

(2020) 02 AFT CK 0031
In the Armed Forces Tribunal
Case No : Original Application No. 5 Of 2019

Gaurav Manhas

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 20-02-2020

Acts Referred:

Armed Forces Tribunal Act, 2007 — Section 14

Citation : (2020) 02 AFT CK 0031

Hon'ble Judges : Rajendra Menon, J; Philip Campose, Member (A)

Bench : Division Bench

Advocate : Abhishek Shukla, Harish V. Shankar

Final Decision : Dismissed

Judgement

1. This application has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 and the prayers made in the application

read as under:

(i) Call for the relevant records based on which the applicant's impugned CR for the period 01.09.2015 to 26.12.2015 has been retained by the

respondents as well as based on which the applicant's statutory complaint has been rejected by the impugned order dated 14.08.2018 and thereafter

quash the impugned order dated 14.08.2018; and

(ii) Direct the respondents to expunge/remove the CR covering the period from 01.09.2015 to 26.12.2015 in its entirety.

2. By the impugned order passed on 14.08.2018, the Ministry of Defence has rejected the statutory complaint filed by the applicant with regard to

certain adverse entries stated to have been made in his CR for the period 09/2015 to 12/2015, during which period, the applicant was performing the

duties as DJAG Litigation (Colonel Litigation), Headquarters Central Command at Lucknow. In fact, the applicant was holding the said post from

September 2014 to December 2016 and for the period in question i.e. 09/2015 to 12/2015, adverse entries have been made by the Initiating Officer

(JO), which have been confirmed/endorsed by the Reviewing Officer (RO) and the Senior Reviewing Officer (SRO). According to the applicant, who

is a serving Colonel of 1999 batch, he has an exemplary service profile. He joined as a Commissioned Officer in the Army Service Corps of the Indian

Army on 12.06.1999, did three years Infantry attachment and has been promoted from time to time and presently, due to hard work, sincerity,

dedication and consistent good service profile, he has been promoted as a Colonel. It is the further case of the applicant that he was transferred from

ASC to the JAG Branch. He qualified in the departmental examination of the JAG Branch and during the period from 2005 to 2014, the applicant got

posted to different places and held different appointments in the JAG Branch. He was posted to UN Mission in DR Congo in 2010-11 as Military

Legal Advisor and he was awarded certificate of appreciation by the Force Commander in September 2011. He was thereafter promoted to the rank

of Colonel by selection in 2014. He was then posted to Lucknow as DJAG Litigation (Colonel Litigation) on 18.09.2014 to supervise the functioning of

OIC Legal Cells across different States. It is the case of the applicant that throughout, he has received exemplary ratings in his CRs and there is

nothing adverse against him. He has in detail dealt with various aspects of his service career to contend that except for the entry now made by his 10

viz. Brig. (late) Devendra Singh, there is nothing adverse against him.

3. By referring to the CR dossiers of the applicant for the period from 09/2014 to 08/2015 and from 12/2015 to 08/2016, learned counsel vehemently

argued that except the impugned entry, there is nothing adverse against the applicant and if the documents available on record, particularly the

performance appraisal of the applicant contained in Annexure A3 is considered collectively and the remarks given by various authorities with regard to

working of the OICs in the Legal Cell, handling of cases, etc. are taken note of, there is nothing adverse against the applicant. That apart, he refers to

the orders passed by the Benches of the Armed Forces Tribunal at Lucknow and New Delhi vide Annexures A4, A5 and A6 to say that in all these

cases, the applicant had represented the department and in all these cases, the verdicts were given in favour of the respondents, which is indicative of

the fact that there was no shortcoming or lacunae in the working of the applicant. Referring to the guidelines for rendering objective Confidential

Reports (CRs) Annexure A8, the principles canvassed therein, the manner of objectively assessing the performance of an officer, the method of box

grading, writing of pen picture and various guidelines indicated therein and also other guidelines and procedures laid down for recording of CRs, a case

is tried to be made before us for considering the entire profile of the applicant that the adverse remarks are unsustainable and are, in fact, not

consistent with the service profile of the applicant. Inviting our attention to Army Order No. 45 of 2001 issued by the Military Secretary's Branch with

regard to the general instructions in the matter of recording of ACRs and certain orders passed by various Benches of the Tribunal, it was emphasized

that in this case, the objective assessment of the applicant's performance has not been done and instead, in a very arbitrary and illegal manner, the

adverse entries have been recorded. Contending, inter alit, that the box grading of '7' awarded to the applicant as also the assessment made and marks

allotted for various qualities by the JO is unsustainable as it does not match the service profile of the applicant and, therefore, the impugned adverse

remarks and ratings are required to be quashed. The adverse remarks and the quantified assessments, which form the subject matter of consideration

before us and available on record, read as under:

12. Assessment by 10

Col Gaurav is physically fit, soft spoken officer, who has performed the duties of DJAG (Litigation) Central Command satisfactorily. During

the reporting period, he failed to properly analyse the Court cases filed in High Courts and AFT (Regional Bench) Lucknow and Circuit

benches and guide the officers-in-charge of these cells leading to adverse orders in cases which should have been decided in favour of

Union of India. He also failed to forward adverse orders in time, resulting in filing of execution petitions causing embarrassment to the

organisation and senior officers. In spite of repeated reminders to take timely action and forward court orders to concerned

Records/Directorates, failed in his duties. He need to keep himself abreast with

latest military and allied laws. He is capable of doing well, provided he is analytical in his approach and applies the military, allied laws and judgments pronounced by the Apex Court to facts of cases filed in various courts. He is happily married and fits well in a team.

xx xx xx xx xx xx

(c) Details of guidance for improvement during the Reporting Period. Almost every day whenever he came to discuss court cases/judgments.

XX XX XX XX XX XX

(emphasis supplied)

Further, the applicant has been graded '7' in the box grading and also in a number of personal and performance qualities by the JO. Accordingly, the learned counsel for the applicant, after taking us through various aspects of the matter, argued that in this case, despite the applicant having performed well, the assessment of his performance for the impugned period has not been done properly and it is submitted that the JO, who has recorded the adverse entry, did so without any justification and, therefore, the same is liable to be interfered with, by expunging the remarks.

4. Learned counsel for the respondents refuted the aforesaid contentions and placed on record the entire CR dossier of the applicant and the file

dealing with the statutory complaint and indicated that even on previous two occasions, certain adverse entries were made against the applicant. They

were taken on record, but his non-statutory and statutory complaints were dealt with and they were expunged. However, in the present case, the

performance of the applicant has been scrutinized, the entire record has been considered and on objectively assessing the work of the applicant, the

JO had made the entries which had been endorsed by the RO and the SRO and now, as the assessment made is on the objective satisfaction of the

officer concerned, particularly after personally assessing the work of the applicant, the same need not be interfered with. Taking us through the

adverse entries made and the nature of remarks indicated therein, learned counsel for the respondents argued that they pertained to the performance

of the applicant, the observations made by the JO are based on objectively assessing the facts with regard to the work done by him, the manner in

which the applicant performed the duties and, therefore, in the absence of any mala fide or ill will attributable to the IO, the entries are analysed in the

backdrop of the performance of the applicant, which are based on record, no interference is called for. It is argued that merely because the applicant in the past had performed reasonably well, that does not mean that there cannot be deterioration in his performance. If, for the period in question, the superior officer had found him to be not up to the mark and made certain observations, the same need not be interfered with. The learned counsel also placed before us the file by which the statutory complaint of the applicant dated 21.02.2018 was considered and the detailed consideration made by the Central Government, which ultimately resulted in the passing of the impugned order dated 14.08.2018. That apart, serious objections were raised by Mr. Harish Vaidyanathan, learned counsel appearing for the respondents with regard to the conduct of the applicant. It was argued by him that though the impugned report was conveyed to the applicant on 25.01.2016, the applicant did not challenge the same, for about two years till 21.02.2018, when the statutory complaint was made for the first time. The applicant chose to remain silent with regard to the issue in question, did not make any representation or complaint to any superior officer, did not raise any grievance with regard to the impugned CR and it was only after the death of the officer late Brig. Devendra Singh, who had initiated the CR, on 14.02.2018, that too within a week thereof on 21.02.2018, the challenge to the impugned action was made. It is argued that this was done deliberately, knowing fully well that the department will not be in a position to obtain the comments of the officer to analyse the basis for making the report. It is submitted that all this was done deliberately to take advantage of the position and to prevent the respondents from taking the valuable opinion of the IO as the facts constituting the entry made are based on the factual aspects which were within the knowledge of the IO only.

5. We have heard the learned counsel for the parties at length and perused the records, particularly the two files viz, the file dealing with the statutory complaint of the applicant and the CR dossier of the applicant.

6. If we go through the remarks made by the IO, which is impugned before us, we find that for the reporting period in question, the applicant is stated to have failed to analyse court cases filed before the High Court and the AFT, Lucknow Bench and the Circuit Benches and did not properly guide the officer-in-charge of the Cell, leading to certain adverse orders. That apart, the

applicant did not forward the adverse orders in time, which resulted in not filing a large number of execution petitions, thus causing embarrassment to the institution and senior officers as the orders of the Tribunal were not implemented. The remarks further go on to say that in spite of repeated reminders to take timely action and to forward the court orders to concerned Records/Directorates in time, the applicant failed to discharge his duties properly. The JO further recorded that almost every day, there was discussion with the applicant on court cases/judgments and these facts were noted down. It is this remark which was made by the JO that the applicant wants us to be interfered with and the only ground canvassed is that if the past and subsequent service records of the applicant and the entries made in his CRs are analysed, it would be seen that he has an exemplary and extra ordinary service record and there is nothing adverse against him.

7. However, merely because the past and the subsequent service records of the applicant are unblemished, that cannot be the sole ground or criterion to interfere with the matter. If the entire service records of the applicant are analysed, it would be seen that only general assessment of the work has been done and his performance is categorized as satisfactory. Even though on two occasions, certain adverse entries were made, they were expunged by the competent authority. We may take note of two or three important aspects of the matter which were canvassed before us at the time of argument. The first is, the applicant's conduct in not responding to the adverse entries when it was communicated to him on 25.01.2016. This is surprising, considering that the applicant is an officer in the JAG Branch dealing with legal cases and is very well conversant with the legal procedure for redressal of grievances. In spite of that, after having received the adverse entries in January 2016, he kept silent for more than two years i.e. till the filing of the first complaint. It is also surprising to note that he filed the complaint a week after the JO had expired. This becomes important for the simple reason that the entries made were based on the personal assessment of the work by the JO and none other than the JO would have been able to state the circumstances which compelled him to make such entries. The action of the applicant in remaining silent for over two years and initiating action thereafter cannot be taken very lightly, in the facts and circumstances of

the present case. However, in his rejoinder, the applicant has come out with an explanation to state that he had prepared the complaint and handed it over to Brig. D.K. Ahluwalia, the then Dy. JAG, HQ Central Command on December 2016, which was kept by the officer for over a month and thereafter the applicant was posted out to Shillong on 19.12.2016 and, therefore, he could not make the complaint. The aforesaid explanation, in our considered view, is unsustainable and this conduct of the applicant had caused prejudice to the respondents, as they were unable to obtain crucial comments of the JO with regard to the reasons and the circumstances which compelled him to make such remarks. A specific statement was made before us during the course of hearing that the applicant does not attribute any mala fide, abuse of power or prejudice towards the 10 late Brig. Devendra Singh. He has no complaint against him. If that be so, then the JO is deemed to have taken action in accordance with the material available with him on not being satisfied with the performance of the applicant, which resulted in the recording of the remarks as has been done. That apart, if we analyse the justification or the reason given by the applicant, he made a two-fold submission, firstly, if his past and subsequent records are analysed, the remarks made are inconsistent. This ground cannot be the sole criterion for interfering with the matter. Secondly, he places on record three or four orders of the Tribunal, wherein he was shown to be present along with the counsel for the Union of India representing the department and in all these cases, the applications filed against the Union of India by the employees were rejected. However, in none of these petitions, is there any observations about his exemplary service profile. They only indicate the decision on legal issues based on the materials adduced without any observation with regard to the service profile or work of the applicant. The applicant had placed on record only four orders, which, in our considered view, are not sufficient enough to indicate that the applicant's performance was extra ordinary. That apart, we may also take note of the fact that the applicant has not placed before us any statistics with reference to the remarks made against him and any material to show that they were baseless. He does not refute the contention with regard to the delay in filing the execution applications and various other aspects mentioned in the report. He only states about four or five cases in which he had represented the

department, which were decided in favour of the Union of India and, therefore, he contends that the remarks were without any basis. However, if we analyse his statutory complaint, we find that he referred to have dealt with 2015 cases while posted in HQ of Central Command between 18.09.2014 and 08.12.2014, but he does not mention what were the materials available before him during the period in question to show that the observations made in the remarks are incorrect and none of the orders passed with regard to execution or delay, etc. in dealing with cases have been brought on record. Merely on the basis of observation made in the petition, without any supporting material and in the absence of there being any mala fides or ill will attributable to the JO, it is not appropriate for us to interfere with the matter. If we analyse the observations made by the JO i.e. the remarks in question, we are satisfied that the 10 had subjectively analysed the working of the applicant for the said period and based on the factual assessment of the applicant's work, the JO had made the remarks. In the absence of any material to show that the remarks were made without any basis, we cannot exercise our jurisdiction and interfere with the matter. Assessing the performance of an officer and reporting his work is based upon appreciation of factual aspects regarding the performance of an individual and a military officer is supposed to have discharged his duties properly in the absence of there being anything to show that he had prejudice in his mind or acted with malice. This being not the case of the applicant, the remarks made are nothing but subjective satisfaction recorded by the officer, therefore, it is not a fit case to interfere with, merely based on the past and subsequent records of the applicant. The officer concerned and the department have not committed any error. In our considered view, the applicant has not made out a case where interference is called for.

8. In the matter of expunction of his CR, as the statutory rules or the procedures are not shown to be violated or bias or mala fides established, we find no reasons to interfere with the CR. In our considered view, in the facts and circumstances of the case, it is not appropriate for us to interfere in such matters. Accordingly, being satisfied that the 10 had initiated the remarks based on due evaluation of the work of the applicant and there being nothing available on record to show that it was done unfairly and deliberately to cause harm to the applicant, the O.A deserves to be dismissed.

9. The O.A fails and is dismissed. No order as to costs. Pronounced in open Court on this the 20th day of February 2020.