

COURT NO. 1, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

G.

OA 1313/2020

Col Sanjay Kumar Razdan (Retd)

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant

:

Mr. SS Pandey, Advocate

For Respondents

:

Gp Capt Karan Singh Bhati, Sr. CGSC
for R-1 to R-3

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON

HON'BLE LT GEN P. M. HARIZ, MEMBER (A)

ORDER
20.10.2023

Vide our orders of even date, we have dismissed the OA. Faced with the situation, learned counsel for the applicant makes an oral prayer for grant of leave to appeal under Section 31 of the Armed Forces Tribunal Act, 2007, to the Hon'ble Supreme Court. We find no question of law much less any question of law of general public importance involved in the matter to grant leave to appeal. Hence, the prayer for grant of leave to appeal is declined.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[LT. GEN P. M. HARIZ]
MEMBER (A)

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For Applicant:
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 for RR 1-3

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT. GEN P M HARIZ, MEMBER(A)

ORDER

1. This application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant, a retired Col in the Army, who is aggrieved by his termination from re-employment vide letter dated 31.01.2020 and rejection of his statutory complaint by the respondents vide order dated 29.01.2020. The applicant has made the following prayers:

- (a) Call for the records of the respondents who have retained the ACR covering the period from 01.09.2018 to 31.05.2019 which was otherwise highly unfair, biased and inconsistent with the profile but wrongly retained as part of reckonable profile of the applicant and based on which the applicant was terminated from the re-employment vide letter dated 31.10.2019 w.e.f 31.01.2020

(A/N) and the statutory complaint filed against the said ACR was rejected vide impugned order dated 29.01.2020 and thereafter quash the same.

(b) Quash/set aside the ACR covering the period from 01.09.2018 to 31.05.2019 and direct the respondents to restore the re-employment of the applicant as also grant him extension of re-employment to a place of his choice for two years based on the remaining ACRs from the date it was otherwise due to the applicant with all consequential benefits of the initial and extension re-employment of pay and allowances which the Applicant has been deprived of due to such wrongful termination of his re-employment with giving liberty to the respondents to recover the said amount from the pay and allowances of the officers responsible for denial of retention/extension of the re-employment and further award a compensation of Rs. 1,00,00,000 (Rupees One Crore only) towards mental harassment, humiliation and agony caused to the applicant besides loss of self-esteem, honour, dignity, military pride and military reputation which takes a lifetime to build and is invaluable.

(c) Issue such other order/direction as may be deemed appropriate in the facts and circumstances of the case.

Brief Facts of the Case

2. The applicant was commissioned on 07.03.1987 into Corps of Engineers and superannuated on 31.07.2018 after rendering 32 years of military service. After superannuating from service, the applicant was re-employed for an initial term of 2 years w.e.f 01.09.2018. The applicant was posted to HQ 101 Area, Shillong as AQMG (Wks & Land). During his tenure of initial re-employment from 01.09.2018 to 31.05.2019, CR (09/18-05/19) was initiated as per policy. In the said CR, the applicant was assessed below minimum grade of '7' in overall performance with complimentary pen pictures. The applicant was also not recommended for retention and extension of re-employment. Accordingly, the respondent issued a letter dated 31.10.2019 stating that the re-employment of the applicant was terminated with effect from 31.01.2020. Aggrieved, the applicant submitted a statutory complaint dated 05.11.2019 against the impugned CR for the period 09/18/-05/19 and sought the same to be quashed on the grounds of subjectivity and violation of the procedures and guidelines laid down in the SAI 1/S/80 and AO 02/2016/MS for rendition of ACR's in respect of officers. The applicant also prayed that Review or Special ACR be initiated to assess

his suitability for retention/extension of service on re-employment. This was duly recommended by his IO vide letter dated 11.11.2019.

3. Subsequently, the applicant submitted a representation dated 18.11.2018 to the respondents praying for cancellation of termination letter dated 31.10.2019. However the respondents replied to the representation vide letter dated 05.12.2019 stating that the representation was not communicated to the MS branch through proper channels. Thereafter, the applicant initiated a statement of case dated 14.12.2019 praying that the termination of his re-employment may be revoked/cancelled till the disposal of his statutory complaint dated 05.11.2019. In the meantime, the competent authority examined the statutory complaint of the applicant and found that all the CRs in the reckonable profile including the impugned CR 09/18-05/19 was well corroborated, performance based and technically valid. Therefore, the competent authority vide order dated 29.01.2020 rejected the statutory complaint. Hence, this OA.

Arguments by the Counsel for the Applicant

4. The counsel for the applicant briefly reiterated the complete service profile of the applicant and highlighted the applicant's performance on courses of instructions and the appointments held. He further elaborated that the applicant had performed his duties to the

best of his abilities and satisfaction of his superior officers. In fact, the applicant was made to officiate as Col Q (Wks and Land) in the absence of his IO w.e.f 13.10.2018 for 73 days (out of total of 273 days of reporting period from 01.09.2018 to 31.05.2019).

5. The counsel for the applicant strenuously argued that the statutory complaint filed by the applicant was illegally decided and rejected by Respondent no. 3 (MS Branch) stating that the impugned CR was objective, performance based and technically valid, whereas the said statutory complaint was required to be decided by Respondent no. 1 (Ministry of Defence).

6. Referring to the impugned CR, the counsel for the applicant narrated a series of events which according to the applicant, led to biased rating by the reporting officers. The counsel submitted that the applicant had raised certain issues regarding the treatment of officers in writing which might have negatively influenced the grading of the applicant by the reporting officers. Moreover, the counsel asserted that the impugned ACR was not only highly subjective, but also violated the provisions of Para 127, 128, 131, 132, 134, 135, 137, 139, 142, 144, 145, 146, 147, 148 and 149 of the Army Order 02/2016/MS.

7. The counsel for the applicant also questioned the credibility of the impugned CR as the extracts of letter dated 31.10.2019 received by the

applicant on 07.11.2019 were not the same as letter dated 24.10.2019 received by him on 04.11.2019. Moreover, the adverse remarks of the IO was communicated to the applicant and the signatures were obtained accordingly. However, adverse remarks by other reporting officers were not communicated to the applicant. Therefore, the applicant failed to seek appropriate remedy. Further, the counsel asserted that this was a clear violation of the policies in vogue. He concluded that considering the overall profile of the applicant and the circumstances of the case, the OA be allowed and the applicant be granted extension.

Arguments by the Counsel for the Respondents

8. The counsel briefly recapitulated the service profile of the applicant and submitted that the competent authority had examined the complaint and held that the impugned CR of the applicant from 09/2018 to 05/2019 was objective, performance based and technically valid. There was no evidence of any bias or subjectivity and therefore, the competent authority rejected the complaint. Further, the counsel submitted that the provisions of Para 131, 136, 145, 146, 147, 148 and 149 of AO 02/2016/MS were complied with. However, provisions of Para 134, 135, 139 and 142 were not applicable to CR for period of re-employment.

9. Referring to the allegation of the applicant that the statutory complaint filed by the applicant was illegally decided and rejected by MS Branch instead of Ministry of Defence, the counsel submitted that the MoD vide letter dated 23.04.2010 has delegated the administrative powers to MS, Integrated Headquarters, Ministry of Defence (Army) in respect of re-employment of officers upto the rank of Brigadiers.

10. Referring to the impugned CR (09/18- 05/19), the counsel submitted that the applicant was assessed below minimum grade of '7' in overall performance with supporting pen picture. The applicant was also not recommended for retention and extension of re-employment. Accordingly, the re-employment of the applicant was terminated with effect from 31.01.2020, after following due procedure as laid down by the extant policy vide letter dated 31.10.2019. Accordingly, the applicant was given three months' notice vide letter dated 31.10.2019 and his service terminated w.e.f 31.01.2019. In this regard the counsel drew our attention to the relevant paras of MS Branch, IHQ of MoD (Army) letter no. 04580/MS Policy dated 25.01.2018 and AO/02/2016/MS. The counsel emphasised that as per the policy letter dated 25.01.2018, continuation of initial/ extension of re-employment is contingent on favourable recommendations for retention/ extension in the ACRs earned during the period of re-employment.

11. Referring to the allegation on the credibility of the impugned CR due to contradictions in the extracts received by the applicant on 07.11.2019 vide letter dated 31.10.2019 and extracts received by the applicant on 04.11.2019 vide letter dated 24.10.2019, the counsel submitted that weak remarks by RO were communicated to the applicant through RO vide letter no. A/18056/IC-46900W/Engrs Obsn/MS 4D1 dated 19.08.2019. However, extracts duly signed by the applicant were not received back in MS Branch even after lapse of two months. Since the applicant was not recommended for further retention, extracts of weak remarks were communicated to the applicant directly by MS Branch vide letter dated 31.10.2019. However, on this occasion erroneously extracts of Page 1 with remark regarding non-retention in service was also communicated, which is not mandated as per the Army Order. As such there was no discrepancy in the impugned CR of the applicant as the intention here was to communicate the weak remarks of the RO.

Consideration of the Case

12. Having heard both sides, the only issue for consideration is whether the respondents were justified in terminating the re-employment and rejecting the statutory complaint made against the

termination. We have examined the documents submitted by the Respondents in Court.

Policy on Extension of Re-employment

13. The policy on Re-employment is laid out in MS Branch letter No.04580 dated 25.01.2018. Paragraphs relevant to the case are extracted below:

*"13. **Commencement of Re-employment:** The officers granted initial re-employment will serve for two years from the date of joining on re-employment. Initial re-employment will commence with effect from the date officers report for duty at the station to which they have been posted and not from the date of grant of re-employment. Criteria for Grant of Extension of Re-employment.*

*14. **General:** Applications for extension of re-employment service, where applicable, duly recommended by 10, RO and SRO should reach MS-3A (MS Branch) at least four months in advance from the date of completion of initial re-employment. Officers should continue to meet the laid down QR as stipulated for initial re-employment. Re-employed officers failing to meet the QR, as laid down, will not be granted extension of re-employment.*

*15. **CRs during Re-employment Period:** Officers should have been recommended by all reported officers in CRs earned during his initial re-employed service for extension of re-employment. Officers should have obtained minimum grade of '7' in overall performance, from 10 and RO/SRO. In case the CRs for the re-employed period are not received in the MS-3A by due date, the officer will not be considered for extension of re-employment. The format of ACR for re-employed officers has been promulgated vide AO 02/2016/MS and is attached as Appendix G.*

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Broad Policy

31. On grant of re-employment, an officer will generally serve two tenures in different stations. The first tenure, to be called Organisational Leg, will be served in a station identified by the MS Branch based on organisational requirement and officer's overall profile. The second tenure, to be called Choice Leg will be served in one of the stations opted by the officer, based on

officer's overall posting profile and availability of vacancies in the stations opted for.

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Initiation of ACR

50. The ACR for re-employed officers will be initiated on ACR Form No OAFI-1123 D (Revised). CRs will be initiated as per AO 02/2016/MS by the formation/establishment where re-employed officers are being utilised for service. In cases where sanction for initiation of ACR has been accorded to the RO, review by SRO shall become mandatory. It is the responsibility of the formation HQ, units and re-employed officers to ensure that the ACRs are forwarded to MS-4Coord (MS Branch) on schedule, under intimation to MS-3A.

51. The officer's fitness for continued retention during the current tenure of re-employed service or extension of re-employed service on conclusion of initial tenure, should be reflected in his ACR by all reporting officers. Recommendations for non-retention should be intimated to MS-3A immediately on occurrence.

52. Continuation of initial/extension of re-employment will be contingent on favourable recommendations for retention/extension in the ACRs earned during period of re-employed service. Officers not recommended for retention/extension in ACRs will be liable for release from re-employed service with three months notice (as amended from time to time)."

14. Administrative Powers - Re-employed Officers It is the contention of the applicant here that the statutory complaint had been disposed of by the MS Branch while as per AA Sec 27 and Para 364(b) Regulations for the Army (Vol. I), statutory complaints are required to be disposed of by the MoD. It is seen from the records that MoD vide their letter No. B/32228/Brig/AG/PS-2(a)/2124/D(AG) dated 23.04.2010 have delegated the administrative powers in respect of re-employed officers upto the rank of Brig to MS. The letter is reproduced below:

"B/32228/Brigs/AG/PS-2(a)/2124/D(AG)

Government of India

Ministry of Defence

New Delhi,

Dated the 23 Apr 2010

To

The Chief of the Army Staff

Subject: Delegation of Administrative Powers to Integrated Head Quarters.
Ministry of Defence (Army) - reg.

Sir,

1. The sanction of the President is hereby conveyed to the delegation of administrative powers to MS, Integrated Headquarters, Ministry of Defence (Army) in respect of re-employment of officers upto the rank of Brigadiers only against deficiencies.
2. SAI 1/5/80 governing the re-employment of retired regular officers has been amended vide Army Instruction Corrigendum Case No B/32228/AG/PS-2(a) MoD UO No 2124/2010-D(AG) dt 23.4.2010. The delegation will be exercised based on SoP to be issued separately by Army Headquarters in terms of the ibid Corrigendum and the provisions of the above corrigendum.
3. This issues with the concurrence of the Ministry of Defence(Finance) vide their UO No 3/5/87-AG/PA (186-PA) dated 23.4.2010.

Sd/-

(Naveen Kumar)

Director (AG)"

15. CR-9/2018-5/2019 The applicant on his first leg of re-employment was posted to HQ 101 Area and earned his first CR covering the period 01.09.2018 to 31.05.2019. The IO and RO have assessed the applicant as average with box grading of '5' and have not recommended the

applicant for retention/extension of re-employment. The pen picture of both IO and RO are extracted below:

"Pen picture by IO

The officer has displayed lack of seriousness and interest on the entrusted tasks to meet the organisation requirement. Has not shown adequate involvement and execution in the assigned tasks thereby failing to provide the desired results in time. The officer is not recommended for retention or extension of service.

Pen picture by RO

Not recommended for retention or further extension."

16. It is seen from the records that the extracts of the CR to include the pen picture by the RO was forwarded to the applicant vide MS Branch letter dated 31.10.2019. This was returned by the applicant duly signed vide his letter dated 15.11.2019.

Complaint

17. It is seen from the records that prior to the statutory complaint dated 05.11.2019, the applicant had filed two statutory complaints dated 01.05.1991 and 06.03.1992 against CRs, both of which were rejected.

18. The statutory complaint dated 05.11.2019 has been filed against the CR covering the period 01.09.2018 to 31.05.2019. The applicant has highlighted the work done by him including officiating as the Col Q (Wks

and Land) from time to time; cases dealt by him and various Boards of officer conducted as presiding officer/ member. That despite his hard work and commitment, he had not been recommended for retention/ extension by both the IO and RO. That he came to know of these weak remarks only when the extracts were forwarded by MS Branch in Sep/Nov 2019. The applicant has further stated that the prolonged illness/ hospitalisation of his mother had necessitated frequent absence on leave and that this may have led reporting officers to conclude the applicant's lack of seriousness towards work. The applicant had therefore, prayed that the CR be set aside, since his performance was not communicated to him during this period.

19. The examination also reviewed the 22 CRs earned by applicant whilst in service and concluded that his overall profile was 'above average' with negative recommendation for promotion. In the overall profile, the applicant has 74% box grading of '8', 23% of '7' and 3% of '5'. Based on the applicant's overall profile, the competent authority concluded that the overall CR profile is weak. And that the impugned CR earned as the first CR in re-employment too is a weak CR with box grading of '5' and non-recommendation for retention /extension. The examination concluded that the CR was well corroborated by the overall

profile of the applicant and that the assessment of both the IO and RO were performance based and objective.

20. As regards the issue of technical validity raised by the applicant in the complaint, the examination established from the records that the CR was placed under observation during internal assessment for non-communication of weak remarks and non-recommendation for extension. The extracts were then forwarded to the IO & RO for communicating the same to the ratee as per Para 137 of AO 2/2016/MS. And that the CR was accepted post receipt of the authenticated extracts. Hence the applicant's plea that the remarks were not communicated as per guidelines was not valid. The examination also concluded that the termination process had been ordered in accordance with provisions of Para 15 and 52 of policy letter dated 25.01.2018. Thus the statutory complaint was rejected being bereft of merit.

21. In view of the above consideration, since the impugned CR is performance based and is well corroborated by the applicant's overall profile, it merits no further interference. The weak remarks/ non-recommendation for retention though not communicated earlier, was subsequently communicated by the MS Branch under the provisions of Para 137 of AO 2/2016/MS. Also that the complaint has been disposed of by the MS Branch under the provisions of the delegated powers in

hardly administrative matters of re-employed officers up to the rank of Brig issued vide MoD letter dated 23.04.2010. We find that the Respondents are justified in rejecting the statutory complaint. We thus uphold the action of the Respondents in terminating the re-employment of the applicant which has been done in accordance with Para 15 and 52 of the MS Branch policy letter dated 25.01.2018.

22 The OA is therefore, dismissed being bereft of any merit.

23. No order to costs.

Pronounced in the open Court on this day of 20 Oct 2023.


(RAJENDRA MENON)
CHAIRPERSON


(P M HARIZ)
MEMBER(A)

/ashok/