

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI**  
**10.**

**T.A. No. 656 of 2009**  
**Writ Petition (Civil) No. 5284 of 2000**

**Major S.V. Rao**

**.....Petitioner**

**Versus**

**Union of India & Ors.**

**.....Respondents**

**For petitioner:** Mr. S.S. Pandey, Advocate.

**For respondents:** Mr. Ankur Chhibber, Advocate.

**CORAM:**

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

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

**ORDER**  
**24.09.2012**

1. Petitioner by this petition has prayed for quashing of the impugned orders dated 27<sup>th</sup> January 1998 and 11<sup>th</sup> November 1999 passed by the Respondent No.1 rejecting the statutory complaints dated 29<sup>th</sup>/30<sup>th</sup> August 1996 and 18<sup>th</sup> March 1999 being non speaking orders and issued without application of the mind to the contentions set out by the Petitioner in the statutory complaint. He has further prayed that the Respondents may be directed to critically examine the entire records (ACRs) of the Petitioner, especially after the year 1992-93 and expunge the inconsistent aberrations in the Petitioner's ACR for the year 1995-96 and the remarks endorsed by Respondent No.3 (IO) and also the report of the IO/RO in totality being subjective, and in consequence thereof, direct the Respondents to consider the case of the Petitioner afresh for promotion to the rank of Lt. Col. based on the reports earned by him with effect from year 1992-93.

2. Petitioner was Short Service Commission Officer and he was granted a permanent commission on 25<sup>th</sup> August 1984 and he was given a seniority from 24<sup>th</sup> April 1985. After becoming permanent commission officer, he became Major and thereafter his case was sent for consideration for the post of Lt. Col. in 1997. But in 1997 he could not make up to the post of Lt. Col. as post of Lt. Col was selection based. Thereafter he filed a statutory complaint for expunging the ACR for the period 1995-96 and that statutory complaint was rejected. He also filed a statutory complaint for non-selection for the post of Lt. Col. and that was also rejected. Hence, Petitioner filed a petition before the Hon'ble Delhi High Court which was transferred to this Tribunal after its formation.

3. A reply was filed by the Respondents and the Respondents have taken the position that the case of the Petitioner was considered according to the merit and the ACR of 1995-96 against which Petitioner filed a statutory complaint was examined objectively but it did not merit any reconsideration and, therefore, the statutory complaint was rejected. His case was considered objectively and after due consideration he could not make up to the post of Lt. Col. Petitioner was graded 'Above Average' with box grading of 7 out of 9 points and it was also pointed out that Petitioner did not follow the charter of duties while conducting himself as a Law Officer and directly asked the MACT court to send the notices to him instead of sending it to the unit formation where the concerned vehicle was involved in the accident and he was advised not to directly approach the Tribunal by writing the aforesaid communication and he was asked to withdraw the communication sent by him to the MACT by the communication dated 17<sup>th</sup> October 1995 and 16<sup>th</sup> March

1996. The Petitioner pointed out that he has already written on 4<sup>th</sup> November 1995 to the Presiding Officer, MACT that his earlier letter under reference may be treated as cancelled. Therefore the Petitioner's assessment by awarding him 7 marks for 1995-96 was fully justified and there was no inconsistency with previous ACRs of the Petitioner. As such his ACR of 1995-96 was considered and on the basis of other ACRs also he was not selected. Petitioner has also impleaded Brig. V.P. Malhotra and Maj. Gen. P.K. Puri as Respondents 3 and 4 respectively. They have also filed their counter affidavits. They have contested the matter and Brig. V.P. Malhotra who was Initiating Officer has said that the Petitioner acted beyond his briefs and thereafter his explanation was received and that was found satisfactory. He has further said that Petitioner's role of unnecessarily taking upon litigation of MACT cases, which as per Dy JAG, HQ Northern Command was the duty of units formations was a factor which did not receive my appreciation as I felt that the Petitioner was doing this at the cost of other cases pending in High Court of Jammu which was his prime responsibility. As such the Petitioner cancelled his DO letter addressed to the Presiding Officer, MACT and confirmed of the same to him. He also said that he had called for the explanation of the Petitioner vide his letter dated 13<sup>th</sup> July 1996 which was given by the Petitioner by letter dated 19<sup>th</sup> July 1996. Meanwhile, his ACR was due to be initiated and same was initiated by him on 12<sup>th</sup> July 1996. Maj. Gen. P.K. Puri has given his explanation that he has written the ACR of the Petitioner on the basis of the IO's report and there nothing against the Petitioner.



4. We have considered the rival contentions of the parties and perused the record.

5. Learned counsel for the Respondents have produced before us the original record of the Petitioner and we have found that during 1995-96 his ACR in all qualities has been given 7 points by the IO and same has been endorsed by the RO also. The FTO has given him 8 marks in all the qualities. Then we have also checked up his previous ACRs in which he had received 7 and 8 marks by the IO and RO in all qualities in 1993-94 and 8 and 9 marks in 1994-95. Only in 1995-96 suddenly his performance dropped to 7 from 8 and subsequently also we have seen for 1996-97 he had received 8-8 marks except at one place he received 7 and thereafter in 1997-98 he had received 8-9 and likewise upto 1998 also he has been consistently receiving 8-9 points. Therefore, the only inconsistency is with regard to ACR of 1995-96 and that is understandable for the reason which has come forward by the affidavit of the IO that he felt annoyed because Petitioner has directly asked the Presiding Officer, MACT to send notices to him whereas he was not required to do so but that was done by the Petitioner without any ill intention to see that cases are being properly defended and not go undefended by the Union of India and burden the public exchequer. As a Law Officer it was his duty that all matters should be properly defended. Therefore, we are of the opinion that the letter written by him was not due to any malice but was purely bonafide with a purpose to defend the cases of the Union of India effectively. It is the misfortune that this letter has recoiled on him. May be technically there was a procedure laid down that accidental cases should be dealt by the unit formation and it should not be dealt by the JAG unless specifically instructed

by Dy. JAG. May be there is a technical breach on his part which he explained to Brig. Malhotra by his reply dated 19<sup>th</sup> July 2006. On 12<sup>th</sup> July 2006 Brig. Malhotra has reason to be annoyed with him but soon after when his explanation was given to Brig. Malhotra on 17<sup>th</sup> July 2006, he felt satisfied but before that he had already initiated Petitioner's ACR and he could not have rewrite or revoke the earlier remarks given by him. This was a simple bonafide misunderstanding and there was no malice in it. However, it was misfortune of the Petitioner that the explanation given by him reached late otherwise perhaps Brig. Malhotra would not have given him 7 marks which has been endorsed by the RO also. RO has specifically said that he had absolutely no physical interaction whatsoever with the Petitioner throughout his tenure and his endorsement on the ACR of the Petitioner was generally based on the assessment already made by his IO. He has no occasion to meet the fellow and he has to bank upon the marking given by the IO. Therefore, in these circumstances, we are of the findings that the ACR of 1996-96 was not consistent with his previous ACRs and subsequent ACRs also. His HTO has given him 8 marks. This inconsistency is apparent on the face of it. We wish that the authorities should have looked into the matter obviously.

6. It is clear that this is the sole ACR of the Petitioner which was inconsistent with his previous and subsequent ACRs therefore this needs to be expunged. Accordingly, we expunge the ACR for the period 1995-96 and direct the Respondents that the case of the Petitioner may be considered afresh in accordance with law. Since Petitioner has already sought voluntarily retirement and released on 26<sup>th</sup> March 2006, in case he is found suitable, then

he may be given all consequential benefits. The petition is allowed with no order as to costs.

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

**New Delhi**  
**September 24, 2012**  
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**S.S. DHILLON**  
**(Member)**