

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH**

**NEW DELHI**

**T.A. No.509 of 2010 in**

**W.P. (C) No.7472 of 2007**

**Lt. Col. B.D.Joshi**

**.....Petitioner**

**Versus**

**Union of India & Others**

**.....Respondents**

**For Petitioner**

**Mr. S.M.Dalal, Advocate**

**For Respondents**

**Mr.Ankur Chhibber Advocate with  
Col. Devender Singh**

**CORAM**

**HON;BLE JUSTICE A.K.MATHUR CHAIRPERSON**

**HON;BLE S.S.DHILLON, ADMINISTRATIVE MEMBER**

**ORDER**

**Dated: 30<sup>th</sup> November ,2012**

This petition has been received by transfer from the Hon'ble Delhi High Court.

2. By this petition, petitioner has prayed for quashing the impugned order of the Government of India No.36501/3105/Engrs/97/MS-19/339/SC-D(MS)/2004 dated

08.02.2005, impugned ACRs covering the period January,94-05/95 and December97-05/98 issued by Col. B.J.V.Rao and Brig. A.S.Gill and ACR initiated during December,2002 to May,2003 by RO AIR CDR P.K. Barbora VM AOC 11 Wing Air Force, and a direction may be issued to the respondents to reconsider by the Selection Board No3 to consider the petitioner for promotion to the rank of Colonel and also prayed for quashing the AHQ policy letter No.31525/P/MS/SB dated 06.05.1987 which is biased, arbitrary and discriminatory.

3. The petitioner was commissioned in the Indian Army on 14.06.1986 in the Corps of Engineers. He did M.Tech in the year 1996 and on 15.08.2001 he got Army commendation certificate. He was promoted to the post of Lt. Col in time Scale on the basis of the recommendations of A.V. Singh Committee but during 2003, he could not be promoted to the post of Lt. Col from Major as he was not found suitable for promotion. Therefore, he made a representation for expunging his ACR for the period 1994-95. That representation was rejected. The grievance of the petitioner against this ACR was that this ACR was written by an Officer who was facing disciplinary enquiry. But so far as this ACR is concerned, learned counsel for the petitioner modulated the arguments and thereafter realised that it is not necessary to challenge the ACR for 1994-95 in the changed circumstances because the petitioner was already promoted to the post of Lt. Col. Therefore, he did not pursue to challenge this ACR for 1994-95.

4. Next comes with regard to ACR for 1997-98. The main grievance of the petitioner was that it was wrongly kept by RO for more than 1 ½ years and this adversely affected his promotion for the post of Lt. Col. to Col. He has also levelled

allegations of malafide against the RO ( Review Officer). It is also pointed out that since this was the adverse remarks, this was communicated by MS branch. We called for the original record and perused the same. From the perusal of the same it is found that there is no delay on the part of the RO for this ACR. The petitioner himself has submitted his ACR on 26.02.1999. Hence the same was endorsed by the IO on 03.03.1999 and on 05.04.1999 RO endorsed it. On 13.04.1999 SRO endorsed it. Therefore, factually, the contention of the petitioner appears to be misconceived. Infact when he has submitted his ACR on 26.02.1999 IO has endorsed on 03.03.1999, RO endorsed on 05.04.1999. Therefore, the grievance of the petitioner that it was delayed by the RO is absolutely wrong. Secondly, that RO has not intimated the so called adverse remarks. We have seen the record and the ACR. We do not think that this was adverse remarks. The observations made by RO was that he could have done better if he had taken little more care. Despite that the box grading was 8. Therefore, it was not adverse. Against this, he had filed a representation on 27.04.2002 and the same was rejected on 05.01.2004. Thereafter, he did not protest against this adverse remarks. But he has again made grievance by this petition.

5. Learned counsel for the petitioner submitted that though his representation was rejected but when he could not be promoted to the post of Col., therefore it gives him fresh cause of action for representing for expunging that remark. We regret that this contention can not be accepted. Once the representation against the aforesaid ACR has been rejected, then subsequent his non selection does not gives him fresh cause of action to challenge that ACR. The rejection was communicated to the petitioner way back in 2004 and he did not pursue the matter further.



Therefore, the successive rejection for promotion does not give him fresh cause of action challenging the ACR over again and again.

6. Next comes the ACR for the period 2002 to 2003. So far as ACR for 2002-2003 is concerned, there is no adverse remarks and all that had been said is that with technical qualification, he could have done better, still in his box grading he was given 8 marks and his case has been considered alongwith other eligible candidates of his batch. Therefore, it can not be said that this ACR also need to be expunged. However, because of the comparative assessment alongwith his batch, he could not make up to the promotion to the post of Col. Therefore, it is not correct on the part of the petitioner that he has not been considered properly for the post of Col. Therefore, we do not find any merit in the petition and the same is dismissed. No order as to costs.

**( A.K.MATHUR)**  
**Chair Person**

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

New Delhi

Dated: 30<sup>th</sup> November,2012