

RESERVED
Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 308 of 2017

Tuesday, this the 13th day of September, 2022

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Col. V K Tiwari
B2/52 Sector F, Jankipuram
Lucknow – 226021 (UP)

.... Applicant

Ld. Counsel for the Applicant : **Shri Shashank Shekar Shukla & Shri Virat Anand Singh, Advocate**

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, DHQ PO, New Delhi-110011.
2. The Chief of Army Staff, IHQ of MoD (Army), South Block, New Delhi-110011.
3. The Military Secretary, IHQ of MoD (Army), South Block, New Delhi-110011.
4. Lt Gen R K Anand, C/o Military Secretary Branch, IHQ of MoD (Army), South Block, New Delhi – 110011.

... Respondents

Ld. Counsel for the Respondents : **Shri Namit 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, whereby the applicant has sought following reliefs:-

- “a) Call for the complete records of the case leading to the impugned order dated 20.06.2017 and set aside the said order;

- b) Call for the complete CR Dossier of the applicant and, after perusal thereof, set aside the applicant's impugned CRs for the period (i) 01.06.2008 to 18.04.2009, (ii) 01.05.2009 to 31.08.2009, (iii) 01.09.2009 to 31.08.2010 and (iv) 01.09.2013 to 05.08.2014; and grant all the consequential reliefs flowing from setting aside the said CR including reconsideration for Higher Command Course and all future service benefits.
- c) Pass such other order(s) or directions(s) as the Hon'ble Tribunal deems appropriate in the facts and circumstances of the case."

2. Brief facts of the case are that the applicant was commissioned in the Indian Army on 08.06.1991. The initiating Officer (IO) has graded the applicant outstanding (figurative assessment 9) in majority of columns of Demonstrated Performance (DP) and Personal Qualities (PQ), therefore, logically IO ought to have box graded him as outstanding '9', however, under pressure from the Reviewing Officer (RO), the IO box graded the applicant only 'Above Average '8'. The applicant preferred a Statutory Complaint dated 18.07.2016 challenging four impugned CRs for the period from 01.06.2008 to 18.04.2009, from 01.05.2009 to 31.08.2009, from 01.09.2009 to 31.08.2010 and from 01.09.2013 to 05.08.2014, seeking setting aside of the said CRs and fresh consideration for nomination to Higher Command Course but the same was rejected by the Govt. vide order dated 20.06.2017. Being aggrieved, the applicant has filed present Original Application for setting aside all four CRs, order passed on statutory complaint and reconsideration for Higher Command Course.

3. Learned counsel for the applicant submitted that applicant was commissioned in the Indian Army (Corps of Signals) on 08.06.1991. The applicant has been serving the organisation (Army) with utmost sincerity, dedication and devotion and maintained outstanding record of service. He has done many courses during the service, i.e. YO, SODE, Junior Command Course, Master of Engineering and PhD and obtained good gradings. The high degree of confidence and professionalism of 581 Sub Group under the command of the applicant was always applauded and appreciated by the senior most Signal Officer, i.e. Signal Officer-in-Chief. Due to expertise in Satellite networking, applicant was employed at Indian Embassy at Kabul, Afghanistan and in United Nations Mission in Sudan. The applicant served in many important appointments including Commanding Officer of 581 Sub Group and Deputy Chief Signal Officer of HQ 33 Corps. The applicant also received a Commendation Card from the Force Commander, United Nations Missions, Sudan. The applicant has maintained an outstanding profile except for the four impugned CRs for the u/m periods :-

(a) ACR for the period from 01.06.2008 to 18.04.2009.

The ACR for the period from 01.06.2008 to 18.04.2009 was earned by the applicant in the rank of Lt Col as a Company Commander/Second in Command of 571 Sub Group. The applicant submitted CR to Initiating Officer (IO) about 15 days in advance for initiation but the same was kept pending intentionally by IO perhaps on the instructions of Brig R K

Anand, the Reviewing Officer (RO) and perhaps due to some differences between him and RO with regard to four pilot projects which were being implemented by the unit of the applicant. However, he was later transferred to another unit, i.e. 2 Army HQ Signal Unit on the instructions of Brig R K Anand and Maj Gen R K Das, Additional Director General Telecommunication (applicant's RO in the new appointment). Transfer from these pilot projects was done without following any due process of deliberation. The IO has graded the applicant outstanding (figurative assessment 9) in majority of columns of Demonstrated Performance (DP) and Personal Qualities (PQ), therefore, logically IO ought to have box graded him as outstanding (Box grading 9), however, under pressure from the RO, the IO box graded the applicant only 'Above Average' (box grading 8) which is not in order as per MS Branch 'Guidelines for Rendering CRs' dated 05.04.2013 in which box grading represents overall assessment of performance as well as potential for promotion. There was bias on the part of RO in reviewing his CR which was also delayed beyond 60 days by the RO intentionally Therefore, on averaging the awards of marks in PQ, DPVs and QAPs, the box grading should have been outstanding (9) and not above average (8).

(b) ACRs for the period from 01.05.2009 to 31.08.2009 & for the period from 01.09.2009 to 31.08.2010.

The a/m two CRs were earned by the applicant in the rank of Colonel as Commanding Officer of 581 Sub Group, which were

now initiated by Brig R K Anand as the new IO and who was the RO for the applicant's previous ACR for the period from 01.06.2008 to 18.04.2009. These two CRs like the previous one, suffered from the vice of inordinate and deliberate delay of 127 days and 60 days respectively. The applicant never supported misuse of official facilities by officers and there being some misappropriation of technical grants and other funds of Officers Mess, applicant had raised these issues and this resulted in harassment and lowering of ACR marks and box grading in the CRs. Therefore, bias, arbitrariness and non objectivity on the part of new IO are writ large even in these two CRs as well.

(c) ACR for the period from 01.09.2013 to 05.08.2014.

This CR was earned by the applicant in the rank of Col. as Deputy Chief Signal Officer (DCSO) in HQ 33 Corps. In this CR, in majority of columns of 'DP' and 'PQ', the IO has graded the applicant outstanding (figurative assessment '9'), therefore, logically box grading should be awarded as '9' (Outstanding) and not '8' (Above Average). The IO deliberately kept the CR with him pending for 60 days. The applicant was being considered for Higher Command/HDMC course but due to delay in initiation of CR, he was not considered. There being some corrections on relevant pages of the CR, RO directed the IO to re-initiate duplicate CR keeping previous CR with him which was clear violation of the policy on the subject. As per policy,

CR once initiated cannot be annulled by the reporting officers in chain of command and that no CR can be re-initiated without written permission of MS Branch, IHQ of MoD (Army). The laid down procedure thus has been violated as the impugned CR carries a coloured perception of the officer. Hence, this CR needs to be set aside being non-objective, arbitrary and not reflecting the applicant demonstrated performance during the period covered by the CR.

4. Learned counsel for the applicant placed reliance on the following judgments, similar to his case :-

(a) AFT (RB), Lucknow judgment in O.A. No. 163 of 2015, **Lt Col Ray Gautam Prasad vs. UOI and Ors** in which this Tribunal held that over all box grading has to be '9' and not '8' keeping in view the marks given in PQs and DPs, in O.A. No. 200 of 2015, **Col V.J.S. Varaich vs. UOI and Ors**, in which this Tribunal has held that order passed in the statutory complaint of the applicant should be a reasoned one and in T.A. No. 96/2016, **Maj Gen DVS Rana vs. Union of India & Ors**, decided on 08.02.2017, in which this Tribunal has observed that "in estimating or assessing the character, ability, integrity and responsibility displayed by the officer/employee during relevant period, if not strictly adhered to in making an honest assessment, the purpose and career of the officer/employee will be put to great jeopardy"

- (b) AFT (PB), New Delhi judgment in OA No. 74 of 2015, **Maj Gen K.K. Sinha vs. Union of India & Ors**, decided on 29.04.2015 and O.A. No. 07 of 2015, **Maj Gen Sukesh Rakshit vs. Union of India & Ors**, decided on 06.11.2015.
- (c) The Hon'ble Apex Court judgments in **S. Ramachandra Raju vs. State of Orissa** (1994) Supp 3 SCC 424, **State of U.P. vs. Yamuna Shankar Misra and another** (1997) 4 SCC 7 and **S.T. Ramesh vs. State of Karnataka and Anr.** (2007) 9 SCC 436.

5. The applicant preferred a Statutory Complaint dated 18.07.2016 challenging the above mentioned four impugned CRs, inter-alia seeking setting aside of the said CRs and fresh consideration for the Higher Command Course but the same was rejected by the Govt. vide order dated 20.06.2017 by a non speaking order without due application of mind. He pleaded for setting aside arbitrary order dated 20.06.2017 passed on statutory complaint of the applicant and all four CRs for the period from 01.06.2008 to 18.04.2009, from 01.05.2009 to 31.08.2009, from 01.09.2009 to 31.08.2010 and from 01.09.2013 to 05.08.2014 and after setting aside all four CRs and order passed on statutory complaint, applicant should be reconsidered for Higher Command Course.

6. On the other hand, Ld. Counsel for the respondents submitted that applicant has assailed four Confidential Reports (CR) for the period from 01.06.2008 to 18.04.2009 in the rank of Lt Col and from 01.05.2009 to 31.08.2009, from 01.09.2009 to 31.08.2010 and from

01.09.2013 to 05.08.2014 in the rank of Colonel. The applicant has relied on AFT (PB), New Delhi judgments in **Maj Gen KK Sinha** (supra) and **Maj Gen Sukesh Rakshit** (supra) and AFT (RB) Lucknow judgments in **Maj Gen DVS Rana** (supra), **Lt Col Ray Gautam Prasad** (supra) and **Col VJS Varaich** (supra) to which learned counsel for the respondents submits that judgments cited by the applicant have been either stayed, distinguished or are inapplicable to the facts and circumstances of the case. In this regards, the respondents, relied on the observations made by the Hon'ble Apex court in the case of **Union of India & Anr. Vs. Major Bahadur Singh** (2006) 1 SCC 368. The observations of the Hon'ble Apex Court in the case **Maj Bahadur Singh** (supra) are reproduced :-

“Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the factual situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes”.

7. Learned counsel for the respondents also submitted that :
- (a) Scope of exercise of power under Section 14 of the AFT Act, 2007 over assessments in CRs is very limited and relies upon the law laid down by the Hon'ble Apex Court in **Air Vice Marshal S.L. Chhabra vs. UOI & Ors** (1993) Supp 4 SCC 441.

(b) The allegation that respondent No. 4 “masterminded overnight transfer of all the pilot projects and related documents to another unit” with the help of a “backdated letter’ is patently false and denied with the contempt it deserves.

(c) Record of Service of officers are maintained in terms of para 619 of the Regulations for the Army, 1987 and the same contains no provision for recording the performance of an officer as Outstanding/nearly Outstanding as averred by the applicant.

(d) The averment of the applicant that he has excelled in all courses applicable to him is denied as the applicant’s performance in two of the courses attended was High Average (‘B’ Grading) and in one course, it was Average (‘C’ Grading).

(e) The applicant was lower in profile while considering his nomination for Higher Command Course and therefore, he was not nominated.

(f) The overall reckonable CR profile of the applicant is Above Average to Outstanding with predominantly Above Average assessments.

(g) As per policy on the subject, the assessment of the IO in PQs, DPVs, Pen Picture and Box Grading are shown/communicated to the officer reported upon. It is specifically denied that even in such shown portion, seen by the applicant, he was assessed in majority of columns, as Outstanding. It is nowhere mentioned in the policy that CRs

delayed due to exigencies of service and otherwise found objective and performance based, would be technically invalid.

(h) Neither RO nor SRO dittoes assessment by subordinates but are independent reporting officers and discharge their duties cast upon them independently.

(i) The fact that unavoidable exigencies of service resulting in delay is demonstrated by the delayed submission of CRs by the applicant even except where the delay was on account of applicant's endeavour to avoid the CR.

8. Learned counsel for the respondents further submitted that all other allegations made against respondent No.4 are baseless and misconceived. The applicant has miserably failed to establish even by the standards of prima-facie that respondent No. 4 was biased rather contrarily his assertions stand disproved. As regards RO and SRO, they are independent assessors of the CR and have given their figurative assessment/box grading independently based on overall performance of the applicant.

9. The respondents also deny that impugned order dated 20.06.2017 passed on the statutory complaint of the applicant was arbitrary or bad and without application of mind. The impugned CRs were scrutinised at two stages by independent authorities and were found to be technically valid, objective, performance based and consistent with the applicant's overall profile. He pleaded for dismissal of Original Application being misconceived and misleading.

10. We have heard Shri Shashank Shekar Shukla, learned counsel for the applicant and Shri Namit Sharma, learned counsel for the respondents assisted by Lt Col Suchithra C, AMS (Legal), MS Branch, IHQ of MoD (Army), New Delhi and perused the material placed on record. We have also perused the original records including Confidential reports brought by AMS (Legal).

11. Army has introduced the quantified system for figurative awards since they contribute to overall merit of an officer. The purpose is that only deserving officers, who are competent, be promoted to the senior ranks of the Indian Army. Para 35 of the 'Guidelines for Rendering Confidential Reports' deals with Figurative Awards and Box Grading.

For convenience, the same is reproduced as under:

“35. Figurative Awards. With the introduction of quantified system, the figurative awards have assumed greater significance as they contribute to the overall merit of an offr. It is the moral responsibility of all reporting offr to render an objective assessment to ensure that only deserving and professionally competent offr are promoted to senior ranks to tenant crucial command and staff appointments.

(a) Figurative assessment in Box Grading, Personal Qualities (PQs), Demonstrated Performance Variables (DPVs) and Qualities to Assess Potential (QsAP) should be awarded.

Box Grading.

- (i) Box grading represents overall assessment of performance as well as potential for promotion.
- (ii) Reporting offr must clearly differentiate between truly outstanding offr and others. Grading all offr outstanding would defeat the very purpose of appraisal system. Box grading reflects the quality of interplay amongst indl characteristics being assessed. It also reflects the performance and potential which are not being separately assessed but hold value for the org.
- (iii) Box grading is not meant to be a mathematical average of the awards in indl qualities. However, a total mismatch between awards in box-grade and indl qualities is also not in order. For instance, award of predominantly '9' in PQs/DPVs/QsAP with an award '8' in box, may not be in order.

- (iv) Award of '9' in box grading should be explicitly justified in the pen-picture, indicating specific achievements by the ratee.

(b) **QsAP.** The assessment of performance is de-linked from potential based on the rationale that it is not necessary that an offr who performs well in the present rank has the capability to do well in higher ranks also. While assessing QsAP, however, the following aspects should be kept in mind.

- (i) Low awards in QsAP affect the promotion prospects significantly more as compared to similar awards in PQs/DPVs.

- (ii) Reporting offr must be more deliberate while awarding QsAP and endorse the actual promotion aspects of the ratee.

- (iii) In order to guard against IOs harming ratee's "on the sly", discernable variations between PQs/DPVs (open portion) on the one hand and QsAP (closed portion) on the other come under scrutiny at the MS Branch. However, elaboration of any such variations by the reporting offrs aid in acceptance of their assessment. Pen picture can be suitably endorsed to justify the assessment."

It is clear from Box Grading (iii) above that Box grading is not meant to be a mathematical average of the awards in individual qualities. However, a total mismatch between awards in box-grade and individual qualities is also not in order. For instance, award of predominantly '9's in PQs/DPVs/DsAP with an award of '8' in box, may not be in order.

12. To assess the aspect of inconsistency, we have examined all four impugned Confidential Reports (CR) for the period from 01.06.2008 to 18.04.2009 in the rank of Lt Col and from 01.05.2009 to 31.08.2009, from 01.09.2009 to 31.08.2010 and from 01.09.2013 to 05.08.2014 in the rank of Colonel. We found no bias, malafide or arbitrariness in any of the assessment or moderations which have been carried out in accordance with the laid down policy on the subject requiring any judicial interference. Therefore, the claim of the applicant that the box grading given by the IO/RO in all four CRs

should be upgraded to '9' from '8' on account of inconsistency has no merit. The Hon'ble Apex Court in the case of **S.L. Chhabra** (supra) has stipulated as follows :

“According to us, neither the High Court nor this Court can moderate the appraisal and the grading of the appellant for a particular year. While exercising the power of judicial review, a Court, shall not venture to assess and appraise the merit or grading of an officer”.

13. As regards the issue of inadequate interaction by the RO or the SRO, we would like to highlight that as per the policy on the subject, it is not mandatory for the SRO to have physically interacted with the applicant. AFT (PB), New Delhi in the case of T.A. No. 160 of 2009, **Amar Narwat vs. Union of India & Others**, decided on 19.01.2010 has held in Paras 10 & 11 that physical interaction of ratee with RO or SRO is not mandatory. Relevant Paras 10 & 11 are quoted below :-

“10. So far as the S.R.O. is concerned he need not physically come in contact with the incumbent. In the hierarchy of the functioning it may not be possible for the S.R.O. to be in touch with the junior officers. Therefore, he has to assess the remarks given by both the officers after going through the profile of the incumbent. Normally the ACR form, the officer's whose ACR to be written, has to give his self-appraisal and on that the Initiating Officer makes his remarks and, thereafter, same is reviewed by the next in command. Therefore, on the basis of the two remarks i.e. one by the Initiating Officer and other by the Reviewing Officer and looking to the overall profile of the incumbent the S.R.O. makes his assessment. Therefore, the submission of learned counsel with reference to the para 148 of Special Instructions for the Reporting Officers (supra) that since General Dias did not see him physically, therefore, he should not have written his ACR and should have been left it that he had no knowledge, therefore, he would not like to make any comment.

11.....Therefore, it is not necessary that in every case SRO should have physically seen the performance of every officer working in his

command. He has to see the remark of the Initiating Officer, Reviewing Officer and the profile of the officer, given by him on the basis of his self-appraisal report, and, thereafter, he can make his own assessment”.

14. As regards nomination/consideration for Higher Command Course, we have examined the entire CR profile of the officer. We did not find any inconsistency or bias reflected in the CRs. Therefore, we find no legal infirmity in the respondents not recommending the case of the applicant for Higher Command Course on comparative merit based on all the CRs considered in the reckonable profile of the applicant.

15. Further, when we see the pen picture awarded by the Initiating Officer (IO) in CRs, we find that in pen picture the IO has praised him for his technical knowledge, management in the unit and also for welfare of troops and families. The IO has also recommended (in respective part of CR form) the applicant for promotion (by remarking - Should Promote) for foreign assignments and for career courses in all three CRs except for non recommendation of Higher Command Course in the CR of 2013-14 based on reckonable profile of the applicant. The bias contended by the officer in all four impugned CRs is not evident. The CR, being objective, well corroborated, consistent with his overall profile, performance based and technically valid, needs no interference.

16. With regard to rejection of the statutory complaint submitted by the applicant vide order dated 20.06.2017, a perusal of order dated 20.06.2017 indicates that the appellant authority, i.e. Government of India while considering the statutory complaint of the applicant has

rejected the same mentioning the valid grounds/reasons in para 3 of the order, which is quoted below :-

“3. The Statutory Complaint of the officer has been examined in light of his overall profile, comments of the reporting officers, 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 assessments by all the reporting officers in the impugned CRs 06/08-04/09, 05/09-08/09, 09/09-08/10 and 09/13-08/14 are fair, objective, performance based, mutually corroborated and consistent with the profile of the officer. There being no sign of any bias or subjectivity, the impugned CRs do not merit any interference”.

17. We have also gone through the CR dossier submitted before us by the respondents. On going through the same, we are of the view that there is a broad consistency between the gradings and the response received by the applicant in different years; the variations, if any, were quite minor. All these CRs of the applicant are “Above Average” assessment along with complementary pen pictures and positive recommendations, and all of the CRs have grades of ‘9’ and ‘8’ given by all the reporting officers in respect of all sections of CRs and no prejudice was done to the applicant. In any case, the scope of interference with the gradings given in the CRs of an officer is very limited under **Article 226** of the Constitution of India. In this regard, reference may be made to judgment dated 06.04.2021 given by the Hon’ble Apex Court in W.P.(C) 725/2021 titled **Krishan Kumar Agarwal vs. Director (HR) Bharat Sanchar Nigam Limited and Anr.**

18. In the result, we find that all four Confidential Reports (CRs) for the period from 01.06.2008 to 18.04.2009 in the rank of Lt Col and

from 01.05.2009 to 31.08.2009, from 01.09.2009 to 31.08.2010 and from 01.09.2013 to 05.08.2014 in the rank of Colonel being objective, performance based, well corroborated and technically valid, need no interference by this Tribunal. The order dated 20.06.2017 passed by the Govt. rejecting statutory complaint of the applicant, is justified and unbiased keeping in view his complete profile/record which also need no interference.

19. In view of facts and legal provisions as explained above, we find no merit in the Original Application and hence, it is liable to be dismissed. It is accordingly, **dismissed**.

20. No order as to costs.

21. Pending Misc. Applications, if any, stand disposed off.

(Vice Admiral Abhay Raghunath Karve) **(Justice Umesh Chandra Srivastava)**
Member (A) Member (J)

Dated: September, 2022
SB