

UNION OF INDIA & ORS.

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v.

BRIG. DEVINDER SINGH

(Civil Appeal Nos. 2047-2048 of 2011)

AUGUST 23, 2019

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[L. NAGESWARA RAO AND HEMANT GUPTA, JJ.]

Armed Forces: After action reports and Annual credential reports – Judicial review of – Case of respondent-Brigadier that Battle Performance Report, After-Action Report, Report of Army Headquarters Military Operations Directorate and Reports submitted by the High-Power Committee regarding Kargil War to be correctly recorded recognising his performance in Operation Vijay – Direction by the tribunal that facts to be correctly entered in the Report at the relevant places – Sustainability of – Held: Not sustainable – After-Action Report is a compilation of the reports submitted by the Officers at the time of engagement – Such reports are collected and maintained for the purposes of future strategic studies and have no adverse consequences in respect of any Officer as no adverse action is taken on the basis of such reports – Also reports do not have any civil consequences, thus, is not subject to judicial review by the tribunal or the Courts – Tribunal or the Court is not the Authority to appreciate the historical facts as it is for the experts and Officers in the Armed Forces to record such facts in terms of the procedure established by them – Furthermore, this Court neither has the expertise nor has the jurisdiction to sit over the reports furnished by the Officers in respect of credit to the Officers involved in the Operation Vijay – Thus, the direction of the tribunal is set aside.

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CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2047-2048 of 2011.

From the Judgment and Order dated 17.05.2010 of the Armed Forces Tribunal, Principal Bench at New Delhi in T.A. No. 272 of 2010 and order dated 07.09.2010 in R.A. No. 25 of 2010

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Ms. Sonia Mathur, Sr. Adv., Ms. Priyanka Das, Ms. Chinmayee Chandra, Vrinda Rao, A. K. Sharma, Mrs. Anil Katiyar, Advs. for the Appellants.

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- A Lt. Col. K. Ramesh, Vibhuti Sushant Gupta, Archana R., Himanshu Kalra, Ram Naresh Yadav, Advs. for the Respondent.

The Judgment of the Court was delivered by

HEMANT GUPTA, J.

- B 1. The challenge in the present appeals is to an order passed by the Armed Forces Tribunal¹ on May 17, 2010 directing the appellants that the facts should be correctly entered in the reports at the relevant places and that the Annual Confidential Report² written by Lt. Gen. Kishan Pal as Adjudicating Authority for the period November, 1998 to C June, 1999 be expunged as a whole.

2. It is categorical stand of the appellants that the order of the Tribunal so as to expunge the ACR written by Lt. Gen. Kishan Pal is not being challenged by the appellants in the present appeals as said part of the order of the Tribunal has been given effect to. The only direction D under challenge is that the facts should be correctly entered in the reports at the relevant place.

3. The respondent herein was promoted to the post of Brigadier in May, 1998 and assumed the Command of 70 Infantry Brigade then deployed in Kashmir Valley in counter insurgency duties in operation E Rakshak in the year 1999. His Brigade Headquarter was associated to Ladakh Sector subsequently. As per the respondent, he forecasted the pattern of Kargil intrusion but the same was summarily dismissed by his senior officers.

4. The grievance of the respondent is that Battle Performance F Report, After-Action Report, Report of Army Headquarters Military Operations Directorate and Reports submitted by the High-Power Committee of the Government of India regarding Kargil War³ should be correctly recorded recognising his performance in Operation Vijay.

- G 5. It may be stated that the above said Reports are prepared during the action and after the War is completed for review and for further studies at subsequent stages for strategic purposes. Such documents are confidential and are not in public domain.

¹ Tribunal

² ACR

H ³ Operation Vijay

6. The learned Tribunal issued directions for correction in Para 192 in the After-Action Report wherein, the impression sought to be given is that Eastern Flank was headed by Brig. Ashok Dugal but as per Maj. Gen. Budhwar, GOC of 3 Infantry Division, Brig. Ashok Dugal was called to coordinate and assist the Eastern Flank and not superimposed upon the respondent. The direction of the Tribunal was to correct the After-Action Report accordingly.

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7. The only question is whether the respondent can seek recording of After-Action Report in the manner sought by him. The After-Action Report is a compilation of the reports submitted by the Officers at the time of engagement. Such reports are collected and maintained for the purposes of future strategic studies and have no adverse consequences in respect of any Officer as no adverse action is taken on the basis of such reports. In fact, the respondent has been conferred Vishisht Seva Medal as the Commander of an Infantry Brigade in the Northern Command who was given the responsibility for the conduct of all operations in Batalik-Yaldor Sector during Operation Vijay.

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8. We find the issue raised is more to take credit by the Officers engaged in Operation Vijay. The reports do not have any civil consequences, therefore, is not subject to judicial review by the Tribunal or the Courts. The order having civil consequences has already been set aside and not appealed by the appellants. Therefore, maintenance of records for future strategic studies is not open to challenge in exercise of power of judicial review.

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9. In fact, in the synopsis furnished by the learned counsel for the respondent, it is mentioned that the respondent does not want any personal relief from the Court but only wants correct historical facts to be drawn and declared by this Court.

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10. The Tribunal or the Court is not the Authority to appreciate the historical facts as it is for the experts and Officers in the Armed Forces to record such facts in terms of the procedure established by them. This Court neither has the expertise nor has the jurisdiction to sit over the reports furnished by the Officers in respect of credit to the Officers involved in the Operation Vijay.

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11. Consequently, the direction of the Tribunal to correct the After-Action Report or other such reports cannot be sustained and is, therefore, set aside. The appeals are accordingly allowed.