

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

**11.**

**T.A. No. 256 of 2010**

**Writ Petition (Civil) No. 15460 of 2006**

**Cdr. Ajay Kumar Behera**

**.....Petitioner**

**Versus**

**Union of India & Ors.**

**.....Respondents**

**For petitioner:** Mr. Sukhjinder Singh, Advocate.

**For respondents:** Mr. R. Balasubramanian, Advocate.

**CORAM:**

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

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

**ORDER**  
**12.01.2012**

1. Petitioner by this writ petition has prayed that issue necessary orders or directions to the Respondents to quash and set aside third PARBing (un-PARBing) carried out by the Respondent on already PARBed report between 9<sup>th</sup> and 22<sup>nd</sup> August 2004 of the Petitioner's ACR for the period from April 2001 to March 2002 as conveyed to the Petitioner vide letter dated 5<sup>th</sup> April 2004 and direct the Respondents to treat the Petitioner fully eligible for promotion to the rank of Captain with effect from 7<sup>th</sup> August 2004 i.e. when results were declared by quashing the Promotion Board dated 2<sup>nd</sup> February 2004 to the extent of non selection of the Petitioner to the rank of Captain and further direct the Respondents to consider the rePARBing report for the period from April 2001 to March 2002 and he may be considered for promotion with effect from 29<sup>th</sup> August 2004.

2. Petitioner was selected as a Naval cadet to the Naval Academy in June 1982 for commission in the Executive Branch of the Navy and awarded the

President of India's Silver medal for standing first in the order of merit. Thereafter he had a number of achievements during his service span of 21 years. Petitioner came for his next promotion to the rank of Captain in November 2004 by the Promotion Board 02/04 but he was denied promotion to the rank of Captain. The Petitioner sought redressal by his representation dated 3<sup>rd</sup> January 2006 based on event that took place behind the back of the Petitioner between 9<sup>th</sup> and 27<sup>th</sup> August 2004. On 10<sup>th</sup> August 2004, the Petitioner was informed by the officials of the Principal Directorate of Naval Training as well as Principal Directorate of Personnel concerned that he was selected for the Petroleum Management Course from amongst the Executive Branch Officers of the Navy. The Petitioner was empanelled along with three other similarly situated officers for the course conducted at the institute of Petroleum Management Gurgaon, in anticipation of the impending promotion of all the four officers, inclusive of the Petitioner. It is alleged that the course is only meant for the persons holding rank of Captain. It is also alleged that after this the name of the Petitioner was deleted from the panel of the selected officers. Thereafter Petitioner filed a representation which did not meet with the favourable result and ultimately he filed the present petition before the Hon'ble Delhi High Court and it was transferred to this Tribunal after formation of this Tribunal.

3. Learned counsel for the Petitioner also invited our attention to the orders passed by the Hon'ble Delhi High Court on 16<sup>th</sup> April 2007 wherein four queries were raised by Hon'ble Delhi High Court and it was asked that how this PARBing report has been done. Those relevant queries are reproduced as below:

“1. Whether the second PARBing was under the orders of the Chief of the Naval Staff and approved by him.

2. If so, the orders under which the second PARBing was granted shall be placed on record.

3. In case the second PARBing was on account of a mistake as alleged by the respondents in their counter affidavit, whether the individuals who were responsible for committing the mistake were identified and whether any action was taken against them for dereliction of their duty.

4. Whether on the third PARBing of the petitioner’s report, the reports of any other officers were also PARBed and upgraded. If so, the details of the officers and the results of such PARBing be placed on record.”

4. A reply has been filed by the Respondents and the Respondents has taken the position that rePARBing has been done in the case of the Petitioner because at the relevant time there was some bonafide mistake which has crept in and that has been rectified.

5. An additional affidavit was also filed in response to the queries raised by the Hon’ble Delhi High Court replying all the questions which have been raised.

6. We have heard learned counsel for the parties and perused the record. The question of rePARBing i.e. Performance Appraisal Review Board is

undertaken by virtue of a Naval Order No. (Spl) 5 of 2001. This order lays down procedure for selection of officers for promotion to the rank of Commander and above and the procedure is subject to review from time to time. Clause 11 lays down the selection procedure. Clause 12 talks of 'Reports to be considered' and is reproduced as under:

"12. Reports to be considered. All reports of an officer in his present rank, including Acting rank will be considered. Any report which covers a period less than three months in that rank will not be considered."

Clause 14 says that "the Promotion Boards will grade the officers considered into the following categories:-

'S'-Selected for promotion.

'D'-Deferred for consideration without loss of seniority. This is not to be treated as a look year in terms of paragraph 13 above.

'R'-Reconsider. Not yet selected for promotion.

'N'-Not selected for promotion having been considered three times."

Clause 17 talks about composition that means it has to be chaired by (a) Chairman-Vice Admiral (X) and (b) Members-(i) Rear Admiral (E/L), (ii) Assistant Chief of Personnel (HRD) and (c) Member Secretary-Director of Personnel.

Clause 18 deals with the functions and is reproduced as under:

"18. Function. The PARB will meet once every three months and review all the latest confidential reports received on officers in the rank of Lt. Cdr. And Cdr. The PARB will analyse instances of any deviations

(Spikes) in reports with regard to past trend and make appropriate recommendations base on PARB norms for the approval of the Chief of the Naval Staff i.e. apply appropriate index correction or accept deviation. Previously, PARBed reports will not be normally reviewed except in cases where reports pertaining to period prior to the reviewed reports are received subsequently or where a decision to review reports is taken in the light of ROGs by officers or where an officers' spike in report is consistently sustained in subsequent reports, all duly approved by the Chief of the naval Staff."

Clause 19 which deals with timely completion of PARB reads as under:

"19. Timely completion of PARB: The process of PARB will be completed and the approval of CNS contained well before the concerned officers come up for consideration by a Promotion Board. Reports received after the formal process of PARB is over but before the proceedings of the Promotion Board are finalised, will be PARBed by the Promotion Board by applying the prescribed PARB norms and recommendations put up for approval of the CNS. In exceptional cases, if an already PARBed report is not found to be in consonance with the officer's profile, it may be moderated by the Promotion Board, for approval of the CNS.

ACRs on Captains and Commodores are reviewed by the CNS and will not be reviewed by the PARB"

7. It appears that the PARB can be reviewed except in exceptional cases where reports pertaining to period prior to the reviewed reports are received subsequently or where a decision to review reports is taken in the light of

redressal of grievances by officers or where an officers' spike in report is consistently sustained in subsequent reports, all duly approved by the Chief of the naval Staff. This is the process which is normally undertaken.

8. Now coming to the facts of the present case the main question which comes for our consideration is that the Petitioner's first PARBed report was done on 5<sup>th</sup> August 2002 and second time it was done on 24<sup>th</sup> December 2002. In the present case, learned counsel for the Petitioner has tried to argue that once his report has been PARBed it cannot be rePARBed and if it is to be rePARBed then the Petitioner has to be given a notice and should be heard in the matter and in that connection he has invited our attention to the various decisions of the Hon'ble Supreme Court in **Ram Ujarey v. Union of India 1999 (1) SCC 685**, **A. Ravindra Nath Reddy v. Union of India & Ors. (2007) 6 SCC 704**, **State of Orissa v. Dr. (Miss) Binapani Dei AIR 1967 SCC 1269**, **Basudeo Tiwary v. Sido Kanhu University & Ors. (1998) 8 SCC 194**, and **Kashinath Dikshita v. Union of India & Ors. AIR 1987 SCC 177**. He has also invited our attention to the decisions of this Tribunal in **TA No. 244 of 2010** (decided on 17<sup>th</sup> September 2010) and **TA No. 564 of 2011** (decided on 12<sup>th</sup> January 2011).

9. The contention of learned counsel for the Petitioner is that once the report has been PARBed then it cannot be rePARBed and if certain changes are required to be undertaken then the principles of natural justice come into play and a notice should be given to the Petitioner. So far as the principles of natural justice is concerned there cannot be any dispute but the question in the present case is that it was just a bonafide error. Therefore we called the

original records to see that how could this bonafide error occur. In the PARBed report which was done first time on 5<sup>th</sup> August 2002 Petitioner secured 7.5 marks in Performance Quotient and promotional 7.5 but subsequently on 24<sup>th</sup> December 2002 it appears that Performance Quotient was erroneously recorded 7.6 which appears to be a bonafide error because Petitioner's all ACRs were considered when it was PARBed but from 5<sup>th</sup> August 2002 till 24<sup>th</sup> December 2002 no ACR was there. Therefore this was a bonafide error which came to light and it was corrected. This bonafide mistake which was detected by the Board and accordingly the Board corrected it on 18<sup>th</sup> August 2004 and restored back the original Performance Quotient of 7.5. Neither the Petitioner was communicated this original or the changed or the third report. Therefore it was not a case that the Petitioner was informed of 7.6 marks and thereafter it was changed it to his disadvantage. It was a plain bonafide clerical mistake which was detected by the Board and same was corrected. When Petitioner's Performance Quotient was 7.5 i.e. on 5<sup>th</sup> August 2002 and from 5<sup>th</sup> August 2002 till 24<sup>th</sup> December 2002 there was no new report or any fresh input, therefore, it was a bonafide mistake that was restored back to the original PARBed report i.e. on 5<sup>th</sup> August 2002 and corrected it as a typing/clerical error. Therefore in these circumstances after perusing the original record we found that it was a bonafide mistake or some typing error which has been corrected. If the Petitioner has been informed and after that some change has undertaken then the breach of principles of natural justice can be invoked and Petitioner was required to be given notice. But in the present case it was plain mistake and a bonafide error and consequently they have rectified it and considered the case of the Petitioner and they have given due consideration to the case of the Petitioner and when

he was not found suitable he was not promoted to the post of Captain. The selection of Petitioner for sending him for training for Petroleum Management Course had nothing to do with his selection for the post of Captain. Though Petitioner tried to project that his selection for sending for training to aforesaid course amounts to selection of Captain was misleading.

10. Hence, in these circumstances we do not find any merit in this petition and same is dismissed with no order as to costs.

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

**S.S. DHILLON**  
**(Member)**

**New Delhi**  
**January 12, 2012**  
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