

**IN THE ARMED FORCES TRIBUNAL,  
PRINCIPAL BENCH  
NEW DELHI.**

TA No.186 of 2009  
WP (C) 9089/09)

Major Vipin Kumar

...Petitioner

Versus

Union of India & others

...Respondents

For the Petitioner : Applicant in person

For the Respondents: Mr. R. Balasubramanian, ASG &  
Mr. J.S.Yadav, Advocate

**C O R A M:**

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

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

**JUDGMENT**

19.10.2012

**By Chairperson**

1. This petition has been transferred from Hon'ble Delhi High Court on formation of this Tribunal.
2. Petitioner by this petition has prayed that directions may be issued to set aside the order of Ministry of Defence dated-10.7.2008

(Annex P-3) and also the Annual Confidential Report for the period 01.01.2006 to 31.12.2006 (Annex P-1) along with Censure Order date- 08.10.2007 (Annex P-11). He has also further prayed that the respondents may be directed to consider him for grant of permanent commission, after expunging the impugned Annual Confidential Report and the aforesaid censure order so as to meet the ends of justice. When this original petition was filed he was in service. He was given extension upto 3.3.2010 & he was detailed to MCTE, Mhow. But his service was terminated prematurely w.e.f. 3.12.2009. Thereafter, this petition was amended and petitioner made an amended prayer that complete ACR for the year 2006 be set aside and removed from the ACR dossier of the petitioner, and the order of censure dated 08.10.2008 passed by GOC 1 Corps be set aside and removed from his record of service, and to direct the reinstatement of the petitioner in service with all consequential benefits, including continuity of service and direct the respondents to hold a Special Selection Board to consider the petitioner for grant of permanent commission.

3. A reply was filed by the respondents as well as an also additional reply. Petitioner has filed number of affidavits and lot of correspondence has taken place, which was appended.

4. The brief facts which are necessary for disposal of this petition are that petitioner was selected for Short Service Commission on 4.9.1999 in the Corps of EME as a Lieutenant. He continued in service on various assignments from time to time. His problem started when he was posted in the EME, Workshop at Leh and subsequently at Mathura where he was also looking after the canteen. It is alleged that he brought out certain irregularities on 14.06.2006 in the functioning of the canteen, as the excise duty was not paid, and secondly he was forced to sign certain papers. He also made some complaint earlier regarding the canteen at Leh with regard to Lt. Col. B.K.George, and certain negligence in paying of excise duty. A Court of Inquiry was held and it found certain irregularities and suggested action against Lt.Col. George as well as recommended some remedial measures. When the petitioner was posted at Mathura under Lt.Col. Yadav, who took over on 22.1.2006, his ACR was initiated for the period from 01.01.2006 to 31.12.2006 and this ACR was not very apprecaitve, therefore, he has challenged this ACR. In the mean time, he was also awarded a Censure for writing letters to various authorities thereby committing a breach of chain of communication in violation of para -557 of Regulations of the Army, 1987, therefore, he was



given a Censure. He has now challenged both these aspects by filing the present writ petition which has been transferred to this tribunal for final disposal from the Hon'ble Delhi High Court.

5. A reply was filed by the respondent who have urged that the petitioner is guilty of suppression of facts in that he has also previously undergone a summary trial and awarded a 'Reprimand' which he challenged before the Hon'ble Delhi High Court and the same has been dismissed. It was also pointed out that the ACR written by Col. Yadav giving him a grading of '5' is 'High Average' and is not an adverse grading. Therefore, the allegations against Col. Yadav are not warranted. It was further stated that writing a plethora of complaints to the superior authorities violates the laid down channel of correspondence as laid down in Para 557 of Regulations of Army, 1987, therefore, he was given Censure by the General Officer Commanding, after giving him a show cause notice and obtaining a reply from him. It was pointed out that the petitioner was first given reprimand summarily which was challenged and dismissed by the Hon'ble Delhi High Court which he also suppressed. Despite being counselled and proceeded against on discipline grounds he again repeated then same indiscipline, consequent to which he was given a show cause

notice and punishment was awarded to him. It was also pointed out that both the punishments which were awarded to the petitioner were done judiciously and in accordance with law and no illegality has been committed.

6. We have heard the petitioner & counsel for respondents and perused the record. Petitioner, who appeared in person, has pointed out that his ACR which has been written for the period 1.1.2006 to 31.12.2006 by Col. Yadav was not consistent and was subjective. The figurative assessment and pen picture does not correspond. It was also pointed out that the remark that 'he is not residing along with his wife' in pen picture is malicious. It was also pointed out that in the pen picture, Col. Yadav has made a remark that "he is a liability on the institution" which was not warranted. In this connection, he has invited our attention to para no.118, 119, 110 to 113 of the Army Order on initiation of ACR. He has also pointed out that no warning was given to him, verbal or written therefore, there is violation of above instructions. Col. Yadav was impleaded as a respondent & he has filed an affidavit and contradicted the allegations against him.
7. In order to satisfy ourselves we called for the original ACRs of the petitioner and after going through the present ACR & previous

ACRs, it appears that his previous ACRs prior to 1.1.2006 were very good and he was given 8 marks, and subsequently also he was given 8 marks in his ACR. Therefore, there is a dip in performance/grading only during this period i.e.2006. There is no doubt that when the petitioner took over as OC EME Workshop at Mathura, certain discrepancies and irregularities were found by him in the workshop as well as the canteen. For that a court of enquiry was held and the allegations by the petitioner regarding the canteen and Workshop were found right to some extent and various actions were ordered consequently including directions to frame a new SOP. Therefore, proper action in that connection had already been taken, but still the petitioner persisted in his allegations and kept on writing complaints to the Chief of Army Staff and Ministry of Defence, which invited the punishment of censure, after issue of show cause notice.

8. The first issue is with regard to the ACR for the aforesaid period i.e.2006. Infact whatever irregularities were pointed out in the Mathura Workshop by the petitioner, pertained to the period before Col. Yadav assumed Command, and likewise irregularities in the canteen regarding not paying of excise duty were for the period before Col. Yadav assumed command, and he had no role to play



in it. It seems that the persistent attitude of the petitioner of writing complaints and making all kinds of frivolous allegations against senior officers appears to have annoyed Col. Yadav, who although having no personal enmity against the petitioner, but because of the persistent attitude of the petitioner, Col. Yadav seems to have become biased in his assessment, which is not consistent with the petitioner's previous and subsequent ACRs. Therefore, Col. Yadav's assessment appears somewhat subjective in grading the petitioner i.e. '5' whereas he was getting '8' marks prior to this period as well as subsequently. We quite appreciate the predicament of Col. Yadav, when his subordinate behaves like this, he is bound to feel disturbed by these kind of persistent allegations against him and others who were not connected with the wrong doing. However, such complaints cannot totally colour the perception of the IO, especially when some of these allegations were found to be correct. The IO is required to assess the overall performance of the ratee over the year and not be biased by any irritant that the ratee may cause. The court of Inquiry has already been held on both the issues and action has already been taken and the excise duty, which was due to the government, was partly paid and remaining was likely to be paid.

However, the non-payment of excise duty was a procedural lapse by which nobody stood to gain. So far as irregularities in the workshop are concerned, it was not during the time of Col. Yadav, and he had no role to play. However, the persistent complaints by the petitioner and his behaviour in repeating the same subject matter, which has already been examined by a Court of Inquiry, which gave definitive findings and suggested a new standard procedure in order to overcome the shortcomings, seems to have annoyed Col. Yadav. There was no purpose for the petitioner to over and over again project the same shortcomings by writing letters to the Chief of Army Staff and the Ministry of Defence. This seems to have caused some annoyance to Col. Yadav and he gave the petitioner 'High Average' whereas he was getting 'Above Average', reports earlier. In the impugned ACR he got only '5' marks from Col. Yadav. Therefore, we find that there is an element of subjectivity in it. It was also not proper for the superior officer to bring in family matters in the pen picture, likewise the remark that he is a liability to the institution. In these circumstances, we think that the assessment in the ACR for the period 1.1.2006 to 31.12.2006 needs to be reviewed and



accordingly, we set aside the assessment of the IO in the ACR for the period from 1.1.2006 to 31.1.2006.

9. Now coming to the second question of censure which has been recorded against the petitioner. Petitioner was given a show cause notice on 9.7.2007 and he filed a reply on 23.8.2007 and he was censured on 8.9.2007. The petitioner submitted that under DSR Para 319, he has a duty to bring to the notice of the Senior officers any dishonesty, fraud or infringement of orders & he did so but no action was taken for six months, therefore, under DSR 364, he wrote to the Chief of Staff & Central Government. In this connection, it was pointed out by Respondents that his complaint of 14.6.2006 was forwarded by Col. Yadav on 21.6.2006 to higher superior authorities and this led to the holding of the Court of Inquiry and proper action was taken. Therefore, it was not necessary for the petitioner to repeat the complaints and persist in making the same allegations over and over again against various officers. Army is a disciplined organisation and discipline has to be maintained and Regulation 557 requires that he cannot directly approach the higher authorities for making his grievance. Petitioner persisted in his action, he has already been summarily reprimanded earlier, which he has not mentioned in his petition,

which he challenged in the Hon'ble Delhi High Court by way of writ petition No. WPC-2006/2010 and same was dismissed by the Hon'ble Delhi High Court by its order dated-13.9.2011. Then he filed a review application also and that review application was dismissed by Hon'ble Delhi High Court on 21.10.2011.

10. Suffice it to say that the petitioner was given show cause notice and a proper hearing was given to him and his reply was considered and accordingly he has been punished for this kind of indulgence in making repeated complaints of the issue which was already a subject matter of a Court of Inquiry, which after examining all the aspects, recommended various corrective measures. Therefore, it was not proper for him to repeatedly malign senior officers and write a direct complaint to the Chief of Army Staff and the Ministry of Defence. Therefore, in these circumstances, so far as the censure punishment awarded to him is concerned, it is well deserved and there is no ground to interfere in that.
11. As a result of above discussion, we direct that the assessment of the IO in the ACR for the period from 1.1.2006 and 1.12.2006 may be expunged and the case of the petitioner be considered again for further extension of service or for grant of permanent

commission, without that portion of the ACR. In case he is found suitable, his case may be reconsidered for permanent commission/extension of service, and he may be given consequential benefits.

11. The petition is allowed in part. No order as to costs.

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[Justice A.K. Mathur]  
Chairperson

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

New Delhi  
19<sup>th</sup> October, 2012