

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No 487 of 2018**Wednesday, this the 29th day of March, 2023**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)****Hon'ble Vice Admiral Atul Kumar Jain, Member (A)**

IC-49123W Col Rajendra Kumar Singh
 Director in NCC Directorate Uttar Pradesh Lucknow
 S/o Lt Col PB Singh (Retd)
 R/o 10 Nehru Road,
 Lucknow Cantt – 226002 (Govt. allotted accommodation)

..... Applicant

Ld. Counsel for the Applicant: **Col H.M. Maheshwari (Retd)**, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, DHQ PO, New Delhi-110011.
2. The Chief of the Army Staff, IHQ of MoD (Army), South Block, New Delhi-110011.
3. The Military Secretary, IHQ of MoD (Army), South Block, New Delhi-110011.

..... Respondents

Ld. Counsel for the Respondents : **Shri Sunil Sharma,**
 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 for the following reliefs:-

- “(a) Issue/pass an order to call for the complete records of the case leading to impugned order dated 16.04.2018 and set aside the order.

- (b) Issue/pass an order to call for complete CR Dossier of the applicant and, after perusal thereof, set aside impugned CRs for the period of 30.12.2014 to 31.08.2015 and 01.09.2015 to 25.02.2016, and any other inconsistency in the CR profile.
- (c) Issue/pass order to grant all consequential reliefs, flowing from setting aside the said impugned order and CRs, including reconsideration for No. 2 Selection Board as a fresh case.
- (d) Issue/pass such other order(s) or direction(s) as the Hon'ble Tribunal deems appropriate in the facts and circumstances of the case.”

2. The brief facts of the case are that applicant was commissioned in the Indian Army through National Defence Academy and joined 12 SIKH LI Battalion voluntarily. The applicant's Confidential Report (CR) was initiated by Maj Gen Asit Mistry, General Officer Commanding (GOC) CIF (K) in Sep 2015 and the IO had endorsed communication skills as in lower bracket of 'Above Average' (Seven) and knowledge of other Arms and Services in lower bracket of Above Average (Seven) and overall grading as 8, an extremely lukewarm report. The applicant's CR was again initiated by Maj Gen Asit Mistry, GOC CIF (K) in Feb. 2016 and again a lukewarm ACR grading 7 to 8, thus harmed the career prospects of applicant with malafide intentions, without giving due weightage to unit's deployment and performance. Thus, the applicant filed a statutory complaint against the impugned CRs for the period from 30.12.2014 to 31.08.2015 and from 01.09.2015 to 25.02.2016 which are not performance based,

inconsistent, non objective, written in very casual manner by the IO but the statutory complaint was rejected by the competent authority. The applicant by filing the present Original Application has prayed that impugned order dated 16.04.2018 passed on statutory complaint of the applicant be set aside and applicant be considered afresh by No. 2 Selection Board for promotion to the rank of Brigadier.

3. Learned counsel for the applicant submitted that applicant was commissioned in the Indian Army through National Defence Academy and joined 12 SIKH LI Battalion voluntarily. The applicant successfully completed/passed Commando course in March 1991 and got Instructor grading and was posted as Instructor 'Class-C' at Commando Wing, Infantry School, Belgaum. The applicant served as Company Commander in 19 Rashtriya Rifles and was instrumental in destroying/apprehending eight terrorists. The applicant while posted with 8 SIKH LI led a Quick Reaction Team (QRT) in 2003. The applicant while posted in SIKH LI Regimental Centre, his Training Company was awarded Commandant's Banner. The applicant also did Senior Command Course at Army War College, Mhow. The applicant also commanded his Battalion (12 SIKH LI) on the Line of Control with total professional acumen and military ethos. The applicant served as Colonel GS (SD) in HQ Central Command, Lucknow and he was conferred with GOC-in-C Commendation Card.

4. Learned counsel for the applicant further submitted that applicant, due to his complete dedication to the service, relentless hard work and outstanding and successful command of a Battalion

was appointed/assumed the command of 163 Inf Bn (TA) (H&H) SIKH LI on 17.06.2014. The performance of the Battalion during his command was appreciated by most of the senior officers of Sector HQ/Brigade/Division/Corps and even by ADG of Territorial Army, IHQ of MoD (Army), New Delhi. The Battalion was also awarded with GOC-in-C (Northern Command) Unit Appreciation on Army Day 2017. The applicant's Confidential Report (CR) was initiated by Maj Gen Asit Mistry, General Officer Commanding (GOC) CIF (K) in Sep 2015 who as a GOC, Initiating Officer (IO) visited the Battalion on 06.02.2015 only. The IO had endorsed at page No. 5, Para 9(k), communication skills as in lower bracket of 'Above Average' (Seven) and page No. 6, Para 10 (b), knowledge of other Arms and Services in lower bracket of Above Average (Seven) and overall grading as 8, an extremely lukewarm report. The applicant was amazed to see such lukewarm ACR and apprised IO that he has been instructor in prestigious Infantry School, GSO-1 Training of SIKH LI Regimental Centre and then quality of communication skills in para 9 (k), page No. 5 were amended. This clearly reflects lack of knowledge and consideration of entire efforts of ratee, indecisive and casual approach towards sacred responsibility entrusted on the GOC being IO. The applicant's CR was again initiated by Maj Gen Asit Mistry, GOC CIF (K) in Feb. 2016 and General Officer Commanding visited the Battalion on 06.02.2016. Again a lukewarm ACR grading 7 to 8 in six months, thus harmed the career prospects of applicant with malafide intentions best known to him, without giving due weightage

to unit's deployment and performance. Thus, the impugned CR is not performance based, inconsistent, non objective, written in very casual manner by the IO.

5. Learned counsel for the applicant further submitted that it is settled law, held by the Hon'ble Supreme Court that writing Confidential Report bears onerous responsibility on the reporting officers. Career prospects of subordinate officers largely depends upon the work and character assessments done by the reporting officer. Therefore, they must adopt fair, objective, dispassionate constructive approach in assessing the ability/character displayed by ratee during the relevant period (**AIR 1995 SC 111**). The officers entrusted with the duty to write CRs have a public duty and interest to write CRs fairly and objectively while giving as accurately as possible, the overall assessment of the performance of the ratee (**1997 (4) SCC 7**) but the IO has not followed the instructions as contained in Army Order 45/2001/MS and has acted in complete disregard of afore-stated principle of service-jurisprudence while writing the impugned CRs. Thus, it is clear that IO's assessments in the impugned CRs actually suffers not only inconsistency but also from casual, bias and arbitrariness, as the same not being objective and performance based and therefore, assessment of RO/SRO also would have been based on the casual/non objective assessment of the IO.

6. Learned counsel for the applicant further submitted that applicant filed statutory complaint dated 16.05.2017 against CRs for the period from 12/2014 to 08/2015 and 09/2015 to 08/2016 which

was rejected in an arbitrary manner without giving due consideration to the issues raised therein. The applicant during his balance period of command of 163 Inf Bn TA (H&H) has earned three ACRs between the period Feb. 2016 to Aug. 2017 and both IOs have graded Outstanding in all three ACRs. Therefore, CRs for the period from 30.12.2014 to 31.08.2015 and from 01.09.2015 to 25.02.2016 being bad in law, inconsistent and not in consonance with the overall profile of the applicant and impugned order dated 16.04.2018 passed on statutory complaint of the applicant be set aside and applicant be considered afresh by No. 2 Selection Board for promotion to the rank of Brigadier.

7. Learned counsel for the respondents submitted that applicant's grievance is for non empanelment by No. 2 Selection Board 2014, 2015 and 2017. However, the statutory complaint preferred by the applicant pertains to CRs for the period from 12/2014 to 08/2015 and 08/2015 to 02/2016 and not to his non empanelment by No. 2 SB. It is further submitted that assessment of officers in ACR was earlier regulated by SAO 3/S/89 which has been replaced by existing Army Order 45/2001/MS. The entire assessment of an officer in any ACR 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. The demonstrated performance of the applicant during the period covered by the CRs is reflected by three independent levels of reporting. Hence, applicant's self assessment of his performance to

have been graded Outstanding in the impugned CRs for the period from 30.12.2014 to 31.08.2015 and 01.09.2015 to 25.02.2016 is his own imagination. Though the applicant has himself admitted in the Original Application that CR for the period from 30.12.2014 to 31.08.2015 was suitably modified upward by the IO on the appeal of applicant and accordingly, remarks and grading in the CR for the period from 01.09.2015 to 25.02.2016 has been awarded by the same IO in accordance to his performance during this period.

8. Learned counsel for the respondents further submitted that contention of the applicant that his unit was awarded Army Commanders Unit Citation due to outstanding command and control of the Commanding Officer is not correct as Army Commanders Unit Citation is awarded based on laid down parameters of making system and does not reflect an outstanding performance by Commanding Officer.

9. Learned counsel for the respondents further submitted that CR dossier of the applicant was examined while redressing the statutory complaint dated 16.05.2017 of the applicant and impugned CRs for the period from 12/2014 to 08/2015 and 08/2015 to 02/2016 were found well corroborated, performance based and technically valid. There appears no biasness in the CR as alleged by the applicant. The case laws cited are in relation to civilian employees and the Hon'ble Supreme Court in **Dev Dutt vs. Union of India** (2008) 8 SCC 725 has excluded military from the principles of assessment and communication of remarks applicable to civilians. The Reviewing

Officer and Senior Reviewing Officer has the mechanism to assess the performance of the applicant even without frequently visiting the unit and they obtain the necessary information through established means to ascertain the reality.

10. Learned counsel for the respondents further submitted that impugned CRs are subsequent to the reckonable profile considered for empanelment as a fresh and first review case in No. 2 SB 2014 & 2015 and have no impact on his non-empanelment. The applicant's assertion of casualness and inconsistency on the part of his superior officer (IO, RO and SRO) is most unwarranted, uncalled for and the least the applicant ought to have done was to make such superior officer party to respond to the alleged casualness. Hence, present application suffers from non joinder of parties essential for adjudication of the lis and is liable to be dismissed on this count. However, it has emerged from the above that both the impinged CRs were well corroborated, performance based and technically valid. There being no facets of any biasness or subjectivity, the impugned CRs did not merit any interference and thus, Original Application is liable to be dismissed being devoid of merit and misconceived.

11. We have heard learned counsel for the parties and have perused the material on record.

12. We observe that statutory complaint dated 16.05.2017 filed by the applicant against impugned CRs for the period from 30.12.2014 to 31.08.2015 and 01.09.2015 to 25.02.2016 was considered and examined as per rule position and then it was rejected by the

competent authority after considering all facts and issues raised therein vide order dated 16.04.2018. As per Army Order 45/2001/MS, it is factual that entire assessment of an officer in any Confidential Report consists of assessment by three different reporting officers, i.e. IO, RO & SRO whose assessments are independent and accordingly, demonstrated performance of the applicant during the period covered by the CRs from 12/2014 to 08/2015 and 09/2015 to 08/2016 has been reflected by three independent levels of reporting of IO/RO/SRO as per their assessment. Hence, applicant's self assessment of his performance as an Outstanding in the impugned CRs appears to his own contemplation and not performance based demonstration as assessed by the IO/RO/SRO.

13. The CR dossier of the applicant was examined and impugned CRs for the period from 12/2014 to 08/2015 and 08/2015 to 02/2016 were found well corroborated, performance based and technically valid. There appears no biasness or inconsistency in both the CRs. It is also made known that Initiating/Reviewing Officers/Senior Reviewing Officers have the mechanism to assess the performance of the officers/ratee even without frequently visiting the unit and they obtain the necessary information through established means to ascertain the reality and the same method has been adopted by the IO/RO/SRO in the case of the applicant also.

14. We find that both impugned CRs of the applicant are subsequent to the reckonable profile considered for empanelment by No. 2 Selection Board and have no impact on his non-empanelment.

The applicant's assertion of casualness and inconsistency on the part of IO, RO and SRO appears unwarranted and unjustifiable. Hence, there being no facets of any biasness or subjectivity, the impugned CRs did not merit any interference and thus, Original Application is liable to be dismissed.

15. Taking into consideration Army Orders and policy letters on the subject for initiation of CRs and selection/grant of promotion, we hold that the claim of applicant for setting aside impugned CRs for the period from 30.12.2014 to 31.08.2015 and 01.09.2015 to 25.02.2016 and reconsideration/grant of promotion to the rank of Brigadier by No. 2 Selection Board has rightly been rejected by the respondents as per rules/policy which needs no interference. Resultantly, Original Application is **dismissed**.

16. No order as to costs.

17. Pending Misc. Application(s), if any, shall stand disposed off.

(Vice Admiral Atul Kumar Jain) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: 29th March, 2023
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