

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

8.

OA 2034/2018

Col Ashish Singh Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. Indra Sen Singh, Advocate
For Respondents : Mr. Harish V Shankar, Advocate

CORAM

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

ORDER
17.09.2024

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)

/Priya/

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For Respondents	:	Mr. Harish V Shankar, Advocate

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

ORDER

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 against his CR for the period 11/13-06/14. The applicant has made the following prayers:-

- (a) Call for the entire record of the case leading to the impugned order dated 05.11.2018 and set-aside the said order dated 05.11.2018 being arbitrary and illegal;
- (b) Call for the complete record of service of the applicant and after perusal thereof set aside the Interim Confidential Report (ICR) for the period 01 Nov 2013 to 13 June 2014, the

same being illegal, without jurisdiction, inconsistent and subjective/non- objective;

(c) After setting aside the impugned ICR, direct the respondents to reconsider the applicant afresh for nomination/detailment to the Higher Command Course (HCC)/Higher Defence Management Course (HDMC) starting in Jun/Jul 2019 with his modified record of service, and detail/nominate the applicant for the said course if his modified record of service matched with that of the last person in the merit detailed for the HCC/HDMC Course in the consideration held in 2015 and 2016; and

(d) Issue any other order(s) and direction(s) as deemed appropriate by this Hon'ble Tribunal under the facts and circumstances of this case.

(e) In the interim, direct the respondents to keep one vacancy in the HCC/HDMC course pending disposal of the instant OA, or pass such other order to protect the interest of applicant in the event of him succeeding in this OA.

Brief Facts of the Case

2. The applicant was commissioned into the Army (Infantry - ASSAM Regt) on 10.12.1994. He was promoted from time to time

and was promoted to the select rank of Col on 01.01.2011 as a Special Review case of No 3 SB, and then commanded 2 ASSAM for three years. He relinquished command on 14.06.2014. As a CO the applicant earned three CRs, CR-1 - 09/11 to 08/12, CR-2 - 09/12 to 08/13 and CR-3 - 11/13 to 06/14. It is the applicant's case that while both CR-1 and 2 were 'Outstanding' reports, CR-3 was an 'Above Average' report. In the meanwhile, the applicant was considered for HCC/HDMC course in 2014 and was nominated as a reserve.

3. It is the applicant's case that he was assessed as 'Above Average' in his CR-3 due to an allegation of extortion carried out by his unit personnel. The incident was investigated by a CoI and his ICR, CR-3 was initiated during the pendency of the CoI. It is the applicant's belief that he got an average report due to the ongoing incident and, that the higher reporting officers were influenced by the ongoing CoI and assessed him as 'Above Average'. As a result of this, when the applicant was considered for nomination for HC/HDMC in 2015, he did not make the grade, though two other infantry officers who were 'Reserve' in 2014 were now nominated.

4. Based on the CoI, the applicant was served a Show Cause Notice (SCN) dated 28.09.2015 for certain lapses as established by the CoI. The applicant submitted his reply dated 04.11.2015 stating his innocence in the case. However, the competent authority, GOC 2 Mtn Div awarded a censure in the form of a 'Displeasure' vide order dated 26.11.2015. Subsequently, the applicant had filed a statutory complaint dated 07.10.2017 against the award of censure. GOC 3 Corps, examined the applicant's representation and set aside the censure vide his order dated 28.05.2018. It is also the case of the applicant that though his military reputation was at stake, provision of AR 180 was not invoked during the conduct of CoI.

5. The applicant first filed a non statutory complaint dated 30.09.2014 against CR-3. This was however, rejected by the COAS vide order dated 03.07.2015. The applicant then filed a statutory complaint dated 21.06.2018, impugning CR-3. Since it was not disposed of within the laid down time, the applicant filed OA 1543/2018. The OA was disposed of vide AFT (PB) order dated 18.09.2018, with directions to the respondents to dispose of the complaint within two months. The complaint was subsequently rejected vide order dated 05.11.2018. Aggrieved by this, the applicant filed this OA.

Arguments by the Counsel for the Applicant

6. The counsel for the applicant briefly recapitulated the service profile of the applicant. The counsel submitted that based on the applicant's exemplary service record, he was promoted to the rank of Col w.e.f 01.01.2011 as a Special Review (Fresh) case. The counsel submitted that during the applicant's tenure as CO 2 ASSAM from 23.06.2011 to 14.06.2014, he earned two CRs covering the periods from 01.09.2011 to 31.08.2012 and from 01.09.2012 to 31.08.2013; both of which were 'Outstanding' with a box grading of '9' and his exemplary performance led to his nomination as a reserve for the HCC/HDMC course in 2014.

7. The counsel further mentioned that in Feb 2014, the applicant's impugned CR for the period from 01.11.2013, to 13.06.2014 had not been initiated, and thus, was not part of his overall profile when he was placed in 'reserve.' Out of the five officers in the reserve, two were later upgraded and detailed for the course commencing in Jun 2014.

8. The counsel then stated that on 24.05.2014, a CoI was ordered by Cdr 181 Mtn Bde to investigate an allegation of extortion against a JCO in the applicant's unit. The CoI was held from 24.05.2014 to 29.05.2014, during which the evidence and

statements of several witnesses, including the applicant, were recorded. Although, the applicant's military reputation was at stake, the CoI examined him as witness No.1 without invoking Army Rule (AR) 180. The CoI finally concluded in Jul 2015 and during this time, the applicant's CR for the period 01.11.2013 to 13.06.2014, became due and was initiated and the applicant was assessed as above average. Resultantly, he was not nominated for HCC/HDMC course in the consideration held in Feb 2015 although he had been nominated as a 'reserve' in the consideration held in Feb 2014. The counsel asserted that this confirmed the applicant's belief that he was unfairly rejected due to the impugned CR.

9. The counsel then elaborated on the issue of SCN, the applicant's reply and the award of censure in the form of 'Displeasure' vide letter dated 26.11.2015. The counsel then emphasized that based on a representation by the applicant the censure was subsequently set aside by GOC 3 Corps.

10. The counsel then elaborated on the statutory complaint dated 21.06.2018 filed by the applicant against the impugned CR and the fact that the applicant had to approach the AFT to have directions issued to the respondents to dispose of the complaint vide

his OA 1543/2018. The statutory complaint was finally rejected vide order dated 05.11.2018.

11. The counsel then elaborated that the impugned CR was sought to be set aside on three grounds; firstly, the CR was technically invalid as the IO did not have the jurisdiction to initiate the CR since a disciplinary proceeding against the applicant was in progress; secondly, that this report was not consistent with the profile of the applicant and thirdly, that it was not performance based.

12. Referring to the technical validity and elaborating the events leading to the CoI and the fact that the applicant was also indicted, the initiation of the CR was governed by the Para 32 of the AO 45/2001/MS. As per Para 32 since the disciplinary proceedings were not yet completed, the permission of the SRO was required to be obtained before initiating the CR. Further, if the ratee remains under a disciplinary case during the reporting year, no CR is to be initiated and the period is to be covered by a NIR. The counsel emphasized that since the CoI had commenced in May 2014, and the adm action concluded only in Nov 2015 with the issue of a censure, it was implicit that the applicant should have got a NIR and that the respondents had erred in initiating an ICR.

13. Further referring to the inconsistency with the profile of the applicant, the counsel emphasized that the applicant had been assessed as 'Outstanding' in CR-1 and CR 2 and thus the above average assessment in CR-3 was inconsistent with his profile, and this had happened only due to the CoI and the adm action taken against the applicant. The counsel placed reliance on the following judgements of the Hon'ble Supreme Court:

(a) **S. Ramachandra Raju** Vs. **State of Orissa**, [1994 Supp (3) SCC 424].

(b) **State of U.P.** Vs. **Yamuna Shanker Misra**, [(1997) 4 SCC 7].

14. Referring to the assertion that this CR was not performance based, the counsel referred to the details at Para 4 (hh) and highlighted the achievements of the Unit under the applicant's command and elaborated on the various operational tasks successfully completed. The counsel vehemently asserted that thus CR-3 was not based on the performance of the applicant and that it was inconsistent with the applicant's overall profile. Importantly, since the applicant was under a disciplinary action, he should have been given only a NIR. The counsel thus prayed that the CR-3 be set aside.

Arguments by the Counsel for the Respondents

15. The counsel reiterated the service profile of the officer and the prayer in the OA. The counsel drew our attention to the policies on rendition of CR and the process of reporting. The counsel reiterated that the CR has been initiated based on the demonstrated performance of the applicant.

16. Referring to the applicability of Para 32 and 33 of the AO 45/2001/MS regarding initiation of CR of officers against whom disciplinary proceedings are in process, the counsel emphasized that the CoI was ordered in May 2014 wherein the allegation of extortion was made against a JCO of the unit and the applicant was examined only as a witness. The counsel further added that the impugned CR covered the period from 01.11.2013 to 13.06.2014 and that it was initiated, reviewed and completed much before the disciplinary/administrative action against the applicant was ordered, i.e., by 18.08.2014 and has no reference to the incident. The counsel further added that the IO had stated that the applicant was not to be blamed for the incident. The counsel further elaborated that the adm action was initiated in Nov 2015 well after ICR was due and initiated. The counsel emphasised that, therefore, the initiation of ICR did not attract the provisions of Para 32 and 33 of

AO 45/2001/MS. He further added that these Paras' had been amended vide MS Branch letter dated 11.03.2015 (Annexure R-1).

17. Referring to the CR being inconsistent with the profile of the applicant and not performance based, the counsel stated that the ratee only knows the first level of reporting details and is not privy to the RO/SRO assessment. Therefore, it is the applicant's own perception that he had got an overall outstanding report.

18. With reference to not invoking AR 180 in respect of the applicant during the conduct of the CoI, the counsel stated that this was precisely why GOC 3 Corps had set aside the award of censure vide his order dated 28.05.2018. The counsel further explained that while the IO had not blamed the applicant for the lapse in his assessment, and that the authority which awarded the censure was different to his RO/SRO. Thus, there was no bias by the reporting officers in this case and, therefore, the applicant's apprehension that the IO and other reporting officers were biased was misplaced. The CR is technically valid and has not violated any provisions of AO 45/2001/MS. The applicant had been assessed as per his demonstrated performance and therefore the OA needs to be dismissed.

Consideration

19. Having heard both parties the only issue that merits consideration is whether the impugned CR-3 covering the period 11/13 to 06/14 merits any interference. The respondents have submitted the CR dossier of the applicant and the files connected to the examination of the applicant's complaints.

Complaints

20. The applicant has filed a total of two non-statutory complaints and three statutory complaints. Statutory complaint dated 30.04.2007 was against certain CRs and was rejected. The non-statutory complaint dated 03.03.2010 was against his non-empanelment by No 3 SB and he was granted partial redressal in a CR of 2002/2003. The second non-statutory complaint dated 30.09.2014 was against CR-3 and this too was rejected vide order dated 03.07.2015. The second statutory complaint dated 07.10.2017 was against the award of censure and was disposed off vide order dated 28.05.2018 in which the censure order was set aside. The statutory complaint dated 21.06.2018 against CR-3 is examined here.

21. The complaint is at Page No.56 and 65 of the OA and the applicant had prayed that CR-3 for the period 11/13-06/14 be

expunged; technical validity of this CR be ascertained as it was initiated when the CoI was in progress; that he be considered afresh for nomination to HC/HDMC course and that his case be expedited in view of the impending No 2 SB. As part of the process of examination, the comments of the IO were sought, who maintained that the applicant had been assessed based on his demonstrated performance. The comments of the RO/SRO were not sought as they had superannuated. However, while examining the earlier non-statutory complaint dated 30.09.2014 the comments of IO/RO/SRO had been sought on this very CR and all had then too maintained that the applicant had been assessed as per his demonstrated performance.

22. The comparative reckonable profile of the applicant was examined and the competent authority concluded that the CR was well corroborated and was in sync with the applicant's overall profile. The examination had also checked on the applicability of Para 32 and 33 of AO 45/2001/MS and had concluded that though the CoI was convened in May 2014, it concluded in Jun 2015 and adm action was concluded in Jul 2015. The impugned CR, however, had been initiated on 31.07.2014, reviewed by RO on 08.08.2014 and by the SRO on 18.08.2014. Thus, the CR had been initiated and

reviewed well before the disciplinary case against the applicant was established in Jul 2015. Therefore, the CR was held as technically valid and did not merit any interference. Accordingly, the complaint was rejected vide order dated 05.11.2018.

CR

23. The CRs were examined as part of the non-statutory complaint dated 30.09.2014 and the statutory complaint dated 21.06.2018. At the time of examining the non-statutory complaint dated 30.09.2014, there were 16 CRs from 07/01 to 06/14. It included the impugned CR from 11/13 to 06/14 which was the last CR at that point of time. The 16 CRs included 04 CRs in the rank of Capt, 06 in the rank of Maj (including 04 criteria reports), 03 CRs in the rank of Lt Col and 03 reports as Col, when commanding the Unit. After relinquishing command, the applicant has earned 03 more CRs in the rank of Col by the time the statutory complaint was examined. Examination of the reckonable profile at that juncture shows that in the overall profile, the applicant has 39% box gradings as 'Outstanding', 57% box grading as 'Above Average' and 4% box grading were expunged as part of the partial redressal granted in the non-statutory complaint dated 03.03.2010.

Analysis of the criteria report indicates 24% outstanding reports and balance 76% 'Above Average' box grading.

24. The applicant earned 03 CRs as the CO. It is seen that all the reports have been initiated/reviewed by different IO/RO/SRO. The impugned CR is boxed 8/8/8 by a fresh set of reporting officers with positive and laudatory pen picture and positive recommendations for promotions, foreign assignments and career courses. There are no '7' points or adverse/weak remarks in the CR. The RO has held the IO's assessment as justified and the SRO has held the assessment by both IO and RO as justified. Considering the overall profile of the applicant we are of the opinion that this CR is well corroborated and in sync with the profile of the applicant.

25. As regards the technical validity of the CR, the time lines of the CoI and the initiation/review of the impugned CR is as given below. Thus the CR had been initiated and reviewed well before the CoI finally concluded in Jul 2015 and the competent authority decided to initiate adm action against the applicant as well. It is also pertinent to note that the RO who reviewed the impugned CR is not the same who initiated the adm action. Thus we find no bias by the reporting officer in the assessment of the applicant in the impugned CR.

Time Line

Initiation of CoI – 24.05.2014

Conclusion of CoI – June 2015 (Adm Action in Jul 2015)

Initiation of CR by IO – 31.07.2014

Review of CR by RO – 08.08.2014

Review by SRO – 18.08.2014

Issue of Show Cause Notice – 28.09.2015

Award of Censure Order – 26.11.2015

26. In view of the above consideration, we conclude that the impugned CR is technically valid, the assessment by various reporting officers is positive and unbiased and the applicant has been assessed as per his demonstrated performance. In view of this we find no reason to interfere in the impugned CR.

27. Accordingly, the OA is dismissed being bereft of merit.

28. No order as to costs.

29. Pending miscellaneous application(s), if any, stands closed.

Pronounced in open Court on this 17th day of September, 2024.

**(JUSTICE RAJENDRA MENON)
CHAIRPERSON**

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

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