

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

T.A. No.253/2009

Sgt. J.S. Bansal

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Mr. D.K. Sharma, Advocate

For respondents: Mr. Ankur Chibber, Advocate

CORAM:

HON'BLE MR. JUSTICE N.P.GUPTA, MEMBER.

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

ORDER
24.09.2012

1. This case was filed by the petitioner as CWP No.3776/1996 in the Hon'ble High Court of Delhi. After promulgation of the AFT Act, it was transferred to this Tribunal as T.A. No.253/2009.
2. The petitioner vide this petition has prayed for restoring his assessment in the ACR for the year 1995 in which he was assessed as 'Excellent' by Wg, Cdr D. Mathew which was subsequently reduced to 'Satisfactory' by respondent No.5 i.e., Commanding Officer 704, SU, Air Force under whom the petitioner did not work even for a single day for the assessment year 1995. The petitioner has also prayed that he be considered for promotion to the rank of Junior Warrant Officer w.e.f. 01.12.1994 i.e., the date since when his juniors were promoted to the rank of Junior Warrant Officer. He has also prayed for quashing and setting aside the Air Force Order No.1/91 dated 23.02.1991 and the policy letter regarding revised criteria for promotion to airmen issued on

16.11.1989. The petitioner further prayed to quash and set aside the 'Below Grade' assessment given to the petitioner for the years 1993-1994, 1994-1995 and 1995-96.

3. The petitioner was enrolled in the Indian Air Force on 13.11.1976 as Air Craftsman. On successful completion of training, he was posted at an Air Force Unit. He kept passing his promotion exams and in due course, was promoted to the substantive rank of Sergeant 01.08.1988. He also passed his promotion examination Part-I and II for becoming Junior Warrant Officer.

4. Meanwhile, respondent No.3 AOC, Air Force Record Office issued a new policy letter dated 16.11.1989 regarding promotion to the rank of Junior Warrant Officer and while he was being considered for the promotion to the rank of Junior Warrant Officer, his five years Annual Reports (ARs) were taken into consideration. This policy letter was in violation of the Air Force Regulation 1964 from Para No.282 onwards which specifies that promotion to the rank of Flight Sergeant and above will be made by selection within the authorised establishment. Para 290(b) of the said Regulation lays down that "*Commanding Officers are to interview airmen who are not recommended for promotion and inform them of the reasons of non-recommendations*". In this case, the petitioner was never informed by his Commanding Officer that he was not recommended for promotion. His character and general behaviour in the force has been very good. Despite all this, he was accorded 'Below Grade (BG)'.

5. Learned counsel for the petitioner argued that Unit Commanders have a great responsibility of making an assessment impartially and objectively in the annual report for the year. It is only then that true assessment of a person can be realised. The policy for the promotion gives out the details as to how the assessment is to be conducted. In this case, it is pertinent to mention that the petitioner was not given any warning nor the overall grading was ever shown to him.

6. Learned counsel for the petitioner also drew our attention to AFO 01/1991 which lays down that anyone who has been posted to a Unit and thereafter is sent on detachment for a period of more than two months, *"The CO or the Officiating CO in his absence, of the Unit on the posted strength of which the airman is borne is responsible for approving and signing the assessment given to an airman. If an airman is away on detachment for a period of more than two months at the time of his assessment, the CO of this parent unit may consult the CO of the unit to which the airman is attached, if he feels....."*.

7. It has been argued by the learned counsel for the petitioner that Wg Cdr. D.Mathew under whom the petitioner was actually working from 03.08.1993 to 03.04.1996 had given him "Superior" reports. On the other hand, these reports were changed to "Satisfactory" by the CO of 704, SU. It is pertinent to mention that the petitioner had not worked even for a single day under the CO of 704, SU. The petitioner had submitted an application on 22.04.1996 seeking immediate interview of the AOC, Air Force Station, Hindon. On 01.05.1996, the

CO, 704, SU sent a letter to AOC in which it was recommended that the annual assessment of the petitioner for the year ending 31.10.1995 be revised. The AOC, however, did not agree to this revision and advised that his past performance may be kept in mind while giving assessment for the year 1996. This clearly shows that the petitioner had been getting outstanding report from Wg Cdr D. Mathew under whom he was actually working but the same was down graded by the CO of 704 SU.

8. Learned counsel for the respondents stated that the entry "Below Grade" in a promotion board does not reflect the annual reports of the individual. It means that the individual has not been selected for promotion by the DPC. As per the policy for promotion dated 16.11.1989, the applicant should have had a minimum of 350 marks (70%) in the last five years for promotion as per the selection criterion for promotion. In this case the petitioner had failed to meet this criterion and thus he was declared 'Below Grade'. That means that he was not empanelled for the next rank.

9. Learned counsel for the respondents argued that till 2003, the norm was that only the CO would write the annual report of the NCO/WO. The AFO 01/1999 clearly stated that it was the responsibility of the CO with whom the NCO is posted to write the report. If the NCO was attached to some other unit for more than two months, he had to consult the CO of that unit before writing the report. This process of consultation was not binding on the CO. It is after 2003 the system has changed and there has been provision for IO, RO and SRO which has come into force from 2003.

10. Having heard both the parties at length and having examined the relevant policy letters, we have come to the conclusion that no rules or policy was violated by the respondents when the petitioner was being assessed by the CO of the Unit where he is posted. As regards the requirement of consulting the CO of the Unit where he was attached for functional purposes, apparently was done when a report was sought from Wg Cdr D. Mathew under whom the petitioner was attached. When this preliminary report reached the CO 704, SU, he in turn initiated the actual assessment report which was within his powers vide AFO 01/1999.

11. We have also seen the averments made by the petitioner as also the details of marks obtained by the petitioner for the years from 1988 to 1996. It is obvious that when the petitioner was considered for promotion in 1995, he was not making the grade of 70% in the last five year ACRs. Similar is the case in 1996. Therefore, he was not empanelled for promotion to the rank of JCO. In this regard the respondents were guided by the policy letter of 16.11.1989. Therefore, to say that the policy was suddenly introduced in the promotion system, is also incorrect.

12. We have also noted that the application which was sent by the new incumbent i.e. CO, 704, SU in 1995 for upgradation of the said annual report to the AOC which was turned down by the AOC on 09.05.1996 in which the AOC directed the CO, 704 SU to take into consideration the past outstanding performance while making the assessment in the next assessment year.

Despite that, we find that the assessment of the petitioner made by the CO, 704, SU in 1996 was just 62%.

13. In view of the foregoing, we find that there is no merit in the case and thus, we are not inclined to interfere in the case. The TA is dismissed. No order as to costs.

N.P. GUPTA
(Member)

M.L. NAIDU
(Member)

New Delhi
September 24, 2012
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