

(2019) 11 AFT CK 0017
In the Armed Forces Tribunal
Case No : Original Application No. 1034 Of 2018

Vikal Sahni

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 29-11-2019

Acts Referred:

Citation : (2019) 11 AFT CK 0017

Hon'ble Judges : Sunita Gupta, J;B.B.P. Sinha, Member (A)

Bench : Division Bench

Advocate : Ankur Chhibber, K.S. Bhati

Final Decision : Dismissed

Judgement

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1. Through the medium of the instant O.A, the applicant, a serving Major General of the Indian Army, seeks the following reliefs:",,

(i) Quash the impugned order dated 15.02.2018 rejecting the statutory complaint filed by the applicant dated 05.06.2017;,,

(ii) Direct the respondents to expunge/modify the 10 grading in the hidden portion; and RO and SRO gradings in the applicant's impugned ACR for the,,
period 22.11.2015-30.06.2016 and 01.07.2016- 30.09.2016, if there is any inconsistency in the assessments viz, the performance and achievements",,

after perusing the impugned ACRs or the gradings are lukewarm and not commensurate with the demonstrated performance; and,,

(iii) Direct the respondents to consider the applicant as a Special Review/Fresh case for promotion to the rank of Lieutenant General as per the merit,,

of his original batch of 1982 with consequential benefits.,,

2. The facts of the case, in brief, are that the applicant was commissioned in the

Indian Army (Infantry Corps) on 24.12.1982 as Second Lieutenant.",,

He was, in course of time, promoted to the rank of Major General on 11.09.2015 and was commanding 56 Infantry Division from September 2015 to",,

October 2016. He was considered by the Special Selection Board (SSB) in December 2016 for promotion to the rank of Lieutenant General, but not",,

empanelled. Against his non - empanelment, the applicant submitted a Statutory Complaint dated 05.06.2017 complaining about the lukewarm AR",,

gradings despite outstanding performance. During the pendency of the Statutory Complaint, the applicant was again considered for promotion in",,

October 2017 and not empanelled. On 15.02.2018, his Statutory Complaint was rejected. Hence the instant O.A.",,

3. Learned counsel for the applicant submitted the following points to drive home his point of view:,,

(A). That the impugned order dated 15.02.2018 rejecting the statutory complaint filed by the applicant against his non-empanelment is illegal and,,

violative of the principles of natural justice. In order to substantiate his stand, he referred to Army Order No, 45/2001, Para 137 of which states as",,

under:,,

The CR when checked for objectivity in reporting will be analysed for consistency of the performance of the ratee. Depending upon,,

variation from past profile of the ratee against parameters defined in SOP of MS Branch, the CR may be accepted as it is, or with",,

enlacement for inflated/deflated report, to be reflected on the MDS for SBs/ Panels. However, CRs identified as grossly inconsistent or with",,

inflationary/deflationary/subjective reporting, after due examination at appropriate level, may be expunged by the COAS. Expunctions",,

approved by the CoAS will be irrevocable. No re-initiation or review is permissible.,,

Therefore, the MS Branch was mandated by the Army Order to carefully scrutinise the two ACRs and expunge them on account of aberration and",,

inconsistency. If with achievements and courses and honours the applicant has been overlooked, it is more than obvious that there is lukewarm grading",,

and assessment in his ACRs.,,

(B). That the applicant has had exceptionally graded ACR immediately after his impugned ACRs within a short span of six-seven months by the very,,

same RO. It does put a question mark on the gradings awarded in the impugned ACRs since the same ratee cannot have such a large variance in his,, performance during such a short period. Further, the applicant has also never been given any warning/cautionary note/adverse remarks during the,, period of report of impugned ACRs. The applicant has also been awarded VSM on the occasion of Republic Day (2018) for his outstanding work and,, devotion to duty during the same period pertaining to his impugned ACRs. Therefore, the JO grading in the hidden portion and the RO/SRO gradings,, need to be expunged or modified in terms of the respondents' own policy.,,

(C). That the statutory complaint filed by the applicant was rejected by the respondents mechanically without applying the mind, which itself is against,, the rights guaranteed by the Constitution of India. The impugned order is not a speaking order, which is evident from Paragraphs 3 and 4 of the,, impugned order. They read:,,

3. The Statutory Complaint of the General Officer has been examined in the light of his overall profile, comments of the reporting officers,, and other relevant documents. After consideration of all aspects of the complaint and viewing it against the redress sought, it has emerged,, that all assessments in the impugned CRs 11/15-06/16 and 07/16-09/16 are fair, objective, wellcorroborated, performance based and,, consistent with the overall profile of the officer. There being no sign of any inconsistency, bias or subjectivity, the ibid impugned CRs merit,, no interference.,,

4. The Central Government therefore, rejects the Statutory Complaint dated 05 Jun 2017 submitted by IC40757L Maj Gen Vikal Sahni, SM,,

If against CRs 11/15-06/16 & 07/16-09/16.,,

(D). That in the Statutory Complaint, the applicant had highlighted his profile career and elaborated his achievements as GOC, 56 Inf Div in detail. He,, also stated that 56 Inf Div is one of the most challenging divisions due to its vast frontage, large AOR, extremely inhospitable terrain and weather,, conditions in the North East border. He further stated that along with other members of his team, he had worked tirelessly and transformed the,, operational preparedness, operational logistics, administrative infrastructure and administration of the division. The applicant had also stated his,, apprehension that despite such sterling and tangible achievements, the reporting

officers had not graded him commensurate to his demonstrated",,,
performance and justice had not been done to him in the CRs earned as GOC 56
Inf Div. The applicant had also stated that his 10 always appreciated,,
his work and gave him fairly good grading in the open portion of the CR. He
might not have been given his due in the hidden portion due to the strict,,
rating tendency of the officers in his chain of reporting. In the Statutory
Complaint, the applicant had shown the reasons for his apprehension. They",,,
are:,,

(i) There was no mention of notification of 47,444 acres of Sari/ FFR in the pen
picture of his CR 07/16-09/16. He feels that this would have",,,

led to both his reviewing officers not knowing about this important achievement
thereby depriving him of a just and fair grading by them.,,,

(ii) Despite stupendous achievements of the Div, no one in the Div got any
Honours and Awards worth mentioning, which indicates the",,,

likelihood of strict tendencies at HQ 3 Corps/HQ Eastern Comd (,,

(iii) The SRO (the then COAS) did not visit the Division during his entire
command tenure and hence, was possibly not aware of all the",,,

major achievements of the Division. He avers that the SRO's grading would thus
be based primarily on the assessment by the IO/RO.,,,

(iv) He has quoted an incident involving aggressive behaviour of an officer's wife
at Likabali Mil Stn and apprehends that this could have,,

possibly affected his CRs. He states that a highly biased and exaggerated version
of the incident was probably brought to the notice of his,,

reporting officers, which might have adversely influenced their gradings.",,,

Type of Consideration,SSB held on,Result

Fresh Case,Dec 2016,Not empanelled

First Review Case,Oct 2017,Not empanelled

ground to grant the reliefs asked for. Furthermore, the procedure laid down for
dealing with the statutory complaint was adhered to. There is no",,,

inconsistency or arbitrariness perceived in his CR and overall profile. Summing
up, learned counsel for the respondents submitted that there is no",,,

irregularity or illegality in the impugned order and the O.A is devoid of merits.,,,

8. After hearing the learned counsel appearing for both the parties and perusing
the records, including impugned ARs, the questions that arise for our",,,

consideration are:,,

(i) Has the applicant been wronged in terms of not following the policy on ARs in terms of assessment by JO, RO and SRO and has the MS branch",,,

failed to notice and correct inconsistency, if any, in the impugned ARs?"",,,

(ii) Whether the statutory complaint filed by the applicant was dealt with and rejected by the respondents after due application of mind?,,

(iii) What is the relevance and credibility of an affidavit submitted by the then RO of the applicant after his retirement, in favour of applicant?"",,,

9. So far as the first question is concerned, we have scrutinized the complete evidence on record, including the complaints of the applicant, the existing",,,

policy on ARs, the impugned ARs in original and the original file along with all file notings on applicant's statutory or MS branch to cause any wrong to",,,

the applicant. Additionally, we have noted that the applicant had earlier also put up a similar statutory complaint in 2013 as a Brigadier. In this earlier",,,

complaint, the applicant had expressed apprehensions of lukewarm report by the SRO despite his outstanding performance during the period 200T09,"",,,

involving four CRs. After examination of his complaint, the same was rejected. We have also noted that despite rejection of his statutory complaint of",,,

2013, the applicant was empanelled in the Promotion Board for the rank of Major General based on his relative merit and was promoted to the rank of",,,

Major General in 2015. Hence to sum up, we are of the opinion that no wrong has been done to the applicant vis-À-vis the extant AR policy in the",,,

Indian Army.,,,

10. So far as the second question is concerned, we have scrutinised the statutory complaint and also the reply to the statutory complaint in detail."",,,

Additionally, we have following comments to offer after scrutinising the original file on statutory complaint:"",,,

(a) The complaint of the applicant that he has done exceptionally well and got a lukewarm report whereas his counterparts have not done so well and,,

got a better CR and honours and awards is his own self assessment and personal opinion and not the opinion of the superior officers in the chain of,,

command viz. JO, RO and SRO;"",,,

(b) His case of same RO giving him lower grading as GOC 56 Inf Div but giving him better reports after few months as 'Chief of Staff', HQ 33",,,

Corps, thereby implying that the RO made a mistake earlier and hence RO report

of impugned ARs as GOC 56 Inf Div should be reviewed, has no",,,

legal basis to stand because he has been reviewed though by same RO, but in two different appointments, and most important in two different time",,,

zones and work environment.,,

Thus, after considering all the issues raised by the applicant in his statutory complaint, we are of the opinion that the reply by the respondents to his",,,

statutory complaint is a satisfactory reply and meets the requirement of a speaking order.,,

11. As far as the third question of affidavit by RO is concerned, we find that the RO of the impugned ARs of the applicant was the GOC-in-C of",,,

Eastern command. We have noted that in connection with the statutory complaint of the applicant, the then GOC-in-C of Eastern Command has",,,

commented on 10.07.2017 i.e.20 days before his retirement that 'an HR related issue regarding the applicant came in limelight at the time of",,,

applicant's appraisal of impugned ARs, in hindsight he feels that the matter got overplayed while grading the officer'. The comments can be",,,

interpreted to imply that but for the HR incident, he may have given better AR grading to the applicant. The GOC-in-C after retirement has followed",,,

up with a similar statement on an affidavit which is part of this O.A. In this regard, it would be appropriate if we refer to observations at Paragraph 8",,,

of the decision in Chancellor v. Dr. Bijayananda Kar and others (1994) 1 SCC 169, which reads as under:",,,

8. The function of the Selection Committee comes to an end when the process of selection is completed and the proceedings are drawn. Every",,,

member of the Selection Committee has a right to give his independent, unbiased and considered opinion in respect of each candidate appearing before",,,

the Committee. Normally, it would not be considered a bona fide act on the part of a member of the Selection Committee to say, after the selection is",,,

over and he has signed the proceedings, that he 'overlooked' certain qualifications in respect of a candidate. The sanctity of the process of selection",,,

has to be maintained. It would be travesty of the selection process if the candidates are encouraged to meet members of the Selection Committee,,

after the selection is over and to obtain letters from them attempting to renege the selection made.,,

12. Though the above judgment has been given for a different set of

circumstances, however, the underlying principle of law is equally applicable in",,,
this case. Hence a second opinion about one's own grading in the AR as JO or RO
or SRO has serious limitations.,,,

13. We find that the principles of the above quoted judgment equally apply to
this case because though GOC-in-C, Eastern Command was not sitting",,,

in a Selection Board for promotion and giving his opinion, however all the same,
he was giving his opinion about the applicant as a Reviewing Officer",,,

(RO) and this opinion, he fully knew mattered in his Promotion Board. In this
background, we have also noted that the respondents have rejected the",,,

contention of the GOC-in- C Eastern Command that 'in hindsight an HR incident
overplayed into the AR grading of the applicant', on the ground that",,,

his report as RO was rendered in the first impugned AR on 15.08.2016 i.e. before
the HR incident took place. It was noted that as per applicant's own",,,

statement, the HQ incident took place in the last week of August/first week of
September, hence the HR incident could not have influenced the AR",,,

grading given by the RO. It has further been commented that the second
impugned AR by RO is again in conformity with the first impugned AR and",,,

hence needs no review. In this backdrop, we tried to understand the so called HR
incident and arrived at the following facts, as derived from the",,,

statutory complaint of the applicant:,,

(a) The HR incident relates to a complaint received by the applicant as GOC from
one of his Commanding Officers in April 2016 about a Colonel's",,,

wife behaving aggressively and in an uncivilised manner with the jawans and
junior officers under his command;,,

(b) In this context, the applicant counselled the lady's husband, a Colonel under
his command, to tender an apology to the concerned Commanding",,,

Officer whose personal had suffered his wife's bad behaviour. He further advised
the officer to guide his wife so that incidents of this nature are not",,,

repeated by her;,,

(c) Thereafter as per details given in the statutory complaint, in the end of
August 2016 or early September 2016, a complaint was again received from",,,

another lady in the officers' quarters about the violent behaviour of this lady. As
a follow up, he again counselled the husband of the lady, a Colonel, to",,,

take steps so that such behaviour is not repeated by his wife. In this situation,
the concerned officer decided to shift his wife from the military camp",,,

and dropped his wife at his home town; and,,

(d) The applicant suspects that though his actions were right, somebody has exaggerated and distorted the matter to his superiors to harm him.",,

14. With the above-mentioned facts, as given by applicant in his statutory complaint, the following aspects are also clear to us:",,

(a) That the GOC-in-C Eastern Command has rated the applicant as RO on 15.08.2016 and, therefore, he could not have been aware of an HR",,,

incident which took place later i.e. in end of August/beginning of September 2016. Additionally, there has to be a reasonable time gap in the happening",,,

of the incident on the social front, and its information, if any, travelling to the GOC-in-C Eastern Command. Hence the claim of GOC-in-C Eastern",,,

Command as RO, that an HR incident got overplayed is not valid for this AR, which was filled by him well before the HR incident took place;"",,,

(b) Such incidents of aberrant human behaviour by dependents of soldiers are common in family quarters and military camps and are routinely dealt,,

with by the military commanders. Prima facie, there appears to be nothing in this so called HR incident which should affect the AR of a GOC."",,,

Additionally, there is nothing in the impugned ARs from JO or RO side which indicates towards this so-called HR incident. Hence the contention of",,,

the retired GOC-in-C, Eastern Command about his hindsight realisation that the gradings of the applicant got overplayed because of this so-called HR",,,

incident cannot be accepted at its face value; and,,

(c) No organisation can afford the luxury of hindsight review and correction of AR assessment by responsible officers in high positions, especially",,,

when their hindsight realisation happens few days before retirement or after retirement. Giving credence to such hindsight corrections has the potential,,

to derail the complete promotion process of an organisation. Any officer, at whatever seniority he is, is expected to give AR gradings to his",,,

subordinates, with utmost objectivity and fairness in the larger interest of the organisation. A GOC-in-C, who has all the resources under his command",,,

to find facts and ascertain truth, cannot say in hindsight that he did not know the truth hence an HR incident got overplayed into his AR assessment."",,,

Thus considering all issues, we reject the hindsight realisation claim of the then RO of the applicant on both i.e actual facts and the very concept of",,,

such hindsight realisation. We will conclude on this issue by calling the hindsight

claim of GOC-in-C eastern command, 20 days before his retirement",,,
as an afterthought and as unacceptable in law. Thus no benefit for such a hindsight remark by RO, can be extended to the applicant.",,

15. Additionally, we have noted that a Major General is a high rank in the Army and generally Major Generals posted in active areas or border as",,,

GOC are not only known to the concerned GOC-in-C, but also to the COAS as SRO. In this case, the COAS has rated the applicant in the impugned",,,

ARs at box grading of '8'. In this case, we do not agree with the contention of the applicant that the COAS does not have the required first hand",,,

inputs to do justice to the AR grading of the applicant. We feel that the COAS as SRO has the wherewithal to monitor and understand the,,

performance of senior officers at the level of GOC and accordingly do justice to their AR Gradings.,,,

16. The next argument advanced by learned counsel for the applicant is that the impugned order was passed in a mala fide manner by the respondents,,

only to victimize him. In order to establish the malice, learned counsel for the applicant placed reliance on the documents and materials as brought by",,,

the applicant. It is well settled that mere assertions or bald statement is not enough to discharge the heavy burden that the law imposes upon the,,

person levelling allegations of bias or malice, it must be supported by requisite materials.",,

17. Thus, considering all issues, we do not find any valid reason to interfere with the AR gradings of the applicant. We totally reject the hindsight",,,

realisations of applicant's RO as untenable in law as we find the contention of RO to be wrong on facts as well as the settled law on review of ARs.,,,

18. Resultantly, the0.A is liable to be dismissed, hence dismissed. No order as to costs.",,

Pronounced in open Court on this the29th day of November, 2019.",,