

**Reported**

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

**W.P.(C) No. 7074/2008**

**Judgment reserved on: 25.02.09**

**Judgment delivered on: 17.07.09**

MAJOR GENERAL B.S.GREWAL .....Petitioner  
Through: Mr. Valmiki Mehta, Sr. Adv. with  
Mr. Kirat Nagra, Adv.

Versus

UOI AND ORS. ....Respondents  
Through: Mr. Sanjeev Sachdeva, Adv.

**CORAM:**

**Hon'ble Mr. Justice B.N. Chaturvedi**

**Hon'ble Mr. Justice S.L. Bhayana**

1. Whether reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the digest or not? Yes

**S.L. BHAYANA, J.**

This writ petition has been filed by the petitioner under Article 226 of the Constitution of India challenging the Interim Confidential Reports (hereinafter referred to as ICR) given by the Initiating Officer (IO) and the Reviewing Officer (hereinafter referred as RO) in awarding '7' points in 'moral courage' and also the adverse remarks given by both the IO and the RO in the said ICR based on the performance of the petitioner during the period in question 01.07.2006 to 19.10.2006. He has further prayed that a writ be issued in the nature of certiorari quashing the said ICR and also orders dated 24.4.2007 and 30.11.2007 passed by the respondents rejecting the complaints of the petitioner. He has

further prayed that the result of Special Selection Boards held on 12.12.2006 and 04.12.2007 which found the petitioner unfit for promotion be quashed. He has further prayed that the writ of mandamus be issued directing the respondents to consider the petitioner for promotion to the rank of Lieutenant General in accordance with law.

2. In brief the case of the petitioner is that the petitioner has a highly commendable and unblemished professional track record, however he has adversely been impacted being superseded for promotion from the rank of Major General to Lieutenant General because of his single Interim Confidential Report covering the period 01.7.2006 to 19.10.2006 containing adverse remarks and low figurative assessment endorsed by respondents nos. 4 & 5.

3. It is further the case of the petitioner that the impugned ICR was initiated by the IO Lt. Gen P.C. Katoch (Respondent no. 4) who despite having graded the petitioner 8 out of 9 (except in Moral Courage where he gave a '7'), Annexure P-6, dated 20<sup>th</sup> October 2006, endorsed adverse remarks, against him without any prior information in this regard to him. This was then reviewed by LT. Gen P.K. Singh (Reviewing Officer) who without even going into the merits of the incident and without any prior counseling gave adverse remarks against him. Ld. Counsel of the petitioner submitted that he alone has been singled out for adverse remarks in the ICR for that particular incident which is clearly indicative of bias.

4. Learned counsel for the petitioner submitted that the Initiating Officer (IO) has singled out the petitioner and has sought

to take into the realm of consideration certain incidents which had occurred at the unit level which is two levels lower than the Division. The respondents nos. 4 & 5 have failed to take actions against the Commanding Officers and the Brigade Commanders who were in immediate control/supervision of the Units in question at the relevant time who have singled out the petitioner and have given adverse remarks in the ICR against him. Learned counsel for the petitioner further submitted that no performance counseling was given to the petitioner for improvement which is a mandatory requirement as per respondent's own policy, before endorsing adverse remarks against him. The adverse remarks given by respondent no. 5 were not even communicated to him by the respondents.

5. Learned counsel for the petitioner further submitted that no loss of weapon or Computer Unit took place during the relevant period, i.e. 01.7.2006 and 19.10.2006. It is, however, admitted that an incident was reported by 71 Armoured Regiment on 13.5.2006 that two pistols were missing, which were recovered on 22.5.2006. The detailed investigation held by Court of Inquiry revealed that two Jawans of the Unit had stolen the weapons for which the Jawans were punished. Similarly, there was no loss of Ballistic Computer Unit, but one BCU belonging to 18 Cavalry was left behind in a Unit at Jodhpur where it had been taken for repairs along with other stores but it was retrieved. Learned counsel for the petitioner states that there was no loss of weapon/stores as such.

6. Learned counsel for the petitioner further submitted that the impugned ICR containing the adverse remarks is self contradictory and incompatible with figurative assessment given to the petitioner in the same report and it is totally inconsistent. It is also submitted that in the earlier period of one year, i.e July 2005 to April 2006, the petitioner was given an “outstanding” in his ICR but for the period in question, he has been given adverse remarks, which are prejudicial and uncalled for and that the action on the part of the respondents rejecting the non-statutory complaint of the petitioner for correcting his ICR for the period in question is illegal, arbitrarily, unreasonable and without proper application of mind. Learned counsel for the petitioner further submitted that the adverse remarks contained in the ICR of the petitioner are, therefore liable to be quashed and the respondents be directed to consider the petitioner for promotion to the post of Lieutenant General.

7. On the other hand, learned counsel for the respondents has submitted that the petitioner is a 1971 Batch Officer. The petitioner took over the command of 33 Armoured Division on 20.5.2005 and before relinquishing this Command, he earned the said ICR. The said report was initiated on 20.10.2006 by the then GOC 1 Corps and it was reviewed by LT. Gen P.K. Singh, AVSM (respondent no. 5) then being the GOC-in-C South Western Command (RO) and further reviewed by the then Chief of the Army Staff, Gen JJ Singh, PVSM, AVSM, VSM. In the said ICR, the IO had assessed him above average with ‘8’ points in all qualities except in ‘moral courage’ wherein he was assessed ‘7’ points.

The pen picture contains the adverse remarks, which reads as under:

“During the period under review, his formation has had serious incident 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.”

The said endorsement was communicated to the petitioner in November 2006 vide Military Secretary's Branch letter dated 20.10.2006. Even the RO had also endorsed the adverse remarks, which reads as under:

“Intellectual capability not matched by demonstrated performance in Command of the Division and the formation has not measured up to its optimal combat potential due to the factors enunciated by IO in para 9 above.”

The said remarks were also communicated to the petitioner vide letter dated 27.10/2006.

8. The learned counsel for the respondent further submitted that the petitioner filed a non-statutory complaint dated 20.12.2006 challenging the said ICR, which was rejected by the COAS on 20.4.2007 and after that petitioner filed a statutory complaint dated 14.8.2007 challenging the said ICR, which was also rejected by the Central Govt. on 30.11.2007. The learned counsel for the respondents has submitted that the impugned ICR is based on the performance of the officer during the reporting period and is technically valid.

9. Learned counsel for the respondents submitted that as per  
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the latest policy, promotion upto the rank of Lieutenant Colonel is by time scale and thereafter by selection. All officers of a particular batch are considered together with same cut off Confidential Reports and inputs, and on the basis of individual profile of the officers and the batch merit they are approved/not approved. Each officer is entitled to three considerations (Fresh Consideration, First Review and Final Review) for promotion to the select ranks. The grading are in numerical, from 1 to 9 (overall as well as in personal qualities and performance variables in different qualities) and in the form of pen picture also. The entire assessment of an officer in any CR generally consists of assessment of three different reporting officers, whose assessments are independent of each other. The selection/rejection is based upon the overall profile of an officer and comparative merit within the batch as evaluated by Selection Board. The petitioner did not make the grade based on his overall profile as evaluated by the Selection Board. It was upto the Selection Board to assess the suitability of the petitioner for promotion to the rank of Lieutenant General.

10. Learned counsel for the respondents further submitted that since the Initiating Officer and Reviewing Officer, both gave adverse remarks against the petitioner which were also communicated to him, the petitioner was not found suitable for the next promotion by the Selection Board and in these circumstances, the argument of the petitioner that in the previous years he earned 'very good ' remarks in his ICRs for his earlier performance is unwarranted and untenable and therefore present

petition is without any merit.

11. We have gone through the impugned ICR which contains figurative assessment of the petitioner. The petitioner has been given grading '8' in each 'Administrative Acumen', 'Decisiveness', 'Human Relations, Compassion and Magnanimity', 'Stamina, Mental Robustness and Emotional Stability, 'Integrity' and 'Power of Communication'. But in the column 'Moral Courage', he has been given grading '7'. In the pen picture, the IO has given the following remarks against the petitioner; Annexure P6, Dated 20<sup>th</sup> Oct 2006

"Baljit is a smart and intelligent officer who has commanded 33 Armoured Division to the best of his ability. 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.

He is well read and has contributed to various studies. He has improved the interior economy of Hissar Cantonment and his formation has done well in sports."

12. We have also gone through the remarks endorsed by the Reviewing Officer Annexure P-7, dated 27<sup>th</sup> Oct, 2006, which reads as under:

".....Whose Intellectual capability not matched by demonstrated performance in Command of the Division and the formation has not measured up to its optimal combat potential due to the factors enunciated by IO in para 9 above."

13. Admittedly, the remarks given by the IO as well as the

RO are on the basis of the performance of the petitioner during the period in question and also on the basis of handling of situation by the petitioner at the relevant time. Both these remarks given by the IO and the RO were communicated to the petitioner. Thereafter, the petitioner filed both non-statutory and statutory complaints to the Chief of the Army Staff and the Central Govt., which were both rejected. The Chief of the Army Staff confirmed the adverse remarks given by the IO as well as the RO that the performance of the petitioner was not upto the mark at the relevant time. For these reasons, the petitioner has not been considered for the next promotion to the post of Lieutenant General by the Selection Board.

14. It is the case of the respondents that during his tenure, there were two incidents of theft of two pistols and also serious incident of loss of TISAS Ballistic Computer Unit. Even the counsel for the petitioner has admitted that these two incidents took place during his tenure when he was commanding 33 Armoured Division. As per respondents there was a delay on the part of the petitioner to inform about the authorities immediately. It is the part of the official record that the IO had recorded adverse remarks in his ACR when he says that the petitioner needs to adopt a more direct, assertive and analytical approach towards such serious issues in order to deny leniency and cover ups by offenders. Similarly, the RO has stated that the intellectual capability is not matched by his demonstrated performance in command of the Division. There is nothing on record to show that either the IO or the RO was biased, arbitrary or prejudiced when they gave these

remarks in the ICR of the petitioner. These observations/adverse remarks have been made by IO and RO independently, on the basis of the performance of the petitioner. Thus, we are not able to appreciate the arguments advanced by the learned counsel for the petitioner that the remarks given by the IO and the RO which were ultimately confirmed by the Chief of the Army Staff are discriminatory, unjust or abrasive and are therefore liable to be quashed as the same are not based on the performance of the petitioner.

15. Such adverse remarks given by the IO and the RO after observing the performance of the petitioner are not subject to judicial reviews and we cannot examine their correctness. The arguments of the learned counsel for the petitioner do not hold good that the petitioner in the early years of his career had been getting 'Very Good' remarks in his ICRs and so on the basis of those good remarks, he is fit to be promoted to the next rank and this Court should review the ICRs given by the IO and the RO at the relevant period. We do not agree with the learned counsel for the petitioner that the IO and RO should have given him good remarks in the ICR only because his performance in his earlier years was very good. The petitioner has to be judged by the IO and RO for the relevant period and we cannot sit on the judgment of the IO and the RO, nor can we review the remarks given by them.

16. Learned counsel for the respondents relied upon the Supreme Court judgment in the case of Amrik Singh vs. UOI & Ors. **(2001) 10 SCC424**. Relevant paras of the said judgment reads

as under:

“12. As already stated, any reconsideration of the appellant's case for promotion from 1990-91 when his batchmates are promoted, will depend upon the assessment to be made on the basis of ACRs of the previous 5 years including ACR for 1985-86. While the remarks of the IO were favourable to the appellant and even the remarks of the RO were by and large favourable to him, there was an adverse remark relating to “non-display of resoluteness of execution during operations”. It was on this basis that the RO gave him 5 marks while the IO gave him 7 marks. The RO was of the rank of a Brigadier. The SRO was a Major General and in his remarks dated 14.11.1986, the Major General thought fit to agree with the RO by awarding him only 5 marks.

13. It may be that, before the year 1985-86 and even subsequently the performance of the officer 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 this case are ACRs for 5 years prior to 1990 which includes the year 1985-86 and that contains one adverse remark. It is true that the earlier writ petition was allowed. There was no direction to exclude the adverse remark of 1985-86. In fact, it will not be permissible for the High Court to direct exclusion of the same from consideration.

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 vs. Lt. Gen. Rajendra Singh Kadyan, reported at **(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. Maybe one may emphasize one aspect rather than the other put 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 findings 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 Lieutenant Colonel along with his batch mates in 1990.

18. xxx xxx

19. xxx xxx

20. xxx xxx

21. In the result, we are not inclined 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 was 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, we cannot go into the correctness of the adverse remarks, nor into the assessment made by the Selection Board on the two occasions.

22. xxx xxx

23. For the reasons stated above, the appeal is dismissed. There will be no order as to costs."

17. Similar view has been taken by this court in Naib Subedar Major Singh Vs. Union of India and Ors., **2008(152)DLT434**.

18. Reiterating the similar view as was taken in Amrik Sing's case the apex court in Surinder Shukla Vs. Union of India and Ors. **2008(2)SCC 649** held as follows;

"10. Considering the comparative batch merit, if the selection board did not recommend the name of the appellant for promotion to the rank of

Colonel which appears to have been approved by the Chief of Army Staff, it is not for the court exercising power of judicial review to enter into the merit of the decision. The selection board was constituted by senior officers presided over by an officer of the rank of Lt. General. It has been contended before us that the selection board was not even aware of the identity of the candidates considered by them because only in the Member Data Sheet all the informations of the candidates required to be considered by the selection board are stated, but the identity of the officers is not disclosed.

Appellant moreover did not allege any mala fide against the members of the Selection Board. What impelled the selection board not to recommend his case but the names of other two officers is not known.

11. XXX XXX

12. In Union of India and Ors. v. Lt. Gen. Rajendra Singh Kadyan and Anr(2000)6 SCC698., it was held:

...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.

13. The said views have been reiterated in Amrik Singh v. Union of India and Ors.(2001)10SCC424

14. The peculiarities of special requirements of defence services in a case of this nature must also be kept in view. The considerations which apply to other government servants in the matter of promotion may not be held to be applicable in the army services. [See Lt. Col. K.D. Gupta v. Union of India and Ors. AIR 1989 SC 1393: 1989 Supp (1) SCC 416]"

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 up to its optimal combat 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.

22. In the net result, the writ petition being devoid of any merit is, therefore, dismissed.

S.L. BHAYANA, J.

B.N. CHATURVEDI, J.

July 17, 2009