

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 182 of 2016****Friday, this the 5th day of August, 2022****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**IC-55811L Lt Colonel Manish Misra
S/o Lt Colonel O N Misra (Retd)
HQ Madhya UP Sub area
Lucknow – 226002**.... Applicant**Ld. Counsel for the Applicant : **Shri Hari Mohan Maheshwari,**
Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Army Staff, Army Headquarters, South Block, New Delhi-110011.
3. Military Secretary, Military Secretary's Branch, IHQ of MoD (Army), Army Headquarters, New Delhi-110011.
4. Director General NCC, NCC Directorate, New Delhi.
5. Major General Balraj Singh, ADG BRO, IHQ of MoD, DHQ PO, New Delhi.
6. Brig R Srivastava, DDG NCC Directorate, 16 Ashok Marg, Lucknow – 226001.
7. Colonel Arun Kumar, NCC Group Headquarters, Sambalpur (Orissa).

... RespondentsLd. Counsel for the Respondents : **Shri Yogesh Kesarwani,**
Central Govt Counsel

ORDER

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicant has sought following reliefs:-

- “(a) Issue/pass an order or direction to the Respondent No. 3 to produce all Confidential Reports in Original for the perusal of the Honourable Court.
- (b) The Honourable Court may graciously be pleased to scrutinize the ACR of 01 Jun 2013 to 31 May 2014 for its overall average grading. The Annual Confidential Report covering period 01 Jun 2013 to 31 May 2014 be set aside being inconsistent, subjective, biased and initiated with malice.
- (c) To quash/set aside the rejection order passed by the Central Government rejecting the Statutory Complaint of the applicant vide their order No. PC-36501/15749/Armd/2014/MS-19/252/2015-D (MS) dated 04 May 2016 which was communicated to the applicant vide Army Headquarters letter No. 36501/15749/Armd/2014/MS-19 dated 10 May 2016 filed as Annexure A-1.
- (d) Direct the Respondents not to authorize/allow officers of NCC Directorate to initiate the Annual Confidential Report for the period from 01 June 2014 to 31 May 2015 which is still not initiated and pending since it will be subjective and biased because the applicant has filed the Original Application.
- (e) Issue/pass an order or direction as the Honourable Tribunal may deem fit in the circumstances of the case.
- (f) Allow this Original Application with costs.”

2. Brief facts of the case are that the applicant was commissioned in the Indian Army on 05.09.1997. ACR for the period from

01.06.2013 to 31.05.2014 of the applicant was deliberately delayed and it was initiated in the last week of August by the IO and was intentionally retained by IO, RO and SRO and certain portions of the ACR were deleted and tampered with. The applicant put up a Statutory Complaint dated 08.12.2014 to the Central Govt. against the impugned ACR for the period from 01.06.2013 to 31.05.2014 being biased, subjective and initiated with malice and vindictiveness which was rejected by the Govt. vide order dated 04.05.2016 in a mechanical manner without passing a reasoned and speaking order. Being aggrieved, the applicant has filed present Original Application for setting aside ACR for the period from 01.06.2013 to 31.05.2014 and rejection order dated 04.05.2016 passed by the Govt. on statutory complaint of the applicant.

3. Learned counsel for the applicant submitted that applicant was commissioned in the Indian Army on 05.09.1997. The applicant served in the Regiment (51 Armoured Regiment) till April 2003 and thereafter, he was posted to different units. The applicant while carrying out active operation in insurgency area got severely wounded and disabled due to battle casualty. During posting with 94 Armoured Brigade, applicant's wife was not keeping well and on investigation in Military Hospital, she was detected to be suffering from Cancer and was advised to take treatment where Oncologists and Nuclear medical facilities are readily available. Therefore, applicant applied for compassionate posting to Lucknow so that facilities of Command Hospital, Lucknow and SGPGI Lucknow can be

utilised. On 17.03.2013, applicant was posted to NCC Directorate UP, Lucknow. During his formal interview at NCC Directorate applicant apprised all his senior officers that he has been posted to Lucknow for treatment of his ailing wife who is suffering from Cancer and would need to take her to SGPGI, Lucknow from time to time for regular check up and treatment which included radiation therapy. The applicant was asked to take over as Additional Director Planning and Co-ordination. There being no clerk posted in the Planning and Coordination Branch, there were lot of pending cases since many years pertaining to allotment of NCC to the institution, strength of NCC Cadets, Suspended Animation Cases, Re-organisation, revival of NCC etc.

4. Learned counsel for the applicant further submitted that applicant while sorting out pending work of last 10 years he detected and highlighted certain malpractices in black and white causing huge financial loss to the Government. This act of highlighting financial irregularities was not appreciated by the Director, Deputy Director General and Additional Director General of NCC. This was not taken in a positive and correct perspective and applicant was started being harassed by the senior officers of the Directorate. Some of the deliberate acts of harassment and vindictiveness faced by the applicant are as under :-

- (a) Delaying the leave of the applicant on multiple occasions for the scheduled critical cancer treatment of his wife.

Sometimes, applicant's repeated requests were ignored and leave request was denied.

- (b) Pressurizing the applicant's wife who was suffering from Cancer and other ailments to attend Ladies Meet and other social functions. If the wife of the applicant could not attend the function, applicant was issued warning/advisories on one pretext or others and was harassed.
- (c) ACR for the period from 01.06.2013 to 31.05.2014 was deliberately delayed and it was initiated in the last week of August and was shown to the applicant in last week of August/1st week of September by the IO to ensure that applicant is deferred/withdrawn from promotion by the promotion board for lack of ACR.
- (d) ACR for the period from 01.06.2013 to 31.05.2014 was deliberately retained by IO, RO and SRO and certain portions of the ACR were deleted and tampered with.
- (e) On reporting back from leave in June 2014, applicant was transferred from one Branch having number of pending cases since many years to another without any handing/taking over of charge.
- (f) The applicant wanted to put up a Non Statutory Complaint against the impugned ACR and sought permission to photocopy of certain documents from the files to support his case but he was not allowed and thus he could not put

up a non Statutory Complaint against biased, malafide and subjective reporting to Chief of the Army Staff.

- (g) The harassment of the applicant by IO, RO and SRO came to such a low level that Motor Cycle of the applicant and its accessories were torn almost on daily basis and applicant was made to pull his Motor Cycle quite a long distance to get it repaired.
- (h) Blank ACR form for the period from 01.06.2014 to 31.05.2015 was not handed over to the applicant for completion and initiation by IO/RO/SRO which amounts to harassment.

5. Learned counsel for the applicant further submitted that when the harassment and vindictiveness became unbearable and harassment came down to low level, applicant met to MA to Army Commander and also apprised to Army Commander, Central Command, Lucknow and thereafter, he was side stepped to HQ Madhya UP Sub Area w.e.f. 19.06.2015 as per order issued by MS Branch, IHQ of MoD (Army). The applicant put up a Statutory Complaint dated 08.12.2014 to the Central Govt. against the impugned ACR for the period from 01.06.2013 to 31.05.2014 being biased, subjective and initiated with malice and vindictiveness which was rejected by the Govt. vide order dated 04.05.2016 in a very casual and mechanical manner without passing a reasoned and speaking order. He pleaded that order rejecting the Statutory

Complaint against the impugned ACR be set aside being not a reasoned and speaking order.

6. On the other hand, Ld. Counsel for the respondents submitted that applicant was posted to NCC Directorate UP, Lucknow based on his request for posting on compassionate grounds and joined the NCC Directorate in March 2013 and later side-stepped to HQ Madhya UP Sub Area in June, 2015 based on his own request. While posted with NCC Directorate, applicant earned impugned ACR covering the period from 06/2013 to 05/2014 in which Col Arun Kumar (IO), Brig R. Srivastava (RO) and Maj Gen Balraj Singh (SRO) initiated/reviewed the ACR. The allegation made by the applicant that IO has deliberately delayed the initiation of the impugned ACR with the aim and purpose of harassing the applicant with a view that he is deferred/withdrawn from the Selection Board, is false and baseless.

7. Learned counsel for the respondents further submitted that as per para 93 of Army order 45/2001/MS, it is the duty and personal responsibility of the officer reported upon to complete the applicable portions of the CR form and submit it to the IO before the due date of its initiation. The relevant extract of Para 93 reads as under :-

“93. The Officer Reported Upon will be personally responsible for the correct completion of the portions pertaining to personal data, in accordance with records maintained in the unit, in Part I of the CR form. He will hand over the completed form to the IO as under :-

- (a) Before the due date for initiation of an ACR; or
- (b) Before he vacates the appointment, for initiation of an ICR under paragraph 84, or an Early ACR under paragraph 72 above, as the case may be; or
- (c) When called upon to do so.”

The applicant himself submitted the impugned CR form to the IO on 12.08.2014 whereas the CR was due on 01.06.2014. The said CR was initiated by the IO within 14 days and RO and SRO took only two days to review the CR. Thus, except for the delay on the part of applicant, there was no delay on the part of IO/RO/SRO.

8. Learned counsel for the respondents further submitted that as per Para 132 of AO 45/2001/MS, it is incumbent upon the IO to show the applicable portions of the assessment to the officer reported upon who is not permitted to refuse to sign extract or sign it under protest/objections. Contrary to such specific duty laid upon the applicant, he endorsed at Para 11 of CR Form (bottom left) that "***I do not agree with the rating given by the IO and am signing it under protest***". This being contrary to the orders on the subject, IO scored out the said impermissible endorsement made by the applicant. This was not done in any concealed/malicious manner but was duly informed to the applicant by IO under letter dated 19.09.2014. Hence, action of IO does not suffer from any illegality or arbitrariness and technical invalidity.

9. The allegations of malpractices and financial irregularities labelled against senior officers of the respondents are after thoughts made in the O.A. to provide support to it. Applicant has not even made a whisper of such incidents in the Statutory Complaint dated 08.12.2014.

10. Learned counsel for the respondents further submitted that the assessments in the impugned CR were examined by the competent

authority for objectivity. It was satisfied that assessment made by the IO in the open (shown) portion of the CR and un-shown portion were corroborated and further substantiated by the pen picture endorsed by the IO. It was also satisfied that the assessments were mutually corroborated between the IO, RO and SRO. Having thus satisfied the objectivity and being a performance based CR, it was satisfied by the competent authority that no interference is warranted. In view of the aforesaid, learned counsel for the respondents pleaded for dismissal of the Original Application.

11. We have heard Shri Hari Mohan Maheshwari, learned counsel for the applicant and Shri Yogesh Kesarwani, learned counsel for the respondents assisted by Lt Col Suchithra C, AMS (Legal), MS Branch, IHQ of MoD (Army), New Delhi and perused the material placed on record including impugned Confidential Reports of the officer.

12. Army has introduced the quantified system for figurative awards since they contribute to overall merit of an officer. The purpose is that only competent and deserving officers be promoted to the senior ranks of the Indian Army. Para 35 of the 'Guidelines for Rendering Confidential Reports' deals with Figurative Awards and Box Grading. For convenience, the same is reproduced as under:

“35. Figurative Awards. With the introduction of quantified system, the figurative awards have assumed greater significance as they contribute to the overall merit of an offr. It is the moral responsibility of all reporting offr to render an objective assessment to ensure that only deserving and professionally competent offr are promoted to senior ranks to tenant crucial command and staff appointments.

(a) Figurative assessment in Box Grading, Personal Qualities (PQs), Demonstrated Performance Variables (DPVs) and Qualities to Assess Potential (QsAP) should be awarded.

Box Grading.

- (i) Box grading represents overall assessment of performance as well as potential for promotion.
- (ii) Reporting offr must clearly differentiate between truly outstanding offr and others. Grading all offr outstanding would defeat the very purpose of appraisal system. Box grading reflects the quality of interplay amongst indl characteristics being assessed. It also reflects the performance and potential which are not being separately assessed but hold value for the org.
- (iii) Box grading is not meant to be a mathematical average of the awards in indl qualities. However, a total mismatch between awards in box-grade and indl qualities is also not in order. For instance, award of predominantly '9' in PQs/DPVs/QsAP with an award '8' in box, may not be in order.
- (iv) Award of '9' in box grading should be explicitly justified in the pen-picture, indicating specific achievements by the ratee.

(b) **QsAP.** The assessment of performance is de-linked from potential based on the rationale that it is not necessary that an offr who performs well in the present rank has the capability to do well in higher ranks also. While assessing QsAP, however, the following aspects should be kept in mind.

- (i) Low awards in QsAP affect the promotion prospects significantly more as compared to similar awards in PQs/DPVs.
- (ii) Reporting offr must be more deliberate while awarding QsAP and endorse the actual promotion aspects of the ratee.
- (iii) In order to guard against IOs harming ratee's "on the sly", discernable variations between PQs/DPVs (open portion) on the one hand and QsAP (closed portion) on the other come under scrutiny at the MS Branch. However, elaboration of any such variations by the reporting offr aid in acceptance of their assessment. Pen picture can be suitably endorsed to justify the assessment."

It is evident from Box Grading (iii) above that Box Grading is not meant to be a mathematical average of the awards in individual qualities. However, a total mismatch between awards in box-grade and individual qualities is also not in order.

13. To assess the aspect of inconsistency and bias, we have examined the impugned CR for the period from 01.06.2013 to 31.05.2014. We found no bias, malafide or arbitrariness in any of the

assessment or moderations which have been carried out in accordance with the laid down policy on the subject not requiring any judicial interference. The bias contended by the officer in the impugned CR is not evident. The CR, being objective, well corroborated, consistent with his overall profile, performance based and technically valid, needs no interference. Therefore, the claim of the applicant to scrutinize the impugned CR for its overall average grading given by the IO/RO/SRO on account of inconsistency and bias has no merit. The Hon'ble Apex Court in the case of **Air Vice Marshal S.L. Chhabra vs. UOI & Ors** (1993) Supp 4 SCC 441, has stipulated as follows :

“According to us, neither the High Court nor this Court can moderate the appraisal and the grading of the appellant for a particular year. While exercising the power of judicial review, a Court, shall not venture to assess and appraise the merit or grading of an officer”.

14. With regard to order dated 04.05.2016 of the competent authority rejecting rejection statutory complaint of the applicant, a perusal of the order dated 04.05.2016 indicates that the appellant authority, i.e. Government of India while considering the statutory complaint of the applicant has rejected the same citing the reasons thereof in para 3 of the order, which reads as below :-

“3. The Statutory Complaint of the officer has been examined in light of his overall profile, comments of the Reporting Officers, other relevant documents and recommendations of AHQ. After consideration of all aspects of the complaint and viewing it against the redress sought, it has emerged that the impugned CR 06/13-05/14 is well corroborated, performance based and technically valid. There being no sign of any bias or subjectivity, the impugned CR does not merit any interference”.

15. We have also gone through the CR dossier submitted before us by the respondents. On going through the same, we are of the view

