

## ARMED FORCES TRIBUNAL CHANDIGARH BENCH AT CHANDIMANDIR

**T.A. No. 251 of 2010**  
**(arising out of CA No. 08 of 2009)**

**K.S. Katoch** .....**Petitioner/Appellant**

**Vs.**

**UO.I & ors. .... Respondents/Defendants**

**Coram: Justice N.P. Gupta, Judicial Member.**

**Lt Gen N S Brar (Retd), Administrative Member**

**ORDER**  
**15-11-2010**

For the petitioner (s) : Brig. Rajinder Kumar, Advocate.

For the respondent (s) : Mr. G.S. Duhan, CGC.

**Per JUSTICE N. P. GUPTA:**

This matter has come up to this Tribunal by transfer from the Court of Additional District Judge, Ambala, where it was filed as appeal against the judgment and decree of learned trial Court being Additional Civil Judge (Senior Division), Ambala City, dated 23-01-2009 dismissing the plaintiff's suit.

The necessary facts are, that the plaintiff/appellant filed the present suit for declaration to the effect that his Annual Confidential Report for the period January 2003 to 31<sup>st</sup> May 2003 was perverse, subjective and not based on his performance, but based on

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“performance counseling” administered after the period of assessment and was liable to be expunged and that the Invalid Medical Board assessment be set aside being not based on the ground realities, but based on vindictive, arbitrary perverted attitude of the officer commanding and claims to be entitled to reinstatement with all consequential benefits.

The learned trial Court after receiving the written statement framed five issues. The first issue was as to whether the ACR of the plaintiff for the period January 2003 to 31<sup>st</sup> May 2003 is liable to be expunged with all consequential benefits. The second issue was regarding consequential benefits, like seniority, promotion etc. Other issues we need not to deal with, in view of the fact that during course of arguments, learned counsel for the appellant confined his challenge only to the ACR for the period January 2003 to 31<sup>st</sup> May 2003, hereinafter referred to as the “ACR in question”.

In the plaint, the case set out by the plaintiff, inter alia was, that Form AFMSF-10 was sent along with the plaintiff, and the Medical Board examined him, then on the basis of the remarks in favour of the plaintiff given by the competent authority and the plaintiff was upgraded from S-3 to S-2 for six months vide Board proceedings dated 17-06-2003. This up-gradation was not liked by the officer under whom the plaintiff was not serving, and on coming to know about the initiation of the Annual Confidential Report, GSO-1 shouted at the plaintiff and

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proclaimed that he would ensure that the plaintiff was to be shunted out from the Army. According to the plaintiff, though in AFMSF-10 he was given very good chit, but no ACR was initiated by the Initiating Officer and that it was on 29<sup>th</sup> July, Col. G.S. (Ops) initiated a performance counseling on misconceived facts. Till that date, no warning or counseling was given to the plaintiff by any superior officer, but GSO-1 informed the plaintiff that he was making grounds for throwing the plaintiff out of the Army. In these sequences, it is pleaded in para 10 of the plaint that the Initiating Officer after a long pause initiated the ACR, and over all grading was given 'average' and the basis of assessment was, the warning given to the plaintiff on 29<sup>th</sup> July 2003 i.e. much after the period in question.

In reply, the stand taken by the respondents/defendants with respect to relevant pleadings, is, that on 19<sup>th</sup> May, 2003, the plaintiff was sent to Military Hospital, Bhopal, for re-categorization, from where he was transferred to Jabalpur for opinion of Psychiatrist, who reported the plaintiff to be an old case of Alcohol Dependence Syndrom. However, due to abstinent status, no target organ was damaged and individual was upgraded to S-2, requiring further observation, and was advised not to consume alcohol intoxicants in any form. It was pleaded that it is obvious that the plaintiff was keeping his drinking habits under control, and therefore, the remarks mentioned in the petition were endorsed on AFMSF-10 by late Col. Sunil Isser on behalf of Col. GS (Ops). It is then

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pleaded that GSO was neither Initiating Officer nor concerned with processing of Annual Confidential Report of the plaintiff as he was not working under him, and that had the Officer (GSO-1) shown vindictive behaviour towards the plaintiff, he would not have recommended the plaintiff to be retained in service. It was also pleaded that GSO-1 (Ops) had no official dealing and concern with the plaintiff or the personal staff of col. GSO (Ops). However, on 4-07-2003 while performing the duty of Personal Assistant to the Brig. General Staff, the plaintiff was found to be intoxicated, and behaving abnormally, and consequently performance counseling was given. It was also pleaded that the assessment about the ACR in question is based on performance counseling given on 29-07-2003.

Arguing the petition, of course, the learned counsel for the plaintiff/appellant could not specifically make out, or point out, as to what was bias or prejudice, negative against the plaintiff, or positive in favour of any-one else, for initiation of ACR in question in a manner prejudicial to the plaintiff and contrary to Form AFMSF-10 as filled by Col. Sunil Isser. But the matter does not stop on that.

The learned trial Court has discussed this issue No.1 in its judgment in para 16 onwards, and has considered the subsequent circumstances of the plaintiff's subsequent hospitalization for Alcohol, and has then abstained from going into the relevant aspect of the ACR by observing that the Court has no competence or scope to re-appraise

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findings and record its own opinion as to the factual matters and these observations have been made in the back drop of the feeling as if the trial Court was called upon to interfere with any action of disciplinary authority or with respect to any judgment of the departmental authority, and since the issue has been decided against the plaintiff under this pre-obsession, we need not stay ourselves at those findings only.

Arguing the appeal, learned counsel for the appellant invited our attention to the document available in the file Annexure VII, being letter from Brig B.S. Nagal addressed to Col. A.S. Parab dated 6-08-2003 returning therewith the ACR in question with observations. We may gainfully quote those observations, which read as under:-

“(a) The JCO has been graded 6 (High Average) in the Overall Grading at Para 17 of the ACR but has not been recommended for promotion to the next rank. As per para 20 of Appx ‘D’ to AO 1/2002/MP (instructions for rendition of Confidential reports a JCO graded “High Average” ( 6 or 5 ) or above should invariably be recommended for next promotion/Hony Commission.

(b) Letter Nos and dates of the warnings/counselings administered to JCO are to be mentioned in the Cr (Para 46 of AD 1/2002/MP refers).”

These observations do at least show few things. Firstly, being that ACR was initiated earlier, and the things were not as alleged by the plaintiff, that the matter was lying low till October, and it was only

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after the 'performance counseling' was given, that ACR was initiated. Secondly, it also does show that the ACR which was originally initiated did grade the plaintiff in Overall Grading as "High Average" (6) in para 17 though he has not been recommended for promotion. Then we were shown the ACR in question, available at page 423 onwards, and at page 428 a look at para 17 shows that the "Overall Grading" given in box is 4. In this para itself, pen picture is given as under:-

"The JCO is reasonably proficient in his work. On occasions, he has consumed alcohol during working hours, for which was warned on 29 July, 03 vide HQ 21 Corps letter No.642620/P dated 29 July, 03. The JCO is also in low medical category (S1 H1 A1 P2 E1). For two years from 04<sup>th</sup> August, 2001."

That date appears to be originally given as 29<sup>th</sup> July, 2003. It was scored and date was mentioned as 27<sup>th</sup> October, 2003. The same is the position about the date at page 427.

From perusal of these two together, it is clear that in the ACR in question available at page 425 in para 17, there is no erasing or over-writing in the box grading being given as (4). Obviously, the ACR, which was originally initiated, and which had been returned vide Annexure VII, that did contain post grading 6 and obviously, it could not

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have included the 'performance warning' given on 29<sup>th</sup> July, 2003. It is a different story that such warning could not be, and was not permissible to be included in the ACR in question, as that did not relate to the captioned period.

We asked the learned counsel for the respondents to show us the original ACR, which was returned vide Annexure VII, so as to enable this Court to have a correct picture of the things, but the learned counsel for the respondents expressed his inability.

Thus, from the above fact scenario as transpired from the record, we are left with no option, but to expunge the ACR, as recorded, and being available at page 425 for the period January 2003 to 31<sup>st</sup> May 2003.

Since the learned counsel for the appellant confined his contention to challenge this ACR in question only, the contention succeeds.

The result of the aforesaid discussion is that the appeal is allowed, and the ACR in question being for the period January 2003 to 31<sup>st</sup> May, 2003 as recorded and available at page 425 of the record, is expunged. The parties are left to bear their own costs.

**(Justice N.P. Gupta)**

**(Lt Gen N S Brar (Retd))**

**15-11-2010  
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