

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

4.

O.A. No.338 of 2010

Lt. Col. V.R. Ballewar

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

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

For respondents: Sh. Ankur Chhibber, Advocate

CORAM:

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

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

ORDER

05.10.2012

1. Petitioner by this petition has prayed that the ACR covering the period 17th July 1997 to 28th March 1998 be set aside being illegal, invalid, subjective, inconsistent, biased and prejudiced. He has further prayed that rejection of his representation by the communication dated 21st May 2008 may also be set aside. Lastly, he has prayed that his case may be reconsidered for promotion by a Special Selection Board for promotion from Lt. Col. to Col.

2. Petitioner was commissioned in Indian Army in RVC on 8th September 1986 and during the course of service he became Lt. Col. His case was considered for the post of Col. in 2006 but he could not make it and, therefore, he filed a non-statutory complaint on 7th July 2006 which was rejected. Then again he filed a statutory complaint on 24th August 2007 which was rejected on 21st May 2008. Then during 2007-09 second and third lok was given for his promotion from Lt.Col. to Col. but he could not make it. He again made a non-statutory complaint on 10th May

2009 which was rejected on 7th November 2009. Hence, the Petitioner has filed the present petition seeking aforesaid reliefs. He has also impleaded Respondents 3 and 4 i.e. the Initiating Officer Lt.Col. G.S. Mishra (Retd.) and RO Col. Viresh Kumar (Retd) as party respondent. They have also filed their reply and denied the allegations.

3. The grievance of the Petitioner is that the IO did not write his ACR in time. It is also alleged that in 1987 he was posted at RVC Centre & School, Meerut as an Instructor. On 28th March 1998, Lt. Col. G.C. Mishra got posted out and the Petitioner thus became entitled to initiation of an ACR covering the period from 17th July 1997 till 28th March 1998. He submitted his ACR to IO for initiation but the IO did not initiate the same while being in Station before moving out on posting as required in terms of Special Army Order 3/S/89. The IO did not initiate the ACR for next six months and kept it with him and ultimately on 30th September 1998 he initiated the ACR which otherwise was due on 28th March 1998, only after moving out to Lucknow on permanent posting. It is stated that ACR, as per policy, is required to be initiated within 15 days of submission and especially when an officer is moving out on posting, the ACR is required to be intimated and communicated to the officer concerned before the officer moves out on posting. It is also stated that there was malafide and bias of the IO in rendering a lukewarm assessment with number of '7s' which is evident. He submitted that the IO was not very favourably disposed towards him and he has also submitted that on 10th October 1998 when he received the extract of ACR, only para 18 of page 11 of the ACR was found enclosed and did not contain pages 7 and 10 of the ACR. He has also submitted that he wrote a letter to the IO requesting for the extracts of pages 7 and 10 of the ACR with copy

endorsed to Col. Viresh Kumar the then RO. The IO did not respond to the request of the Petitioner and extracts of pages 7 and 10 were not sent to him. He sent a reminder also. Instead of sending these pages to him, the IO dispatched ACR to RO Col. Viresh Kumar. It is also alleged that the extracts were never communicated to him till it was forwarded by MS Branch on 21st January 2008 after ten years when the Petitioner raised the issue by way of a statutory complaint. He has also made a grievance against Col. Viresh Kumar who was RO as Deputy Commandant, RVC Centre & College was not cordially disposed towards the then Commandant Brig B.M. Talwar and he was directly being called by Commandant Talwar and, therefore, Col. Viresh Kumar was annoyed with him. Since he was annoyed with him he must have also given him proper grading. Hence, he made an allegation against IO and RO both and on that ground he has sought the expunging of the ACR for the period 1997-98.

4. A reply has been filed by the Respondents and the Respondents have contested the position and submitted that assessment has been given rightly to the Petitioner and there is no illegality whatsoever. A reply has been filed by Respondent No.3 Col. G.C. Mishra who was the IO and in his reply he has pointed out that he has written the ACR of the Petitioner for the period from 17th July 1997 to 28th March 1998 and said that he has strictly followed the Army Order on the subject. He has said that the Petitioner forwarded the ACR to him on 6th June 1998 which was received by him on 26th July 1998 and the Petitioner was required to submit a confidential report on his posting out in terms of para 87 of the SAO 3/S/89 but he did not do so. Therefore, the delay in endorsement is not on account of him but it is on account of the Petitioner. Respondent No. 4 Col. Viresh Kumar has also

contested the matter and also denied the allegations of the Petitioner. Both the Respondents have filed their reply and denied the allegations that there was any malafide or ill will feeling towards the Petitioner.

5. The original record has been summoned by us and we have perused the record. We have seen the figurative assessment given by Col. G.C. Mishra on all the qualities which is 8 and 7. Large number of them are 8, and therefore the box grading has been given '8' and same has been confirmed by the RO and SRO also. Therefore the impression of the Petitioner that they might have given him poor figurative assessment is misplaced because of the fact that the pen picture has been given '8'. It belies the apprehension of the Petitioner that they might have given a figurative assessment of 7. Had the figurative assessment given '7' then the box grading would not have been '8'.

6. We have checked up with the original record and we find that there are '7' also by IO and RO but large number of them are '8'. Therefore, they have given him 8 marking in the pen picture. Therefore, the allegation that Respondents being malafidely motivated, does not appear to the reason.

7. Learned counsel for the Respondents has raised an objection that there was a delay in challenging the ACR for 1997-98. That is true there is a delay. Normally, when a person does not make to the selection then in ordinary course of nature he is bound to have reasons that some ACRs might have been spoiled by some of the persons and, therefore, in such a situation the delay is bound to occur. The delay in the present case is not as that fatal as we have examined the matter on merit also.

There is nothing which turns on the question of delay. However, we do not find any merit in the petition and same is dismissed with no order as to costs.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
October 05, 2012
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