

**ORDER****(Passed in Court)**

1. Heard Ld. Counsel Shri Satyajeet Mukhrjee, Shri P.K Shukla, Ld. Counsel for the petitioner and Shri Mukund Tewari, Ld. Counsel for the Respondents assisted by Lt Col Subodh Verma, Departmental Representative for the Respondents and perused the documents available on record.

2. The petitioner filed this petition being aggrieved by the ACR grading awarded to him while he was serving as Havildar in fresh group in the year 1988. While assailing entry granted by the Initiation Officer in the year 1988, it is submitted by Ld. Counsel for the Applicant submitted that the applicant had not physically served under him for 90 days. As per Army Order ..... , the Initiating Officer is not entitled to initiate his ACR as the petitioner has not served physically for 90 days under him. It is not disputed by Ld. Counsel for the Respondents that, under Army Order ....., it is necessary that the person must have physically served under the Initiating Officer for 90 days. Being aggrieved by the entry by Capt Raj Kumar, it has been submitted that the applicant has never served for physically 90 days and above. According to rule, entry made by Capt Raj Kumar, suffers from lack of jurisdiction. Ld. Counsel for the Applicant invited our attention to duty chart (Annexed as A1 to the T.A.) which shows that in the later period the applicant served under Capt Parihar. In the mean time the applicant went on leave for 64 days from 11.07.1988 to 12.09.1988. After that Capt Raj Kumar assumed duty of butchery w.e.f. 30.09.1988 and Capt Parihar has taken over charge of fresh group. Ld. Counsel for the Applicant submitted that Capt Raj Kumar was on leave for 24 days during the period in question. His statutory complaint was rejected by the impugned order. Attention has been invited in statutory complaint that it has been rejected by a unreasoned and non speaking order and

copy of the same has been filed with the T.A. Main points of the statutory complaint is reproduced below:-

....

3. The plain reading of the statutory complaint shows that the applicant had objected to the right of Capt Raj Kumar to grant any entry in his ACR since he has not physically served for 90 days under him. Aforesaid statutory complaint was decided by the impugned order dated ..... has been filed as Annexure No 5 to the T.A. The impugned order dated .... Is reproduced as under:-

.....

4. The plain reading of the impugned order shows that the ground of challenge was not been considered by the authority while deciding the statutory complain.

5. The order dated ..... passed by Chief of Army Staff is capricious and has been passed without application the mind. While rejecting the statutory complaint, he failed to reply certain points which are obligatory to clarify as to what grounds has been raised by the applicant is not sustainable in passing non consideration of grounds raised by the applicant. The impugned order is unreasoned and non speaking and seems to be arbitrariness. In case order is not reasoned and speaking , it affects the livelihood or career of employee. Now it is well settled proposition of law that whether it quasi judicial or administrative order it should be reasoned and speaking one. The cryptic order affecting the right of citizen shall be violative of principle of natural justice.

6. In view of the above, it seems to non sustainable vide Article 14 of the Constitution of India.

7. Accordingly, the T.A. is allowed.

8. Impugned order dated 19.07.1993 is set aside and the matter is remitted back to competent authority for passing speaking and reasoned order expeditiously within two months.

9. No order as to cost.

**(Air Marshal Anil Chopra)**  
**Member (A)**  
ukt/-

**(Justice D.P Singh)**  
**Member (J)**