He has also prayed that order issued on 16.06.2011 may be declared arbitrary.

2. Petitioner was commissioned in the Indian Air force on 26.6.1978 in AE (L) Branch as a Pilot Officer and over passage of time, because of his good performance, was promoted to the rank of Flt. Lt and Sqn Ldr in 1984 and 1988 respectively. He was selected for the rank of Wg Cdr in 1996. After his selection as Wg Cdr he was sent as the Director, Air Staff (Inspection) which is one of the most important Directorates of Indian Air Force which conducts inspection of all units of IAF for their combat worthiness round the year. Applicant remained in that Directorate from September 1996 to 2000 as an Inspector and maintenance Team Leader. In December, 2000, the applicant was especially selected by the DRDO P Staff (Posting Section) of IAF to be posted to DRDL as

a Project Manager for development of Trishul Missiles in the Integrated Missile Development Programme. Trishul Missile is one of the indigenously developed ground to air missile along with four other missiles Viz. Prithvi, Akash, Agni & Nag. The programme to develop Trishul Missile was lying defunct for two decades and petitioner by dint of his hard work and devotion to duty was able to develop Trishul Missile (Army version), which could hit a moving target successfully, in a short span of two and half years.

3. In July, 2003, the applicant was transferred to AF Station, Gorakhpur. But on account of the intervention of the then DCAS, he was retained in DRDL so as to develop IAF version of Trishul. The applicant was allowed, on account of the request made by the DCAS, to continue in DRDL upto December, 2005. It is alleged that from 26.12.2002 to 02.10.2005, applicant earned high average report between 8.4 to 8.7 in the scale of 9 as told to him by SRO while IO/RO had given him close to 9. Then on account of downward moderation carried

out at Air HQ, the applicant was overlooked for promotion to Gp. Captain twice i.e. in the year 2002 and 2003 and could make it to the rank of Gp Capt (Select) in the third Board in 2004, that too after the intervention of then DCAS and accordingly he was promoted to the rank of Gp. Captain.

4. The petitioner didn't know about downgrading of ACR, but subsequently on information from Air Marshal Raghu Rajan he came to know how the downgradation has been done. Thereafter applicant was posted in October, 2005 as a Director to perform Commanding Officer role at Army HQs Dte. of Signal Intelligence having six units/sub units in the Eastern Zone. He also pointed out that average appraisal report raised for these two years stay as Director, Dte. of Signal Intelligence were above 8.7 marks as told to him by staff officer of IOs. Then he was sent for Higher Commander's Course at Mhow in July 2007 for a period of nine months. Thereafter, petitioner was posted to Air HQ's in the Dte. of Aircraft Accident Board Member (AAIB) in April, 2008, which also forms

part of DASI. Thereafter he was posted to Dte. Of Telecommunications and in May, 2008 the Applicant was posted as Director, Dte. of Electronic Warfare. In July, 2008 the applicant was also given charge of Dte. Of MATCAL (Mobile Air Transportable Calibration Laboratory). He has been working independently as Director, Dte. of Ground Electronics since Sept. 2009. Petitioner was considered for promotion to the rank of Air Cmde in March, 2009 and was overlooked. Then he filed a complaint against non-promotion which was rejected. Then he filed a statutory complaint which was also rejected on 23.1.2010 without any justification. According to petitioner, if his last 10 years of ACR was seen in the scale of 9 it comes to 8.4, and by virtue of these ACRs petitioner should have made it to the rank of Air Cmde. It is his misfortune that he could not. Then he approached Air Marshal K.G.Mathew who was convinced that injustice has been done and he assured him to forward his complaint to the Ministry of Defence. It is alleged that petitioner was unaware of moderation

and his grievance is that his ACR which was 8.4 was downgraded to 7.3 without assigning and as such was against the principle of natural justice. Hence petitioner has filed this petition challenging the so called moderation and non-selection to the post of Air Commodore.

5. Respondent has filed their reply and contested the matter and submitted that the case of petitioner was considered periodically but since he could not make it therefore he was not promoted. It is pointed out that AR for the officer for the period from 2000 to 2007 were subjected to mandatory review at the Air HQ, which was as per the policy of the performance appraisal. It is also pointed out that appraisal of methodology of Tri-Service or civil organisations is different from that of the IAF. The officers occupying these posts may get assessments disproportionate to their level of work and calibre, which manifests in the IAF Officers on deputation to such organisations being assessed on a different scale. Even within the organisation, there are many posts that are

low risk/high visibility and vice-versa. Further occasionally, an officer is faced with dilemma /pressures on the personal front that may hamper his output on the professional front for a short while. If such event is left un-moderated, may lead to long term effects in an officer's career. There may also be cases wherein personal biases on the part of reporting officers come into play when the appraisal is conducted. The process of variation review in Air HQ has been devised to rectify all the aforesaid errors and is carried out when a large upwards or downwards variation is noticed between the numerical grading awarded when compared to the officer's AR average for the preceding five years. Norms for mandatory review of ARs exist vide Para 17 of AFO 50/97 and Paras 18, 48 and 49 of AFO 2/2008. The relevant paragraph 17 of AFO 50/97 and Paras 18, 48 and 49 of AFO 2/2008 are produced as under:

Para-17

The IO for which appraisee will normally be the immediate senior officer in the chain of command who has been directly supervising/overseeing the work of the appraisee. In most cases he will be unit/section commander. However, for certain assignments the appraisal channel is decided on operational

requirements. Accordingly, the appraisal channel as given in Appendix 'D' to this order is to strictly followed. Under no circumstances, will an officer junior to the appraisee raise/comment or review the reports.

Para-18 of AFO-2/2008

The RO will be the officer senior to the IO and higher in the chain of Command. The SRO will be the officer senior to the RO and higher in the chain of Command. Grading/Av Grading given by the SRO or any other reviewing officer last reviewing the AR would be taken for computation of overall grading of an AR. If the remarks of the reporting/ reviewing officers are at variance, then the remarks annotated by the last reporting/ reviewing officer would be considered as the final remarks. The final marks awarded to an appraisee, would be viewed in the light of his previous performance. Any anomalies in assessment would be reviewed at Air HQ. The review will be done by an officer who is of the same or higher rank than the last reviewing officer.

Para 48 of AFO-2/2008

Mandatory review of all ARs must be carried out at Air HQs/ Command HQs. The ARs of all officers upto the rank of Gp Capt (TS) should be reviewed by the senior most officer working under the respective PSO at Command HQ. These reviewing officers should be delegated by name by the AOC-in-C of respective Command in writing. Letter authorising these officers for review at Command level should be sent to DPO-4 at Air HQs. The ARs of all officers of the rank of Gp Capt (Select) and above should be reviewed by AOC-in-C at Command HQ and by PSOs at Air HQs for units directly under the Air HQ. This is not applicable for re-employed officers.

Para 49 of AFO-2/2008

Whenever the RO /SRO are posted at the Command HQ/Air HQ, their review would be construed as Command HQ/Air HQ review. The reviewing Officers at Air HQs / Command HQ should check correctness of the AR as mentioned in this AFO and should also include the following in their review

6. So far as informing the petitioner is concerned it is pointed out that there are no rules or regulations to

inform the officer about upward or downward moderation of the AR. This policy has been followed in the Air Force. It is also pointed out that so far as meritorious performance of the petitioner is concerned, his performance in the DRDO was taken into consideration along with his pen picture and his AR for period 2001 to 2007 were reviewed with reference to extant policy. It is pointed out that he has been rated very high by the reporting officer who was a civilian Scientist, apparently unaware of the normal scale of grading in Indian Air Force. On repatriation to the Air Force the officer's rating in the AR of 2008 and 2009 earned in Air HQs which was appreciable differently than the AR received by the petitioner while working in the Civilian department. It is pointed out that a comparative merit of the officer was assessed by the Promotion Board in 2/2002 and 2/2003 for the rank to Gp. Captain when his first of his two impugned ACRs were duly considered and he was successfully empanelled by PB-2 of 2004 when three ARs out of the impugned ARs were

considered. He did not represent about loss of seniority at that time. It is also pointed out that the impugned ARs cannot be construed as the sole reason for his not making it to the rank of Gp. Captain in the first two attempts and now missing promotion to the rank of Air Cmde by PB-1/2009 and PB-1/2010. It is pointed out that there are large number of other officers above and below the officer in the merit list of Pb-2/2002, PB-2/2003, PB-1/2009 and PB-1/2010 whose ARs would have been similarly subjected to the mandatory review as per policy. The officer's merit position in the aforesaid promotion boards is the true reflection of his performance when compared to other officers in his peer group and no injustice has been done to him. He lost out for promotion based on comparative merit.

7. In this connection they also pointed out the decision of the AFT bench, New Delhi in case of Gpt Capt. VT Patnaik Vs. UOI (OA No.600 of 2010) delivered on 4th of February, 2011.

8. We have heard learned counsel for the parties and perused the record. Though the petitioner in his petition has challenged Para-17 of the AFO 50/97, we don't think that the policy suffers from any vice of Article 14 or 16 of the Constitution. This is a policy which has been laid down that officers AR will be reviewed when they come back by Senior Officer of Air Force as per the procedure laid down. Some times when officers serve outside the Air Force they tend to get a better ACRs as those civilian officers are not very well aware of the norms of Air Force, therefore, when they come back their ACR is reviewed with their past performance and then assessment is made.

9. In this connection our attention was invited to Air HQ /C 98822/1/PO-5 (Standard Procedure for Grading and Review of ARs Wg Commanders and Below). The introduction of the same reads as under:

1. Para 11 of Internal Directive No.DPO/P04/AR/1/2000 dated 27 October, 2000 is hereby amended as follows:-

"In case of requirement for a 'Variation Review' at Air HQ, the reviewing authority will be as follows:

- (a) ACAS (PO) ACAS (PO) will review all ARs which are last reviewed by an AVM or below and are graded less than 7.5 in Professional and/or Behavioural Factors.
- (b) AOP. All ARs which are last reviewed by,
- (i) Air Mshls
 - (ii) Branch-Heads at Comd HQs or ACsAS and are graded 7.5 or more in Professional and/or behavioural Factors
 - (iii) AOsC-in-C or PSOs at Air HQ who have given only nil remarks and no grading
 - (iv) ARs for review with a downward variation where AOsC-in-C or PSOs at Air HQ have either endorsed the assessment of previous RO or have given their own grading.
- (c) CAS ARs for review with an upward variation where AOsC-in-C or PSOs at Air HQ have either endorsed the assessment of previous RO or have given their own grading

(A Bhavnan)
AVM
ACVAS (PO)

JDPO-4

JDPO-2

10. According to this standard procedure if it is found that there is a variation in the ACRs of the officer, sometimes one stands benefitted and sometimes one stands to lose. It is for the betterment of the Services. Sometimes people may get a higher rating while serving in the Air Force itself and if it is found to be inflated, then it has to be moderated by looking into Officer's last three years or five years ARs as per norms. So far as persons working outside the Air

Force there also their ratings are moderated according to the relevant provisions.

11. Para -15 of the Air Force order No.50/97 issued on 12.12.1997 was amended on 13.09.2004 Para-15 highlights this aspect of the matter and is produced as under:

"The RO will be the officer senior to the IO and higher in the chain of Command. The SRO will be the officer senior to the RO and higher in the chain of Command. Grading / AV Grading given by the SRO or any other reviewing officer last reviewing the AR would be taken for computation of overall grading of an AR. If the remarks of the reporting/reviewing officers are at variance, then the remarks annotated by the last reporting/reviewing officer would be considered as the final remarks."

12. Therefore if we look at it from the point of view of objectivity, we don't find that para-17 in any way, or para -15, are violative of Article 14 and 16 of the constitution. These are the normal norms which have been adopted for assessing the ARs of the persons who are working in the Air Force or working outside the Air Force. Therefore, so far as the norms laid down are concerned we don't find any arbitrariness or illegality. These norms have been framed by the Air Force and they are consistently

followed for all ranks. Therefore there is no invalidity of these norms. It is true that sometimes one may get a very inflated report because of lack of bonafide consideration, while others may get a very poor report. Therefore, in order to be fair to all, this system has been evolved so that the officers may not stand to suffer and it creates a level platform. As such so far as the procedure which has been adopted by them is concerned it doesn't suffers from any invalidity.

13. The next issue that comes up for consideration is whether petitioner's ACR earned while working in the DRDO, have been properly evaluated or not. We have gone through those ACRs in which DRDO has found the petitioner exceptionally good and made a significant contribution in developing the Trishul missiles. We cannot sit over these ACRs given by the persons under whom petitioner was working i.e. I.O., RO or SRO but reading of these reports and pen picture given by them makes out a case that the

contribution of the petitioner in the development in the missiles project has been of great value. It is true that it is for the competent authority who have been entrusted the job of reviewing the ACRs for them to assess how much weightage be given; but, what we find is that they have employed the same yardstick i.e. persons before going out of the Air Force & coming back his ACR will be compared with his last three years ACR. This stock standard may sometime cause injustice. When the petitioner came back after serving in the DRDO from 2000 to 2005, they applied the same yardstick and after taking into consideration 3 years previous ACRs of Air Force, they have moderated his ACRs to 7.33 onwards. This is a common yardstick which they apply for all others. But when a person goes to a very specific project and his achievement and contribution is of very high quality then the same yardstick cannot be employed so as to beat the person down to his past performance in the Air Force. We can understand

that a person is already serving in the Air Force and some times he gets 8 marks and other times he gets only 6 marks, then in such a variation the respondent can assess that when he has been rated for the last three years with 8 or 7 marks then suddenly how come his performance is dropped to 6 marks. The job requirement is that of the air force but where the job requirement is outside the Air Force and of a different nature, then in that case adopting the same yardstick will be hazardous. This will not be a correct assessment of the incumbent and this will have a demoralising and discouraging effect that even when a person in a specialised subject of Trishul development has done a high quality contribution and his contribution is sought to be judged from the yardstick of his past performance in the Air Force and then reduce his assessment to the same level as before going to the DRDO will not be fair, reasonable or rationale.

14. It has been pointed out to us that all his ACRs and pen picture of the petitioner were considered by the reviewing authority and they have taken into consideration the pen picture given by the Director of DRDO and his contribution made in the development of missiles and after considering all these factors he has been assessed with reference to his previous three years ACRS i.e. 7.33 and accordingly reduced his ACRs from 8.45 or 8.56 to 7.33 only. This in our opinion was not correct. It appears that proper evaluation of his performance rendered by him in the development of Trishul at DRDO seems not to have been given due credit. After going through the ACRs and the pen picture of the petitioner by the IO, RO or SRO of the DRDO we feel that proper credit does not seem to have been given to the petitioner achievement. We fail to appreciate the review undertaken by the Air Force by applying the same standard that since in Air Force he had last three years ACR at 7.33, therefore, his performance in

DRDO may be brought down to 7.33. This is not a correct assessment of his performance. We cannot substitute the view of reviewing authority but we can certainly hold that assessment of the petitioner's performance in the DRDO vis-a-vis the performance in the Air force has not been reasonably and rationally evaluated by the respondent. Therefore, we are of the opinion that the matter is remitted back to the authorities to give a proper consideration to the ACRs received by the petitioner for his achievements in the DRDO. These may be assessed objectively and not by stock standard, that since his prior to joining DRDO he got 7.33 in last ACRs then they reduced all the ACRs to 7.33. This is not, in our opinion, a rationale approach. Hence, we allow the petition in part and remit the matter back to the respondent to give due weightage to the ACRs received of the petitioner in DRDO and thereafter review his performance for the aforesaid period. In case it is moderated, then the case of the petitioner

may be considered a fresh for promotion to the post of Air Commodore by convening a special Promotion Board.

15. Petition is allowed in part and no order as to costs.

[Justice A.K. Mathur]
Chairperson

(Lt. Gen. SS Dhillon]
Member (A)

New Delhi
6th January, 2012