

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

8.

O.A. No.17/2012

Col Deepak Bahadur

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

Present: Mr. Anil Srivastava, counsel for the petitioner
Mr. Anil Gautam, counsel for the respondents 1 to 3
Mr. Ankur Chibber counsel for respondent No.6
None for respondents 4,5 and 7

CORAM:

HON'BLE MR. JUSTICE N.P.GUPTA, JUDICIAL MEMBER.

HON'BLE LT. GEN. M.L. NAIDU, ADMINISTRATIVE MEMBER.

ORDER

24.09.2012

1. This OA No.17/2012 was filed on 10.01.2012. Vide this petition, the petitioner has sought directions for respondents to remove the assessment of IO and ROs in the CRs for the years 2006, 2007 and 2008 on the grounds of non-objectivity and to consider the petitioner afresh for promotion as per rules consequent to the new profile.
2. The applicant was commissioned on 09.03.1981 in the Army Medical Corps. He was promoted to the rank of Colonel in December 2005. Thereafter, he was posted as CO, Military Hospital, National Defence Academy (NDA), Khadakwasla from 28.05.2006 to 04.10.2008.
3. On 24.11.2009, his first Promotion Board for Colonel to Brigadier was held in which he was not empanelled. On 05.02.2010, he preferred a statutory complaint. He was granted partial relief in the ACRs of 2006 and 2007 on

27.10.2010. Thereafter, a Review Promotion Board was held on 12.11.2010, in which again he was not empanelled.

4. On 28.01.2011, the petitioner preferred a fresh statutory complaint against non-empanelment to the rank of Brigadier. On 05.05.2011, his statutory complaint was rejected. He was screened by Review Promotion Board. On 15.11.2011 he was considered by the Final Review Promotion Board, in which he was finally superseded.

5. Learned counsel for the petitioner argued that while he was posted as CO, NDA, Khadakwasla, his IO was located at Pune, while his RO was located at Mumbai. His SRO was co-located with him at Khadakwasla. He further argued that the IO and the RO never got an opportunity to interact with him or formally visit him, as a result he apprehends that the assessment may not have been objective.

6. Learned counsel for the petitioner drew our attention to Army Order SAO 8/S/91 which lays down that the aim of confidential reports is to have an objective assessment of an officer's professional and personal qualities, his comprehension, employability and his potential as observed during the period covered by the period.

7. Learned counsel for the petitioner further asserted that the same Army Order at para 71 states that *"In accordance with the aim as defined at para 5 above the assessment contained in a CR will be restricted strictly to the performance and events during the period covered by the report."*

8. Learned counsel for the petitioner further argued that in the ACR of 2006, the SRO endorsed report after 8 months. He further asserted that in 2007, the IO did not visit him even once. While in 2008, the RO did not visit him at all. The petitioner had projected this aspect in his statutory complaint arguing that his assessment was done in a routine manner and there were several inconsistencies and therefore, the report was not objective.

9. Learned counsel for the petitioner further submitted that the technical reports were better than the administrative reports. This in itself proves that the report for IO and RO which only cover the administrative report were not objective.

10. Learned counsel for the petitioner drew our attention to Annexure R-1 i.e. affidavit submitted by respondent No.6 who was the IO in 2007 and 2008. In that, respondent No.6 has stated that *"My assessment possibly could have been more objective if it was based on adequate knowledge and frequent interaction. My intention of assessing the petitioner was never to halt his career progression. In fact, assessment about further promotion has been so recorded. A figurative assessment of 8 point is considered good for all arms and services. However, in the Army Medical Corps, stiff competition appears to have placed anything less than 8.6 points in the reject criteria."*

11. In support of his contentions, learned counsel for the petitioner cited the judgment of Hon'ble High Court of Orissa in case of **WP(C) 3823 of 2006 in the matter of Colonel Narendra Kumar Vs Union of India and Others** wherein their Lordships have observed that *"the assessment of Mr. S.K.*

Dahiya without visiting to his place of work and without seeing the petitioner and without scrutinizing his work is not in consonance with the Army Order.”

12. Learned counsel for the respondents states that as a response to statutory complaint filed by the petitioner on 05.02.2010, his profile was examined and some aberrations were noticed. The same was expunged by the Competent Authority and thereafter the petitioner was put through a Review Promotion Board as a fresh case. Unfortunately, he did not make the grade despite the revised profile.

13. Learned counsel for the respondents further stated that the petitioner was considered by the following Boards for his promotion i.e., Fresh Promotion Board, Special Review (Fresh) Promotion Board and First Review and Final Review Promotion Boards but he was unable to make the grade.

14. Learned counsel for the respondents submitted the original record of the petitioner for scrutiny of the Bench.

15. Having heard both the parties at great length and having examined the documents placed before us in original, we have noted that there is no tangible drop, aberration or 'dip' in the profile of the petitioner in the ACRs of 2006, 2007 and 2008. We also noted that for 2007 and 2008, the IO is the same.

16. We have observed that where the 'dip' had occurred, the Competent Authority based on the statutory complaint of the petitioner dated 05.02.2010 have already expunged those qualities from the reports. The remainder qualities are in consonance with his overall profile, both past and present and therefore, there is no cause for us to interfere in the matter.

17. We have also examined the Promotion Board proceedings in respect of the petitioner. We have noted that in all the three Promotion Boards despite his revised profile after having expunged the 'dips' in the ACR of 2007 and 2008, the petitioner has not made the grade in the comparative merit list. Though, his overall profile has improved but it still does not bring him up in merit to be empanelled.

18. In view of the foregoing, we are of the opinion that there is no cause for intervention in the case. The petition is dismissed. No order as to cost.

M.L. NAIDU
(Member)

N.P. GUPTA
(Member)

Pronounced in the open Tribunal
New Delhi September 24th, 2012
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