

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOCHI

O.A.No.116 OF 2014

THURSDAY, THE 11TH DAY OF DECEMBER, 2014/20TH AGRAHAYANA, 1936

CORAM:

HON'BLE MR. JUSTICE SHRIKANT TRIPATHI, MEMBER (J)

HON'BLE VICE ADMIRAL M.P.MURALIDHARAN,AVSM & BAR, NM, MEMBER (A)

APPLICANT:

COLONEL VIRINDER SINGH JEJI, AGED 45 YEARS,
PERSONAL NO.IC 52290X,
S/O.RUPINDER SINGH,
MADRAS ENGINEER GROUP & CENTRE,
PIN – 900493,
C/O.56 A.P.O.

BY ADV. SRI.V.K. SATHYANATHAN

versus

RESPONDENTS:

1. UNION OF INDIA, REP. BY ITS SECRETARY,
MINISTRY OF DEFENCE, SOUTH BLOCK,
NEW DELHI.
2. THE CHIEF OF THE ARMY STAFF,
COAS'S SECRETARIAT,
INTEGRATED HEADQUARTERS OF MINISTRY OF DEFENCE (ARMY),
DHQ P.O., NEW DELHI – 110 011.
3. THE MILITARY SECRETEARY,
M.S. BRANCH,
INTEGRATED HEADQUARTERS OF MINISTRY OF DEFENCE (ARMY),
DHQ P.O., NEW DELHI – 110 011.
4. DIRECTOR GENERAL BORDER ROAD
SEEMA SADAK BHAWAN, RING ROAD,
NARAINA, DELHI CANTT
NEW DEHIL – 110 010.
5. CHIEF ENGINEER (PROJECT)
HIMANK, PIN – 931 713, C/O. 56 APO.

BY ADV. SRI.S.KRISHNAMOORTHY, SENIOR PANEL COUNSEL.

O R D E R

VAdm.M.P.Muralidharan, Member (A):

1. The Original Application has been filed by Colonel Virinder Singh Jeji, No. IC 52290X essentially aggrieved by the confidential reports rendered on him between 30th December 2010 and 12 May 2012 while he was in command of 753 Border Roads Task Force (BRTF).

2. The applicant is a serving Officer in the Corps of Engineers and was commissioned in June 1993, with ante dated seniority of June 1991. In due course he was promoted to the rank of Colonel and took over as Commander, 753 Border Roads Task Force (BRTF) on 31 March 2010 and remained in Command till 11 May 2012. He earned three confidential reports for performance during this period, the first from March 2010 to August 2010, second from December 2010 to August 2011 and third from September 2011 to May 2012. The Officer has challenged

his assessment in the second and third confidential reports.

3. Heard Mr.V.K.Sathyanathan for the applicant and Mr.S.Krishnamoorthy, Senior Panel Counsel for the respondents.

4. The learned counsel for the applicant brought out that after taking over command of the 753 BRTF in the high altitude area of Leh (J & K), the applicant systematically worked towards meeting the organisational goals in key result areas and the unit was looking after some of the most important roads in a strategic area. During the period of his Command there were multiple cloud bursts in the area and the Task Force ensured speedy re-establishment of road connectivity despite the massive natural destruction that had taken place. For the outstanding work done by his unit, personnel of the unit were commended by the Director General, Border Roads and the unit was also honoured as the "Best Task Force". While the applicant was graded

“outstanding” in his first confidential report in Command, he was assessed “above average” by his Initiating Officer Brigadier MH Rizvi in the second and third reports, in the portion shown to him. Subsequently, when he received an extract of his grading and remarks of Reviewing Officer (RO), he found that the grading given to him by RO, Lt General S Ravi Shanker was luke warm. Further the RO had indicated that the report by the Initiating Officer was liberal and found his assessment lower than that of the Initiating Officer.

5. In the meanwhile, the applicant was informed by the MS Branch of Army HQ that his name was under consideration for Higher Command Course/Higher Defence Management Course/Higher Air Command Course/Naval Higher Command Course. However he was not nominated for the same and the applicant felt that this was due to the poor assessment of his performance in the Confidential Reports, despite the Task Force under his Command

doing extremely well.

6. The applicant filed a statutory complaint on 15 October 2012 (Annexure A8). The same was rejected by Ministry of Defence vide order No.36501/12266/ Engrs/08/ MS-19/284/SC/2013-D(MS) dated 5 May 2014 (Annexure A10). The learned counsel for the applicant contended that the order was passed in a mechanical manner without discussing any of the issues raised by the applicant. He further contended that statutory complaints are required to be disposed of within six months, but in his case it was unduly delayed. Learned counsel requested that the applicant's reckonable Annual Confidential Reports, specifically the reports for the period December 2012 to May 2012 be examined and any defective Annual Confidential Reports be expunged and if the apprehensions of the applicant are found to be genuine, suitable orders may be issued to undo the injustice done to him. The learned counsel further prayed that the respondents be

directed to nominate the applicant for the next Higher Command/equivalent course.

7. The learned counsel for the respondents, on the other hand, brought out that it was the applicant's perception that he is an outstanding officer, but same was not borne out by the facts as the Officer had not qualified competitive Courses such as Defence Services Staff Course or Technical Staff Officers Course and was not empanelled for promotion to the rank of Colonel when first considered by a Selection Board in 2008. The applicant had then submitted a non statutory complaint against his non empanelment. That was considered and rejected by the Chief of the Army Staff as it emerged that his confidential reports were in consonance with his overall profile and he was not empanelled based on comparative batch merit. Subsequently, the next Selection Board in 2009 empanelled the Officer and he was promoted to the rank of Colonel and was appointed as Commander of 753 BRTF.

8. Learned counsel brought out that the applicant is also taking undue credit for the performance of his unit as the applicant's unit was given the award for Best Task Force for the year 2009-10 during which period it was commanded by his predecessor and not by the applicant. The officer was correctly assessed as per his performance. When the first report in question was received at Army Headquarters, it was observed that there were some weaker marks by the RO, which were not communicated to the applicant and he was apprised of the same. Learned counsel further brought out that all reports rendered on the Officer met requisite stipulations and were technically valid. The assessments do not reflect any bias on part of Initiating or Reviewing Officer. Learned counsel stated that no injustice had been done to the applicant and the confidential reports rendered were true reflection of his demonstrated performance during the period of assessment. The learned counsel also pleaded that observations of the Hon'ble Apex Court in **Union of India and Ors. vs. E.G.Nambudiri**

(1991) 3 SCC 38, Amrik Singh vs. Union of India, (2001) 10 SCC 424 and other judgments on selection boards and processing of statutory complaints were scrupulously followed by the respondents. The learned counsel also brought to our notice the Hon'ble Delhi High Court judgment in case of **Major General BS Grewal vs. Union of India & Ors., (WP(c).No.7074/2008)** on adverse remarks in CRs and Armed Forces Tribunal, Principal Bench order on **Col PK Nair vs. Union of India & Ors. (TA.No.198/2010)** on CRs.

9. We have carefully considered the rival submissions with reference to the records and materials, including the annual confidential reports of the applicant and the file analysing the statutory representation of the applicant, which were placed before us by the representative of Respondent No.2.

10. In sum and substance, the applicant has

questioned two of the ACRs raised on him between December 2010 and May 2012 when he was in Command House , 753 BRTF. It is a settled fact that both the ACRs were raised by the same set of Initiating and Reviewing Officers. The applicant has alleged that both these ACRs do not reflect his actual performance and has hinted at the possibility of personality clash between him and the Reporting Officers as the reason for assessing him at a lower level. The respondents have vehemently argued that the assessments are in keeping the over all profile of the officer.

11. At this stage we would like to bring on record that during the course of the arguments, the respondents brought out that while the applicant has made allegations against his IO and RO for the reports, they have not been made as respondents in this petition. At that stage the learned counsel for the applicant brought out that while the applicant had indicated in his case that he felt that the IO

and RO possibly had some issues against him, he did not want to raise any issues of mala fide against the IO or the RO, that is why they have not been made respondents. He further added that even in the reliefs/prayers made in the OA, there is no mention of anything regarding IO or the RO. The applicant has only requested for a check of the relevance of his CRs for the period in question against the background of his entire profile and has also sought the intervention of the Tribunal in expunging defective confidential reports. His other prayer was for nomination for the next Higher Command Course and any other reliefs that the Hon'ble Tribunal may grant. In view of the above submissions we do not feel that there is any requirement of the IO and the RO being made respondents.

12. The respondents have cited a number of judgments of the Hon'ble Apex Court and other Courts including the Principal Bench of the Armed Forces Tribunal to validate their stand that no judicial review can be taken of

Confidential Reports.

13. While we agree to the extent that in the cases quoted the respective courts have held the view that judicial review should not substitute the view of the reporting officers, it is also a settled norm that each case has to be considered on its own merit and on the facts. In this regard the Hon'ble Apex Court in the case of **Union of India and another v. Maj. Bahadur Singh (2006) 1 SCC 368** has clearly held that the courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. The relevant observations of the Apex Court are given below:

“9. The courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of the 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 the 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.....

12. The following words of Lord Denning in the matter of applying precedents have become locus classicus:

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.....

14. Before we look at the ACRs per se of the applicant it is necessary to state that the procedure adopted for recording of ACRs has been elaborately provided for. There are different officers involved in the process, the Initiating Officer (IO), the Reviewing Officer (RO), the

Senior Reviewing Officer (SRO), the First Technical Officer (FTO) and Higher Technical Officer (HTO). In the Confidential Report form there is place for numerical assessment as well as for writing of remarks. In accordance with the rating scale given in the report form, numerical performance for "outstanding" is 9. For "above average" 8 or 7 and for "high average" 6 or 5. There are other gradings with marks 4 and below which are not relevant in this case. The rating scale is to be used when assessing Personal Qualities, Demonstrated Performance Variables, Qualities to assess potential, Technical Performance and in Box grading which is part of the pen picture/remarks section written by IO/RO/SRO. As envisaged, an officer is to be assessed for various personal qualities and demonstrated performance and the pen picture/remarks section is the culmination of that assessment, wherein the Assessing Officer puts in words his overall impressions of the officer. He is expected to highlight and support his assessment for high and low marking in any particular quality and also bring

to the notice of the assessee if there are any remarks which is considered adverse. It is expected that the Assessing Officers will regularly counsel and guide the officers under their command and only if they fail to show the desired improvement are the adverse or advisory remarks to be included in the Confidential Report for it to be noted as a weakness for future placements/appointments.

15. The Bench perused the Annual Confidential Reports of the applicant. It is observed that over the years, more so from Lt Col onwards, barring in the two reports being challenged, the applicant has been consistently judged as "outstanding" (9) or "above average" (8) in Box gradings. As brought out earlier, the box grading given to an Officer by the Initiating Officer or the Reviewing Officer is of relevance as it is the culminating assessment by the concerned reporting Officer. As seen, in the immediate preceding two reports as well as in the succeeding two reports bracketing the reports under challenge, the Officer

has been assessed as 8 or 9 in the box gradings. In the two reports under consideration, the first report is for the period from 30 December 2010 to 31 August 2011 and the second report is for the period from 01 September 2011 to 12 May 2012.

16. It is observed that in the first report the applicant has been given a box grading of 8 by the Initiating Officer. The pen picture by the I.O being relevant is re-produced below:

“Col. Jeji is spirited, motivated and intelligent officer who is commanding his task force with a lot of drive and determination. He is highly dependable and can be relied upon to carry out his assigned task in the best possible manner with optimum resource utilization and within the allotted time. He is a very integral member of the team and himself leads a motivated, happy and professional team. He

offers sound and correct advice without fear or favour and has the tenacity to come out a winner however adverse the circumstances. He is recommended for posting to US Mission abroad. He is suitably married and socially active.”

17. In our view, these are laudatory remarks by the I.O and does not indicate any adverse/weak traits and is in keeping in with the numerical grades in his personal qualities and the Demonstrated Performance Variables which are all assessed at 8 and above. It is also important to highlight that the applicant has been recommended for UN Missions where any sub standard performance would show the Nation in poor light.

18. The Reviewing Officer while indicating that the report by the IO is liberal, has not recommended any portion of the report by the IO to be expunged. His remarks being relevant are given below:

“The officer needs to be more careful in dealing with local sentiments as an executive in J & K State. His performance has otherwise been adequate.”

19. It is also observed that out of the 17 qualities that are assessed under Personal Qualities and Demonstrated Performance Variables, the RO has graded him at 8 in 10 of them, at 7 in 6 of them and at 6 in one. Apart from the advisory nature of needing to be more careful in dealing with local sentiments, there are no adverse or other remarks to indicate why box grading by RO is 7 when grading in majority qualities is 8. It is pertinent to point out that RO possibly did not consider it an adverse remark and hence did not have it initialled by the Officer as required procedurally. However the MS Branch considered it a 'weak' remark and had it sent to the Officer, which created apprehensions in the applicant of low marking.

20. In the next report from 01 September 2011 to 12 May 2012, the IO has once given applicant a box grading of 8 and pen picture as produced below:

“Col Jeji is a hard working and enthusiastic officer who has strived to deliver targets against odds. He can be depended upon to put in effort in order to find a solution to problems on the ground. He has delegated well, while still overseeing the essentials. He has also been able to motivate his team to put their best foot forward in order to achieve the laid down goals. He has improved the quality of life of men under his command by systematic and sustained effort. He is an effective member of the team and has also managed to keep his team cohesive.”

21. The applicant, has been assessed at 8 or above in all the qualities by the IO. In our view, these remarks too are laudatory and is in keeping in with the profile of the Officer.

22. The Reviewing Officer, on the other hand, has remarked as follows:

“A hard working officer who has responded to the challenges of the task force fairly well.”

23. The RO apart from indicating that the IO was liberal, has not recommended any portion of the report by the IO to be expunged. It is also observed that in his numerical assessment, except in four qualities where grading is 7, in all the others ie 13 of them, the applicant has been graded at 8. Therefore we find that the box grading of 7 by the RO is not logical.

24. In other words when both these reports are looked at in totality, ie considering the remarks/marking by IO, gradings in various qualities by RO and lack of any specific adverse remarks/recommendation to expunge any remarks of IO by the RO, we find a dichotomy in the box grading of

7 given by the RO in both these reports. It is not in keeping with the performance of the applicant as it emerges from the reports and certainly out of sync with his overall profile.

25. At this stage we go back to the rulings on which the respondents have placed reliance viz **Amrik Singh v. Union of India, Major General BS Grewal vs. Union of India & Ors. and Col PK Nair vs. Union of India & Ors.** (all supra). All these cases pertain to promotions/selection of the respective applicant and the impact of adverse remarks in the Confidential Reports. In our opinion, the decisions given in those cases are entirely distinguishable on facts and circumstances from the present case.

26. In case of **Major General BS Grewal**, who had challenged remarks of IO and RO and points in one quality, the decision arrived at by the Hon'ble High Court of Delhi was based on the facts of that case and the relevant portion of the judgment is appended below:

“ 19. We are in respectful agreement with the view taken by the Apex Court in Amrik Singh's case (supra) and Surinder Sharma's (Supra). In the present case also the IO and RO have given adverse remarks against the petitioner on the basis of his performance and on account of two serious incidents that occurred during the relevant period. We cannot substitute our view to that of the authorities concerned, Judicial review is permissible only to the extent of finding whether the process in reaching decision has been observed correctly or not and not the decision as such. The records show that the reason for the lower grading of the petitioner' had been mentioned by, both the IO and the RO. It was specifically observed by the IO that “During the period under review, his formation has had serious incidents of loss of weapons and a TISAS Ballistic Computer Unit. Lack of appropriate reporting particularly in respect of untoward incidents has been conspicuous. He needs to adopt a more direct, assertive and analytical approach towards such serious issues in order to deny leniency and cover ups by offenders”.

20. The RO while agreeing with the IO observed that “intellectual capability not matched by demonstrated performance in Command of the Division and the formation has not measured upto

its optimal compact potential due to the factors enunciated by IO in para 9 above.

21. Since both the IO and RO have given these adverse remarks against the petitioner in their administrative capabilities we cannot sit over their decision as appellate authority in the exercise of judicial review as while exercising the power of judicial review we can consider only the decision making process not the merits of the decision. It can be challenged only on the ground that it smacks of malafides or arbitrariness. We do not find any irregularity and arbitrariness, in the whole decision making procedure."

27. In the above decision, the Hon'ble High Court had referred to the decision of the Apex Court in the case of **Amrik Singh** (supra). In that case the applicant was challenging his non-empanelment for promotion even on reconsideration as directed by a Hon'ble High Court and one adverse remark in his career, which was considered by the Selection Board. For arriving at the decision, the Hon'ble Apex Court had quoted its earlier judgment in **Union of India v. Lt. Gen. Rajendra Singh Kadyan (2006) 6**

SCC 698, which was for selection to the appointment of Army Commander. The relevant sections of the judgment are appended below:

“14. The scope of judicial review in such matters of assessment of merit for purpose of promotion has been dealt with by this Court recently in the case of ***Union of India v. Lt. Gen. Rajendra Singh Kadyan(2000)6 SCC 698.***

15. In para 29 of the said judgment, this Court stated as follows:

“29. The contention put forth before us is that there are factual inaccuracies in the statement recorded by the Cabinet Secretary in his note and, therefore, must be deemed to be vitiated so as to reach a conclusion that the decision of the Government in this regard is not based on proper material. The learned Attorney-General, therefore, took great pains to bring the entire records relating to the relevant period which were considered by the Cabinet Secretary and sought to point out that there were notings available on those files which justify these remarks. Prima facie, we cannot say, having

gone through those records, that these notings are baseless. Critical analysis or appraisal of the file by the Court may neither be conducive to the interests of the officers concerned or for the morale of the entire force. May be one may emphasize one aspect rather than the other but in the appraisal of the total profile, the entire service profile has been taken care of by the authorities concerned and we cannot substitute our view to that of the authorities. It is a well-known principle of administrative law that when relevant considerations have been taken note of and irrelevant aspects have been eschewed from consideration and that no relevant aspect has been ignored and the administrative decisions have nexus with the facts on record, the same cannot be attacked on merits. Judicial review is permissible only to the extent of finding whether the process in reaching decision has been observed correctly and not the decision as such. In that view of the matter, we think there is no justification for the High Court to have interfered with the order made by the Government.

16. In that case, this Court referred to the advisory remarks both by the IO and the RO that the officers should be bold and aggressive in operation and should lead their men personally to difficult objectives. The RO had said that the

officer's performance as a Rifle Coy Commander in the "recent" operations had been satisfactory though not up to the expected level. All the Reporting Officers gave him above-average ratings with a sprinkling of outstanding ratings. It was held by this Court that the High Court was in error in interfering with the non-promotion of the respondent in that case (writ petition) and in directing fresh consideration.

17. In our view, the observations made in the said judgment are apt in this case also. The adverse remarks for the year 1985-86 in the present case cannot be said to be irrelevant matter for the purpose of consideration of the appellant for promotion as Lt. Colonel along with his batchmates in 1990."

28. In case of **Col PK Nair** (supra) before the Hon'ble Principal Bench of the Armed Forces Tribunal the applicant was not approved for the rank of Brigadier and had put in a statutory complaint against his ACR/ICR which had been rejected by the Government and he had filed an appeal in the Hon'ble Delhi High Court which had been transferred to the Principal Bench for quashing of the Government order

and for reconsideration of promotion as a fresh case. The Hon'ble Tribunal while holding that performance in each appointment would vary and therefore past performance need not be reflection of the present, had referred to the ruling of the Hon'ble Apex Court in Amrik Singh's case. The relevant section of the judgment is given below:

“9. Their Lordships in their judgment(2001) 10 Supreme Court Cases 424 – Lt.Col.Amrik Singh v. Union of India & Others have ruled similarly. Relevant portion of the judgment reads as under:-

“Although before the year 1985-86 and even subsequently the performance of the appellant had been so good that he got marks 7,8 and 9 in a number of years, but ultimately, what is relevant for the purpose of the present case are ACRs for 5 years prior to 1990 which includes the year 1985-86 and that contains one adverse remark. That adverse remarks in the present case cannot be said to be an 'irrelevant matter' for the purpose of consideration of the appellant for promotion as Lt.Colonel along with his batchmates in 1990.....

.....Therefore, it is not possible to grant any relief to the appellant in spite of the fact that his performance in the subsequent years has been shown to be very good and his ratings were very high. Ultimately the single adverse remark of 1985-86 by the Reviewing Officer had stood in his way, not only at the time of original consideration but also when the matter considered afresh pursuant to the directions of the High Court. The result may be unfortunate: But the scope of the jurisdiction of the High Court being very limited, one cannot go into the correctness of the adverse remarks nor into the assessment made by the Selection Board on the two occasions."

10. In this case, the ACR obtained by the petitioner covering the period June, 1995 to May, 1996 and the CR covering the period June, 1996 to September, 1996 seems to be in keeping with his overall profile. The report is well articulated by the IO as also well moderated by the RO and the Senior Reviewing Officer. The markings in the character qualities and demonstrated performance appear to be in keeping with his performance, as also the profile that has been assessed subsequently. Therefore, we feel that the

assessment of the IO and RO in the impugned ACR and ICR are fair, objective and well corroborated. ”

29. All the above quoted cases have been looked at from point of view of promotion/selection. In the instant case the applicant is seeking a review of his ACR during the specified period. It is pertinent that he has not sought quashing of the Government order rejecting his statutory appeal. It is also clear that in all the cases quoted by the respondents there were specific adverse remarks against the respective petitioners. In the case of Major General BS Grewal, the IO and RO had given adverse remarks on account of two serious incidents that had occurred during the relevant period such as loss of weapons and ballistic computer unit and most specifically lack of appropriate reporting of untoward incidents. The intellectual capability of the petitioner had also been questioned by the RO.

30. In case of Amrik Singh, there was a specific adverse remark in one of the ACRs which was under

consideration for his promotion and the Court held that they cannot go into the correctness of the adverse remarks or the assessment made by the Selection Boards. In case of Col PK Nair, the Hon'ble Principal Bench had observed that the assessment of the IO and RO in the confidential reports under question were fair, objective and well corroborated. In case of Lt Gen RS Kadyan (supra), the Court held that appraisal of the total profile had been taken care of by the authorities and therefore the Court did not want to substitute their view.

31. We are in agreement with the views expressed by the Apex Court and the Principal Bench with regard to the point that an officer's performance would vary depending upon circumstances and conditions of service and the challenges thrown up by the environment. Therefore the past performance or subsequent performance cannot be taken as baseline for a performance during a specified period. However in all the cases quoted, the Hon'ble Courts

have held that judicial review is permissible to the extent of finding whether the process in reaching a decision has been observed correctly or not and not the decision as such. It is evident that in all the cases quoted, there were specific remarks against the respective petitioners which is not so in this case. In the case of Lt Gen Kadyan, the Apex Court had not intervened in the selection to the post of Army Commander where the appraisal of the entire service profile had been looked at by the authorities. In the instant case as brought out earlier by us, there are no specific adverse remarks and the RO also did not consider his remarks to be adverse in any way and possibly considered it advisory in nature. It was the MS Branch, which had deemed it to be weak remark and kept the applicant informed. As brought out, the remarks of the IO, in both cases were laudatory and had even recommended the applicant for a UN posting. We have already pointed out that the remarks/pen picture and Box grading by the reporting officers is in fact a culmination of their reporting process and should in normal

case be in keeping with grading awarded in personal qualities and demonstrated performance. While we agree that marks of 7 or 8 both conform to the norms of "above average", the applicant has got 8 in majority of the qualities assessed. More so, in the second report from the RO. Hence in our view the Box grading of 7 is out of place and deserves to be expunged.

32. The representative of Respondent No.2 showed us the file on which the applicant's statutory representations have been processed. It is observed that the Ministry of Defence had specifically questioned the aspect of the dichotomy between the officer being recommended for 'UN Mission' vis-a-vis his need to be more careful in 'dealing with local sentiments'. We observed that the reply made by the Army Headquarters was rather perfunctory, but we do not want to comment on it or analyse as to how it was accepted, as the rejection of the statutory complaint is not a plea before us in the current OA. So, in our view, while

a grading of 7 by itself may fit the need of "above average", when seen in totality ie the overall profile of the officer, the assessment by the IO including his remarks and Box grading and gradings by RO, we find that the Box grading of 7 by the RO is apparently capricious.

33. While we are of the view that the two Box gradings by the RO should be expunged, we do not consider it conducive to direct so, in view of the convention set by the Hon'ble Apex Court in the case of **Air Vice Marshal SL Chhabra vs. Union of India and Anr. (1993) Supp (4) SCC 441**. In that case the Hon'ble Apex Court had ruled that **"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 the grading of an officer"**. This view has been consistently held by all the Courts since then.

34. It is well known that periodically depending on merits of the case, the Army Headquarters and other Service Headquarters and also the Ministry of Defence have been expunging remarks and gradings of Officers which have been found to be not in conformity with the prescribed norms. Even in the case of **Air Vice Marshal SL Chhabra** (supra), it has been recorded that the adverse remarks in the appraisal report of the petitioner for the year 1986 was expunged by the respondents in 1989. We would therefore direct that the case be looked at de novo by Respondents 2 and 3, based on the observations made by us in accordance with the rules and Regulations.

35. The learned counsel for the applicant had contended that applicant's statutory representation was only cursorily looked at and all the issues raised were not examined and reply was unduly delayed. In this context the respondents had submitted that they had followed the directives of the Apex Court in **Union of India and Ors.**

vs. E.G.Nambudiri (supra). The relevant portion of the said judgment is given below:

"9. There are however, many areas of administrative activity where no reasons are recorded or communicated, if such a decision is challenged before the court for judicial review, the reasons for the decision may be placed before the court. The superior authority while considering the representation of a government servant against adverse remarks, is not required by law to act judicially, it is under no legal obligation to record or communicate reasons for its decision to the government servant. The decision, rejecting the representation does not adversely affect any vested right of the government servant nor does it visit him with any civil consequences. In many cases having regard to infinite variations of circumstances, it may not be possible to disclose reasons for the opinion formed about the work and conduct or character of the government servant....."

36. In the same judgment, the Apex Court had also held that no order of administrative authority communicating its decision is rendered illegal on the ground of absence of reasons and it is not open for the courts to interfere in such

orders on the ground of absence of reasons. The court had held that the administrative authority is at liberty to pass orders without there being any reasons for the same. We are, therefore, of the view that no injustice has been done to the applicant by not giving him detailed reasons in rejecting his statutory complaint or by the delay that has taken place in communicating the same to him.

37. As regards the applicant's appeal that he be nominated for the Higher Command or equivalent course, we are of the view that the selection for courses, like promotions are based on inter se/comparative merit and it is entirely upto to the respondents to carry out any selection in accordance with laid down Rules and procedures. In this regard the respondents have brought out that the applicant did not merit selection for the year 2014, but would be considered again in 2015 and 2016. We would, however, direct the respondents to carry out review of the ACRs of the applicant based on the issues raised by

us, prior to his consideration for the Higher Command/equivalent courses.

38. Accordingly, taking all facts and circumstances in consideration, the Original Application is partly allowed. We direct the respondents to review the applicant's ACRs for the period December 2010 to May 2012, in the light of the observations made by us. It is further directed that the review be carried out prior to the applicant being considered for Higher Command/equivalent course.

39. There will be no order as to costs.

40. Issue copy of the order to both side.

Sd/-

VICE ADMIRAL M.P. MURALIDHARAN,
MEMBER (A)

Sd/-

JUSTICE SHRIKANT TRIPATHI,
MEMBER (J)

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(true copy)

Prl.Pvt.Secretary