

COURT NO. 1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

10.

OA 2713/2025

Wg Cdr M S Mander		Applicant
Versus		
Union of India & Ors.		Respondents

For Applicant	:	Mr. K Ramesh & Ms. Archana Ramesh, Advocates
For Respondents	:	Gp Capt Karan Singh Bhati, Sr. CGSC

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT. GEN. C. P. MOHANTY, MEMBER (A)

O R D E R
04.09.2025

Heard on the question of admission.

2. Invoking the jurisdiction of this Tribunal under Section 14, the applicant has filed this application. The reliefs claimed in para 8 (a) and (b) read as under:

(a) Issue directions to the Respondents to Modify the Impugned Order of Air Headquarters, Vayu Bhavan New Delhi Letter dated 28 May 2025 which is placed as Annexure A-1 to promoting the Applicant to Air Marshal (Notional) in the modus operandi as promotions given in Annexure A-3 (Colly) to Annexure A-5 (Colly) by this very Armed Forces Tribunal Principal Bench so as to meet the ends of equity, justice and fair play;

(b) Issue directions to the respondents to grant pay and allowances from the date of cashiering to date of superannuation as Air Marshal (Notional) and followed from the Next date by grant of issuing Corrigendum PPO as to Air Marshal Pension from that date till death to meet the ends of equity, justice and fair play'

3. The facts in brief indicate that the applicant was working as a Fighter Pilot in the Indian Air Force and was subjected to trial by a General Court Martial (GCM) on the allegation of murder of an Army Sepoy and was said to be facing disciplinary action. It was the case of the applicant that the Sepoy had jumped from the Gypsy and tried to run away on the Air Force tarmac and in the process accidentally fell into a deep cemented trench, sustained severe injuries and died. The applicant was tried by the GCM which found him guilty of the offence and sentenced him to be cashiered with a sentence of two years on confirmation. The aforesaid finding of the GCM was that the applicant was guilty of an offence under Sections 302, 325, 342 read with Section 149 IPC and he was found guilty of an offence under Section 304 (iv)(ii) read with Section 149 IPC. He was sentenced to undergo rigorous imprisonment for five years and cashiered which was remitted by Chief of the Air Staff who confirmed the conviction and remitted the sentence to imprisonment of two years in civil prison.

4. The applicant challenged the aforesaid finding in a writ petition filed before the Hon'ble Delhi High Court being WP(C)

No. 5158/1999. After the formation of this Tribunal in 2009 the said writ petition was transferred to this Tribunal and registered as TA No. 14/2010. By a judgment rendered on 14.05.2010 vide Annexure A2 the applicant was acquitted of the charges and the final directions issued by this Tribunal in para 42 read as under:

“42 Therefore, in the absence of evidence, the case against the appellant-accused cannot stand. The findings and convictions are not sustainable. In the result, the appeal is allowed setting aside the conviction and sentence awarded to the appellant-accused. The appellant-accused shall be deemed to be in service till the date of superannuation in the present rank and be entitled to pension thereafter. No order as to backwages.”

(Emphasis supplied)

The decision of the Tribunal was challenged by the Union of India before the Hon’ble Supreme Court in Criminal Appeal. No. 190/2011. The said criminal appeal was decided by the Hon’ble Supreme Court by a detailed judgment rendered on 06.11.2024 which is available from pages 54 to 64 of the paper book. The Hon’ble Supreme Court finding no error in the judgment dismissed the appeal filed by the Union of India.

5. After dismissal of the appeal by the Hon’ble Supreme Court vide the order in question (Annexure A1) dated 28.05.2025 the judgment of this Tribunal was implemented and it was directed that the applicant be reinstated in service and action be taken for granting him consequential benefits. The direction was to implement the orders of this Tribunal.

6. The applicant now submits that as he has been acquitted of all the charges, therefore, he is entitled to be notionally promoted to the rank of Air Marshal and granted pay, allowances and all other benefits treating him as having superannuated from the post of Air Marshal notionally and grant him all monetary benefits and issue a corrigendum PPO. For the said purpose the applicant places reliance on certain orders passed by this Tribunal in the case of Brig. P.S. Gill v. Union of India and Others. (OA No.147/2010), decided on 24.05.2011 and (TA No.610/2009) Shri Amarjit Singh v. Union of India and Others. decided on 25.02.2010 and various other cases to claim entitlement.

7. Having heard learned counsel for the parties we find that the directions issued in the appeal filed by the applicant before the Hon'ble Delhi Court which was transferred to this Tribunal in TA No.14/2010 on 14.05.2010 were to the effect that the applicant shall be deemed to be in service till the date of superannuation in the present rank and be entitled to pension thereafter with no orders as to back wages.

8. The simple interpretation of this order is that the applicant's conviction was set aside, his appeal was allowed and as he had already attained the age of superannuation, he will be deemed to have retired from the rank of Wg Cdr on superannuation and all pensionary benefits shall be granted to him without any back wages for the period he remained out of service. This order passed by this Tribunal was affirmed by the Hon'ble Supreme Court on 06.11.2024. There is nothing in the

order passed by this Tribunal to indicate that the applicant is entitled to be treated as promoted to the post of Air Marshal and granted all consequential benefits. The directions issued in para 42 are very clear as indicated hereinabove and leave no scope for ambiguity or interpretation.

9. As far as the judgments relied upon by the applicant in the case of Brig. P.S. Gill (Annexure A3 collectively) are concerned the first order on record is an order passed in OA No.147/2010 on 24.05.2011 wherein the petitioner Brig. P.S. Gill had challenged the charges framed against him and had questioned the Court of Inquiry, the Summary of Evidence, etc. Vide order passed and the charges framed against the applicant were quashed and his appeal allowed. There is nothing in this order that helps the present applicant.

10. The said order passed by this Tribunal was challenged by the Union of India before the Hon'ble Supreme Court in Criminal Appeal No.404/2013 and the same was dismissed on 27.11.2019. There is nothing in this order to indicate that there was any direction to grant promotion or other benefits to Brig. P.S. Gill. However Brig. P.S. Gill again approached this Tribunal in OA No.276/2011 praying for declassifying the result of the Special Selection Board held in 2006 qua the applicant officer and for grant of promotion with seniority to the rank of Major General. It appears that after the charges against him were quashed, promotion was not granted as he was placed under DV Ban. He retired from service on 31.05.2009. In 2006, the

Selection Board had considered his case and found him fit for promotion and the Board proceedings were approved by the competent authority. However as he was under DV Ban on 06.07.2006 he was not granted promotion. Subsequently on his acquittal the proceedings of the Selection Board kept in sealed cover were directed to be opened and the applicant was granted the benefit of promotion. In our considered view the said case is totally different and does not apply to the present applicant. Similarly, the case of Amarjeet Singh is also entirely different inasmuch as it pertained to promotion of juniors to the rank of Nb Sub and certain punishments imposed upon the applicant therein. After his exoneration and the punishment being quashed by the Tribunal there was a specific direction to grant him the consequential benefit of promotion at par with his juniors.

11. In the present case the punishment imposed by the GCM after trial was subjected to appeal before this Tribunal and the Hon'ble Supreme Court as indicated hereinabove. While allowing the appeal this Tribunal set aside the conviction and sentence awarded to the applicant but at the same time directed that he shall be deemed to be in service till the date of superannuation in the present rank i.e. Wg Cdr and entitled to pension, however back wages specifically denied. There is nothing in this order to indicate that the applicant's case for promotion, if any, denied to him during the period he was undergoing the punishment has to be granted to him. In our considered view all the dispute and grievances of the applicant concerning the trial by GCM and the

conviction stood settled on 14.05.2010 when the appeal was decided by this Tribunal and para 42 of the said order clearly mandated the respondents to treat the applicant as being in service till his date of superannuation only in the rank of Wg Cdr and nothing more. Even while dismissing the criminal appeal filed by the Union of India the Hon'ble Supreme Court did not indicate any direction to grant him any consequential benefits of promotion.

12. That apart, identical issues have already been considered by a Coordinate Bench of this Tribunal on 15.10.2015 in (TA 394/2009) Yatinder Nath Sharma Vs. Union of India & Ors. In the said case, Yatinder Nath Sharma was working in the rank of Hav, when he was tried by a GCM and punished with reduction in rank, rigorous imprisonment for two years and dismissed from service. He challenged the aforesaid punishment and sentence by filing a Writ Petition before the Hon'ble Delhi High Court. The Hon'ble Delhi High Court allowed the petition, quashed the punishment and sentence imposed and directed for his reinstatement with all consequential benefits on 30.03.1987. In pursuance of the order passed by the Hon'ble Delhi High Court, Hav Yatinder Nath Sharma was reinstated in service in the rank held by him on the date of discharge and, therefore, stood treated by this on the date of his discharge i.e., 31.01.1986. Inter alia contending that the consequential benefit granted by the Hon'ble Delhi High Court would include considering his case for promotion to the rank of Nb Sub in the year 1981 and Sub in the

year 1982 and this benefit has not granted to him, initially, he filed a contempt petition before the Hon'ble Delhi High Court. The petition was dismissed granting him liberty to invoke the jurisdiction by filing a fresh Writ Petition. He therefore, challenged the same by filing a fresh Writ petition before the Hon'ble Delhi High Court which stood transferred to this Tribunal in the year 2009 and was decided in TA 394/2009 on 15.10.2015. While considering the question as to whether based on the directions for granting consequential benefit, Hav Yatinder was entitled for promotion, the Coordinate Bench of this Tribunal decided the issue by discussing the matter in Para 8,9, and 10 in the following manner:-

“8 The sole question for consideration is as to whether the consequential benefits would include the promotion which he would be entitled to after the court martial has been set aside by the Hon'ble High Court. The contention of he learned counsel for the petitioner is that after the dismissal had been set aside by the Hon'ble High Court, he has been reinstated to the post that existed in the year 1979 when he was dismissed from service. Therefore, he would be eligible for consideration to the next higher post. He contends that he could not complete the promotional cadre courses as he was out of service on the date he became eligible for promotion. Therefore, emphasizing on the fact that petitioner does not fulfill the QRs cannot apply to the present case. He has placed a reliance on the judgment of this Tribunal in OA No. 64/2011 wherein the Tribunal has held as under:

“Petitioner is required to be promoted from the date when these three persons who were junior to him were promoted irrespective of the fact whether he has passed the Promotion Cadre Course or not. As it was not possible for him to pass the

Promotion Cadre Course for the period when he was facing the disciplinary ban from 1985 till he superannuated on 30th June, 1988. Hence, in a peculiar situation like the present one, there is no except to promote the petitioner as Naib Subedar from 1st April, 1988. The petitioner shall not use any derogatory language in his representation.

This judgment has been followed by the co-ordinate benches of this Tribunal.

“9. On the other hand, the stand of the respondents is that the petitioner was not eligible for promotion to the rank of Subedar as he had not passed the Junior Leader Proficiency Test (JLPT) Course and he did not have the requisite ACRs for promotion to the said rank as per the existing promotion policy. Learned counsel for the respondents has placed on record a judgment of the Hon’ble Delhi High Court in W.P(C) No. 2221/2012 titled as Naib Subedar Vijay Bahadur Singh. Vs. U.O.I & Ors. decided on 12.09.2014, wherein the Hon’ble High Court had held as under:

“.....However, we cannot stretch the expression ‘consequential benefits’ to mean the grant of all further promotions and consequent extensions in the service of the petitioner as per the tenure of higher ranks.”

“10. The orders of the Tribunal in granting promotion on the basis of directions issued and consequential benefits would have been construed to mean that the petitioner would be entitled to promotion with all the consequential benefits including promotion, even if the petitioner did not fulfill the requisite Q.Rs. However, the Hon’ble High Court has ruled otherwise. It clearly states that the promotional benefits cannot be granted as a matter of course unless the petitioner satisfies the QRs required for promotion. Admittedly, Q.Rs of the petitioner in the present case does not meet the requirement of having obtained three years ACRs.

This condition cannot be waived as it applies across the board. Mere fact that the petitioner could not have obtained the requisite QRs as he was facing disciplinary proceedings, cannot become a ground for implied relaxation. We are, therefore, in agreement with the judgment of Division Bench of the Hon'ble Delhi High Court. “

As can be seen from the aforesaid the learned Bench has taken note of the issue and in Para 10 it has been clearly laid down that if the delinquent employee does not fulfill the requisite QR criteria to be considered for promotion and he has not obtained the ACR for the relevant year as required under the promotion rule, he cannot be granted promotion. Similar situation prevails in the present case.

13. After his dismissal from service based on the conviction in the Court Martial till his reinstatement by the order in question on 28.05.2025, the applicant had not discharged his duties, he had not earned his CRs and other QR criteria required for promotion to various posts from the post of Wg Cdr to be promoted as Gp Capt, thereafter, as an Air Commodore, Air Vice Marshal and then as a Air Marshal. Admittedly, he had not earned his ACRs and other QR criteria required by discharging duties in all these posts and, therefore, applying the principle of law as laid down in the case of Yatinder(supra) which is based on a judgment of the Hon'ble Delhi High Court as detailed in Para 9 of the said judgment, we see no reason to make any indulgence into the matter.

14. In view of the above, we are of the considered view that the benefit granted to the applicant in accordance with the directions issued by this Tribunal in the transferred appeal has already been implemented. Nothing further can now be granted to the applicant by way of treating him as having retired on promotion in the rank of Air Marshal. The reliefs claimed in the application before this Tribunal in our considered view are misconceived and untenable.

15. The application is therefore dismissed.

**[JUSTICE RAJENDRA MENON]
CHAIRPERSON**

**[LT. GEN. C. P. MOHANTY]
MEMBER (A)**

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