

**Court No.1**  
Sl. No.18

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW**

**Original Application No. 91 of 2023**

Thursday, this the 25<sup>th</sup> day of May, 2023

**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Atul Kumar Jain, Member (A)**

IC-53587L Colonel Vijay Narayan Shukla, VSM (on study leave) 4T203, AWHO, Gurjinder Vihar, Sector Chi-1, Greater Noida, Gautam Budh Nagar, UP, PIN-201310

.....Applicant

Ld. Counsel for : **Shri Veerendra Mohan**, Advocate  
Applicant

Versus

1. Union of India, through Secretary Ministry of Defence, South Block, DHQ P.O. New Delhi-110011.
2. The Chief of the Army Staff, through Military Secretary, South Block, DHQ P.O. New Delhi, PIN-110011.
3. Lt Gen DS Bartwal, PVSM (Retd), 44A East Canal Rd, Dehradun, (Uttarakhand) PIN-248001.
4. Lt Gen KG Krishna, PVSM, AVSM, SM, VSM (Retd) House No 2-2C-7, Vidhyanagar, Nidadavolu, West Godavari, PIN-534301.
5. Lt Gen LN Singh, VSM\*\* (Retd), Laiphrakpam Jogen, Thangmaiband, Khomdram Selungba Laikai, P.O-Imphal HO, Distt- Imphal (West), PIN-795001.
6. Maj Gen Suresh Mamgain, SM (Retd), B-404, Ranjit Vihar 1 Plot No 15, Sector 22 Dwarka, New Delhi PIN-110077.
7. Lt Gen JDS Rawat, PVSM, SM (Retd), Flat-402, B Block, Green View Residency, Aman Vihar, Shahastradhara Rd, Dehradun, PIN-248001.
8. Maj Gen VK Joshi, VSM (Retd), Caca Rouge Apartments A-Block 703 Rd No.8 Opposite NEXA, Jubilee Garden, Kothagudda, Kondapur Hyderabad, Telengana PIN-500084.
9. Maj Gen SK Choudhary, VSM (Retd), Flat No. 3/11, Third Floor, Block C, AWHO (Bhaskar Roy Road), VIP Road, Distt 24 Paraganas (N), PIN-700052.

10. Maj Gen Gautam Deb, SM, VSM (Retd) 703, J Block, 7<sup>th</sup> Floor, AWHO Housing, Society, Vivek Vihar, Sector 82, Noida-201304.
11. Brig PS Bora (Retd), Bora Niwas, Navabi Rd, Opposite Wah Re Dulha Shop, Haldwani, Uttarakhand, PIN-263139.
12. Col Virendra Tomar, (Retd) 1401, Forum Condominium, Uday Baug, Pune, PIN-411013.
13. Col Gurdev Singh (Retd) 767, Joginder Vihar, Sector 54, Phase II, Mohali, PIN-160055.

.....Respondents

Ld. Counsel for the : **Ms. Appoli Srivastava**, Advocate  
Respondents Central Govt Counsel, assisted by  
**Lt Col Suchitra Chellapan**,  
AMS (Legal), IHQ of MoD (Army),  
New Delhi.

### **ORDER (Oral)**

#### **“Per Justice Umesh Chandra Srivastava, Member (J)”**

1. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 whereby the applicant has claimed the following reliefs:-

- (i) *Entire impugned Confidential Reports for the periods '06/03-05/04' (Report No 10), '01/07-11/07' (Report No 14), '01/08-05/08' (Report No 15), '06/08-12/08' (Report No 16), and '04/15-08/15' (Report No 27), be set aside, being subjective and unrelated to the actual outstanding performance of the Applicant during impugned periods, his courses, his recorded contributions to the national safety by timely intelligence acquisition and dissemination, intentionally underplayed due to hidden*

*vengeance, bias and malafide of the Initiating Officers duly carried on by the Reviewing Officers without moderation to make the same objective.*

- (ii) The present OA be allowed with costs and with directions to the Respondents Nos 1 and 2 to remove it's ill effects on career advancement of the applicant, and consequent thereupon the impugned 'Rejection Order' No 36501/14153/Int/2012/MS-19/494/SC /2022-RoG/Stat dated 19 Oct 2022, signed by Shri Raja Ram Sah, Under Secretary, Govt of India, Ministry of Defence, Department of Military Affairs, New Delhi on the Applicant's Statutory Complaint dated 02 March 2022 and the partial 'Redressal Order' No 36501/14153/INT/2012 /MS-19 dated 03 Nov 2021 of the COAS on the Applicant's Non Statutory Complaint dated 07 Jun 2021, be also set aside.*
- (iii) All other related and consequential benefits arising out, consequent to the grant of the relief sought in Para 8.1.1 and 8.1.2, be allowed retrospectively.*
- (iv) Respondent No 1 be also directed to take cognizance of failure of the erring reporting officers for failing to discharge public duty entrusted to them adopting subjectivity, bias and malafide intentions, ignoring the actual performance, course and awards etc conferred on the Applicant for his exceptional services to the nation.*

2. Brief facts of the case are that the applicant was commissioned in 24 RAJPUT of the Indian Army on 10.06.1995. He was posted on important assignments such as intelligence unit at Army Headquarters, New Delhi and has undergone various important courses.

He was conferred with various medals and awards for his exceptional dedication to the services. In April 2021, result of No. 2 Selection Board was declared in which the applicant could not make out. He raised the issues of inconsistencies in his CRs 06/03-05/04, 01/07-11/07, 01/08-06/08, 06/08-12/08 & CR 04/15-08/15 by submitting non-statutory complaint dated 07.06.2021 which was partly redressed by Chief of the Army Staff vide order dated 03.11.2021 and RO's assessment in QsAP at Para 24 of the CR 01/07-11/07 was expunged, being inconsistent. Being aggrieved with non grant of full redressal, he submitted statutory complaint dated 02.03.2022 which being rejected vide order dated 19.10.2022, this O.A. has been filed.

3. Learned counsel for the applicant submitted that the respondents have grossly downgraded the ACRs of the applicant mainly due to the following reasons:-

- (i) His wife's refusal from kitty group of the unit ladies as she was suffering from serious medical problems (cancer patient) which restricted a normal life.

(ii) An on the spot conferment of COAS Commendation Card on 29.09.2005 made hidden anger and bias by IO.

(iii) CR for the period 04/15-08/15 was delayed by the SRO unduly for 40 days without any justifiable reasons, against the instructions of Para 131 of Army Order 45/2001/MS. On getting to know, he interacted with AMS 6E and Col MS6 and sought interview with COAS. He was called by Lt Gen KG Krishna, DGMI (SRO) who asked to withdraw the application or else face consequences in which his IO and RO were supportive. The applicant was never allowed to meet the COAS, and DGMI also got annoyed with the applicant for not withdrawing his application.

4. Learned counsel for the applicant further submitted that in July, 2007 while posted with 567 Intelligence and FS Unit, he attended the Combined Strategic Intelligence Training Programme at DIA, Washington DC, USA. It was further submitted that while attending the programme in USA, MS Branch issued his posting order with directions to directly report at MINTSD as Instructor Class 'B' on termination

of the course. It was submitted that since his reliever was not posted he had to report back to 567 Int and FS Unit on insistence of his IO and since he did not complete 90 days physical service under his IO, his CR was endorsed by Maj Gen JDS Rawat, Cdr, HQ Int and FS Security Gp/MI-25, who being not having any interaction with the applicant graded 'Above Average' despite the fact that applicant was having outstanding report in earlier CRs.

5. Learned counsel for the applicant further submitted that despite applicant's established acumen during the course of his service his assessment has been subjective and unrelated to the actual outstanding performance besides being inconsistent with the previous outstanding CRs. It was further submitted that there being no record of any counselling, the MS Branch in its internal audit ought to have observed the glaring inconsistencies and would have expunged the impugned CRs under the powers of COAS. It was thus, submitted that it was not only inconsistent with the overall profile of the applicant, but, also technically untenable, being in violation of Guidelines for Rendition of the CRs as laid down in extant Army Order and the

policies as well as the settled proposition of law that require the reporting officers to afford opportunity to the ratee to know any drop in performance or shortcomings noticed by the reporting officers to improve before down grading their assessments in the CRs.

6. Learned counsel for the applicant further submitted that as against the requirement of annual assessment of a ratee, the applicant came to be assessed twice in one year with only ICR for a very short duration of physical service as an 'Above Average' being inconsistent with performance and profile both, whereas in his corresponding annual confidential report, the applicant was rated outstanding by the IO and his next ACR was also identical. It was further submitted that the applicant fell victim to dual assessments by IOs, for relatively shorter durations and there was visible lack of cohesion amongst the reporting officers, and requisite prior intimation for rendering outstanding grading may not have been taken up by the IOs, thus, resulting in underplayed grade 'Above Average' in the impugned CRs. He submitted that in fact these 'Above Average' ICRs practically amounts to adverse ICRs,

and, are stand out against the outstanding performance and profile of the applicant. In support of his contention, learned counsel for the applicant has relied upon the Hon'ble Supreme Court judgment in the case of ***Express Newspaper Pvt Ltd & Ors vs Union of India & Ors***, (1986) 1 SCC 133. He pleaded for setting aside of CRs covering the period 06/03-05/04, 01/07-11/07, 01/08-06/08, 06/08-12/08 & CR 04/15-08/15 being subjective and not related to actual outstanding performance of the applicant and grant him consequential benefits after expunction of aforesaid CRs.

7. On the other hand, learned counsel for the respondent No. 1 to 2 submitted that the applicant was commissioned into 24 RAJPUT on 10.06.1995 and he was permanently transferred to Intelligence Corps w.e.f. 30.12.2004. He was considered for further promotion by Selection Boards thrice but was not empanelled. It was further submitted that being aggrieved by his non empanelment to the rank of Brig by No. 2 Selection Board held in December, 2020, the applicant submitted a non statutory complaint dated 07.06.2021 which was duly examined by the competent

authority in detail alongwith his overall profile, previous complaint and other relevant documents and after consideration of all aspects of the complaint and viewing it against the redress sought, it emerged that the assessment by all reporting officers in all the CRs including impugned CRs 06/03-05/04, 01/08-05/08, 06/08-12/08 and 04/15-08/15 in the reckonable profile is fair, objective, well corroborated, consistent, performance based, and in tune with the overall profile of the officer, except CR 01/07-11/07 which merited interference. Thereafter, value judgment marks have been awarded as per extant policy uniformly applied to all similarly placed officers and no injustice has been done to the applicant on this account. The competent authority expunged the RO's assessment at Para 24 in CR 01/07-11/07 vide speaking order dated 03.11.2021.

8. Learned counsel for the respondents further submitted that applicant thereafter, submitted statutory complaint dated 02.03.2022 against CRs 06/03-05/04, 01/07-11/07, 01/08-06/08, 06/08-12/08 & CR 04/15-08/15 which being examined in light of his overall profile, previous complaint, other relevant documents and recommendations of Army HQ, were found

objective, performance based and technically valid, was rejected vide order dated 19.10.2022.

9. Repudiating submission of learned counsel for the applicant on the ground of delay in disposal of his CR for the period 04/15-08/15, learned counsel for the respondents submitted that the SRO is entitled to 30 days for initiation, completion, disposal and movement of CR in terms of policy letter dated 11.07.2006. His submission is that had there been delay of 40 days, as alleged by the applicant, on the part of SRO, the CR would have been technically invalid which infact was accepted post internal assessment. It was further submitted that allegations made by the applicant are baseless and mere general allegations of malafides are unacceptable. The contention of the applicant that the impugned order is neither a speaking order nor it indicates any application of mind by the competent authority, is denied being his unsubstantiated presumptions. In support of his contention, learned counsel for the respondents has placed reliance on the orders passed by the Hon'ble Supreme Court in the case of **Union of India vs Lt Gen RS Kadyan**, (2000) 6 SCC 698, **Maj Gen IPS Dewan vs Union of India &**

**Ors**, (1995) 3 SCC 383, **AVM SL Chhabra, VSM vs Union of India & Ors**, 1993 Supp (4) SCC 441, **Dalpat Abasaheb Solunke vs BS Mahajan**, (1990) 1 SCC 305, **Lt Col Amrik Singh vs Union of India & Ors**, (2001) 10 SCC 424 and **Major Surinder Shukla vs Union of India & Ors**, (2008) 2 SCC 649. He pleaded for dismissal of O.A.

10. Notices were given to respondent No 3 to 13 and in response thereto replies of some of the respondents have been received. While submitting their replies they have much or less expressed their opinion in favour of the applicant except as under:-

(i) Maj Gen Suresh Mamgain (Retd), Respondent No 6 has submitted that applicant deserves to be granted relief against any subjective or downplayed reporting/review by the SRO, against his otherwise overall outstanding performance.

(ii) Maj Gen Gautam Deb (Retd), Respondent No 10 has submitted that applicant deserves to be given the relief sought.

(iii) Lt Gen DS Bartwal (Retd), Respondent No. 3 submitted that the contention of the applicant that the impugned CR has adversely affected his

career, is speculative as the petitioner would normally not be aware of the inter-se merit of his peers.

(iv) Col Virendra Tomar (Retd), Respondent No 12 submitted that applicant be granted relief.

(v) Col Gurdev Singh Deb (Retd), Respondent No 13 submitted that the applicant deserves to be granted relief sought against the ICR initiated by me, admittedly not being an objective assessment.

11. Replies of respondent No 4, 5, 7, 8, 9 and 11 have not been received despite sending fresh notices to them, therefore notice deemed sufficient.

12. Heard Shri Veerendra Mohan, learned counsel for the applicant and Ms Appoli Srivastava, learned counsel for the respondents assisted by Lt Col Suchitra Chellappan, AMS Legal, IHQ of MoD (Army) and perused the record.

13. Applicant was commissioned into 24 RAJPUT of the Indian Army on 10.06.1995 and thereafter, he was permanently transferred to Intelligence Corps w.e.f. 30.12.2004. The Record shows that he was bestowed Commendation Cards by different dignitaries in addition

to award of 'Vishisht Seva Medal' for his distinguished services. The record also shows that applicant's wife was suffering from cancer and that was the reason she avoided taking part in kitty parties organized by the unit level.

14. The applicant had submitted a non statutory complaint dated 07.06.2021 against his non empanelment for promotion to the rank of Brig by No. 2 Selection Board (Fresh) held in December, 2020 highlighting achievements as Commanding Officer and Sub Unit Commander, performance on courses, being nominated twice in the 'Reserve List' of Higher Command Course and Award of Vishisht Seva Medal while Commanding in Counter Insurgency Operations in Field area of South Kashmir. His complaint was processed at the level of Military Secretary's Branch and later was also examined by the Chief of the Army staff in detail alongwith his overall profile, previous complaint and other relevant documents. After consideration of all aspects of the complaint and viewing it against the redress sought, RO's assessment in QsAP at Para 24 of the CR 01/07-11/07 was expunged, being inconsistent, by the Chief of the Army

Staff and it was directed that aberrations be removed from the CR dossier of the applicant. For convenience sake, order dated 03.11.2021 passed in disposal of his non-statutory complaint is reproduced as under:-

"1. Ref your Note No B/497741/AG/ECHS/Dy MD/ACR dated 07 Jun 2021.

2. IC-53587L Col Vijay Narayan Shukla, VSM, Int, has submitted a Non Statutory Complaint dated 07 Jun 2021 against non empanelment for promotion to the rank of Brig by No 2 Selection Board (Fresh) held in Dec 2020. Main points of the complaint are:-

(a) The officer has outlined his service profile highlighting his achievements as CO and Sub Unit Cdr, performance on courses, being nominated twice in the Reserve List of Higher Comd Course and award of VSM while commanding in CI Ops in field in South Kashmir.

(b) The officer has impugned five CRs:-

(i) CR 06/03-05/04. IO graded 'Above Average', probably as the complainant was not socially active because his wife was diagnosed with cancer and was under treatment at Army Hospital (R&R).

(ii) CR 01/07-11/07. The complainant was away from unit for a course at Def Int Agency, USA and on termination of course, was posted as Instructor at MINTSD. IO did not appreciate this and directed the complainant to seek a delay in posting (posting order amended twice). CR initiated by RO, with whom he had no opportunity to interact.

(iii) CR 01/08-05/08 & CR 06/08-12/08. Short duration reports were

*inadequate to assess and rate the complainant commensurate to his work.*

*(iv) CR 04/15-08/15. Sought an interview with COAS on being posted for second command assignment, which was not appreciated by the DGMI (SRO). This incident may have adversely influenced his assessment.*

*3. The officer has requested the following:-*

*(a) His entire profile be reviewed in detail especially the impugned CRs. Any aberrations in impugned CRs, which do not conform to this overall profile be removed/expunged from his records and consequential benefits be given to his future career progression.*

*(b) No 2 Selection Board to revisit their value judgment assessment as per the policy/parameters on the subject, especially in view of the service awards conferred on him for distinguished service and other achievements.*

*4. The COAS has examined the complaint of the officer in detail alongwith his overall profile, previous complaint and other relevant documents. After consideration of all aspects of the complaint and viewing it against the redress sought, it has emerged that assessment by all reporting officers in all the CRs including the impugned CRs-CR 06/03-05/04, CR 01/08-08/08, CR 06/08-12/08 & CR 04/15-08/15 in the reckonable profile is fair, objective, well corroborated, consistent, performance based and in tune with the overall profile of the officer, except CR 01/07-11/07 (impugned), which merits interference.*

*5. Value judgment marks have been awarded as per extant policy uniformly applied to all similarly placed officers and no injustice has been done to the officer on this account.*

*6. The COAS has therefore, directed that partial redress be granted to the officer by way of expunction of complete assessment of RO in QsAP at Para 24 in CR 01/07-11/07 on grounds of inconsistency.*

7. The COAS has further directed that the above aberrations be removed from the CR dossier of the officer and all consequential benefits be granted to the officer in accordance with existing rules and regulations.

8. Accordingly, necessary expunctions have been carried out in CRD of the officer. The officer may please be informed accordingly. Please acknowledge."

15. Against non grant of full redressal, applicant submitted statutory complaint dated 02.03.2022 which was rejected by Govt of India vide order dated 19.10.2022, which for convenience sake, is reproduced as under:-

"1. IC-53587L Col Vijay Narayan Shukla, VSM, Int, has submitted a statutory complaint dated 02 Mar 2022 against CR 06/03-05/04, CR 01/07-11/07, CR 01/08-06/08, CR 06/08-12/08 & CR 04/15-08/15. Main points of the complaint are :-

(a) the officer has outlined his service profile highlighting his achievements as CO and Sub Unit Cdr, performance on courses and award of VSM while commanding in CI Ops area.

(b) The officer has impugned five CRs:-

(i) CR 06/03-05/04. The officer has stated that he was socially not active because his wife was diagnosed with cancer and was undergoing treatment at Army Hospital (R&R). He has averred that the IO did not appreciate his absence and graded him 'Above Average'.

(ii) CR 01/07-11/07. The officer has stated that the CR was initiated by the RO, with whom he had no opportunity to interact and therefore, he may have been underrated. He avers that since he has already been granted 'Partial Redress' in the CR by expunction of QsAP of IO (initiated by RO), the complete CR may have been subjective/biased.

(iii) CR 01/08-05/08 & CR 06/08-12/08. The officer has averred that being short duration reports, the time period was inadequate to assess and rate the officer commensurately.

(iv) CR 04/15-08/15. The officer has stated that he had sought an interview with COAS on being posted out suddenly from IHQ of MoD (Army) CIU, which was not appreciated by the DGMI (SRO). This incident may have adversely influenced his assessment.

2. The officer has requested the following:-

(i) the impugned CRs (CR 06/03-05/04, CR 01/07-11/07, CR 01/08-06/08, CR 06/08-12/08 & CR 04/15-08/15) be scrutinised thoroughly for any aberrations/assessment infirmities /subjectivity, in light of the averments brought out by the officer and the same be set aside/expunged.

(ii) CR 01/07-11/07 & CR 04/15-08/15 be also reviewed for technical validity as the CRs were initiated by the RO and the same be set aside, if prior sanction of the SRO was not obtained for initiating the CRs.

3. *The Statutory Complaint of the officer has been examined in light of officer's overall profile, previous complaint, 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 CRs i.e. 06/03-05/04, CR 01/07-11/07, CR 01/08-06/08, CR 06/08-12/08 & CR 04/15-08/15 are objective, performance based and technically valid. There being no evidence of any bias or subjectivity, the CRs do not merit any interference.*

4. *The Central Government, therefore, rejects the Statutory Complaint dated 02 Mar 2022 submitted by IC-53587L Col Vijay Narayan Shukla, VSM, Int, against CR 06/03-05/04, CR 01/07-11/07, CR 01/08-06/08, CR 06/08-12/08 & CR 04/15-08/15".*

16. The applicant has impugned five CRs. We have perused the CR Dossier in respect of the applicant and our opinion is submitted as under:-

(i) CR (06/03-05/04). The CR was earned by the applicant in the rank of Major as Intelligence Officer, Army Headquarters Liaison Unit. This CR is a clear 'Above Average' report with fair mix of outstanding and above average in figurative assessments by all reporting officers. The reporting officers have endorsed matching pen pictures and suitable recommendations for

promotion and employment. The assessment of the reporting officers in the CR is consistent with the overall profile of the applicant at the time of initiation and hence does not merit any interference.

(ii) CR (01/07-11/07). This CR was earned by the applicant in the rank of Major as Officer Commanding No. 2 Detachment, 567 Int & FS Unit. The CR was initiated by RO under the provisions of Para 24 (a) of AO 2/2016/MS, as he did not complete 90 days physical service under IO. The assessment in QsAP endorsed by RO being harsh and inconsistent was set aside by order dated 03.11.2021 passed by the Chief of the Army Staff. Rest part of the CR is clear 'Above Average' report with clear pen picture and positive recommendations for promotion and employment which needs no interference.

(iii) CR (01/08-05/08) and CR (06/08-12/08). These early CRs were earned by the applicant in the rank of Maj/Lt Col (Instructor) while serving at Pune under different IOs but same RO and SRO. All reporting officers have graded 'Above Average'

without weak remarks with fair mix of 'outstanding' and 'Above Average' and positive pen pictures and positive recommendations for promotion and employment. However, Col Gurdev Singh (Retd) (respondent No. 13), who initiated ICR covering the period 06/08-12/08, while filing reply to the notice dated 01.02.2023 has submitted as under:-

*"4. I also admit that in the Faculty of Comb in MINSTD, Col Vijay Narayan Shukla, VSM had been performing not only the duties of Basic Directing Staff (DS) of intelligence Staff Officer's Course, but, also directing Staff of Advance Intelligence Staff Officer's Course. His performance was flawless and was not only outstanding, but of an exceptional degree. He was the only Directing Staff with an exposure of International Intelligence Courses at Washington DC, USA. He had on his own initiative amalgamated the courses modules with the latest intelligence developments at the global level, and was imparting the instructions in a highly impressive manner and to entire satisfaction of all. Even ARTRAC appreciated his contribution. At no occasion, he required any guidance/counselling etc either from me or any of the Reporting Officers. On the contrary, being new in the assignment of Col Instructor, Faculty of Comb, I often took his help in discharging my functions as the Col Instructor. He had maintained a consistent outstanding profile throughout without an exception, in an exemplary manner. The RO as well SRO were also well aware of his outstanding performance. It was not only in the field of the Instructional appointment that he excelled, Col Vijay Narayan Shukla, voluntarily shouldered to fullest accomplishment, any and all other responsibilities without any hitch or reservations. I would like to add that because of Maj Gen SK Chaudhary's attitude, there was an overall discontentment, and lack of faith in him.*

*5. x x x Thus, it was only upon my posting out, that I was informed that the applicant completed 90 days physical service, and, I needed to initiate his ICR No 16. I discussed with Brig (Now a Retd Maj Gen Gautam Deb) the RO as I wanted to grade Col Vijay Narayan Shukla, outstanding in my overall assessment. However, he expressed helplessness, in conveying my recommendations to Maj Gen SK Choudhary. Maj Gen SK Choudhary, had passed clear instructions that the instructors will not be graded outstanding in their short term ICRs. Even for ACRs, he had told that if any*

*officer deserved an 'Outstanding Grade' in his ACR, the reporting officers below will have to inform him at least 90 days in advance. MS Br had also been promulgating policies against outstanding grades upon officers, calling it inflated CRs. Thus, escaping any controversy at the time of leaving the post and constrained, I could not ensure objectivity of assessment by endorsing an otherwise well-deserved outstanding grade to Col Vijay Narayan Shukla, VSM. Therefore, the contentions raised by the officer/applicant, being correct, are admitted as claimed, and, it will be in fairness to grant him redressal as sought for by him in his O.A. As such I have no objections to the relief being granted to the officer/applicant. It was unmindful that an 'Above Average' report would be reducing his chances to the promotions to higher ranks."*

The aforesaid endorsement of Col Gurdev Singh (Retd) clearly shows that though he wanted to grade applicant as outstanding but due to instructions of Maj Gen SK Choudhary not to grade instructors as outstanding, he could not grade applicant as outstanding in the ICR endorsed for the period 06/08-12/08. We have given our anxious consideration to his submission and we find that Col Gurdev Singh could not endorse applicant's CR as outstanding as this being interim report there was not enough time to inform the RO in advance for endorsement of CR as outstanding. As per rule for grading CR as outstanding, prior intimation is required to be given by the IO to RO. The CR for this period is clear 'Above Average' report with clear pen picture

and positive recommendations for promotion and employment which needs no interference.

(iv) CR (04/15-08/15). This CR is a clear 'Outstanding' report with fair mix of 'Outstanding/Above Average' in figurative assessments by all reporting officers. The reporting officers have endorsed matching pen pictures and suitable recommendations for promotion and employment. The CR is consistent and does not merit any interference.

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. Annual Confidential Report (ACR) 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 recommendations for promotion, career courses and foreign assignments. In addition, there are different attributes in technical reporting. Each of the reporting officers assess 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 confidential report 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 confidential report form preclude an assessing officer from being biased, by compelling the assessing officer to assess each quality separately.

18. The Army has a pyramidal rank structure. Thus, the number of vacancies in higher ranks are limited. From the broad base of the pyramid, only those officers whose record of service within a particular batch are better are selected to fill up the vacancies available in the higher ranks. All officers of a particular batch are considered together with same cut off Annual Confidential Reports (ACRs) and inputs and on the basis

of individual profile of the officer and the comparative batch merit, they are either empanelled/not empanelled. Seniority in itself is no consideration before the Selection Board for empanelment or non empanelment. In case, any officer gets any relief through complaint etc in any confidential report, after the Selection Board has been held, he is entitled to a special corresponding consideration by Selection Board with his changed profile, and in case, he is empanelled by such special consideration, his original seniority remain protected.

19. While considering an officer for promotion to a selection rank, the Selection Board takes into consideration a number of factors such as war/operational reports, course reports, annual confidential report, performance in command and staff appointments, honours and awards, disciplinary background etc and not just the annual confidential report. Empanelment/non empanelment is based upon the overall profile of an officer and comparative merit within the batch as evaluated by the Selection Board.

20. We find that assessment in his CRs 06/03-05/04, 01/07-11/07 (after expunction of QsAP at Para 24),

01/08-05/08, 06/08-12/08 and 04/15-08/15 in the reckonable profile is fair, objective, well corroborated, consistent, performance based and in tune with the overall profile of the applicant which needs no interference.

21. In view of what has been explained hereinabove we see no reason to interfere with the aforesaid CRs which were endorsed by different IOs/ROs/SROs and technically found to be correct by the Military Secretary's Branch, IHQ of MoD (Army) in accordance with existing rules and regulations.

22. The O.A. is **dismissed**.

23. No order as to costs.

24. Miscellaneous application(s), if any, stand disposed off.

(Vice Admiral Atul Kumar Jain)  
Member (A)

Dated : 25.05.2023  
*rathore*

(Justice Umesh Chandra Srivastava)  
Member (J)