

(Court No. 1)**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 190 of 2021**Friday, this the 13th day of January, 2023**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”****“Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

IC-60987A Lieutenant Colonel Harish Sharma (Corps of Army Air Defence), GSO1 Planning & Training, HQ 9 Infantry Division, Meerut, PIN-250001.

..... Applicant

Ld. Counsel for the Applicant : **Shri Veerandra Mohan**, Advocate.

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, DHQ, P.O.-New Delhi, Pin-110011.
2. The Chief of the Army Staff, through Military Secretary, South Block, DHQ P.O., New Delhi, Pin-110011.
3. Col RN Chowdhury, SM, O-7/6, Clyde Row, Hastings, Kolkata, PIN-700022.
4. Brig MG Jacob (Retd), G-4, Express Tower, Judges Avenue, Kaloor, Kochi (Kerla), PIN-820147.
5. Lt Gen Munish Sibbal, PVSM, AVSM** (Retd), A-101, Alaknanda Coop Group Housing Society, Plot No. 45, Sector 56, Gurgaon (Haryana), PIN-122001.
6. Col Chandan Bajaj, Col Provost, HQ Delhi Area, Delhi Cantt, PIN-110010.

.....Respondents

Ld. Counsel for the Respondents. : **Dr. Shailendra Sharma Atal**, Advocate
Central Govt. Counsel
Assisted by **Lt Col Suchitra C**, AMS (Legal)
IHQ of MoD (Army).

ORDER

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

- (a) *Entire impugned Confidential Report No 17 and entire Assessments of IO (Respondent No 6) now remaining Report No 21 after expunction of the Pen Picture by GOC-in-C, ARTRAC, be set aside, being subjective due to bias and malafide intention of the Initiating Officers and moderated assessments of the Reviewing Officers in Report No 17 on account of it's being unrelated to the actual performance of the Applicant during impugned period, his courses and contribution to the organization and also because they completely lacked any knowledge or exposure about the same, as also on technical grounds and arbitrariness.*
- (b) *The present OA be allowed with costs and with directions to Respondents Nos 1 and 2 to remove it's ill effects on career advancement of the Applicant, and consequent thereupon the impugned Order No PC-36501/14273/AAD/2012/MS-19-282/SC/2018-D(MS), dated 17 Sep 2018, of the Respondent No 1 on the Statutory Complaint of the Applicant dated 04 Dec 2017 against his CR for period 01/11-5/11 and 1/13-12/13, be also set aside.*
- (c) *All other related and consequential benefits arising out consequent to grant of the relief sought in Para 8.1.1 and 8.1.3, be allowed retrospectively.*
- (d) *Respondent No 1 be also directed to initiate strict action against the erring reporting officers from failing to discharge public duty entrusted to them adopting subjectivity, bias and malafide intentions, ignoring the actual performance and course report etc of the Applicant.*

2. Brief facts of the case are that the applicant was commissioned into 28 Air Defence Regiment of the Indian Army on 09.12.2000. During the course of his service he was promoted to the rank of Lt Col. The applicant was to proceed for Staff Course on 29.05.2011 and prior to that he handed over his Interim Confidential Report (ICR) form to his Commanding Officer (respondent No 3) duly completed well before his

departure on 27.05.2011 but as per applicant his ICR was initiated on 15.07.2011 after a deliberate delay of 50 days against provisions of Para 131 of Army Order 45/2001/MS. Applicant has alleged that in the said ICR, gradings endorsed by IO and RO are not consistent to his overall performance hence complete ICR needs to be set aside. In this regard a non statutory complaint dated 26.09.2011 was submitted by the applicant which was rejected vide order dated 16.08.2012. Applicant has also stated that there being aberrations in his confidential report (CR) for the period January 2013 to December 2013, pen picture endorsed by IO was expunged vide order dated 01.08.2014 based on his Non Statutory Complaint dated 08.05.2014. On 04.12.2017 applicant submitted a Statutory Complaint against his CRs for the period 01/11 to 05/11 and 01/13 to 12/13 which was rejected vide order dated 07.09.2018 (Annexure A-1). This O.A. has been filed for setting aside entire assessment made by IO and RO in CR for the period 01/11 to 05/11 and remaining impugned report for 01/13 to 12/13 after expunction of pen picture by GOC-in-C vide order dated 01.08.2014.

3. Learned counsel for the applicant submitted that the applicant, while undergoing LGSC (Long Gunnery Staff College), despite being called frequently being a prosecution witness in the General Court Martial (GCM) of his own Commanding Officer (CO) being conducted on twelve charges arising out of incident

of sexual harassment of Lieutenant Iman, a subordinate lady officer under him, was able to score 69.5% in the prestigious course. It was further submitted that applicant has also qualified for Junior Command Course (JC Course) with instructional grading in first attempt due to his hard work and dedication towards the organization.

4. Learned counsel for the applicant further submitted that besides his day to day work in the unit, the applicant took keen interest in upkeep and welfare of troops and executed additional tasks assigned to him to the entire satisfaction of his seniors and his work was appreciated time and again by the senior dignitaries who visited the unit. It was further submitted that the authorities at Military Secretary's Branch omitted to see the glaring inconsistencies and mismatches in the figurative assessments, box gradings and pen pictures endorsed by the reporting officers in the confidential reports of 01/11 to 05/11 and 01/13 to 12/13 in respect of the applicant which needs to be set aside to impart justice as the authorities at higher level did not address the points raised in his non statutory complaint. In support of his contention, learned counsel for the applicant has placed reliance on the Hon'ble Apex Court judgment in the case of ***Express Newspaper Pvt Ltd & Ors vs Union of India & Ors***, (1986) 1 SCC 133.

5. Learned counsel for the applicant further submitted that at no point of time was he given any advisory by any of the

Reporting Officers, which instilled in him a belief that the reporting officers were completely satisfied with his abilities and performance. The learned counsel further submitted that the applicant had handed over his ICR to his CO on 27.05.2011 but it was initiated on 15.07.2011 after an impermissible delay of 50 days without specifying any reasons for delay. It was further submitted that the gradings have been underplayed with avowed intention to seal his career leaving aside his outstanding performance and additional task assigned to him.

6. Learned counsel for the applicant further submitted that the applicant had no direct interaction of any nature with respondent No 4 and 5 and even then the applicant was misjudged probably on hearsay by RO and SRO. It was further submitted that respondent No 3, being from same Corps had ethnic intimacy with Col Debashish Mitra, the then CO during 2004-2006 against whom the applicant was a witness to the facts of the case instituted by Lt Iman of 28 AD Regt, had expressed loudly that he should not have stood against his own CO. This he feels is the main factor behind downgradation of his gradings in ICR for the period 01/11 to 05/11.

7. Learned counsel for the applicant further submitted that had the applicant not deserved an outstanding CR, he would have been counselled for lacking desired standard. His other contention is that in column 12 (b) (i) and (ii) 'Nil' has been endorsed below counselling which means that his performance

during the reporting period was consistently upswing. His further contention is that the applicant despite being in low medical category (LMC) took part with youngsters during inter unit BPET championship and came out with flying colours but even then his initiating officer has endorsed in Para 12 (a) of his CR form that 'the officer has strived hard to reduce his weight, but, he is advised to further reduce it and get it within permissible limits' knowing well the fact that applicant was having precise weight limit.

8. Learned counsel for the applicant further submitted that on one hand the applicant's pen picture was endorsed as *'the offr is very hard working with a strong determination and will power. He has moulded his bty into a cohesive working outfit and has kept it battle ready. He has sound processional knowledge both about his own and as well as other arms and has motivated the young offrs to excel professionally with his personal example'* but on the other hand he was awarded grading '7' which is not commensurate with his pen picture. His further contention is that gradings and endorsements made by his initiating officer were dittoed by the reviewing officer thus making the CR incompatible with applicant's overall performance.

9. With regard to applicant's CR for the year 2013, learned counsel for the applicant submitted that while applicant was posted as GSO1, Army Training Command, he was entrusted with additional responsibilities in addition to his own work but even

then respondent No 6 endorsed in the pen picture as '*he is not amenable to guidance or advice, and he prefers to bypass the chain of command for own gains*'. It was further submitted that figurative assessment in box grading represents overall assessment of performance as well as potential for promotion besides reflecting the interplay amongst individual characteristics but the applicant was not assessed in accordance with his performance.

10. Learned counsel for the applicant further submitted that applicant's RO (respondent No 4) and SRO (respondent No 5) being located elsewhere, their assessment were based on uncorroborated IO's assessments which were biased and with malafide intentions apparently due to his empathy with ex CO 28 AD Regt against whom the applicant had given evidence in a case of sexual harassment/assault on a unit lady officer (Lt Iman). It was pleaded that the Military Secretary at Army Headquarters ought to render CR technically invalid keeping in view the moderation being found in both the CRs. He pleaded for setting aside both the CRs for advancement of his career. He has summed up by stating that during his tenure with the unit and outside the unit there had been an all round improvement in the organisational effectiveness of the unit.

11. Per contra, learned counsel for the respondents submitted that the applicant was commissioned on 09.12.2000 in Army Air Defence. He further submitted that applicant had submitted a

non statutory complaint dated 26.09.2011 against his CR covering the period 01/11 to 05/11 which was rejected vide order dated 17.08.2012. Thereafter, he submitted a non statutory complaint dated 08.04.2014 against his CR for the period 01/13 to 12/13 which was redressed vide order dated 01.08.2014 removing pen picture of the reporting officer in para 12 of the CR.

12. Further submission of learned counsel for the respondents is that applicant's statutory complaint dated 04.12.2017 preferred against CRs 01/11 to 05/11 and 01/13 to 12/13 was examined by competent authority and rejected vide order dated 17.09.2018 being consistent to his overall profile.

13. Learned counsel for the respondents further submitted that submission of the applicant with regard to less interaction with respondent No 4 and 5, has already been decided by Hon'ble AFT, PB, New Delhi in the case of **Col Amar Narwat vs Union of India & Ors**, T.A. No. 160 of 2009 decided on 20.01.2010 in which it has been held that it is not necessary for the senior reviewing officer (SRO) to interact with the ratee in order to render a CR upon him. It was further submitted that the pen picture endorsed by the IO in Para 12 of CR for the period 01/13 to 12/13 was expunged based on his overall profile. He pleaded for dismissal of O.A. stating that the CRs are well corroborated and technically valid. In support of his contention with regard to assessment of Selection Board being recommendatory in nature,

learned counsel for the respondents has relied upon the following judgments of the Hon'ble Apex Court:-

- (i) **UOI vs Lt Gen RS Kadyan**, (2000) 6 SCC 698.
- (ii) **Maj Gen IPS Dewan vs UOI**, (1995) 3 SCC 383.
- (iii) **AVM SL Chhabra, VSM vs UOI**, 1993 Supp (4) SCC 441.
- (iv) **Dalpat Abasaheb Solunke vs BS Mahajan**, (1990) 1 SCC 305.
- (v) **Lt Col Amrik Singh vs UOI**, (2001) 10 SCC 424.
- (vi) **Major Surinder Shukla vs UOI & Ors**, (2008) 2 SCC 649.

14. We have heard Shri Veerandra Mohan, learned counsel for the applicant and Dr. Shailendra Sharma Atal, learned counsel for the respondents assisted by Lt Col Suchitra C, AMS (Legal), MS Branch, Army HQ, perused the regulations, Army Orders, policy letters and case laws submitted on the subject matter and seen the connected files and dossier of the officer.

15. It is seen that most of the achievements for which the applicant is claiming credit pertain to the period before and after the initiation of this ICR. However, as the report was for a short period of five months, the IO ought to have taken into account the courses done and appointments held by the applicant, while initiating the ICR, as given in Part II, Para 34, Guidelines for rendering CRs.

16. The assessment of officers in ACR is regulated by Army Order 45/2001/MS) and other relevant policies at any given time. The gradings are numerical from 1 to 9 (overall as well as in Personal Qualities (PQs) and Performance Variables in different qualities) and in the form of pen picture also. The entire assessment of an officer in any CR consists of assessment by three different Reporting Officers i.e. Initiating Officer (IO),

Reviewing Officer (RO) and Senior Reviewing Officer (SRO) whose assessments are independent of each other.

17. The aim of a confidential report 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. CR form is well laid out comprising of 22 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. Each of the reporting officers assesses the ratee independently in various qualities and box grading and pen picture. 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.

18. The applicant had submitted a non statutory complaint dated 26.09.2011 against his ICR covering the period 01/11 to

05/11 while he was attending Staff College Course. The said complaint was rejected by GOC-in-C, Southern Command being found the CR well corroborated, free from subjectivity and bias and consistent with the applicant's overall profile. After initiation of CR for the period 01/13 to 12/13, applicant again submitted non statutory complaint dated 08.05.2014 which was partially redressed and pen picture endorsed by the IO was removed.

19. Against his CRs for 01/11 to 05/11 and 01/13 to 12/13 statutory complaint dated 04.12.2017 was again preferred by the applicant which was rejected by Govt of India vide order dated 17.09.2018 stating that the aforesaid CRs are well corroborated, performance based and technically valid and there is no bias or subjectivity while endorsing the CRs.

20. A perusal of CR dossier, we notice that assessments towards the following attributes are not consistent and there is a dip in figurative assessment in both the CRs as under:-

CR 01/11 to 05/11

(a)	Para 9 (a) - Appearance	-IO and RO
(b)	Para 9 (h) - Maturity	-IO and RO
(c)	Para 10 (g) -Dedication	-IO and RO
(d)	Para 24 (d) -Tolerance for Ambiguity	-IO
(e)	Para 24 (e) -Professional Competence	-IO and RO

CR 01/13 to 12/13

(a)	Para 9 (b) -Decisiveness	-IO
(b)	Para 9 (c) -Dependability	-IO
(c)	Para 9 (d) -Moral Courage	-IO
(d)	Para 10 (d) -Motivation	-IO

21. In view of the above, the aforesaid endorsements in both the CRs are set aside being not found consistent to applicant's

overall profile. Order dated 17.09.2018 passed by Govt of India is set aside. After expunction of aforesaid endorsement, the applicant may be considered for grant of further promotion in his own turn.

22. In view of the above, O.A. is partly allowed.

23. No order as to costs.

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

(Vice Admiral Atul Kumar Jain)
Member (A)

Dated : 13.01.2023
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(Justice Umesh Chandra Srivastava)
Member (J)