

**COURT No.1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

OA 1020/2017

Lt Col N Kanwar **Applicant**
Versus
Union of India and Ors. **Respondents**

For Applicant : Mr. Anil Bakshi, Advocate
For Respondents : Mr. V.S. Mahndiyan, Advocate

CORAM

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

ORDER

This application has been filed under Section 24 of the Armed Forces Tribunal Act, 2007, by the applicant who is a serving Lt. Col in the Military Nursing Service (MNS) and has since retired, and is aggrieved that the competent authority granted her only partial redressal, in her statutory complaint against the CR for the period 8/14-1/15. She has made the following prayers:-

(a) Set aside the impugned order dated 14-10-2016 passed by the Government of India, Ministry of Defence.

(b) Set aside the entire impugned confidential report of the applicant covering the period 20-08-2014 to 04-01-2015.

(c) Any other relief as considered just and proper in the facts and circumstances of the case.

Brief Facts of the Case

2. The applicant was commissioned into the Military Nursing Service on 27.12.1985 and superannuated on 30.11.2020. She was promoted to the rank of Lt Col (TS) in 2005. Thereafter, the applicant was considered for promotion by PB No. 4 (MNS) on 04.04.2014, and subsequently promoted to Lt Col (Selection Grade) w.e.f. 20.08.2014. It was during the applicant's posting at MH Jabalpur, that she received an adverse remark in her CR for the period 20.08.2014 to 04.01.2015 by her IO. Consequently, the applicant filed a statutory complaint dated 30.07.2015, seeking that the complete CR 8/14 – 1/15 be set aside. However, she was only granted partial redressal, in that the adverse remarks by the IO alone were expunged on grounds of inconsistency. Hence the OA.

Arguments by the Counsel for the Applicant

3. The counsel for the applicant reiterated the applicant's service profile, detailing her tenure at MH Jabalpur. The counsel highlighted her role as the Nursing Officer Incharge (NO I/c) of the Family Wing, her additional duties as Deputy Principal Matron, and her responsibilities as President of the Nursing Officer Mess Committee.

4. The counsel argued that in the applicant's CR for the period 08/14 – 01/15, the IO/TO gave adverse remarks that were not shown to her, contrary to the policy on CR rendition. It was only when Army HQ directed that these remarks be communicated to her that she was made aware of them. The counsel emphasized that the IO had never provided any verbal or written counseling before endorsing these adverse remarks.

5. The counsel then drew attention to the statutory complaint dated 28.07.2015, emphasizing that while the applicant had requested the entire CR be set aside, the competent authority had only partially addressed this by expunging the adverse remarks. Thus the CR 08/14 – 01/15 has caused significant prejudice to the applicant.

6. The counsel further argued that the superior officers (RO/STO/SRO) were influenced by these adverse remarks, adversely affecting their grading of the applicant. Initially, no superior officer considered the remark as an "adverse remark" warranting communication until higher headquarters sent the CR back to Jabalpur for this purpose. Consequently, the remarks were communicated on 23.04.2015. Therefore, the entire CR remained neither objective nor fair, even after the removal of the adverse remarks. The counsel contended that the adverse remark in the pen picture was directly related to various gradings in the report, and after its removal, the associated gradings also deserved to be expunged, and relied on the AFT (PB) order dated 29.11.2010 in OA No. 190/2009, **Brigadier Rajiv Verma vs. UOI and Others.**

7. The counsel vehemently asserted that the impugned CR suffered from subjectivity and unfairness, necessitating its complete expunction. The adverse remarks endorsed by the IO were without any basis and was made arbitrarily. These remarks, specifically stating that the applicant needed to take more interest in organizational activities, directly impacted the assessment of crucial

attributes such as "Sense of Duty" and "Integrity," causing significant damage. The adverse remarks had a profound effect, both directly and indirectly, on the applicant's individual quality gradings, overall pen pictures, and the ultimate box gradings given by all the reporting officers. The counsel emphasized that the IO had never provided the mandatory guidance for improvement as required by the policy on CR rendition.

8. Relying on the Hon'ble Supreme Court in **UOI vs. Major Bahadur Singh** (2006) 1 SCC 368 the counsel contended, that additional duties and appointments undertaken by the applicant were not reflected in the CR, contrary to departmental instructions. Moreover, no specific instance of adverse conduct by the applicant was cited by any reporting officer warranting the adverse remarks. The counsel further relied on the Hon'ble Supreme Court judgment in **Mohinder Singh Gill vs. The Chief Election Commissioner** AIR 1978 SC 851, and argued that while expunging the adverse remarks, the Government avoided issuing a detailed speaking order on the various grounds raised by the applicant in her statutory complaint, contrary

to well-settled law. This omission resulted in the entire impugned CR not being set aside.

Arguments by the Counsel for the Respondents

9. At the outset, the counsel for the respondents contended that the present OA was barred by limitation. The counsel argued that the OA pertains to adverse remarks in the applicant's CR for the period 08/14 to 01/15, which the applicant claimed, she became aware of on 23.04.2015. Since the OA was filed on 26.05.2017, it was barred under Section 22(1)(a) of the AFT Act, 2007. Additionally, the OA was time-barred as it was not filed within the period prescribed in Section 22(2)(c) of the AFT Act, 2007.

10. The counsel further asserted that the statutory complaint had been duly analyzed by five different offices: DGMS (Army), DGAFMS, AG, CAB, and MoD/D(Med). The competent authority, after thorough analysis, granted partial redress to the applicant by expunging the adverse remarks endorsed by the IO on grounds of inconsistency. The applicant had been rated between outstanding and exceptionally outstanding by all reporting officers, and the adverse remarks were

expunged because they were inconsistent with the numerical assessments in the CR.

11. The counsel vehemently contended that the applicant's claim that the entire ACR for 2014 should have been expunged once the adverse remarks were removed was unsustainable. The numerical markings by all reporting officers were between outstanding and exceptional and aligned with other reports earned by the applicant. Additionally, the contention that the superior officers (RO/STO/SRO) were influenced by the adverse remarks of the IO was not supported by records. All superior officers endorsed the applicant as outstanding and exceptional, with laudatory pen pictures. The counsel further stated that the IO had endorsed advisory/adverse remarks in the pen picture, which had not been communicated to the applicant. Therefore, the extract of the adverse remarks was forwarded to the Commandant, MH Jabalpur, vide letter No B/32164/ACR/DGMS-4A dated 10.04.2015 for communication to the applicant

12. The counsel asserted that the competent authority, after considering the statutory complaint dated 30.07.2015, had rightly

granted partial redressal by expunging the adverse remarks endorsed by the IO on grounds of inconsistency, as communicated via letter No 15(155)/2016/D(Medical) dated 14.10.2016.

Consideration

13. We have heard both parties at length and the only issue that requires consideration is whether the applicant's CR 08/14-01/15 merits any further interference. The respondents have submitted the CR dossier and the file pertaining to the examination of the complaint. Both of these have been examined by us.

14. In the statutory complaint dated 13.08.2015 the applicant has impugned the CR 8/14 - 01/15 and had prayed that the CR be set aside as it was biased and unjustified and was inconsistent with her performance and profile. The complaint was examined by ADG MNS, DGMS (Army), DGAFMS, AG, COAS and finally by the competent authority at MoD. The impugned CR was examined in detail. The pen pictures of various reporting officers are as under:

(a) IO: *'Well built, neat, smart and well turned out nursing officer. Cheerful and has average communication skills. She needs to take more interest in organizational activities.'*

(b) TO: *'A well built, smart, well tuned out nursing officer, has average administrative knowledge. Has good communication skills. A good team member'.*

(c) The pen picture of the RO/SRO/STO were all positive. The SRO stated that the applicant possessed excellent professional and administrative skills. The STO however stated that the applicant had satisfactory administrative output.

15. It is seen that the remarks of the IO were not communicated to the applicant by the IO. However, the office of ADG MNS on examining the CR took necessary action to communicate the remarks to the ratee on 10.04.2015. As part of the process of examining the complaint, comments were sought from the IO who stated that her remarks were based on her own observations. Eased on the recommendations of various authorities in the chain of command, the competent authority concluded that the adverse remarks: *".... Needs*

to take more interest in organizational activities" by the IO should be expunged being inconsistent with the overall assessment and pen pictures of other reporting officers. Accordingly, vide order dated 14.10.2016, partial redressal was granted.

16. We have examined the CR. The CR is boxed 8.16/8/8/8/8 by IO/RO/SRO/TO/STO. The overall assessment in the CR is as per the overall profile of the applicant and thus this CR does not merit any further interference.

17. Accordingly, the OA is dismissed.

18. No order as to costs.

Pronounced in open Court on this^{19th} day of July, 2024.

**(JUSTICE RAJENDRA MENON)
CHAIRPERSON**

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

/ashok/