

(Court No. 1)
RESERVED

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

TRANSFERRED APPLICATION No. 12 of 2021

Thursday, this the 02nd day of March, 2023

“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”

“Hon’ble Maj Gen Sanjay Singh, Member (A)”

Wing Commander Gaurav Bhatnagar (25610-S) F (P), S/o late Shri Pradeep Kumar Bhatnagar, R/o 200 Sqn AF C/o 56 APO, Pin936200, Air Force Station Bhisiana, Bathinda (Punjab).

..... Applicant

Ld. Counsel for the : Applicant in person.
Applicant

Versus

1. Gp Capt Pradeep Batra (24206) F(P) Commanding Officer, 200 Sqn, AF, C/o 56 APO, Pin-936200 (Initiating Officer).
2. Air Cmde Rajiva Ranjan VM (18801) AOC 34 Wing AF, C/o 56 APO (current Address-Air Cmde Ops (AD), Air HQ (VB), Rafi Marg, New Delhi-110106 (Reviewing Officer).
3. Air Mshl NS Dhillon, AVSM (16580) F(P) SASO HQ WAC AF, C/o 56 APO (current Address-AOC-in-C, SFC, New Delhi).
4. Chief of Air Staff, Air Headquarter (Vayu Bhawan), Rafi Marg, New Delhi-110011.
5. Air Officer in Charge, Personnel (AOF), Air Headquarter (Vayu Bhawan), Rafi Marg, New Delhi-110011.

.....Respondents

Ld. Counsel for the
Respondents.

:Shri Bipin Kumar Singh, Advocate
Central Govt. Counsel
Assisted by **Group Capt Gaurav Singh**,
Departmental Representative.

ORDER

1. Original Application No 1841 of 2019 was filed in Armed Forces Tribunal, Chandigarh under Section 14 of the Armed Forces Tribunal Act, 2007 which on transfer to this Tribunal has been re-numbered as T.A. No. 12 of 2021. By means of this T.A. petitioner has sought following reliefs:-

- (a) *Summon of AR dossier of the applicant to confirm the anomalies mentioned by the applicant.*
- (b) *Grant of promotion to next higher rank (Group Captain) with immediate effect setting aside all AR assessments after filing of O.A. 282/2015. The promotion must be granted retrospect w.e.f. 01 Apr 17, the date course mates of the applicant picked up the same rank. That the applicant suffered the non inclusion of his best ever assessed AR due to digital cancellation based on bias due to O.A. 282/2015.*
- (c) *Nomination for next Higher Air Command Course or equivalent setting aside drop in merit due to biased and incorrect AR assessments after riling of O.A. 282.2015.*
- (d) *Assurance of future career progression by grant lien to higher ranks up to Air Marshal which has been adversely affected due to biased and incorrect AR assessments after filing of O.A. 282/2015 and denial of desired path of career progression.*
- (e) *Termination of Digital AR processing in Indian Air Force (IAF) in the absence of supporting Air Force Order.*
- (f) *Invalidation of all Promotion Boards and results held post implementation of imperfectly flawed and illegal Digital Appraisal Report (DIGITAR) System in IAF.*

2. Brief facts of the case are that the applicant was commissioned into Indian Air Force (IAF) as flying pilot on 19.06.1999. During the course of his service he rose to the rank of Wing Commander (Wg Cdr). While posted with 200 Sqn AF w.e.f. 07.08.2017, applicant submitted his Appraisal Report (AR) online for the period 07.08.2017 to 30.06.2018 to respondent No. 1 which was endorsed and shown to him duly graded with 7.85 marks. This was reviewed by respondent No.

2 and forwarded to respondent No. 3 on 30.09.2018. On 11.10.2018 applicant was informed that his AR was cancelled by respondent No. 3 with reasons 'please reconcile numerical assessment and the pen picture'. On getting to know that his AR was cancelled by respondent No. 3, he submitted a statutory complaint dated 18.10.2018 (Annexure A-3) requesting to digitally revive his AR which was cancelled in contravention to Air Force Order 06/2012. In response to his statutory complaint, speaking order was passed by AOC-in-C, Western Air Command vide order dated 27.11.2018 (Annexure A-7).

3. In response to Speaking order dated 27.11.2018 applicant submitted application dated 18.12.2018 (Annexure A-8) requesting respondents for his empanelment for upcoming promotion board 02/2019. Against speaking order dated 27.11.2018, applicant submitted another statutory complaint dated 24.11.2018 re-iterating three earlier issues raised in his earlier statutory complaint dated 18.10.2018. Further, the applicant forwarded statutory complaint dated 16.01.2019 addressed to Chief of Air Staff on similar issues. The issues raised by the applicant vide his statutory complaints dated 18.10.2018, 24.11.2018 and 16.01.2019 were deliberated at Air HQ and disposed off vide order dated 05.02.2019 and 20.05.2019, hence this O.A.

4. Applicant submitted that being commissioned in Indian Air Force on 19.06.1999 his Digital Appraisal Report (DIGITAR) for

the period 07.08.2017 to 30.06.2018 was endorsed by respondent No. 1 and reviewed by respondent No. 2. He further submitted that the said AR was cancelled by respondent No. 3 arbitrarily in utter violation of Para 18 of the AFO 06/2012. It was further submitted that keeping in view of his unflinching devotion to duty he was recommended for award of Chief of Air Staff Commendation Card by his IO and his best ever report endorsed by his IO and RO was arbitrarily cancelled by his SRO mentioning therein 'please reconcile numerical assessment and pen picture', the screen shot of which is placed at Annexure A-2.

5. The applicant further submitted that against illegal cancellation of his report, statutory complaint dated 18.10.2018 was preferred followed by application dated 24.11.2018 but it was rejected arbitrarily by AOC-in-C by speaking order dated 27.11.2018 (Annexure A-7). It was further submitted that said statutory complaint was not forwarded to higher level as per the provisions of Section 27 of Air Force Act and Para 622 of the Regulations for the Air Force but contrarily it was disposed off vide order dated 27.11.2018 mentioning therein to raise a fresh AR which is not part of Air Force Order 06/2012.

6. The applicant further submitted that he challenged the speaking order and other related replies by the respondents vide application dated 18.12.2018 mentioning therein to process his representations dated 18.10.2018 and 24.11.2018 and empanelment for upcoming promotion board 02/2019. Further

submission made by the applicant is that on 31.12.2018 respondent No. 1 handed over letter dated 31.12.2018 (Annexure A-9) refusing to process his statutory complaint.

7. The applicant further submitted that on 15.01.2019 respondent No. 1 again handed over letter on same lines as that of 31.12.2018 directing him to raise his fresh AR which was challenged by him on 16.01.2019 addressing it directly to Chief of Air Staff i.e. respondent No. 4. Meanwhile respondent No. 1 issued letter dated 14.02.2019 intimating him disposal of his representation/complaint dated 18.10.2018 and 24.11.2018 and raising fresh AR. It was further pleaded that he was threatened to face administrative action for not raising fresh AR as per Para 9 of AFO 06/2012. Thereafter, the applicant challenged order dated 14.02.2019 by submitting representation dated 15.02.2019 (Annexure A-14) expressing his disagreement to raise fresh AR.

8. The applicant further submitted that he filed an application under RTI Act, 2005 dated 04.02.2019 to know the status of his statutory complaints and action taken on digital revival of his AR, but it was replied vide letter dated 15.03.2019. It was further submitted that being aggrieved he preferred an appeal to the Appellate Authority on 27.03.2019 (Annexure A-19) of which final reply was received on 21.05.2019 (Annexure A-20). He pleaded that being aggrieved by reply of the respondents he filed this O.A. to impart justice. The applicant further submitted

that though he was interviewed by his Commanding Officer but no tangible result could be achieved which resulted in adversely affecting his future career.

9. The applicant further submitted that in the year 2012-13 when his AR was downgraded, he filed O.A. No. 282/2015 against adversely written AR and since then he is combating legal battle for wrongs done by the respondents. The applicant feels that he has been deprived of being on the desired path of career progression and it has been done to deny him opportunity to perform primary task of aviating and holding desired appointments like Flt Cdr and CO of flying Sqn, timely promotions to higher rank and Group Captain and undergoing desired courses like HACC or equivalent. It was only when the applicant was posted to a flying unit after a long gap and was assigned duty of Flt Cdr, his outstanding performance got him exceptional grading by the respondent No. 1 of 7.85 in professional factors and 7.85 in behavioural factors. He pleaded for revival of his AR for the period 07.08.2017 to 30.06.2018, which as per him is an excellent reporting, and review AR dossier w.e.f. 2012 onwards which were challenged but applicant is dissatisfied with reply received from the respondents.

10. Per contra, learned counsel for the respondents submitted that while the applicant was posted with 200 Sqn, his DIGITAR for the period 07.08.2017 to 30.06.2018 was initiated by the IO

(Gp Capt P Batra, respondent No 1), RO (Air Cmde R Ranjan, respondent No 2) on 10.09.2018 and 30.09.2018 respectively. He further submitted that the said DIGITAR was cancelled by SRO (Air Mshl NJS Dhillon, respondent No. 3) on 11.10.2018 with reason 'Please reconcile numerical assessment and pen picture'. It was further submitted that being aggrieved with cancellation of his DIGITAR applicant submitted statutory complaint dated 18.10.2018 which was deliberated at appropriate level and disposed off by AOC-in-C, Western Air Command by speaking order dated 27.11.2018.

11. Learned counsel for the respondents further submitted that the applicant submitted another statutory complaint dated 24.11.2018 re-iterating three issues already raised in his earlier statutory complaint dated 18.10.2018 which was disposed off and intimation was given to AOC 34 Wing vide letter dated 04.03.2019. He pleaded for dismissal of O.A. on the ground that no injustice was done to the applicant.

12. Heard learned counsel for the parties and perused the record.

13. The applicant was posted to 26 Sqn Air Force w.e.f. 24.01.2012. In the year 2013, a signal dated 07.02.2013 was received wherein his name was not figured in the selection for 69 ASC/22 TSOC (Air Staff Course). Consequent to that applicant started submitting representations followed by statutory complaint for which he was counselled by his

Commanding Officer not to indulge in infructuous correspondence and he was advised to be careful.

14. It appears that the applicant, due to his non selection in staff course, became vindictive and frustrated. Upon adverse counselling by his Commanding Officer, in his pursuit of revenge, the officer filed numerous personal applications followed by statutory complaints. The applicant also seems to be frustrated by Court of Inquiry (C of I) conducted to investigate the authenticity of Operational Hazard Report (OHR) in which the Commanding Officer on conclusion of C of I did not hold anyone responsible for the violation. Further, the C of I opined that the intention of the applicant with respect to bring the OHR as a tool to resolve personality clashes is evident, but the same could not be conclusively proved.

15. In pursuance to his statutory complaint dated 18.10.2018 challenging digital cancellation of AR by SRO, speaking order was passed vide order dated 27.11.2018 which for convenience sake is reproduced as under:-

“1. WHEREAS, you were commissioned in the Indian Air Force on 19 Jun 99 and at present, held on the posted strength of 200 Sqn.

2. AND WHEREAS, you have preferred an application dated 18 Oct 18 to the CO, 200 Sqn essentially bringing forth the following contentions.

(a) That your AR for the period 07 Aug 17 to 30 Jun 18 had been cancelled by the SRO influenced by events beyond the reporting period and to reduce the numerical assessments by the IO & RO.

(b) That, the cancellation of the AR by the SRO is not in line with AFO 06/12 as the system of digital processing of AR, digital cancellation thereof, digital re-writing/re-assessing of ARs does not figure therein.

(c) That, digital cancellations/corrections deny subsequent review (in case of any representation) of the AR as original digital remarks/assessments are not archived.

(d) That, the variations/reduction in the digital AR in terms of numerical assessment and pen picture may be documented on paper as the same is mandated by AFO 06/12 & that the system of digital cancellation & digital rewriting without maintaining previous record may be stopped till the AFO is suitably amended; and

(e) That, your application may be processed as an application in terms of Sec 27 AF Act read with Para 622 of the Regs for the AF, 1964.

3. AND WHEREAS, on careful consideration of the issues raised by you in your instant application dated 18 Oct 18 and the other relevant material available on record, the AOC-in-C WAC has arrived at the following conclusions as regards the issue raised by you:-

(a) The allegations that the SRO had cancelled the AI influenced by events outside the period of report is unsubstantiated.

(b) As regards the allegation that the cancellation is intended to reduce the numerical assessment by the IO/RO, the same could have been done by the SRO without referring the issue to the IO/RO and did not merit cancellation of the AR with the reasons there for annotated therein. Accordingly, your contention in this regard is baseless & devoid of merit.

(c) AFO 06/12 mandates the RO/SRO to oversee the correct raising of the AR by the previous reporting officer. The SRO, in the instant case, had noticed appraisal inconsistencies therein and wanted to return the AR to the IO/RO for necessary corrective action. However, considering that the ARs at every level are now digitally signed, return thereof was not possible & cancellation of the same by the SRO after annotating his comments thereon was the only way to correct the anomalies & the appropriate course of action in the circumstances;

(d) That, the issues raised by you regarding digital processing of ARs be referred to Air HQ (VB) for consideration & appropriate action; and

(e) That, your application is to be processed as an application in terms of AFO 05/08 as you had failed to bring forth anything which shows that you had been denied or deprived of something to which you had a right under AF law.

4. NOW THEREFORE, you are enjoined to raise a fresh AR to enable processing of the same without the anomalies pointed out by the SRO. Your application dated 18 Oct 18, is disposed of accordingly.

5. This is issued on the orders of the AOC-in-C, WAC."

16. From the aforesaid, an inference may be drawn that the applicant was advised to raise fresh AR digitally which on being initiated by IO and RO was objected and cancelled by the SRO.

17. Applicant had submitted representation dated 24.11.2018 with regard to his AR repeating his earlier representation dated 18.10.2018 which was turned down vide letter dated

05.02.2019, which for convenience sake, is reproduced as under:-

“x x x x x

2. The issues raised by the officer in his application dated 24 Nov 18 are merely a repetition of the officer's previous application dated 18 Oct 18, which has already been duly considered and disposed of by the competent authority. The views of AOC-in-C, HQ WAC in the Speaking Order issued to the officer are supported.

3. Apprehension of the officer with regards to his perceived flaws in DIGITAR have been duly considered at this HQ. DIGITAR is conforming to all the provisions of AFO 06/2012. The cancelled AR is preserved digitally and can be produced for review at any stage at this HQ. Appropriate systemic measures are in place to address any anomaly observed in the cancelled and the re-raised ARs in the review of the ARs carried out at this HQ. If an AR is cancelled at any stage after having been digitally signed by the IO, a copy of the cancelled AR is attached along with the re-raised AR received at this HQ and both are processed together to rule out any inconsistencies. This should allay the apprehensions of the officer.

4. This has the approval of the CAs. In view of the above, appropriate reply be given to the officer, with a copy forwarded to this branch for retention in our records.”

18. Applicant had submitted an RTI application dated 04.02.2019 seeking information with regard to his statutory complaint dated 18.10.2018 preferred by him in respect of digital processing of appraisal report. This application was disposed off by the Appellate Authority vide order dated 20.05.2019 which is reproduced as under:-

“1. WHEREAS, Wg Cdr Gaurav Bhatnagar had submitted an RTI application 04 Feb 19 which was received by the CPIO Air HQ on 11 Feb 19. The appellant had sought information regarding his statutory complaint dated 18 Oct 18 in respect of Digital processing of Appraisal Report.

2. AND WHEREAS, the appellant was replied parawise by the CPIO vide letter No Air HQ/23401/204/4/16214/E/PS dated 15 Mar 19.

3. AND WHEREAS, not satisfied with the reply of the CPIO, the appellant has submitted the present appeal dated 27 Mar 19, which was received on 08 Apr 19 by the Appellate Authority, wherein the appellant stated that the appellant was not satisfied with the reply of CPIO. He had sought specific information which have been replied incorrectly by CPIO treating them as clarifications. Now, the appellant requested the following:-

(a) To provide the specific information by simply replying in yes/no.

(b) Requested a copy of Air HQ/C 21901/900/PO-4E dated 05 Feb 19 duly approved by CAS so as to complete the information sought vide his RTI application dated 04 Feb 19.

4. AND WHEREAS, I, being the First Appellate Authority having examined the submission/contention in the appeal, vis-a-vis the

reply given by the CPIO in terms of Section 19 of the RTI Act, 2005, am of the view that the appellant has sought a different line of queries at appeal stage as 'yes/no' and such additional query at the appeal stage does not fall under the RTI Act, 2005. The appropriately queries were elaborated by the CPIO during the RTI reply. Notwithstanding the above, it is clarified that :-

(a) With regard to para 4 (d) of the RTI application, DIGITAR conforms to all the provisions of AFO 06/2012. There are no flaws in the DIGITAR.

(b) With regard to Para 4 (b), (c), (d), (e) to (g) of the RTI application, information which is available with CPIO at the time of RTI reply was provided to the appellant. CPIO is expected to provide only that information which is available with him in records.

(c) Further, the appellant requested to provide a copy of Air HQ/C/21901/900/PO-4E dated 05 Feb 19, which is not part of original RTI application 04 Feb 19. As per provisions of RTI Act, 2005 additional information cannot be sought at Appeal stage. Notwithstanding the above, keeping the spirit of RTI Act alive, the copy of Air HQ/C/21901/900/PO-4E dated 05 Feb 19 is annexed herewith.

5. AND WHEREAS, the aforesaid opinion is supported by the under mentioned CIC ruling:-

"In the case of Shri Madan Gopal Midotiya vs Dept of Posts, Bhopal in case No CIC/AD/A/2008/000600 dated 23 Jun 2009, the Hon'ble CIC has held that "there is no provision in the RTI Act to seek additional information at the stage of first appeal and therefore this case can be closed on the ground that the information originally sought has been furnished and direct the appellant to file a fresh application for additional information."

6. NOW THEREFORE, in the light of above mentioned facts and other material available on record I, as Appellate Authority, dispose of the appeal submitted by Wg Cdr Gaurav Bhatnagar, in terms of Para 4 of this Order."

19. The aim of AR is to have an objective assessment of an officer's competence, employability and potential as observed during the period covered by the report, primarily for organizational report. AR form is well laid out comprising qualities/attributes in three parts viz. Personal Qualities (PQs), Demonstrated Performance Variables (DPVs) and Qualities to Assess Potential (QsAP), and recommendation for promotion, career courses and foreign assignments. The reporting officers assess the ratee independently in various qualities based on his overall performance during the reporting year. In addition they also comment on the reporting by the lower reporting officers as

“Liberal/Strict/Justified”, as applicable. The various qualities/attributes in various columns in CR form specify to predicate the assessing officers in the chain, to make comprehensive analysis of the ratee's qualities with reference to the assessment scale. This approach is well established and an important tool for human resource development especially in a leadership oriented organization like Armed Forces. The various qualities listed out in detail in CR form preclude an assessing officer from being biased, by compelling the assessing officer to assess each quality separately.

20. We agree with the Respondents that each report reflects the performance of the officer during that particular period. However, if it gets established that a particular Reporting Officer has been strict and inconsistent in his assessments, then there is a need to compare his overall profile as well to see if there was any bias. We have examined the Master Data Sheet i.e. AR dossier presented before us and have gone through the details of assessment made by various reporting officers from the year 2012 onwards and we find no inconsistency in any of his ARs. We also find that his applications/representations/statutory complaints have been adequately considered and replied by the respondents giving cogent reasons for his non selection to career course and further promotion.

21. With regard to cancellation of his AR as pleaded in Para 4(f) of the O.A. it is pertinent to mention that the subject AR was

cancelled by SRO endorsing the remarks as 'please reconcile numerical assessment and pen picture' due to inconsistencies noticed in numerical assessment and the pen picture. Since the ARs are digitally signed at each level, any change in the AR document would render it invalid, hence there is no provision to return the AR for correction at any level in DIGITAR.

22. The applicant was advised to raise his fresh AR but rather taking initiative to raise his AR, he started submitting representations followed by statutory complaints which were dismissed/rejected vide various orders as quoted in preceding paragraphs. Even during the course of his interview the Commanding Officer also advised him to raise his fresh AR. His statutory complaint dated 18.10.2018 was duly considered and disposed off by the competent authority i.e. AOC-in-C, Western Air Command.

23. Perusal of application dated 24.11.2018 indicates that the applicant had refused to raise fresh AR. The applicant has never raised fresh AR even subsequently despite many advices and directions in this regard. Apprehensions of the applicant with regard to his perceived flaws in DIGITAR have been duly considered at Air Headquarters. We find that DIGITAR is conforming to all the provisions of AFO 06/2012 and the cancelled AR is preserved digitally and can be produced for review at any stage.

24. Thus, keeping in view that the DIGITAR was cancelled by the SRO in accordance with rules on the subject and advice being given to raise fresh AR and also no inconsistency being found in his earlier ARs, this O.A. is liable to be dismissed.

25. Accordingly, O.A. is dismissed.

26. No order as to costs.

27. Miscellaneous applications, pending if any, stand disposed of.

(Maj Gen Sanjay Singh)
Member (A)

Dated : 02.03.2023
rathore

(Justice Umesh Chandra Srivastava)
Member (J)