

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

**T.A. No.230 of 2010**

**W.P. (C) No.2357 of 2006**

**Lt. Col. Y.S. Pathania**

**.....Petitioner**

**Versus**

**Union of India & Ors.**

**.....Respondents**

**For petitioner:** Mr. P.D.P. Deo, Advocate

**For respondents:** Mr. R. Balasubramanian, ASG for respondent Nos.1 to 3 & 5  
Ms. Aakriti Jain proxy for Mr. Ankur Chibber, Advocate for respondent No.4

**CORAM:**

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

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

**ORDER**

**04.09.2012**

1. This petition has been transferred from the Delhi High Court on the formation of this Tribunal.
2. The petitioner by this petition has prayed for quashing of the subjective ACRs for the period 1993-94, 1994-95 & 1995-96 being inconsistent. He has further prayed for holding of a review promotion board to consider the case of the petitioner after setting aside the CRs for the years 1993-94, 1994-95 & 1995-96 and he may be given full benefits if he is found suitable by the selection committee.
3. The petitioner was commissioned in the year 1983 as 02<sup>nd</sup> Lieutenant in Indian Army after completion of necessary training. In February, 1993 he was appointed as Adjutant of the Regiment. During handing over and taking over he learnt that four classified accountable documents are missing from

the charge of outgoing Adjutant. On query the outgoing Adjutant informed the petitioner that these documents were with the Commanding Officer (C.O.), namely, Col. V.K. Malik. It was also noticed by the petitioner that these documents were issued to the C.O. The petitioner went to the C.O. along with the outgoing Adjutant and enquired about the documents in question. After 2-3 days the Col. Malik returned two documents out of four, however, he was not able to return the balance two documents, namely, employment of rapid and battle of the Forward Zone. Col. Malik told the petitioner that he will search these documents also and asked for some time. However, in spite of the search by him he could not find these two documents. Col. Malik told the petitioner that he should take the charge of the Adjutant as the administrative function of the unit will come to stand still. He further told the petitioner that he would in the meantime try his best to locate these two documents and hand over to him. Since Col. Malik was the C.O. and was responsible and accountable for the whole regiment, petitioner took over the charge of Adjutant on his orders on 12.02.1993. The petitioner continued doing his duties as Adjutant, however, the C.O. unable to hand over these two documents in spite of petitioner's constant requests. In August, 1993 an anonymous complaint was received by the 18 Artillery Brigade under which the unit was serving, wherein besides alleging financial irregularities and misappropriation of funds by Col. V.K. Malik the loss of these two documents by the C.O. was also mentioned. In the month of September, 1993, C.O. came to the petitioner and told him that there has been a complaint against him as above and further told to the petitioner that he has not been able to find out these two documents and he proposed to procure them from other units and make duplicate or photocopy and show them as the original



documents. The petitioner declined to accept this illegal demand. After the proposal of C.O. and refusal by the petitioner to his suggestion, the petitioner went on 10 days leave in September, 1993. While going on leave the petitioner handed over the duties of Adjutant to Major Anil Singh on the orders of the C.O., from whom the petitioner had taken over the duties in February, 1993 and the petitioner obtained the certificate from the said officer that he had handed over all documents less these two documents on 12 Feb and also on 10.09.1993. On return from leave while taking over the charge of Adjutant on 25.09.1993 Maj. Anil Singh told petitioner that the two missing documents in question have been found and same has to be taken over. Petitioner was shown these documents, however, he came to know that they were duplicated to conform to the original documents issued to the unit. On questioning by petitioner Maj. Anil Singh told him that yes they are duplicate and not originals and were handed over to him by the C.O. At that time, C.O. was on leave and temporary duty. The petitioner then reported the fact to then second in command of the regiment Lt. Col. K.S.V. Krishnan who was officiating as C.O. The Officiating C.O. told him to take over in that condition, as Major Anil Singh was to go on leave and discuss the matter when C.O. comes back from leave. In the first week of October, 1993 petitioner and the second in command went to C.O. on his arrival and informed him of the duplicate documents in place of the originals and also told him that he has not signed on the handing over certificate. In the month of November, 1993 petitioner wrote a demi official (D.O.) letter dated 09.11.1993 to C.O. i.e. Col. Malik to put the loss of documents on record as verbal assurance by C.O. was not yielding any result. He feared that in absence of written record he might be blamed in future. The petitioner did not realise that the said D.O. letter will

be his Waterloo. However, the C.O. managed to obtain sanction of disposal by destruction of these duplicate documents from 18 Artillery Brigade and destroyed them in connivance with Major Anil Singh. C.O. asked petitioner to withdraw his D.O. letter in view of destruction carried out of the documents in question. When the petitioner refused to withdraw the same Col. Malik told him that he would have to suffer for the refusal. However, the petitioner did not withdraw this D.O. letter and on account of this he was harassed and victimised by Col. Malik by giving some additional task and responsibility, sarcastic remarks, letters and comments on even a slightest opportunity. Therefore, the petitioner's ACRs for the years 1993-94, 1994-95 & 1995-96 must have been actuated with bias and subjectivity of Col. Malik.

4. The petitioner filed a non-statutory complaint and the same was disposed of by expunging the remarks of C.O. in the ACR of 1995-96. Then the petitioner filed a statutory complaint, but without any result. Thereafter, he filed the present petition before the Hon'ble High Court, which was transferred to this Tribunal on its formation.

5. Reply was been filed by the respondents Nos.1 to & 5. Respondent No.4 Col. Malik filed separate reply. In the reply filed by Col. Malik he has countered the allegations made by the petitioner against him that he was bias and all the ACRs of the petitioner were written by him are actuated with bias and subjectivity. In the reply filed by the other respondents, they have pointed out that the assessment made by the R.O. for all the years are with objectivity and there is no allegations against the R.O. So far as the I.O. is concerned, they have also contested and stated that these objective assessments was made by the respondent No.4.



6. The original ACR dossier and the data sheet were placed before us for perusal. We have heard the parties and bestowed the best of our considerations to the same.

7. Normally, the ACRs are always subjective to assessment of the officers arrived at in objective manner. As and when the assessment of the ACR lacks the subjectivity then naturally it becomes a biased one. In order to assess the situation that whether the ACR for the year 1993-94 suffered from subjectivity or not, we have occasioned to go through the data sheet and seen the earlier and subsequent ACRs of the petitioner. After going through the original data sheet it gives us an impression that during the year 1993-94 the petitioner in all the 22 qualities have been given the marking of '7' by the I.O. and same has been endorsed by the R.O. except few changes. We have also seen the subsequent ACRs of the years 1994-95 and 1995-96, but the assessment of 1993-94 has dipped his all qualities. Normally, in the assessment of the I.O. of the performance of the incumbent should not be interfered unless it is actuated with some subjectivity or a bias. It appears from the facts that during the year 1993-94 on account of missing of two original documents, the petitioner has annoyed the C.O. These two documents were found missing and the C.O. was persuading the petitioner to take out the duplicate copies and treat them as original, to which the petitioner refused to abide by it. Petitioner's apprehension was that if the original of document is missing, he may be blamed for the same in future. Therefore, he addressed the D.O. letter to the C.O., to which C.O. persuaded him to withdraw the same and not to prosecute the matter, but the petitioner remain stick on his decision, which seems to have annoyed the C.O. and, thus, in the

ACR for the year 1993-94 he was given the marking of '7' in all the 22 qualities. Prior to that the petitioner got the marking of '7' and '6' in various qualities, but in none of the ACRs he has got '7' markings in all 22 qualities. It is only in the ACR for the year 1993-94 the petitioner has got the marking of '7' in all the 22 qualities, but the same I.O. in the ACR for the year 1994-95 has given him the '8' marks in some qualities and '9' marks in some other qualities. So far as the ACR for the year 1994-95 is concerned we do not feel that there is any kind of dip in the qualities of the petitioner or that the ACRs are actuated by any subjectivity. But, so far as the ACR for the year 1993-94 is concerned we feel that there is a bias and subjectivity in the assessment of the I.O. as he has unanimously given the markings of '7' in all the 22 qualities. As against this, in the ACR for the year 1994-95 he has given him '8' & '9' markings in some qualities. Therefore, the ACR for the year 1994-95 does not seem to be actuated with any bias or subjectivity, but the remarks of the I.O. in the ACR for the year 1993-94 appears to be out of annoyance for not accepting his command given to him to take two duplicate copies as original and writing the D.O. letter, putting on record the entire blame on the C.O. must have been given a proximate provocation to him for annoying and that has resulted for giving him the markings of '7' in all the qualities in the ACR for the year 1993-94. Therefore, we are of the view that the ACR for the year 1993-94 has been actuated with bias and subjectivity, as such we think that the assessment given by the I.O. in the ACR for the year 1993-94 deserves to be expunged.

8. Learned counsel for the respondents has also invited our attention to the decision given by the Hon'ble Supreme Court in "**Amrik Singh Vs. Union**



*of India & Ors.*" (2001) 10 SCC 424. In that case the whole issue had been decided on the factual aspect of the matter. The petitioner therein challenged his assessment, which was found to be inconsistent and, but the Hon'ble High Court did not interfere with the matter and ultimately the matter reached to the Hon'ble Supreme Court and the Hon'ble Supreme Court while referring to the earlier decision given in "*Union of India Vs. Lt. Gen. Rajendra Singh Kadyan*" (2000) 6 SCC 698 observed that in view of the ratio laid down in the case of *Lt. Gen. Rajendra Singh Kadyan* (supra) they do not wish to interfere with the matter. Their lordships held that the case of the petitioner was considered objectively vis-a-vis the other persons on the basis of remarks available on the record and did not feel inclined to interfere with the matter. So far as the present case is concerned, we have found that the ACR for the period of 1993-94 appears to be biased and actuated with subjectivity of the C.O. and, therefore, the ACR for the period of 1993-94 to the extent of the markings of the I.O. deserves to be expunged. So far as the ACR for the year 1994-95 is concerned, the said ACR does not suffer from any subjectivity as the petitioner has been awarded '8' and '9' marks by the I.O. in number of qualities. So far as the ACR for the year 1995-96 is concerned, the remarks of the I.O. have already been expunged by Army Commandant, Southern Command. Therefore, the reliefs prayed for in respect of the ACRs for the year 1995-96 have already been given to the petitioner.

9. Consequently, we partly allow the petition and expunge the remarks of the I.O. in respect of the ACR for the year 1993-94. Let the case of the petitioner be reconsidered by the review selection board. In case the

petitioner is found suitable for promotion then consequential benefits be given to him. Petition is disposed of, accordingly. No orders as to costs.

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

**M.L. NAIDU**  
**(Member)**

**New Delhi**  
**September 04, 2012**  
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