

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

49.(Supplementary)

OA 1938/2021 with MA 1971/2021

Col Rajesh Pratap Singh ..... Applicant  
Versus  
Union of India & Ors. .... Respondents

For Applicant : Mr. I. S. Singh, Advocate  
For Respondents : Mr. Neeraj, Sr. CGSC for RR 1-3  
None for R-4

CORAM

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

ORDER  
27.09.2024

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.

[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

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

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**Col Rajesh Pratap Singh** ... **Applicant**

**Versus**

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**For Applicant**

: Mr. JP Sharma, Advocate

Ms. Kirtika Chhatwal, Advocate

**For Respondents**

: Mr. Neeraj, Sr. CGSC for RR 1-3.

None for R-4

**CORAM**

**HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON**

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

**ORDER**

**MA 1971/2021**

Keeping in view the averments made in this application seeking condonation of delay in filing the OA and finding the same to be bonafide, in light of the decision in **Union of India and others Vs. Tarsem Singh [2008 (8) SCC 648]**, the same is allowed condoning the delay in filing the OA.

**O.A. 1938/2021**

2. This application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007, by the applicant who is a serving Col in the Army, and is aggrieved by the rejection of his statutory complaint vide order dated 01.01.2021 against CR for the period 01/06-12/06, The applicant has made the following prayers:-

*a) Call for the entire record leading to the rejection of the applicant's statutory complaint vide the impugned order dated 01.01.2021 (Annexure A-1), and after perusal thereof, set aside said impugned order dated 01.01.2021 passed by Respondent No.1;*

*b) Call for the entire service record/dossier of the applicant, including the applicant's impugned CR for the period 01.01.2006 to 31.12.2006, and after perusal thereof, set aside the complete CR of the applicant pertaining to the period 01.01.2006 to 31.12.2006 being illegal, biased, arbitrary, inconsistent, non-objective and technically invalid;*

*c) Call for the entire service record/dossier of the applicant, including the applicant's impugned CR for the period*

*01.01.2006 to 31.12.2006, and after perusal thereof, set aside the 'adverse remarks' endorsed by Respondent No. 4 in the CR pertaining to the period 01.01.2006 to 31.12.2006, being false, biased, arbitrary, inconsistent, non-objective and technically invalid; and*

**Brief facts of the Case:**

3. The applicant was commissioned into the Army (21 RAJPUT) on 13.12.2003. It is the applicant's case that whilst being posted with the unit in 2006, the CO had referred the applicant for psychiatric examination and the applicant had been discharged stating that '*nothing abnormal detected*'. However, it is the applicant's case that the then CO was biased and vindictive against the applicant and therefore gave an 'High Average' CR covering the period 01/06-12/06. In the meanwhile based on the applicant's application to the Army Cdr and Corps Cdr, a CoI was convened to investigate the various allegations made by the applicant against the CO. It is the applicant's case, that based on this CoI, the CO was given a censure.

4. The applicant then submitted a statutory complaint dated 29.07.2007 against the CR 1/06-12/06. However, this was rejected

vide order dated 11.06.2008. In 2010, the applicant voluntarily sought an inter arm transfer, which was sanctioned and the applicant was transferred to Int Corps in Apr 2010. The applicant then submitted a second statutory complaint dated 18.11.2019 against the same CR (01/06-12/06) which was impugned in his first complaint. This complaint too was rejected vide order dated 01.01.2021. Aggrieved by the rejection of the complaint dated 18.11.2019 and since the CR 1/06-12/06 was not expunged, the OA has been filed.

**Arguments by the Counsel for the Applicant**

5. The counsel reiterated the service profile of the applicant and his achievements and the fact that the applicant was conferred the COAS and Army Commander commendation cards. The counsel then took us through the details of the incidents of 2006, when the applicant with only three years of service had been referred for psychiatric evaluation due to the biased and vindictive nature of the CO. The counsel then elaborated the circumstances under which the CR covering the period 01/06-12/06 was initiated in Jan 2007, in which the applicant was given a box grading of '6' and

unsubstantiated adverse remarks were endorsed in the pen picture. The counsel further highlighted that the CO falsely claimed that he had verbally counseled the applicant on 18.07.2006, while the applicant was actually away from the unit attending a military course at CIJW School in Mizoram from 17.07.2006 to 26.08.2006, and that this false statement further illustrated the CO's malice and lack of objectivity in assessing the applicant's performance.

6. The counsel then took us through the complaints made by the applicant to the Army Cdr and the Corps Cdr (Annexure A-7 and A-8); being interviewed by the Army Cdr and his subsequent attachment to another unit. The counsel then took us through the CoI ordered to investigate the various issues raised by the applicant. The counsel then emphasized that based on these complaints, the CO was given a censure, and that later in 2019, the applicant's CO was court martialed for misusing warrants and other irregularities. The counsel then stated that in 2010 the applicant had voluntarily sought inter arm transfer and had been moved to Int Corps.

7. The counsel then took us through the two statutory complaints dated 29.07.2007 and 18.11.2019 and added that they had been rejected vide order dated 11.06.2008 and 01.01.2021 without the issues having been examined correctly. The counsel contended that the applicant, upon realizing that the CoI proceedings from Mar to Oct 2007 may contain additional facts relevant to his challenge of the impugned CR, submitted an application on 16.02.2017 requesting a copy of the CoI proceedings to file a fresh statutory complaint. In response, the applicant was provided a copy of the proceedings, excluding the findings, opinion and directions through HQ CIF (U) letter dated 14.03.2017. The counsel asserted that the CoI proceedings revealed new facts that were relevant to baseless adverse remarks made by the CO in the applicant's CR of 2006. Consequently, the applicant submitted a second statutory complaint dated 18.11.2019, challenging the legality, objectivity, and consistency of the impugned CR, but the same was rejected vide order dated 01.01.2021, which was communicated to the applicant on 23.01.2021.

8. The counsel for the applicant contended that as per Para 94 of AO 45/2001/MS it is the responsibility of the ratee to submit his duly filled CR-Form to his IO before the due date of initiation of CR, the counsel further laid emphasis on Para 129 read with Para 130 of AO 45/2001/MS which obligated the IO to communicate the relevant portion of his assessment to the officer reported upon in person and not through courier/post (as has been done in the instant case), when the IO and the ratee both are posted in the same place/unit. The counsel further submitted that as per Para 37 of the 'Guidelines for Rendering Confidential Reports, adverse remarks can only be made if an officer fails to show improvement after counseling, but in the instant case, no such counseling was administered on 18.07.2006, as falsely claimed in the impugned CR. The counsel further argued that the CO also falsely claimed to have counseled the applicant on multiple occasions in Dec 2006, despite the fact that the applicant was admitted to a military hospital on 18.12.2006 and was discharged only on 18.01.2007. The counsel further contended that even if such counseling had been given, no time or opportunity was

given to the applicant to demonstrate improvement, rendering the adverse remarks invalid.

9. The counsel vehemently asserted that Para 37, read with Para 34 of AO 45/2001/MS prohibits a Reporting Officer from initiating a CR if a complaint involving the officer's character has led to a Col, which didn't happen in the present case. The counsel asserted that the inconsistency in the CR was a valid ground for expunging it, as inconsistency renders an assessment null and void in service jurisprudence. The counsel emphasized that absolute objectivity was the hallmark of CR writing, as underscored in Paragraphs 5 and 118 of AO 45/2001/MS and that reporting officers are bound to assess rates based on actual demonstrated performance, without being influenced by extraneous factors.

10. The counsel contended that although the adverse remarks in the 2006 CR did not affect the applicant's current promotion, they might hinder future career advancements, particularly for higher ranks such as Brigadier. The counsel then relying on the following judgments of the Hon'ble Supreme Court which held that unreasonableness or arbitrariness of an administrative action was

open to judicial review, asserted that the CO's pen picture was grossly biased and vindictive and therefore the whole CR be set aside.

- (a) Judgment dated 10.11.2017 in the case of ***Uoi v. Major General Manomoy Ganguly*** [(2018) 1 SCC 552].
- (b) Judgment dated 29.04.1969 in the case of ***A K Kraipak & Ors. V UoI*** [(1969(2) SCC 262]
- (c) Judgment dated 11.01.2007 in the case of ***Major Prithviraj Patnaik v.UoI & Ors*** (ILR (2007) Delhi 572].

#### **Arguments by the Counsel for the Respondents**

11 The counsel for the respondents submitted that the applicant is challenging his CR for the period 01/06 to 12/06 which he had previously challenged in his statutory complaint dated 29.07.2007, while he was in the rank of Capt and the same was duly examined and rejected by the competent authority vide its order dated 11.06.2008. The counsel further submitted that the applicant did not challenge this order before the Hon'ble Armed Forces Tribunal or any other forum within the prescribed limitation period.

12. The counsel further contended that, despite the earlier rejection, the applicant submitted another statutory complaint dated 18.11.2019, challenging the same CR for the period 01/06 to 12/06 and this complaint was again examined in detail by the competent authority, taking into account the applicant's overall profile, relevant documents, and all aspects of the case. The counsel vehemently asserted that it was determined that the assessment in the CR for the period 01/06-12/06 was consistent, performance-based, corroborated, and technically valid. Accordingly, the statutory complaint was rejected by the competent authority on 01.01.2021.

13. It was strongly argued that the applicant's subsequent complaint was merely an attempt to revive the expired limitation period as in this case, the limitation period should be reckoned from 11.06.2008, when the applicant's initial statutory complaint impugning the CR was rejected, and not from 01.01.2021. The counsel contended that the present application suffers from an inordinate delay of nearly 13 years, without any justifiable explanation for this prolonged delay and the applicant has failed to provide either legal or factual justification for approaching the Tribunal at this belated stage, while it is a settled principle that the delay for each day

must be adequately explained. Therefore, the counsel argued that the instant OA should be dismissed outright due to the unreasonable delay.

14. The counsel for the respondents further submitted that the assessment of CRs is governed by the provisions of Army Order 2/2016/MS, which provides detailed guidelines.

15. The counsel contended that the objective of a CR is to assess an officer's competence, employability, and potential for organizational needs. During the relevant period, CR assessments were regulated by SAO 3/S/89 (now replaced by Army Order 02/2016/MS) and the gradings provided numerical scores and a pen picture assessment. The CR process involves independent assessments by the IO, RO and SRO, with additional endorsements for technical arms and services where applicable.

16. Finally, the counsel argued that the convening of the Court of Inquiry and the submission of the applicant's complaint occurred after the initiation of the CR for the period 01/06-12/06 by the IO, thereby affirming the CR's technical validity, objectivity and performance based nature. He further, emphasized that the applicant had raised two complaints on the same CR and which had been rejected. Moreover this CR was part of his profile

when the applicant was empanelled by No 3 SB. Thus, the CR in question stands corroborated and should not be interfered with.

17. The counsel further relied on the following judgments:

(a) **Union of India vs. SS Kotiyal & Ors**, (1998) 8 SCC 682.

(b) **UOI vs. Major Bahadur Singh**, 2005 AIR SCW 6113.

(c) **Dev Dutt vs. UOI & Ors, 2008**, INSC 630.

### **Consideration**

18. Having heard both parties, the only issue for consideration is whether the impugned CR merits interference or not. The respondents have submitted the CR Dossier and the file on examination of the complaints.

### **Complaints**

19. The applicant had filed statutory complaints dated 29.07.2007 against CR 01/06-12/06 and this was rejected vide order dated 11.06.2008. He then filed a second statutory complaint dated 18.11.2019 in which he impugned the same CR and this was also rejected vide order dated 01.01.2021.

20. As part of the examination of the first complaint in Apr 2008, the comments of the Reporting Officers are also on record. The IO has given a detailed explanation to the issue raised by the applicant in his complaint. In

summary, the IO has stated that the applicant had been assessed as per his demonstrated performance; that referring the applicant for psychiatric evaluation in Dec 2006 and the initiation of the ACR in Jan 2007 were two independent issues; that the pen picture had also mentioned the positive contributions of the applicant; that the applicant had been verbally counseled on numerous occasions and that the difference in date of counseling may be appreciated in the backdrop of the many verbal counseling given to the applicant.

21. The RO in his comments has stated that the assessment was purely based on the qualities demonstrated by the applicant during the reporting period. The RO has also stated that the applicant at that juncture had a tendency to over-asses himself without understanding the organizational goals and that the applicant's contributions then had been mere average and satisfactory. With reference to the remark by the CO that the applicant had walked away with two ORs, the RO has stated that the officer had disobeyed the order intentionally with arrogance, and had thereby created a situation where in he did walk away with two ORs through the jungle in CI Ops without taking due security precautions when he had been tasked to execute a particular military task. The RO has also

stated that the CoI had adequately established the issue and that the applicant himself had confessed to his mistake before the Court and that in the complaint the applicant had twisted the facts of the case. The SRO too had recommended that the complaint be rejected as the CR was objective and conformed to the performance and professional traits of the officer. The examination of the first complaint thus concluded that no bias or subjectivity can be attributed to the IO's assessment as the RO and SRO had endorsed the assessment of the IO and therefore, the report was held to be performance based and did not merit any interference. Accordingly, it was rejected.

22. The second complaint dated 18.11.2019 was examined de-novo since the applicant had mentioned additional details regarding certain financial irregularities against the CO and had also referred to a CoI where he claimed that the weak remark by CO in the pen picture were proved to be false. The complete CoI had been sought from 39 Mtn Div and examined. Based on the examination of CoI it was concluded that the applicant's assessment that adverse remarks endorsed by the IO had been proved to be false was incorrect as it clearly emerged from the CoI that the applicant had disobeyed local orders and had moved cross country with

two ORs without seeking permission/ informing anyone of his movement. The CoI had also found that there was no evidence to suggest that the applicant had been victimized and the allegations made by the applicant against the IO were unsubstantiated. The examination once again concluded that the CR was well corroborated with matching assessment by all reporting officers and therefore did not merit any interference.

### CR

23. The impugned CR is boxed 6/6/6 by the IO/RO/SRO and was earned by the applicant as the Company Second in Comd (Coy 2 I/C ) in field. The pen picture by the IO, RO and SRO are reproduced below. The IO has also endorsed that the applicant was given verbal guidance on six different occurrences. All reporting officers have recommended he applicant for promotion but not for foreign assignments/ career courses.

#### Pen picture by IO

*"Capt Rajesh is medium built who performance has been high average. The officer has displayed reasonably keen interest in regt level activities with guidance by sr offr. The physical fitness of the offr is very good and his personal disp is orderly under supervision. The offr is dependable with judicious maturity with comd and cont commensurate to his service and personal disp. He possesses reasonably good capability to train his subordinates. He possesses good adm and man mgt capability. The offr took immature steps and ran away with wpn and ammn with two CDR and was absconding till finally nabbed on 17 Dec 06. Offr being young was given a chance to rehabilitate by going through medical ckeck and treatment under AFMSF-10. The offr being young is expected to improve*

*with close supervision and constant guidance. The officer is being kept under check and his prog is likely to be encouraging. Capable of performing better under guidance and close supervision."*

*(a) Advisory Remrks/Performance of LMC offrs (as applicable)*

*N/A*

*(b) Details of guidance for improvement during the Reporting period:*

*(i) Verbal*

*(aa) By CO on 18 Jul 06*

*(ab) By CO on 12 Dec*

*15 Dec, 16 Dec, 17 Dec &*

*18 Dec, 2006*

*(ii) Written*

Pen Picture by RO

*"Rajesh is a medium built offr. He is physically fit. He possesses good adm and man mgt capabilities. He goes all out to train and look after the interest of his subordinates."*

Pen Picture by SRO

*"A high average offr who has performed his op tasks satisfactorily."*

24. At the time of examining the second statutory complaint, the profile of the applicant has 13 CRs. Of these the first two reports are whilst serving with RAJRIF and the remaining 11 CRs are consequent to his transfer to the Int Corps (from 01/09 to 5/19). The impugned CR is the first CR in the reckonable profile. It is seen from the records that the applicant was considered by No 3 SB in Feb 2021, was empanelled to the rank of Col and commanded a Conter Int Unit in field. The impugned CR

was therefore part of the reckonable profile during his consideration by No 3 SB.

### **Conclusion**

25. In view of the above consideration, we find no reason to interfere with the impugned CR 01/06-12/06. While the applicant has made a case that the assessment and pen picture were biased and subjective, this is not borne out by the facts from the subject CoI which was examined during the examination of the second statutory complaint. As seen from the OA, the proceedings of the CoI less the findings, opinion and directions (total of 68 pages) were forwarded to the applicant by HQ CIF vide their letter dated 14.03.2017 (Annexure A- 15). However, vide Annexure A-12, the applicant has selectively enclosed only 12 pages out of the total 68 pages. These 12 pages pertain to certain statements of three witnesses and certain question by the Court to the CO. The only inference to be drawn is that producing the complete CoI was not in the interest of the applicant. In view of the above consideration, we therefore conclude that the impugned CR covering the period 01/06-12/06 does not merit any further interference.

26. The OA is accordingly dismissed

No orders to cost

Pronounced in open Court on this <sup>27<sup>th</sup></sup>-----day of September, 2024.

**(JUSTICE RAJENDRA MENON)  
CHAIRPERSON**

**(LT GEN P.M. HARIZ)  
MEMBER (A)**

/ashok/