

**THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
NEW DELHI
(Court No.1)**

O.A NO. 73 of 2011

IN THE MATTER OF:

Maj. Ashish Malik**APPLICANT**
Through : Mr. S.R. Kalkal, counsel for the applicant

Vs.

UNION OF INDIA AND OTHERS**RESPONDENTS**
Through: Mr. Ankur Chibber counsel for the respondents

CORAM:

HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON
HON'BLE LT. GEN. M.L. NAIDU, ADMINISTRATIVE MEMBER

JUDGMENT

Lt. Gen M.L. Naidu, Member

Date: 12.07.2012

1. This case was filed as OA No.73/2011 on 11.02.2011.
2. Vide this OA, the petitioner has sought the following reliefs:-
 - (i) Setting aside the ACR covering the period 2007-2008 with specific reference to the remarks of the Reviewing Officer (RO).
 - (ii) Setting aside the ACR covering the period of 2008-2009 being inconsistent and subjective, since it was initiated under the instructions of the RO.
 - (iii) Setting aside the ACR covering the period 2009-2010 since the petitioner had not served under the IO for 90 mandatory days for the IO to initiate the same.

(iv) Grant a stay order in respect of release order dated 20.12.2010 and other reliefs as deemed fit.

3. Brief facts of the case are that the applicant was commissioned in the regular Army as a Short Service Commission on 03.03.2001. At that point of time, as per the policy existing, he had opted for service condition of five years, extendable to another five years. This scheme was amended for initial service for 10 years and extendable to four years vide policy dated 20.07.2006. The applicant later opted for the latter policy.

4. On commissioning, the applicant was attached to 11th Bn of Bihar Regiment. On completion of this attachment, he was posted to various Ordinance units. Later he got posted at the Headquarters 11 Sector Rastriya Rifles (RR) as an Ordinance Officer.

5. Since the Petitioner had initially opted to be governed by the old policy with the initial mandatory period of 5 years, he was considered for grant of permanent commission/extension of service in 2006. The applicant was not selected for grant of permanent commission but was approved for extension of service for five years.

6. It has been stated that since the Petitioner had opted for new terms of engagement i.e., 10+4 years of service, he was considered for grant of permanent commission/extension in his 10th year of service. However, the applicant was not found fit for permanent commission as well as extension of service based on the review of

overall profile. Accordingly, a release order i.e., impugned order dated 20.12.2010 was issued for his release w.e.f. 02.03.2011 (A.N.).

7. Learned counsel for the applicant argued that the ACR covering the period October 2007 to February 2008, the RO i.e., Respondent No.3 had taken objections to the letter dated 19.09.2007 issued by the applicant after he had carried out Annual Technical Inspection of Ordinance Stores and Equipment on behalf of the Commander for the period 2006-2007. This report contains certain observations on the procedures being followed by the units against the Standard Operating Procedures. As such, the applicant was given a low rating in the ACR.

8. As regards the second ACR, which covers the period from February 2008 to July 2008, the IO was influenced by the RO and as such, he was given a low rating by both the IO and the RO.

9. As regards the ACR covering the period August 2008 to January 2009, learned counsel for the applicant argued that the ACR was technically incorrect because the applicant has not worked for 90 days under the IO. In support of his contentions, learned counsel for the applicant referred to the certificate issued by the applicant on 22.01.2011 which clearly shows that he had worked under the IO for only 12 days. As such, the learned counsel for the applicant argued that the said ACR should be expunged on technical grounds. He further argued that after due expunction, the applicant should be re-considered for grant of permanent commission/extension of service.

10. Learned counsel for the respondents drew our attention to the affidavit filed by respondent No.3. In that, respondent No.3 very clearly stated that performance of the Petitioner was not satisfactory. Therefore, the respondent had continuously advised him regarding his charter of duties and on method of working. He has also stated that the Annual Technical Inspection on behalf of the Commander was carried out by the Petitioner on 29.08.2007, while inspection report was issued on 19.09.2007, that too after continuous reminders and verbal counselling. Next year i.e., the inspection was carried out by the Petitioner on 21.05.2008, and the report was issued on 22.05.2008. This was because of repeated counselling by the Commander against delaying official work. He further states that the Petitioner was warned on several occasions for excessive drinking, inappropriate behaviour, unpunctuality for morning office, asking the Officers' Mess to serve breakfast to him in the office, inadequacy in his office work and his supervision of office work by his staff, and being overweight by 29 Kgs while making no efforts whatsoever to reduce weight, despite medical advice.

11. Learned counsel for the respondents produced the copy of the certificate for physical service in respect of the applicant under the IO as was submitted by the Petitioner himself alongwith his ACR form on 28.01.2009. The learned counsel argued that apparently, the certificate produced by the Petitioner in the OA dated 22.01.2011 is an after-thought and in any case can not withstand technical scrutiny. In

this certificate dated 28.01.2009, the applicant very clearly stated that he has served 90 days under the IO.

12. We have heard the learned counsel for the parties and have gone through the original record produced by the respondents. We observe that the applicant vide certificate dated 28.01.2009 had rendered details of physical service under the IO from 18.08.2008 to 13.01.2009 wherein he has stated that he has served for a total period of 90 days under the IO. While the certificate which was appended in the OA is of 22.01.2011 and cannot be submitted alongwith the ACR, therefore, the ACR pertaining to period August 2008 to January 2009 has been correctly initiated by the IO. It is also endorsed by the RO. Learned counsel for the Petitioner does not dispute signature on the certificate rendered by the Petitioner on 28.01.2009. Hence, there is no technical flaw in this ACR.

13. The technical inspection report of Ordinance Stores and Equipments for 2006-2007 dated 19.09.2007 does not contain anything against the RO. Therefore, the claim that this letter showed the Commander in bad light and thus, the RO was biased against the applicant is baseless. In the pen-picture column of ACR pertaining to period October 2007 to February 2008, the RO has made a specific mention as regards the verbal counselling and guidance given to the Petitioner. This was considered advisory by the MS Branch at the Army HQ and the applicant was made to sign on these remarks on

20.08.2009. Delay for communicating the advisory remarks has not been explained by the RO.

14. Similarly, in the ACR covering the period February 2008 to July 2008, the RO had endorsed that the Petitioner had shown tremendous improvement in his official work and has performed satisfactorily under supervision. Thus, it was not considered an adverse comment or guidance, which needs to be communicated to the ratee for improvement.

15. In view of the foregoing, we are of the opinion that since no malafide has been alleged against the RO, there is no reason to expunge the endorsement of the RO in the ACRs covering the period October 2007 to February 2008, February 2008 to July 2008 and August 2008 to January 2009. The reports, both by IO and the RO seem to be consistent and there are no aberrations in the reporting paras.

16. We have also perused the Master Data Sheet as also the results of the deliberations of the No.5 Selection Board which considered the applicant for permanent commission/extension of service. We find that there is no reason for us to interfere in the matter.

17. In view of the foregoing, the OA is hereby dismissed. No order as to costs.

M.L. NAIDU
(Member)

A.K. MATHUR
(CHAIRPERSON)