

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

OA 1521/2022

Col Ranjeet Narayan ... Applicant
Versus
Union of India and Ors. ... Respondents

For Applicant : Mr. Amit Kumar, Advocate
For Respondents : Mr. Neeraj, Sr. CGSC

CORAM

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

ORDER

Invoking the jurisdiction of this Tribunal under Section 14 of Armed Forces Tribunal 2007, the applicant who is a serving Colonel of Army has filed this OA challenging his CR's and prays for following reliefs:

(i) *To set aside the disposal order of the Statutory Complaint by Military Secretary's Branch, Integrated Headquarters of Ministry of Defence (Army) vide their letter No 36501/17412/Inf/2018/MS-19 dt 13 Mar 2019, marked as Annexure A-1, as being unjust, arbitrary and illegal.*

(ii) *To expunge the following CRs in totality which were initiated by Colonel SS Sharda due to the bias and prejudice, in view of the evident biased approach of the Respondents.*

(a) *25 Sep 2010 to 02 Feb 2011 ACR*

(b) *03 Feb 2011 to 31 Dec 2011 ACR*

- (iii) To award exemplary costs in favour of the Applicant*
(iv) To pass such other and further orders which their lordships may deem fit and proper in the existing facts and circumstances of the case

Brief Facts of the case

2. The applicant was commissioned into the Indian Army in Infantry on 13 December 2003 and by his consistent performance in various appointments during his service both in peace and field areas, he was promoted to the rank of Colonel on 28.05.2019.
3. During his service he has earned Confidential Reports from various officers and has been graded as an "outstanding" officer in most of his reports. The applicant however, stands aggrieved by the ACR's for the period 25.09.2010 to 02.02.2011 and 03.02.2011 to 31.12.2011 during his posting as Instructor Class 'B' to Infantry School Mhow, wherein he was graded poorly by the IO particularly in the report from 03.02.2011 to 31.12.2011 where he was graded with maximum of '8's, only two '9's, and a '7' in physical attributes out of total of 22 gradings with an overall box grading of 8 which is inconsistent and subjective in comparison to his overall CR profile and earlier reports. The

applicant apprehends that RO and SRO in turn may have graded him low due to the same reason thereby contributing to his low assessment in the entire CR. He attributes these low rated CRs to have adverse effects on his nomination for career courses, UN assignments and other career progression prospects in future.

4. The applicant filed a Statutory Complaint dated 11.05.2018 against the assessment in the ACR. The aforesaid complaint dated 11.05.2018 was rejected by Respondent No.1 vide Order dated 13.03.2019; allowing him no relief against the impugned Confidential Reports. Similarly, his statutory complaint dated 11.05.2018 was also disposed off as 'Rejected' vide order dated 13.03.2019.

Submissions by Learned Counsels

5. Learned counsel for the applicant submits that due to his hard work and dedicated service in all his assignments and excellent results in career courses, the applicant has been found fit for promotion to higher ranks and accordingly promoted to the rank of Colonel in his career of more than 18 years and six months. The counsel emphasized that the applicant was awarded the General Officer

Commanding-in-Chief Commendation Card in 2004 for gallantry and again in 2019 for distinguished service. The applicant's was also recommended for the same commendation in 2015 and 2021, illustrating his continued exemplary performance. The counsel contended that the applicant's performance during his tenure at Infantry School Mhow was exemplary and appreciated by commanders in the chain of command. Deliberating on his service profile, Ld. Counsel submits that the applicant has attended various prestigious courses such as Staff Course at Defence Services Staff College, Wellington, having been selected through a rigorous competitive examination.

6. Submitting on the issue of CR, learned counsel submits that the applicant is aggrieved by the Annual Confidential Reports (ACRs) for the periods from 25.09.2010 to 02.02.2011 and 03.02.2011 to 31.12.2011, during his tenure as Instructor Class 'B' at Infantry School Mhow, a highly coveted posting for Infantry Officers. Learned counsel contended that upon arrival at Infantry School Mhow, officers undergo a month-long probation, including a Suitability Test, which the applicant

passed with excellent gradings. The counsel emphasized that the applicant's efforts were highly appreciated by the chain of command, particularly by Col S.S. Sharda and Brig A.K. Gupta and the applicant was chosen by Col S.S. Sharda to perform the duties of Directing Staff (Coordination) and was further awarded a "Certificate of Merit" by Col S.S. Sharda, commending his professional competence and zealous effort.

7. Learned counsel further points out that despite the applicant's exemplary performance and additional responsibilities, he was not graded commensurately in his ACRs for the specified periods. The Applicant received very poor gradings from 03.02.2011 to 31.12.2011, with mostly 8s, two 9s, and a '7' in Physical Attributes out of a total of 22 gradings, which was inconsistent with his excellent gradings in past reports and the physical tests undergone by him.

8. Learned counsel further highlights an incident possibly affecting IO assessment involving the applicant, who was one of eight officers in the Anti-Tank Guided Missile Group, five of whom were appearing for the Defence Services Staff College Examination. Due to a shortage of officers, the IO directed the

Applicant to forego his first mandatory chance for the examination in December 2011. The counsel emphasized that the applicant, being senior to three of the five officers appearing for the examination, politely refused, as it would have resulted in the loss of one of his three mandatory chances. In hindsight, the reason as cited above would have resulted in IO forming a poor opinion of the applicant which would have led to lowering the rating of the Applicant in the ACR initiated in January 2012. It is submitted that the impugned ACR was not in consonance with his overall profile for which he squarely blames the IO for having made unreasonable demands for his personal administration and that in spite of his professional contribution, it was the IO whose impression was biased which in turn affected the opinion of the higher reporting officers. It is also highlighted that the applicant was rated much higher by the Reviewing Officer (Brigadier AK Gupta) and Senior Reviewing officer (Major General Sanjeev Laumas) in his third and last Confidential Report at Infantry School Mhow for the period from 01.01.2012 to 06.10.2012.

9. Learned counsel further avers that consequently, the Statutory Complaint preferred by the applicant against his impugned CR's which was rejected by the Respondent was a violation of principle of natural justice and thus, bad in law.

10. Per contra, learned counsel for respondents submits that the CRs earned by the applicant were duly assessed in the MS Branch and after due scrutiny, the same were accepted being found devoid of any inconsistency. It is submitted that the demonstrated performance of the applicant has been duly mentioned in the CRs which is the true record for obtaining quantified merit for the purpose of Selection Boards.

Consideration

11. We have heard learned counsel for the parties and perused the CR dossiers and the file notings of MS Branch, Complaint Advisory Board of COAS Sectt and MoD while processing the Statutory Complaint dated 11.05.2018 of the applicant. The short question that merits our attention is

whether the applicant's impugned CR merit any judicial interference.

12. Before going into the analysis of the case under consideration it is pertinent to note that the applicant has already been promoted to the rank of Col even with the impugned CRs of 09/10 - 02/11 and 02/11 - 12/11 on record and has filed the Statutory Complaint in 2018 in the rank of Lt Col. We have perused the CR dossiers of the applicant and observe that the grading of '7' in Physical Attributes by IO were within the visible domain the applicant which he has signed as seen in the space earmarked for signature of Officer reported upon. Therefore, it is clearly a belated after thought by the applicant. We have noted that the applicant's averment regarding only two '9' in the CR for 03.02.2011 to 31.12.2011 is misplaced as he has been awarded seven '9's, in the Personal Qualities (PQs) and Demonstrated Personal Variables (DPVs). The low rating of the applicant in the quality of Physical Attributes has been fortified by the portion of the pen picture wherein the IO has recorded to the effect "Ranjeet is physically satisfactory". Other than this expression there is no adverse note

in any of the pen pictures by IO and RO. There is no endorsement by the SRO in the impugned CR with reasons of being "as per conditions mentioned in Para 41 of AO/45/2001/MS not applicable". Similarly, in the earlier CR initiated for period 09/10 – 02/11 while the physical attributes have been graded as '8', IO has recorded in the pen picture to the effect "Ranjeet is physically Satisfactory". We have also given out diligent consideration to the file noting of complaint processing branches in MS Branch, CAB of COAS Sectt and the MoD while analyzing the Statutory Complaint of the applicant. As per procedure, the comments of the IO have been sought by the Competent Authority pursuant to filing of the Stat Complaint by the applicant as per laid down procedure and the reasons for the same have been recorded to the effect.

Comment of Reporting Officers

4. *CR 09/10-02/11 and 02/11-12/11*

(a) Comments of IO: He has commented that the officer has been graded '7's in physical attributes due to being above the authorised weight. He has commented that an instructor in a premier 'Cat A' establishment needs to be an epitome across all domains or professional life since he is looked upto as a role model by both officer and JCO/OR trainee. The IO further bring out in his comments that he did not project a poor image of the officer to the RO. In fact, the issue of limited interaction with RO does not arise as the officer was officiating a DS

Coord working directly under the RO. The IO considers that besides the issue of being overweight, the officer had performed well as instructor class 'B'.

(b) Comments of RO. Comments have not been obtained as RO has retired.

13. Other than the above observations, we have not come across any adverse remarks or recommendation in the CR profile or the complaint analysis files. Being satisfied with the observations and appropriate disposal of the Statutory Complaint in respect of the applicant by the respondents, we do not find any necessity for judicial intervention in this matter.

14. In parting, it is essential to place reliance on orders of this Tribunal in the case of Brig Vishal Mohanlal Murada Vs. Union of India and Ors. (OA 1256/2022 decided on 27.09.2023) which is extracted herein below.

17. It is our considered opinion that the Courts are not an expert to assess the competence of the employee and override the assessment of the reporting officers to upgrade Above Average (8) to Outstanding (9) in absence of any malafide on record.

18. We are of the opinion that we are neither privy to the performance of the employee nor the interpersonal aspects of the organizational health, and this aspect has been adequately answered by Honorable Supreme Court in the case of Union of India Vs Lieutenant General RS Kadyan (2000) 6 SCC 698 and Major General IPS Dewan Vs Union of India and Ors (1995) 3 SCC 383 (Supra).

19. If the courts were to upgrade all above average (8) Confidential Reports to Outstanding (9), we will be swarmed by applicants seeking the intervention of courts for upgradation of their CR ratings which would cause grievous injury to the overall health of the Armed Forces and render the entire system of Confidential Report and Quantification System of Selection redundant. Thus, we

do not consider it prudent to upgrade the Confidential Report ratings through our judgment.

Which, therefore, amplifies our reluctance to replace the figurative ratings of the reporting officers through a judicial order since we are neither privy to the performance of the ratee nor various professional aspects that the reporting officers take into consideration while reporting on their subordinates unless there is a clear indication of bias, subjectivity or illegality while initiating the CRs.

15. With the aforesaid the OA is dismissed being devoid of merit.

16. Accordingly, OA 1521/2022 is dismissed.

17. No order as to cost.

18. Pending miscellaneous application, if any, stands closed.

Pronounced in open court on this 2nd day of July 2024.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

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