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IN THE HIGH COURT OF DELHI AT NEW DELHI

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**Judgment reserved on: 24th May, 2021
Judgment delivered on: 2nd June, 2021**

+ W.P.(C) 5463/2021 & C.M. No.16929/2021 (for stay)

BRIG NEEL KAMAL SHARMA

..... Petitioner

Through: Mr. P.S. Patwalia, Sr. Adv. with Mr.
S.S. Pandey, Mr. Abhishek R. Shukla
and Ms. Pragya Sharma, Advs.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Harish Vaidyanathan Shankar,
CGSC with Mr. Sahja Garg, GP, Mr.
Amit Gupta, Mr. Vinay Yadav, Mr.
Prabhat, Mr. Akshay Gadeok and Mr.
Abhigyan, Advs. for UOI.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

AMIT BANSAL, J.

1. The present writ petition impugns the order dated 4th May, 2021 of the Armed Forces Tribunal (AFT), Principal Bench, New Delhi, of dismissal of OA No. 1415/2020 preferred by the petitioner.

2. The petitioner herein was commissioned in Army Service Corps (ASC) of Indian Army on 15th December, 1990 and since then has had an exemplary service record. The petitioner was promoted to the post of Brigadier in January, 2018. On 3rd March, 2021 respondents issued a list of names of the officers who are to be considered for promotion from the rank of Brigadier to Major General wherein petitioner's name was also included. As per Integrated HQ, of Ministry of Defence (Army) MS Branch, New Delhi letter No. 04502/MS Policy dated 23rd December 2017, the marks obtained in the Confidential Report (CR) are the most important aspect for promotion. Apprehending that his CRs for the periods January, 2018 to June, 2018 and July, 2018 to June, 2019 may not be good enough for him to be considered for promotion to the post of Major General, the petitioner made a Statutory Complaint on 19th November, 2019 to Ministry of Defence against his CRs earned in the rank of Brigadier for the periods January, 2018 to June, 2018 and July, 2018 to June 2019. The petitioner in his complaint also sought restoration of his CR earned in the rank of Colonel for the period February, 2009 to August, 2009. The Ministry of Defence on 9th September, 2020 passed an order rejecting the Statutory Complaint filed by the petitioner with the reasoning that both the CRs of petitioner in the rank of Brigadier are corroborated, consistent, performance based, objective, fair and technically valid.

3. Aggrieved by the aforesaid rejection order, petitioner preferred OA No. 1415/2020 before Armed Forces Tribunal (AFT), Principal Bench, New Delhi from which the present petition arises.

4. The said OA was dismissed by the Tribunal vide the impugned order, observing/reasoning that (i) with respect to February, 2009 to August, 2009,

the adverse comments had been completely expunged and the moderation carried out had been restored and the restored gradings were correctly reflected in the data sheet of June, 2020; (ii) in the CR January, 2018 to June, 2018, RO has remarked that the IO's assessment is justified. The SRO has remarked that the IO's assessment is justified while that of the RO is strict. However, in the column '*Do you recommend any portion of the report by IO/RO to be expunged? If so, state such portion and reasons*', the SRO has only commented that '*RO has been strict in reporting for reasons other than professional*'. However, the SRO has not amplified his reasoning, nor has he stated or recommended any portion of the report that needs to be expunged; (iii) in the absence of any recommendation for expunction, there was no clarification which was required from the SRO and therefore the MS Branch was justified in not seeking any comments from the SRO who had since retired, in terms of para 132 of the Army Order 2/2016/MS (AO); (iv) in the CR of July, 2018 to June, 2019, RO had remarked that the IO's assessment is justified. The SRO has remarked that the assessment of both the RO and SRO are justified; (v) in both the impugned CRs, there is no quality grading or box grading which varies by more than one mark. Therefore, there was no reason for MS Branch to have sought any clarification on the assessments in terms of para 130 of the Army Instructions. (vi) the impugned CRs have been rendered objectively and that all the CRs in the reckonable profile are well corroborated, consistent with the officers' profile and performance, and technically valid; (vii) the examination of the CRs does not indicate any violation of para 130 or 132 and therefore there was no violation of para 146. The AFT had the benefit of

the CR dossier of the Petitioner filed by the Respondents, in coming at the above conclusion.

5. Aggrieved by the said decision of the AFT, the present writ petition has been filed by the petitioner. This petition came up before this Court on 24th May, 2021, when it was heard finally and the judgment was reserved. Counsel for the Respondents was directed to place before the Court CR dossier of the petitioner as well as the files pertaining to the examination of the statutory complaint by the respondents.

6. The senior counsel for the petitioner states, that (i) the OA was preferred with grievances with respect to the confidential report of the petitioner for three terms i.e. (a) from February, 2009 to August, 2009, (b) from January, 2018 to June, 2018, and (c) from July, 2018 to June, 2019; (ii) the AFT, with respect to February, 2009 to August, 2009 has, after examining the records, noted that the adverse comments had been completely expunged and the moderation carried out had since been restored and the restored gradings were correctly reflected in the data sheet of June, 2020; thus the grievance with respect to February, 2009 to August, 2009 does not survive; and, (iii) the petitioner gives up the challenge to the appraisal report for the third period of July, 2018 to June, 2019 and now the challenge in this petition survives qua CR for the period of January, 2018 to June, 2018 only.

7. In support of his challenge to the CR for the period from January, 2018 to June, 2018 (impugned CR), the Ld. senior counsel for the petitioner submitted that; (i) the impugned CR has a major significance in the quantification system and plays a determinative role in the promotion of the petitioner from Brigadier to Major General; (ii) while examining and

undertaking internal assessment of the impugned CR, the respondents had violated paragraphs 130, 132 as well as para 146 of the AO; (iii) once it was remarked by the SRO that the review by the RO was strict and for reasons other than professional, it implied that the grading of the RO had to be expunged and, (iv) even if there was any doubt in this regard, the MS Branch should have sought clarification from the SRO.

8. *Per contra*, it has been submitted by the learned counsel for the respondents that an Officer does not have any right to claim an ‘outstanding assessment’ in the CRs and it was solely for the various reporting officers to assess the officer objectively, having observed his performance during the period of the report. It was further submitted that both the CRs of the petitioner, which were the subject matter of the statutory complaint filed by him, were duly examined in the light of the petitioner’s overall profile, comments of reporting officers and other relevant documents and it was concluded that both the CRs were corroborated, consistent, performance-based and technically valid and therefore, the complaint was rightly rejected by the respondents.

9. The CR dossier of the petitioner as well as the files pertaining to the examination of the statutory complaint by the respondents were duly submitted in terms of the earlier order dated 24th May, 2021 and the same have been duly perused by us.

10. The principal argument on behalf of the petitioner is that in light of the comments made by the SRO, as quoted above, the entire review of the RO should have been expunged from his record. In our view, the said submission has to be rejected. Once there is a specific column with a specific question, viz. ***“Do you recommend any portion of the Report by***

the IO/RO to be expunged? If so, state such portion and reasons”, unless there is a specific remark by the SRO stating that the report of the IO/RO should be expunged, it cannot be implied that it was his intention to do so. The SRO in response to the above column stated that “*RO has been strict in reporting for reasons other than professional*”, but this cannot be read to mean that the remarks of RO should be expunged from the record. If that was his intention, he would have clearly said so. As per Para 132(a) and (b) of the AO, it will be mandatory for senior reporting officers (i.e. RO/ SRO/ HTO/HSCRO) to endorse specific remarks on the assessment by lower reporting officers in the pen picture, whether the assessment by lower reporting officer is ‘Liberal’, ‘Justified’ or ‘Strict’ and to make recommendation for expunction of assessment by lower reporting officers which is not considered to be objective. Such recommendation has to be supported with reasons. In the present case, SRO has endorsed that the assessment by the RO is strict, however, there is no recommendation for expunction. Therefore, there was no violation of paragraph 132 of the AO. In this regard, reference may also be made to the earlier complaint dated 30th June, 2010 made by the petitioner in respect of his CRs for the period from February, 2009 to August, 2009 in which case, in response to a similar question in the CR form, both the RO and SRO had endorsed that complete record of the FTO be expunged. In light of that recommendation, the MS Branch had removed and completely expunged the remarks of the FTO.

11. A perusal of the statutory complaint filed by the petitioner shows that the major thrust of challenge was in respect of the assessment of the petitioner done by Lt. General M.H Thakur as HTO and not in respect of assessments done by the RO/SRO, which was/is the subject matter before

the AFT and this Court. In any event, the statutory complaint filed by the petitioner was duly examined in the light of the petitioner's overall profile, comments were sought from all concerned reporting officers, except the comments from SRO, since he had already retired before the statutory complaint was filed by the petitioner. The said comments and observations have been duly considered along with CRs for the relevant period, while rejecting the statutory complaint.

12. We have also gone through the CR dossier submitted before us by the respondents. On going through the same, we are of the view that there is a broad consistency between the gradings and the response received by the petitioners in different years; the variations, if any, were quite minor. Even though the petitioner has raised questions of bias against Lt. General Thakur, who was the FTO, a perusal of the CR dossier shows that FTO has given a complimentary pen picture in respect of the Petitioner and Petitioner's apprehensions were misplaced. The petitioner's grievance is that in respect of the CRs for the period from January, 2018 to June, 2018, RO had reduced his box grading from '9' to '8' without any basis and the same was not justified. However, even in respect of CRs for the period from July, 2018 to June, 2019, SRO had given him a box grading of '8' and the petitioner has given up the challenge to the said CRs before this Court, even though the same was subject matter of challenge before the AFT. All these CRs of the petitioner are 'Above Average' to 'Outstanding' assessments along with complementary pen pictures and positive recommendations, and all of the CRs have grades of '9' and '8' given by all the reporting officers in respect of all sections of CRs.

13. Next, we come to the contention of the Petitioner with regard to violations of Paras 130, and 146 of the AO in the internal assessment carried out by the Respondents. AFT has rightly observed that while examining the issue of violation of para 130 of the AO, reference has to be made to para 129 of the AO, which states that on receipt of CR in the MS Branch, it will be scrutinized for ‘consistency in reporting’. It is only if there is variation in terms of para 129 that para 130 becomes relevant. In the present case, there was no quality grading or box grading which varied by more than one mark. Therefore, there was no reason for MS Branch to have sought any clarification on the assessment made.

14. The examination of the CRs as explained above does not indicate any violation of Para 130 or 132, therefore, there was no occasion for the MS Branch to set aside the assessment under Para 146. Petitioner has also placed reliance on Para 169 of the AO, which provides that comments could be obtained from the reporting officers even after he had retired if it was “inescapable”. However, in the present case there was no ambiguity in the comments of the SRO that required clarification.

15. In any case, the scope of interference with the gradings given in the CRs of an officer is very limited under Article 226 of the Constitution of India. In this regard, reference may be made to judgment dated 6th April, 2021 given by this Bench in W.P.(C) 725/2021 titled ***Krishan Kumar Agarwal vs. Director (HR) Bharat Sanchar Nigam Limited and Anr.***

16. Impugned order of the AFT has threadbare considered all submissions made on behalf of the Petitioner and has given exhaustive findings on each issue. No ground for interference with the impugned order passed by the AFT is made out.

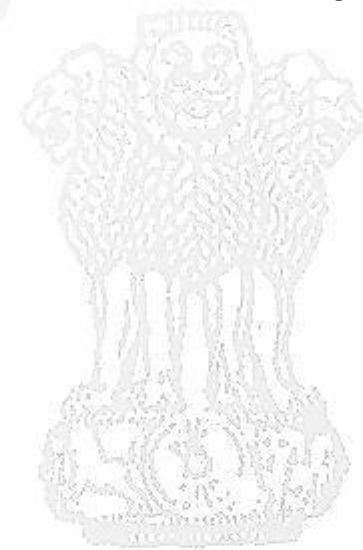
Dismissed.

Original record submitted by the respondents may be collected.

AMIT BANSAL, J

RAJIV SAHAI ENDLAW, J

JUNE 02, 2021
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