

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

O.A. No. 231 of 2011

Col C S Sree Ramulu

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Mr. S.S. Pandey, Advocate.

For respondents: Ms. Anjana Gosain, Advocate.

CORAM:

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

HON'BLE LT. GEN. S.S.DHILLON, MEMBER.

JUDGMENT

13.03.2012

S.S. Dhillon, Member

1. The petitioner is aggrieved by his non empanelment for the rank of Brigadier and has sought removal of the assessment of the Senior Reviewing Officer in the impugned ACR for the period September, 2004 to May, 2005 as well as expunging complete confidential report for the period November, 2005 to August, 2006 and September, 2006 to January, 2007 in its entirety. He also seeks quashing the decision of the Government of India dated 02.12.2010, whereby his statutory complaint was rejected.

2. Petitioner was granted permanent commission in the Indian Army in the Infantry on 13.12.1980. While serving in the infantry from December, 1982 to March, 1987 he became a Permanent Low Medical Category and was transferred to the Army Ordnance Corps on 08.04.1987. By dint of his hard work and professionalism, he was promoted up to the rank of Colonel in May, 2002. On promotion to the rank of Col, petitioner was posted as Commandant 11 Field Ordnance Depot (FOD) from May, 2002 till May, 2005. Petitioner has

also highlighted the various achievements and distinctions attained by him over his approximately 20 years of service. Petitioner has enumerated the various assignments tenated by him including in the U.N. Mission in Angola.

3. In April, 2004 when the petitioner was commanding 11 FOD, there was an incident wherein one of the NCOs of the Depot was found illegally selling CSD items to unauthorized personnel. A Court of Inquiry was ordered to investigate into the circumstances and the petitioner was not found responsible for any improper act. Petitioner also pointed out that there were four rungs of functionaries supervising the CSM between him and the NCO who was punished for such illegal sale of items. There were the Canteen JCO, Canteen Officer, Administrative Officer and the Deputy Commandant. Petitioner stated that notwithstanding the fact that the Court of Inquiry had not held him blameworthy for any specific omission or commission, he was still given an adverse pen picture by the SRO in the ACR from September, 2004 to May, 2005.

4. Learned counsel for the petitioner urged that since the incident had taken place in April-May, 2004 and the Court of Inquiry was held in June, 2004, it was improper and illegal of SRO to reflect this event in the ACR for the period September, 2004 to May, 2005. He, therefore, sought that these adverse remarks which pertain to the previous reporting year, be set aside, being arbitrary and illegal. It was also argued that such adverse remarks were not communicated to the petitioner. This was in gross violation of the Army Order on the subject. The adverse remarks endorsed by the SRO are *“while the officer was technically proficient, administratively he was no go as there were a number of cases particularly in canteens run by the FOD wherein he*

failed to supervise and assert effective control leading to illegal sales and irregularities". Petitioner went on to argue that he was put through his First Promotion Board to the rank of Brigadier on 31.03.2008 with the adverse remarks of the ACR for the period September, 2004 to May, 2005, which had not been communicated to him. This was grossly illegal and it was on account of these adverse remarks that he was not empanelled. Petitioner further argued that after he received the warning letter dated 09.11.2004, he considered that the matter had reached finality. He had been warned to "avoid recurrence of such incidents", which he ensured and there was no further irregularities in the CSD during his tenure. Since he had complied with the instructions in the warning letter, there was no occasion for the SRO to reflect the incident in the pen picture of his ACR. Petitioner filed statutory complaint on 06.05.2008 and it was only after filing the statutory complaint that the respondents communicated the adverse remarks to him on 07.01.2009. However, his statutory complaint was rejected by the authorities on 15.05.2009.

5. Learned counsel also argued that the two ACRs for the period November, 2005 to August, 2006 and September, 2006 to January, 2007 also need to be set aside being totally arbitrary and initiated by an officer who was not entitled. During this period, petitioner was posted to the College of Materials Management as Faculty Commander and his Initiating Officer (IO) of the ACR should have been Deputy Commandant and Chief Instructor of the College. However since this post had fallen vacant, Brigadier S. Brahma who was also a Faculty Commander, like the petitioner, was authorized by the respondents to initiate the ACR. Petitioner and Brigadier S. Brahma were fellow colleagues and both were Faculty Commanders in the same

establishment, at the same appointment, wherein there were bound to be professional differences of opinion which would cloud the judgment of Brigadier S. Brahma resulting in him earning a poor ACR.

6. It was further argued that in accordance with AO 45/2001/MS, ACR is required to be initiated by the IO within 20 days of the due date of initiation. However, his ACR for the period November, 2005 to August, 2006 was initiated on 31.01.2007 i.e. after a gap of five months, while the ACR for the period September, 2006 to January, 2007 was initiated after 8 months of its due date. Learned counsel for the petitioner also drew attention to the policy letter of Army HQ dated 21.07.2004 wherein it clearly stipulates that *“delayed endorsement of CRs is also indicative of subjectivity of assessment”*. Therefore, in accordance with their own policy such delayed endorsement of ACR should be treated as subjective and should be set aside being technically invalid. Petitioner had put up a statutory complaint against his non empanelment for the rank of Brigadier on 02.07.2009 which was rejected on 02.12.2010 after a gap of 18 months. Learned counsel for the petitioner argued that the adverse pen picture in the ACR for the period September, 2004 to May, 2005 and the technically invalid ACR for the period November, 2005 to August, 2006 and September, 2006 to January, 2007 had been responsible for the petitioner being rejected in his promotion board and, therefore, sought redress on these three aspects.

7. Respondents have filed their reply and have contested the arguments put forth by the petitioner and have clarified that although the canteen incident pertains to the period April-May, 2004, the Court of Inquiry was initiated in

June, 2004 and finalized in September, 2004, therefore, it fell within the ACR period for the ACR of September, 2004 to May, 2005 and the SRO was well within his rights to take cognizance of the petitioner's performance and endorse the adverse remarks in the CR for that period.

8. Learned counsel for the respondents argued that a warning had been given to the petitioner for the canteen incident vide HQ 10 Corps Letter of 09.11.2004 which reads as under;

1. *While perusing the C of I convened by HQ 81 Sub Area vide Convening Order No. 0275/Gen/Q4 dt 09 Jul 04 to investigate the illegal sale of items from 11 FOD Unit Run Canteen, GOC 10 Corps, has found that you as Commandant, 11 FOD, have failed to supervise and assert effective control on the Unit Run Canteen leading to non detection of the infractions of SOP, which resulted in illegal sale of canteen items in civil market.*
2. *You need to be more circumspect in performance of duties as Commandant, 11 FOD.*
3. *You are hereby warned to take immediate action towards ensuring that the highest standard of discipline are enforced in the unit through effective command and control to avoid recurrence of such incidents.*

9. The Court of Inquiry had found fault in quite a few functionaries of the FOD and, therefore, it was within the purview of the SRO to draw necessary inference from such irregularities and he was fully entitled to endorse it in the pen picture. Learned counsel for the respondents made a specific assertion that although the adverse pen picture have been communicated late to the petitioner, however, it had not caused the petitioner any bias or prejudice in the First Promotion Board held on 31.03.2008, since till holding of the

promotion board, adverse remarks had not been reflected in the Master Data Sheet given to the Selection Board Members. Therefore, while admitting that the adverse pen picture had been communicated late to the petitioner, it was categorically emphasized that this so referred adverse pen picture had not been placed before the Selection Committee and, therefore, it could not have caused him any prejudice and certainly could not have been responsible for his non empanelment to the rank of Brigadier.

10. We have perused the record of the Selection Board and we find that in the Master Data Sheet which is placed before the Selection Committee members, for the Promotion Board held on 31.03.2008, the so-called adverse pen picture is not reflected. After the adverse remarks were communicated to the petitioner on 07.01.2009, the adverse remarks were reflected in the Master Data Sheet for the Review Promotion Board held in 2011 where adverse remarks under "*administrative ability*" have been reflected.

11. Learned counsel for the respondents indicated that for Brigadier S. Brahma to initiate the ACR for the period November, 2005 to August, 2006, necessary sanction of the SRO had to be obtained in terms of MS Policy and such sanction was only received from the SRO on 31.12.2006 and ACR was initiated on 31.01.2007 i.e. within a period of 30 days of receipt of the sanction. Referring to second ACR for the period September, 2006 to January, 2007, respondents admitted that while the second ACR was initiated after 8 months, such delay would not render the ACR as technically invalid. Learned counsel for the respondents drew our attention to an earlier judgment of the Hon'ble Supreme Court of the case of **Maj Gen IPS Dewan Vs. Union of India 1995(3) SCC 383**, wherein their lordships had held any

representation against adverse remarks which is ultimately rejected and there being no allegation of mala fides against the authority does not merit any interference.

12. We have called for the record of both these ACRs i.e. November, 2005 to August, 2006 and September, 2006 to May, 2007 and have perused the same. Contrary to the apprehension of the petitioner, both these reports earned by him are graded "Above Average" and, therefore, his apprehensions are misplaced. After having perused the record including the three ACRs impugned by the petitioner, we are satisfied that no injustice has been done to the petitioner as alleged by him and accordingly do not find any merit in the petition. Petitioner was not empanelled for promotion to the rank of Brigadier on account of his over all profile and comparative merit and does not warrant any interference by us.

13. Accordingly, the petition is dismissed. No order as to costs.

**A.K. MATHUR
(Chairperson)**

**S.S. DHILLON
(Member)**

**New Delhi
March 13, 2012
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