

(Court No. 1)
(Ser No 18)

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 393 of 2019

Thursday, this the 25th day of May, 2023

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

IC-51140P Colonel Dinesh Kumar, Commanding Officer, 153 Infantry Battalion Territorial Army (DOGRA), Meerut, PIN-250001.

..... Applicant

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

Versus

1. Union of India through Secretary Ministry of Defence, South Block, DHQ, P.O.-New Delhi, Pin-110011.
2. COAS through Military Secy, South Block, New Delhi, PIN-110011.
3. Lt Gen GM Nair, AVSM, SM, VSM (Retd), G 23/7, Sandeep Vihar, AWHO, Kannan Magla, White Field, Bengaluru, PIN-560067.
4. Lt Gen K Surendra Nath, AVSM, SM, VSM (Retd), Clover Palisades, Flat No 2011, Block B, NIBM, Undri, Kondhwa Rd, Pune, PIN-411048.
5. Maj Gen Sanjiv Bajaj (Retd), P-704, Jalandhar Heights, Jalandhar (PB).
6. Brig OP Singh (Retd), DIG, TAC Wing, BSF Academy, Tejanpur, Gwalior, PIN-475005.
7. Maj Gen SK Chakravarty, SC, SM** (Retd), D-2068F, Palam Vihar, Gurgaon, PIN-122007.
8. Lt Gen NC Marwah, PVSM, AVSM, SM, VSM (Retd), Flat No 234, Tower No 2A, AFNOE, Plot No 11, Sector-7, Dwarka, PIN-110075.
9. Lt Gen SA Hasnain, AVSM, SM, VSM** (Retd), Qtr No A-402, Bestech Park, Sector-47, Gurugram, PIN-122001.
10. Brig S Vinod, SM*, VSM, Cdr, 23 Sector Assam Rifles, C/o 99 APO.

.....Respondents

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

ORDER (Oral)

Per Justice Umesh Chandra Srivastava, (Member 'J')

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

- (a) *All impugned Confidential Reports be set aside, being subjective due to bias and malafide intention or lack of adequate knowledge of the Reporting Officers on account of it's unrelated to the well documents actual outstanding performance of the applicant during impugned periods, his courses, contributions to the organization and safety/security of the nation as also on technical grounds and arbitrariness.*
- (b) *The present O.A. be allowed with costs and with directions to the respondents No 1 and 2 to remove it's effects on career advancement of the applicant, and consequent thereupon the impugned order No A-36501/17302/Inf/2018/MS-19/53/SC/2019-D (MS), dt 28th Feb 2019, on the statutory complaint of the applicant dt 17 Sep 2018 and rejection order No 36501/17302/Inf/2018/MS-19 dt 17 July 2018 of COAS on applicant's non-statutory complaint dated 22 Feb 2018 be 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 for failing to discharge public duty entrusted to them adopting subjectivity, bias and malafide intentions, ignoring the actual outstanding performance etc of the applicant with intentions to seal his bright career.*

2. Brief facts of the case are that the applicant was commissioned in 4 DOGRA Regiment of the Indian Army on 13.06.1992. During the course of his service he was promoted to the rank of Col (select rank) on 08.10.2008 and was given to command 8 DOGRA which was deployed under 92 Infantry Brigade/26 Infantry Division/9 Corps. In April, 2010, his unit was ordered to move to Kashmir Valley in Intense Counter Insurgency role in a High Altitude Area (sonapindigalli). While Commanding 8 DOGRA, his Confidential Reports covering period 27.12.2008 to 31.08.2009 and 01.09.2009 to 02.04.2010 were initiated and reviewed by Brig Sanjiv Bajaj, Cdr 92 Inf Bde (IO), Maj Gen K Surendra Nath, AVSM, SM, VSM, GOC 26 Inf Div (RO) and Lt Gen GM Nair, AVSM, SM, VSM, GOC 9 Corps (SRO). Applicant's apprehension is that he was not empanelled for the rank of Brig by No. 2 Selection Board due to erroneous assessment made by his reporting officers on account of bias and malafide intention. Thereafter, Confidential Reports of the applicant for the period 03.04.2010 to 31.08.2010 and 01.09.2010 to 17.02.2011 were initiated by Brig OP Singh, Cdr 53 Infantry Brigade (IO), Maj Gen SK Chakravarty, SC, SM* (RO), Lt Gen NC Marwah, AVSM, VSM, GOC 15 Corps (SRO for period 03.04.2010 to 31.08.2010) and Lt Gen SA Hasnain, AVSM, SM, VSM*, GOC 15 Corps (SRO for period 01.09.2010 to 17.02.2011). In the aforesaid Confidential Reports applicant also apprehends that he was not assessed as per his

performance which resulted in his non empanelment to the rank of Brig. The applicant has stated that after his relinquishment of command of 8 DOGRA when his SRO visited the unit, he made recommendation for unit citation and Vishisht Seva Medal to the applicant which was awarded in January, 2012. Against his non empanelment for promotion to the rank of Brig, he submitted non-statutory complaint dated 22.02.2018 and statutory complaint dated 17.09.2018 which being rejected vide orders dated 17.07.2018 and 28.02.2019, this O.A. has been filed.

3. Learned counsel for the applicant submitted that the applicant was commissioned in 4 DOGRA on 13.06.1992. It was further submitted that during the period 01.07.1992 to 01.10.2008 he underwent various courses in which he was awarded 'A' grading and therefore, he was posted at prestigious appointments including tenure of UN Mission in Ethiopia-Eritrea (UNMEE). Further submission of learned counsel for the applicant is that due to his exceptionally distinguished service he was conferred Commendation Card by Force Commander in UNMEE.

4. Learned counsel for the applicant further submitted that on promotion to the rank of Col (select rank) the applicant was assigned command of 8 DOGRA which was operationally deployed under 92 Infantry Brigade. It was further submitted that after taking over command of the unit he made the unit operationally fit by his hard work and periodical training to

troops. While commanding the unit he came to know that a number of Jawans were provided as helpers to some very senior officers unauthorizedly including a Jawan as servant was provided to even one of the ladies known to an ex COAS at Jammu with an illegal attachment order to 74 Armoured Regiment. Since the unit was deployed in operational area and was facing shortage of troops, he pulled out such Jawans to make them operationally fit and therefore, his reporting officers got annoyed with him on the insistence of some senior serving/retired officers which resulted in downgradation of his confidential reports despite the fact that due to his detailed planning, execution with close supervision and monitoring and concerted rigorous efforts the unit raised from lowest ebb to the runners up position in 26 Infantry Division Championship 2009-10, which was appreciated by Brig (now Lt Gen) Raj Shukla, Cdr 92 Inf Bde vide Demi Official letter dated 06.08.2010.

5. Learned counsel for the applicant further submitted that applicant's IO had demanded huge amount of money under the pretext of construction of Operation Room which on denying he was endorsed lukewarm above average grading against the well documented outstanding performance, whereas other Commanding Officers were graded outstanding though their achievements were lower than the applicant. It was further submitted that in an outstanding action conducted under his leadership five hardcore terrorists were killed which resulted

award of one 'Shaurya Chakra', three 'Sena Medals' and one COAS Commendation Card to his troops.

6. Further submission of learned counsel for the applicant is that the applicant was made to preside over a Court of Inquiry ordered by his IO to investigate into the circumstances under which personnel of another unit (56 Rashtriya Rifles) under 53 Inf Bde, were caught selling 5,000 litres of Superior Quality Kerosene in the civil area. During investigations, the complicity of that unit's Commanding Officer [Col (now Brig) S Vinod, SM*, VSM] and some officers, JCOs and NCOs was established. Accordingly, the applicant blamed the said Commanding Officer, its Officers, JCOs and NCOs of the unit and forwarded the Court of Inquiry proceedings to the IO, suspecting the least that his uprightness in inquiring the matter honestly would be questioned, particularly at a time when the IO and RO were reeling under severe criticism due to exposure of fake/innocent killings/encounters in Machhil Sector in Kashmir acclaimed by Col Dinesh Pathania, Commanding Officer 4 Rajput who has been handed a life term with four others of his unit by a General Court Martial. It was further submitted that the IO, not only expressed annoyance against the same, but, also fixed him in his ICR for the period 01.09.2010 to 17.02.2011.

7. Learned counsel for the applicant further submitted that his SRO who had assumed the charge on 05.12.2010, had neither visited his unit nor interacted with him personally to adjudge his

outstanding performance during the reporting period 01.09.2010 to 17.02.2011, therefore, there is great possibility of SRO swaying towards biased report rendered by IO and RO.

8. Learned counsel for the applicant further submitted that at no point of time he was 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. It was further submitted that after relinquishment of command of the unit when the SRO visited 8 DOGRA, he issued directions that case be forwarded for unit citation and Vishisht Seva Medal to the applicant which were awarded on the occasion of Republic Day 2013. It was further submitted that after relinquishing command of the unit he was posted at various prestigious appointments and while posted as Dy Cdr, 10 Inf Bde the applicant was screened by No. 2 Selection Board but was not empanelled. Thereafter, non statutory complaint and statutory complaints submitted by him were rejected by the competent authorities. In support of his submission 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 the impugned CRs, quashing of rejection orders dated 17.07.2018 and 28.02.2019 and initiate strict action against the erring reporting officers who failed to discharge

public duty entrusted to them adopting subjectivity, bias and malafide intentions against the applicant.

9. Per contra, learned counsel for the respondents submitted that the applicant was commissioned in 4 DOGRA on 13.06.1992. He conceded the appointments held by him during the course of his service. It was further submitted that the internal assessment of the CRs on receipt are carried out as per extant policies by the Military Secretary's Branch and accepted after ascertaining the technical validity and objectivity. It was further submitted that on receipt of impugned CRs internal assessment was carried out as per provisions of Para 135 to 138 of Army Order 45/2001/MS and the CRs were accepted being found technically valid.

10. Learned counsel for the respondents further submitted that applicant's non-statutory complaint and statutory complaint were examined in light of his overall profile and after considering all aspects of the complaint and viewing it against the redress sought, it was found that the impugned CRs are well corroborated, balanced, performance based and technically valid and there is no bias or subjectivity. It was further submitted that the applicant was not empanelled for promotion to the rank of Brig on account of his overall profile, relative merit and comparative evaluation as assessed by No. 2 Selection Board (Fresh) held in November, 2017. Learned counsel for the respondents further submitted that submission of the applicant

with regard to less interaction with his SRO, 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. He pleaded for dismissal of O.A. stating that the CRs are well corroborated and technically valid and applicant could not be empanelled in No. 2 Selection Board due to lack of merit.

11. Heard Shri Veerendra Mohan, learned counsel for the applicant and Dr. Shailendra Sharma Atal, learned counsel for the respondents assisted by Lt Col Suchitra Chellappan, AMS Legal, IHQ of MoD (Army), New Delhi and perused the material placed on record. We have also perused original records produced in the court.

12. The applicant was commissioned in 4 DOGRA on 13.06.1992. During the course of his service he underwent different courses in which he was awarded 'AX' and 'A' gradings. He was also assigned important assignments in staff duties including second-in-command Infantry Battalion in United Nations Mission abroad where he was conferred with Commendation Card by Force Commander in UNMEE for his distinguished service.

13. The assessment of officers in CRs 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.

14. 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 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.

15. The applicant had submitted a non statutory complaint dated 22.02.2018 against his non empanelment for promotion to the rank of Brig by No. 2 Selection Board (Fresh) held in November, 2017 vide which he highlighted his career profile in detail to include various appointments tenanted in command/staff/instructional/ERE duties, course profile and honours and awards. In non-statutory complaint the applicant has impugned Confidential Reports covering the period December, 2008 to April, 2010 stating that on account of withdrawal of extra manpower detailed for unauthorised duties including one person detailed on instructions of ex COAS, this being not liked by his RO, he would have harmed him in the CR and also influenced the IO and SRO. In addition to above, applicant has also impugned his CR for the period April, 2010 to February, 2011 stating that while he was Presiding Officer of a C of I he had held Commanding Officer of a unit responsible for certain lapses which being not liked by Cdr, 53 Inf Bde, would have been the sole reason for downgradation of his Confidential Report.

16. Non-statutory complaint submitted by the applicant was rejected vide order dated 17.07.2018, relevant extract of which is reproduced as under:-

"4. The COAS has examined the complaint of the officer in detail alongwith his overall profile and other relevant documents. After consideration of all aspects of the complaint and examining it against the redress sought, it emerges that all the CRs in the reckonable profile including impugned CRs 12/08-08/09, 09/09-04/10 and 09/10-02/11 of the officer are well corroborated, consistent, fair, performance based and technically valid. There being no evidence of any bias or subjectivity, none of the CRs merit any interference.

5. The officer has not been empanelled for promotion to the rank of Brig on account of his overall profile, relative merit and comparative evaluation as assessed by No 2 Selection Board.

6. The COAS has, therefore, directed that the Non Statutory Complaint of the officer be rejected being devoid of merit."

17. After rejection of non-statutory complaint, the applicant preferred Statutory Complaint dated 17.09.2018 which too was rejected vide order dated 28.02.2019, relevant extract of which is reproduced as under:-

"3. The Statutory Complaint of the officer has been examined in light of his overall profile, 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 all the CRs in the reckonable profile including impugned CRs 12/08-08/09, 09/09-04/10, 04/10-08/10 and 09/10-02/11, of the officer are well corroborated, consistent, fair, performance based and technically valid. There being no evidence of any bias or subjectivity, none of the CRs merit any interference.

4. The officer has not been empanelled for promotion to the rank of Brig on account of his overall profile, relative merit and comparative evaluation as assessed by No 2 Selection Board (Fresh) held in Nov 2017.

5. The Central Government, therefore, rejects the Statutory Complaint dated 17 Sep 2018, submitted by IC-51140P Col Dinesh Kumar, VSM, Inf (Dogra) against non empanelment for promotion to the rank of Brig by No 2 Selection Bord (Fresh) held in Nov 2017."

18. Thus, we find that applicant's non-statutory complaint and statutory complaints were rejected by the competent authority as the assessments of all the reporting officers in the entire

reckonable period were found to be fair, well moderated, performance based and in tune with applicant's overall profile.

19. The applicant has filed rejoinder affidavit in response to the counter affidavit filed by the answering respondents wherein he has not brought out any new issues but countered the averments made in the Counter Affidavit.

20. The original record produced in the court shows that the applicant has earned four impugned Confidential Reports in two different environments. His apprehension regarding underassessment is clearly misplaced as all the reporting officers have awarded clear 'Above Average' assessment with positive pen picture and suitable recommendations. The Confidential Reports are well in synchronization with his balance profile, therefore, the impugned Confidential Reports emerge to be well corroborated, objective, consistent and technically valid and hence do not merit any interference.

21. In view of the above, we are of the considered view that the applicant having good profile failed to make his grade in overall merit of No. 2 Selection Board and he was not selected for the rank of Brigadier. After examining all aspects, we do not find any merit in the case and hence the O.A. is dismissed.

22. No order as to costs.

23. 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)