

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A.No. 122 of 2014

Monday, the 8th day of June, 2015

The Honourable Justice V.Periya Karuppiah
(Member-Judicial)
and
The Honourable Lt Gen K Surendra Nath
(Member-Administrative)

Lt Col Sanjeet S Sahai (IC-52649N)
Son of Air Commodore Ajit Sahai (Retd)
Presently posted as Training Officer
NCC Group Headquarters, Group 'B'
161, EVR Periyar High Road
Kilpauk, Chennai – 600 010

...Applicant

By Legal Practitioner:
Mr.Lalit Kumar

vs

1. The Chief of Army Staff
Integrated HQ of MoD (Army)
South Block, New Delhi
2. Military Secretary
Army HQ, Sena Bhavan, New Delhi
- *3. Union of India
Through The Secretary
Ministry of Defence,
South Block, New Delhi – 110 011

...Respondents

**** Respondent 3 impleaded as per Order dated 20.10.2014 of this Tribunal in MA 287 of 2014 in OA 122 of 2014.***

Mr.S.Haja Mohideen Gisthi, SCGSC

ORDER

[Order of the Tribunal made by
Hon'ble Lt Gen K Surendra Nath, Member (Administrative)]

The applicant, Lt Col Sanjeet Sahai has filed this O.A. requesting to quash and set aside the impugned order dated 15 July 2014 passed by the respondents and to restore the complete assessment made by the IO in his ACR for the period 24.10.2012 to 31.05.2013.

2. In brief, the applicant would submit that on not being empanelled by the No.3 Selection Board held in May 2009 and subsequent promotion Boards, he had filed a TA No.02/13 before the Chennai Bench of the AFT. The Bench was pleased to grant substantive relief in terms of setting aside the ICR for the period June 07 to October 07 in its entirety and further ordered that the applicant be considered by a Special Review Selection Board (Fresh). The applicant would state that but for the impugned ICR, his performance was 'Above-Average' to 'Outstanding' and that based on his hard work and performance, he was rated 'Outstanding' by the IO for the period 24 October 2012 to 31 May 2013. However, to his utter shock and dismay, he received the impugned order dated 15 July 2014 whereby the applicant had been informed that respondent No.1, i.e., Chief of Army Staff, in exercise of his powers under para 137 of Army Order 45/2001/MS, had expunged the complete assessment of 9 point Outstanding grading given by the IO in applicant's ACR for the said period, on grounds of 'Assessment

Invalidity'. Further, he would also state that despite this Tribunal's Order dated 02.01.2014, a fresh Special Review Selection Board had not empanelled him for promotion on the plea that he was low in the merit. He states that he had an Above-Average to Outstanding Performance profile during his career and consequent to the setting aside the impugned ICR vide the order of this Tribunal dated 02.01.2014 he ought to have come up in merit for promotion to the next rank. He apprehends that certain portions of the adverse entries in the said ICR are still on the dossier and this was the cause for his non-empanelment as well as setting aside the 'Outstanding' ACR report initiated by the IO for the period 24.10.2012 to 31.05.2013. In view of the foregoing, he would request that records pertaining to the impugned order dated 15 July 2014 be called for and the same be set aside and restore the complete assessment of the IO in the ACR for the period 24.10.2012 to 31.05.2013.

3. The respondents, in their reply statement, would state that consequent to the order of this Tribunal on TA No.02/13 dated 02.01.2014, the impugned ICR dated 01.06.2007 to 24.07.2007 was set aside and no remarks, negative or otherwise, are on record. They would further state that the applicant was also given a fresh consideration for promotion by a Special Review Selection Board (Fresh) No.3 Selection Board, as directed by this Tribunal. They would also submit that the officer ought to have exercised alternate remedy available under Army Act by submitting non-statutory or statutory complaint against the impugned order dated 15 July 2014, prior to approaching the Hon'ble

Tribunal, in accordance with provisions of AFT Act, 2007. They would further submit that the setting aside of the ACR is based upon the provisions of Army Order and in exercise of the powers of the Chief of Army Staff under para 137 of AO 45/2001/MS which is a uniformly applied policy for internal scrutiny of Confidential Reports. They would aver that the said Confidential Report was analysed independently without any bias or reference to the previous Confidential Report or judgment of this Tribunal dated 02.01.2014. The said Confidential Report had 'Near Perfect Nine' (NPN) assessment by the Reviewing Officer and 'Perfect 9' (PN) assessment by the Senior Reviewing Officer leading to officer's overall profile (OAP) variation exceeding permissible limits. The assessment of IO was expunged during the internal assessment, being found grossly inconsistent and inflationary after a detailed and scientific analysis and also after due approval of the COAS. They would further state that the policy regarding corrective action is being applied uniformly to all officers of the Indian Army and the same was similarly applied in respect of the applicant. They would aver that the case has been treated in a standard, justified manner and it is not an exceptional case. In view of the aforesaid, they would state that the application is misconceived, devoid of any merit and substance and, therefore, request this Tribunal to dismiss the application.

4. We have heard the arguments of Mr.Lalit Kumar, learned counsel for the applicant and Mr.S.Haja Mohideen Gisthi, learned SCGSC assisted by Maj Suchithra Chellappan, learned JAG Officer (Army) and Maj Alifa Akbar, AMS (Legal), MS Branch, IHQ of MOD, New Delhi

appearing for the respondents and perused all the documents that were presented before us.

5. Normally, the applicant ought to have sought remedies available to him in the Army Act 1950 and Defence Services Regulations 1987, prior to approaching this Tribunal, as envisaged in Section 21 of AFT Act, 2007. However, the counsel for the applicant has pleaded that OA 122 of 2014 and OA 123 of 2014 filed by the applicant are interlinked and for speedy justice, the OA be admitted. We observe that there is some merit in the said pleadings. In the said peculiar circumstance, we do admit the case, which cannot be quoted as a precedent or in a normal circumstance.

6. Flowing from the pleadings on either side, the following issues can be framed:

- (a) *Was the ICR for the period June 2007 to October 2007 completely set aside, including any negative / adverse remarks, if any, from the CRD of the officer pursuant to the directions of this Tribunal in TA No.02/13 of 02.01.2014?*
- (b) *While following the procedures laid down for internal scrutiny of the Confidential Report (CR) for the period 24.10.2012 to 31.05.2013 and consequent setting aside of the assessment of IO, were the respondents influenced by any contents or remarks contained in the impugned ICR that was set aside by this Tribunal in its order dated 02.01.2014?*
- (c) *Is the impugned order dated 15 July 2014 issued by the Chief of Army Staff liable to be set aside?*
- (d) *What relief, If any, the applicant is entitled to?*

7. Points (a) and (b): The learned counsel for the applicant had claimed that despite the order of this Tribunal in TA 02/13, he

apprehends that the impugned ICR has not been fully set aside and portions of it, especially the adverse remarks, continue to exist on record and that this has adversely influenced the respondents while setting aside the CR for the period 24 October 2012 to 31 May 2013.

8. Per contra, the respondents have stated that as per order of this Tribunal, the complete ICR has been set aside and the impugned ICR has been effaced as such and, in proof, they have produced the original CRD of the officer. We have examined the said CRD and noticed that the impugned ICR has been effaced as "Set Aside" and we are satisfied that no portion of this CRD contains any adverse remarks or otherwise arising out of the said ICR.

9. As for setting aside of the ACR for the period 24.10.2012 to 31.05.2013 on account of 'Near Perfect', 'Perfect' grading by the IO, RO and SRO, the respondents have again produced before us the relevant notings placed before the Chief of Army Staff. The notings, observations and analyses placed before us are quite exhaustive and we have gone through the entire proceedings of the said notings which was routed from the Assistant Military Secretary who keeps records and a number of other notings from the officers in the chain. In all these notings and analyses, as well as the paramount card placed before us, there has been no mention or reference to the impugned ICR for the period June 2007 to October 2007 that had been set aside by an earlier Bench of this Tribunal. From the analyses and observations of various officers who had recommended the expunction of the said report was primarily on account of the CR being highly inflationary and variation between the

overall OAP and the impugned assessment being well beyond permissible range.

10. In view of the foregoing, we find that no portion of the impugned ICR for the period June 2007 to October 2007 remains on record of the applicant and his apprehensions to that effect are unfounded. We find no infirmity either in the procedure adopted and analyses done by the respondents in respect of CR for the period 24.10.2012 to 31.05.2013 and consequent order of the Chief of Army Staff, dated 15 July 2014. Therefore, we are not inclined to interfere with the said order of the Chief of Army Staff.

11. In fine, the OA is dismissed. No order as to costs.

Sd/-

Lt.Gen K Surendra Nath
Member (Administrative)

Sd/-

Justice V Periya Karuppiah
Member (Judicial)

08.06.2015
[True copy]

Member (J) – Index : Yes/No

Internet : Yes/No

Member (A) – Index : Yes/No
ap

Internet : Yes/No

To

1. The Chief of Army Staff
Integrated HQ of MoD (Army)
South Block, New Delhi
2. Military Secretary
Army HQ, Sena Bhavan, New Delhi
3. The Secretary
Ministry of Defence, South Block, New Delhi – 110 011
4. M/s Lalit Kumar and B.A.Thayalan
Counsel for the applicant
5. Mr.S.Haja Mohideen Gisthi
Counsel for the respondents
6. Officer in-Charge, Legal Cell
ATNK & K Area,
Chennai-600009.
7. Library, AFT, RB, Chennai.

Hon'ble Justice V.Periya Karuppiah
(Member-Judicial)

and

Hon'ble Lt Gen K Surendra Nath
(Member-Administrative)

O.A.No.122 of 2014

Dated : 08.06.2015