

**COURT NO. 3,
ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
O.A. No. 15 of 2009**

IN THE MATTER OF:

Sub Daya Ram**Applicant**
Through Maj (Retd) K Ramesh, counsel for the applicant

Versus

Union of India and Others**Respondents**
Through: Col (Retd) R Balasubramanian, counsel for the respondents

CORAM:

**HON'BLE MR JUSTICE MANAK MOHTA, JUDICIAL MEMBER
HON'BLE LT GEN Z.U. SHAH, ADMINISTRATIVE MEMBER**

JUDGMENT

Date: 26/08/2010

1. The applicant has submitted O.A No 15/2009 with the Armed Forces Tribunal praying that Bengal Engineer Group (BEG) Records, Roorkee letter dated 18/03/2009 ordering his discharge be quashed. He has also prayed that the results of his DPC be examined and the deduction of 3 marks for disciplinary awards be cancelled and he be promoted to Subedar Major with ante date seniority with all consequential benefits.

2. The applicant was enrolled in the Army on 19/08/1981. He was initially discharge on 31/07/2008 because he was low medical category. The applicant was reinstated in the Army on 11/02/2009 in pursuant to

Hon'ble Delhi High Court judgement given in Putan Lal Vs Union of India ruling of 20/11/2008 dealing with reinstatement of low medical category personnel being discharged without holding Invaliding Medical Board. The applicant superannuated on 31/08/2009 on completion of his normal terms of engagement.

3. The applicant contends that he was not promoted as Subedar Major because Departmental Promotion Committee (DPC) held in 2007 did not give him credit marks for his service in modified field service area at Jaisalmer from 19/04/2004 to 10/05/2007. The applicant asserts that he brought this fact to the notice of higher authorities vide his application dated 08/12/2007 (Annexure A-1). He was not given any relief and BEG, Records replied that DPC had already been completed on 05/11/2007 but he would be given due credit in the DPC scheduled in 11/2008 (Annexure A-2).

4. The applicant has stated that in the Special DPC held in 2009 after this re-instatement, he was given credit for his service in modified field area at Jaisalmer but the DPC also deducted 3 marks for punishment of "**severe reprimand**" awarded to him in 1988, for loss of identity card, while he was holding the rank of Havildar. The applicant maintains that this punishment which was awarded 21 years ago should not have been taken note of and on this account 3 marks should not have been deducted. **He has prayed that the special DPC should not have deducted 3 marks for this disciplinary award and he should be**

promoted Subedar Major with ante date seniority with all consequential benefits.

5. The respondents in the reply have stated that the applicant was low medical category P-2 (permanent) from 24/12/2006 to 24/12/2008 and was discharged from the Army on 31/03/2008. He was however reinstated on 11/02/2009. He superannuated on 31/08/2009 on completion of normal terms of engagement.

6. The respondents maintain that the applicant was first considered for promotion to Subedar Major by DPC of 2007. Prior to the DPC, the Data Sheet indicating his record of service was sent to the unit of the applicant for checking and verification. The Data Sheet did not reflect the applicant's service in modified field area (Jaisalmer). The applicant himself validated the Data Sheet by signing on the same without challenging its authenticity. The omission thus was not corrected prior to the DPC. The applicant only represented about not being given credit for service in modified field area (Jaisalmer) after conclusion of the DPC. The respondents maintain that the applicant was not approved for promotion to Subedar Major because he was low in merit.

7. The respondents further aver that the special DPC was held in 2009 where the applicant was given credit for service in modified field area (Jaisalmer) but still figured low in the merit primarily because of deduction of 3 marks from his overall total because of a disciplinary

award he earned while holding the rank of Havildar. The criteria for promotion from Subedar to Subedar Major vide Army HQ letter dated 10/10/1997 (Annexure R-1) laid down the marks to be deducted by the DPC if a disciplinary award was made any time in service. In this case the applicant was awarded a disciplinary award in the rank of Havildar and 3 marks were deducted.

8. The respondents aver that the applicant was considered for grant of Honorary Commission on the occasion of Independence Day 2009 but again was low in the merit. The respondents maintain that the applicant had not preferred any statutory complaint and had directly approached the tribunal. They have recommended that the application be dismissed.

9. We have heard the arguments and perused the records including DPC proceedings. Army HQ policy of promotion from Sub to Sub Maj dated 10/10/1997 (Annexure R-1) has ruled the following deduction of marks:-

- (a) Disciplinary awards in the rank of JCO - Permanently debarred from promotion.
- (b) Disciplinary awards in the rank of Havildar - 03 Marks.
- (c) Disciplinary awards in the rank of Naik - 02 Marks.
- (d) Disciplinary awards in the rank of Lance Naik - 01 Mark.

The deduction of 3 marks by the DPC are therefore justified as per provisions of said policy (Annexure R-1) and cannot be held illegal or perverse. The contention raised in this respect is not sustainable.

10. The applicant was not given credit for service in modified field area (Jaisalmer) by the first DPC in 2007. He was awarded 2.79 marks out of maximum 5 marks provided in the policy. The applicant was himself partially to blame for not checking the Data Sheet sent to him, for authentication, before the DPC was held. Be that as it may, in case he had got additional marks **(4.75-2.79) = 1.96** (which he got in special DPC) his total would have been **84.77 + 1.96 = 86.73** which still remains below the marks of the last person promoted (**87.47** marks) in DPC held in Nov 2007. Therefore he was not entitled to be promoted and he has not been prejudiced in any way.

11. In the special DPC held in 2009 the applicant was given due credit for his service in modified field area (Jaisalmer) and obtained a total of 4.75 marks out of maximum 5 marks for the same. His grand total was 85.59 marks which were still below 87.32 marks obtained by the last person promoted. The applicant therefore was low in the merit in both DPCs and was not promoted. The deciding factor was the deduction of 3 marks for the disciplinary award he earned in the rank of Havildar. This deduction was as per laid down procedure and it does not warrant inference.

12. Having examined the results of DPCs, in detail, we find no injustice has been done to the applicant. The applicant was also considered for grant of Subedar Major and honorary rank and was not promoted because of being low in merit. The application is dismissed. No costs.

Z.U.SHAH
(Administrative Member)

MANAK MOHTA
(Judicial Member)

Announced in the open court
Dated: 26/08/2010