

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

A.

OA 300/2017

Brig L I Singh
Versus
Union of India & Ors.

... Applicant

... Respondents

For Applicant : Mr. S S Pandey, Advocate
For Respondents : Mr. Anil Gautam, Sr CGSC

CORAM :

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

ORDER
03.11.2023

Vide our orders of even date, we have dismissed the application. 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.

[RAJENDRA MENON]
CHAIRPERSON

[C. P. MOHANTY]
MEMBER (A)

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ORDER

Invoking the jurisdiction of this Tribunal under
Section 14 of the Armed Forces Tribunal Act, 2007, the
applicant filed this OA with the following prayers:

- (a) *Call for the records based on which the respondents have passed the impugned order dated 09.12.2016 by not removing the complete assessment of the RO and SRO in CR covering the period from 24.10.2011 to 29.03.2012 and thereafter quash the said order to the extent of relief denied to the applicant without disturbing the relief already granted to the applicant.*
- (b) *Set aside the assessment of the RO and the SRO in the CR for the period 24.10.2011 to 29.03.2012 and give the applicant the benefit of quantified marks notionally for having done NDC in his future considerations for further promotions in case the applicant is meeting the grade of last officer nominated for NDC from the batches considered with the applicant and he may be given all consequential benefits.*

2. The applicant is a Brigadier of the Indian Army who is aggrieved by the impugned order dated 09.12.2016 vide which he has been given a partial redressal against the Confidential Report for period 24.10.2011 to 29.03.2012 which he avers was deflated by the Reviewing Officer and Senior Reviewing Officer despite being initiated as an 'Outstanding' report by his Initiating Officer due to subjectivity and bias.

3. Ld. Counsel submits that the report in question being inconsistent compared to his entire earlier service profile affected the future career prospects of the applicant, he filed a statutory complaint on 11.12.2015 due to which a partial redressal was granted to him with impugned order dated 09.12.2016. Thus aggrieved, the applicant has filed this OA.

4. It is the case of the applicant that he had been promoted to the rank of Brigadier owing to his impeccable integrity and brilliant service record during 33 years of his

service in the Infantry arm of the Indian Army. He has performed extremely well in every assignment and career courses and he has also been awarded 'Yudh Seva Medal' in Jan 2005 for acts of Gallantry.

5. Ld. Counsel for the applicant submits that the applicant successfully commanded a Brigade in the Eastern Command and thereafter, was placed in the assignment of Deputy Director General (Discipline and Vigilance) (DDG (DV)) in the Directorate of Discipline and Vigilance in the Army HQ which is a highly sensitive appointment.

6. Ld. Counsel submits that the applicant while in the assignment of Brigade commander was given an outstanding CR for the period of 24.10.2011 to 29.03.2012 by his IO, Maj Gen V.N. Prasad, which included figurative '9' in the box gradings with all the gradings as figurative '9' points except three qualities where he was given a rating point of 8. He further avers that the earlier

two CRs by different Initiating Officers have also been outstanding.

7. Narrating the background, Ld. Counsel submits that while in DV Dte, the applicant in the course of his duty was tasked to handle certain cases of sensitive nature involving discipline of Army personnel of which there was a case against Lt Gen Dalbir Singh, under whose command as General Officer Commanding 3 Corps, an operation at Jorhat, Assam had been mishandled. Thus, it was in his line of duty to issue Show Cause Notice under direction of the then Chief of Army Staff, Gen V.K. Singh to certain officers including Lt Gen (Later General) Dalbir Singh.

8. Elaborating further, Ld. Counsel submits that these official actions initiated from his office led to officers affected by DV Ban facing bar on their promotion as well as postings and it also involved delay in elevation of Lt Gen Dalbir Singh to the appointment of Army Commander by 15 days causing him anguish and resultantly he was

biased in his opinion against the applicant.

9. It is further submitted by the Ld. Counsel that the applicant inadvertently became a victim of circumstances for no fault of his, as he was merely doing his duties as expected of him in the appointment of DDG (DV) that he was holding.

10. Ld. Counsel emphasizes that under this vitiated environment, a one man inquiry was ordered on 26.05.2012 by GOC 33 Corps, the next higher commander (Receiving Officer (RO)) without any written complaint against the applicant. Consequently, a Court of Inquiry against the applicant was ordered after lifting out of DV Ban against Lt Gen Dalbir Singh by Gen Bikram Singh on his assumption of appointment as Chief of Army staff. It was under such circumstances that the applicant was harmed in the Confidential Report (CR) by the senior reporting officers despite having earned an outstanding CR by his IO, Maj Gen V. N. Prasad.

11. It is further argued on behalf of the applicant that the endorsement by the RO and SRO were deliberately delayed and possibly backdated to bring professional harm to the applicant at the behest of Lt Gen Dalbir Singh owing to the applicant's role in issuing the DV Ban against the General. The reports were squarely biased, inconsistent and not in line with the earlier CRs earned by the applicant and included non-recommendation for career course of NDC and foreign assignments.

12. Ld. Counsel for the applicant avers that in all the previous report the applicant has always been given positive recommendation for higher courses and foreign assignment and it is his apprehension that the low ratings in impugned CR were not supported by any endorsement or reason in the pen picture which clearly display inconsistency, subjectivity and bias which have resulted in his non-selection for career course of NDC in Jan 2013 and Jan 2014.

13. Further explaining the timelines in endorsement of the CR, Ld. Counsel submits that SRO endorsed the CR after 180 days of delay after repeating reminders from MS Branch since the applicant was under consideration for promotion for NDC course which is well beyond the 75 days period laid down for the endorsement as per Para 70 of SAO 45/2001.

14. Ld. Counsel argues that the SRO had never interacted with the applicant except for once during a Corps Level Warfare and that even the MS Branch did not set aside the CR as per Para 135 and 137 of SAO 45/S/2001 due to inconsistencies and accepted the CR "as it is" without any enforcements.

15. Ld. Counsel also submits that the statutory complaint against the CR was not addressed appropriately and disposed of with a partial redressal, as per details

given	in	MoD	Order	No.
A/45501/85/2015/SC/MS(X)/110/SC/2016-				D(MS)

dated 09.12.2016, and that he is entitled to relief as prayed for.

Submissions on Behalf of the Respondents

16. Per Contra, the Ld. Counsel for the Respondents submits that there was a disciplinary proceedings initiated against the applicant pertaining to the period when the applicant was the Commander of 164 Mountain Brigade under the Eastern Command and the proceedings were pended due to an interim stay granted by Hon'ble Delhi High Court which had been continued by Hon'ble Armed Forces Tribunal in OA 85/2013 titled as **Brig L I Singh Vs Union of India and Ors.**

17. Ld. Counsel vehemently argues that the applicant has leveled unsubstantiated and uncharitable allegations against very senior officers including a former Chief of Army Staff who had nothing to do with the CR of the applicant and even the senior officers against whom the

applicant had made allegations have not been impleaded as respondents in the instant case.

18. It is the submission of the Ld. Counsel that the applicant has been assessed based on his performance during the period of reporting and the past performance and gradings in previous CRs are no guarantee of commensurate assessment in the impugned CR as the report is a reflection of the performance of the applicant for the period for which the report is initiated.

19. Ld. counsel further submits that the applicant worked as a DDG in DV Dte under ADG DV of the rank of Maj Gen and a DG in rank of Lt Gen and, therefore, his averments that his CR was affected due to alleged ongoing differences amongst the senior officers in the chain of succession are unfounded as he was acting in his capacity of DDG (DV) in DV Dte under the supervision of a Lt Gen and a Maj Gen and the incidents for which the one man inquiry and the Court of Inquiry were conducted were

related to his previous appointment as Cdr 164 Mtn Bde and in no way related to his assignment as DDG (DV).

20. Arguing further on the merits of the submissions on behalf of the applicant, Ld. Counsel avers that the impugned CR was endorsed as per extant instructions, technically valid and there was no bias or subjectivity in assessment of the applicant. Accordingly, the events related to differences between the senior officer and CR ratings awarded to him by his reporting officers have no inter-relation and are merely his apprehension as Lt Gen Dalbir Singh was not his reporting officer in any of the CRs.

21. It is further averred that the statutory complaint has been examined in the most impractical manner at three independent levels and assessments of RO which were found to be inconsistent were accordingly expunged and, therefore, the OA is based on apprehensions without any substantiated facts or record.

Consideration

22. We have taken note of the submission made by the Ld. Counsels representing both sides and have given our careful perusal to the documents including the CR dossiers and the internal notings of MoD, wherein, the statutory complaint against the CR has been analyzed.

23. Before a detailed analysis, it is pertinent to take note of certain important dates, events and correspondences related to the case under consideration, wherein we find that the applicant relinquishes the command of 164 Mountain Brigade on 29.03.2012 and he was posted as DDG-A (DV), IHQ of MoD (Army). The CR for the period 24.10.2011 to 29.03.2012 was initiated by IO on the same date and forwarded to higher reporting officer i.e. RO and SRO for their endorsement.

24. It is noted from the records that the applicant was in the DV Directorate for a brief period from April, 2012 to July, 2012, which is barely for two month till

orders for posting of his relieve as DDGDV by 02 Jul 2012 vide MS Branch Signal No. 388728/MS(Brig)/140/C/1510 dated 21st June 2012 placed at Appendix E was received. Thereafter, the posting of the applicant as additional officer at Infantry Directorate, IHQ of MoD vide MS Branch Signal dated 02.07.2012 was issued.

25. Meanwhile, a convening order for a Court of Inquiry had been issued by HQ 33 Corps i.e. the higher HQ of his last assignment vide their letter No. 172121/3/Corp/AI dated 9th June, 2012 which is approximately 02 months and 10 days after the applicant relinquished his command with directions as follows.

2. Terms of Reference, The Court of inquiry is directed to investigate and collect evidence in relation to the alleged involvement of IC- 41582A Brigh L I Singh, YSM erst while Cdr 164 MTN Bde in the following matters:-

(a) Borrowing of money from wet canteen contractors of units and from subordinate offrs under his comd.

(b) illegally taking away official property of Flag Staff House prior to relinquishing his appt.

26. Subsequently, we find that the scope of the Court of Inquiry had been enlarged with following terms of reference vide letter No. 172121/3/Comp/AI dated 21st June 2012 which is extracted below:-

2. Terms of Reference, The Court of inquiry is directed to investigate and collect evidence in relation to the alleged involvement of IC- 41582A Brig L I Singh, YSM erstwhile Cdr 164 Mtn Bde in the following matters:-

(a) Borrowing of money from wet canteen contractors of units and from subordinate offrs under his comd.

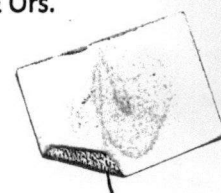
(b) Pressurizing IC- 59235K Maj Amit Salathia, SC, AA&QMG, HQ 165 Mtn Bde to obtain Rs. 45, 000/ from th4e CHT Contractor for him (Brig LI Singh YSM)

(c) Illegally taking away official property of Flag Staff House prior to relinquishing his appt.

(d) Accepting items viz, Laptop worth Rs. 62,000/- and Cannon worth Rs. 56,000/- from M/s United enterprises and M/s Narbada enterprises respectively.

(e) Any other misdemeanour or financial impropriety which may have been committed.

27. A bare consideration of the above chain of events in a short span of time does not convincingly establish a connection between the alleged role of the applicant in a case of differences between the senior officers of the Indian



Army as a barely settled DDG(DV) in IHQ of MoD; and the Court of Inquiry ordered by HQ 33 Corps, as the Court of Inquiry ordered is for incidents when the applicant was the Cdr of 164 Bde till 29.03.2012.

28. Since, the issue under consideration does not relate to the CoI, we do not find it appropriate to dwell into details of the investigations carried out by the Court of Inquiry or the outcome thereof as these questions are beyond our purview and we restrict ourselves to the question of analyzing the impugned CR for any further interference by us and to do so we have given our careful consideration to the file notings of IHQ of MoD vide which the impugned CR has been examined for redressal.

29. On a detailed perusal of the impugned CR for the period of 24.10.2011 to 29.03.2012, we find that it has been initiated as an outstanding CR by the IO and it has been subsequently graded to 'above average' report by both RO and SRO in the Box gradings which are in consonance

with the gradings of RO and SRO in the previous two reports as Cdr 164 Mtn Bde.

30. It is important to note that the previous reports had been endorsed by different ROs and SROs from the CR under consideration. Therefore, we are not inclined to endorse the submission for lack of conformity with the trend with respect to the earlier profile of the applicant. There are no adverse remarks in the pen picture of the applicant by any of the reporting officers, as we have noticed.

31. Consequent to the action of partial expunction of the CR granted through the redressal mechanism, the remaining portion of the CR as endorsed by the RO and SRO is a mix of figurative ratings of '7s' and '8s' in various qualities of Personal and Demonstrated performance and Qualities to assess potential. Since, both '7s' and '8s' are 'Above Average' ratings, we do not consider it necessary to arbitrarily replace or expunge the '7s' by a judicial



intervention since it is our well considered opinion that award of marks by the departmental hierarchy is based on their direct or indirect assessment of the performance of the ratee over the entire period of reporting, unless it is convincingly established before us that there has been a bias or illegalities or arbitrariness due to certain reasons.

32. Noting above, we deem it inappropriate to replace or expunge the CR carrying a certain number of above average ratings merely because it is rated lesser than the expectations of the ratee, in the background where we do not find any correlation between the events of the difference of opinion between the senior hierarchy of the Army with respect to the impugned report of the ratee.

33. On a perusal of the redressal mechanism adopted by the Respondents to grant redressal granted to the applicant by the respondents based on his statutory complaint, we find it legal and in consonance with the policy in vogue, thus, not warranting our interference in

absence of any specific malafide, and therefore, we do not find any reason to expunge the entire CR which is already a mix of 'outstanding' and 'above average' gradings in various qualities as per the assessment of the ratee by his entire reporting channel.


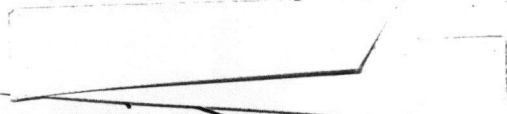
34. In view of the above observations, we are of the considered opinion that the instant O.A. being misconceived and devoid of merit is liable to be dismissed.


35. Consequently, OA 300/2017 is dismissed.

36. Pending miscellaneous application(s), if any, are disposed of.

37. No order as to costs.

Pronounced in the open Court on 3 day of November, 2023.



[JUSTICE RAJENDRA MENON]
CHAIRPERSON


[LT. GEN C. P. MOHANTY]
MEMBER (A)

/ps/