COURT NO. 3,
ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

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T.A. No. 163 OF 2009
(Delhi High Court W.P (C) No. 291 of 1996)

IN THE MATTER OF:

Sub Keshar Singh **.....Applicant**
Through Col (Retd) G.K. Sharma and Mr. Rajeev Sharma, counsel for the applicant

Versus

The Union of India and others **.....Respondents**
Through: Dr. Ashwani Bhardwaj, counsel for respondents

CORAM :

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

Order
Dated of Order: 2-2-2010

1. The applicant has filed a Writ Petition (Civil) number 291 of 1996 before the Hon'ble Delhi High Court. On creation of tribunal under the Armed Forces

Tribunal Act 2007 the same has been transferred to Tribunal on 25.8.2009. The salient points of the applicant are examined in subsequent paragraphs.

2. The applicant was enrolled in the Corps of Engineers as Sapper Clerk (general duties) on 6.10.1967. He was promoted to Naib Subedar on 5.6.1986 and posted to Defence Research & Development Orgainsation (DRDO) Dehradun on 26.2.1990. He was promoted to the rank of Subedar / Clerk (GD) on 26.8.1991. The applicant subsequently reported on posting to Commander Works Engineer (Army) Jodhpur on 12.7.1993.

3. The applicant was informed by records, Bengal Engineer Group, Roorkee, letter NO. A6/4602-1/101/R dated 29.4.1995 (**Annexure P-1**) that his promotion had been deferred by Departmental Promotion Committee (DCP) held in December 1994 for "Want of one Regimental / Instructional Duty Report". It was submitted that the applicant would have been promoted to the rank of Subedar Major on 1.5.1995, if his case was not deferred.

4. The applicant contends that he earned one more regimental ACR on 1.6.1995 and therefore submitted an application on 10.7.1995 (**Annexure P-3**) to OIC Records that as he was due to retire on 31.10.1995 a special DPC be held to consider him for promotion. He also brought out that he was deficient of one regimental ACR because the organistion had posted him to DRDO,

Dehradun from 26.2.1990 to 11.7.1993 thus he could not be blamed for that. It was stated that OIC Records should have posted him out of DRDO well in time to earn the additional regimental ACR. Despite his plea the special DPC to consider the applicant was not held and he retired on 31.10.1995 (**Annexure P-6**). Feeling aggrieved by the non promotion and alleged discrimination the applicant submitted statutory complaint on 11.8.1995 (**Annexure P-7**). It is stated that on 18.10.1995 he sent a telegram (**Annexure P-10**) to enquire about the progress of statutory complaint but received no reply.

5. The applicant had at initial stage prayed that his retirement order be quashed, he be promoted to the rank of Subedar Major from 1.5.1995 with all consequential benefits and be reinstated in service with effect from his date of retirement ie. 31.10.1995. It is further revealed from the record that during the pendency of petition consequent to the earlier statutory complaint filed by the applicant, the COAS accorded redress to the applicant and a special DPC approved his case for promotion to the rank of subedar major. The applicant was subsequently reinstated in service on 26 Jul 1996. He was promoted Subedar Major wef. 7.8.1996 with notional seniority from 1.5.1995. The petitioner had submitted certificate that he had not been employed during his break in service. No payment and other consequential benefits were given despite his demand. It was however clarified by Records Office BEG, Roorkee that the period from 1.11.1995 (date when applicant was initially retired) till

6.8.1996 (that is the date he was promoted Subedar Major) would be treated as extra ordinary leave with no retrospective effect on pay and allowances.

6. The applicant has now in his additional affidavit prayed that the intervening period 1.11.1995 to 25.7.1996, be regularised and he be treated as if he continued to be in service during the said period. It was also prayed that the petitioner was eligible for promotion to subedar major wef. 1.5.1995 and should be paid pay and allowances in that rank wef. 1.5.1995 and not from 6.8.1996 when he was actually picked up rank of subedar major.

7. The respondents in their reply have brought out that the applicant was short of one ACR because of his own fault as he had been posted out from DRDO (Dehradun) to Commander Works Engineer (Army) Jodhpur vide record office Bengal Engineer Group letter No. A5/75571/259/R dated 3.3.1993. The applicant failed to join his new unit in time and reported on 12.7.1993. Had he moved during March 1993 he would have earned a delayed regimental ACR. It was submitted that special DPC could not be held in view of Army Headquarter policy letter No. B/33515/AG/PS 2(c), dated 18.1.1993, ruling that deferred cases would be reviewed by the next DPC due in November /December 1995. The applicant's case was deferred since he did not meet the criteria of having minimum two reports in regimental instructional appointments. The ACR earned by the applicant, while serving with DRDO (Dehradun), cannot be taken

as regimental ACR. It was also stated that DPCs are held once a year in November/ December and not to meet individual requirements. 46

8. We have perused the records and heard the arguments. The learned counsel for the applicant reiterated the grounds stated in pleading and submitted that although the applicant had retired his claim for the intervening period from 1.11.1995 to 25.7.1996 still remained. He was not promoted in time along with his batch due to lacking of one ACR but for that he cannot be blamed therefore his case was deferred. Later he was promoted and is notional seniority was maintained from 1.5.1995. He was not however awarded consequential benefits. He has thus been deprived from this legitimate rights. The action of the govt is arbitrary. He also placed reliance on the judgment given by Division Bench of Hon'ble Punjab and Haryana High Court in the case of Ved Prakash Gupta Vs. State of Haryana (SCR) 1999 (4) 474. Again he prayed that he be declared promoted from the date when his junior were promoted with consequential benefits. Learned counsel appearing on behalf of the respondent refuted and submitted the contentions that as he was promoted on a later date he was thus not entitled to get pay scale during intervening period. His seniority has however been in fact maintained.

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9. We have considered the rival submissions and have gone through the record of case and have also perused the judgment cited by the applicant. The applicant was deficient of one regimental report since the organisation had posted him to DRDO (Dehradun) from 26.2.1990 to 11.7.1993. He could have been posted out earlier to earn the requisite report but this was not done by the organisation. He was belatedly posted out only in March 1993 by Records, Bengal Engineer Group and was expected to move in the same month to enable him to earn a delayed regimental report in his new unit ie. CWE Jodhpur. The organisation should have ensured that the applicant was placed in a regimental appointment well before March 1993. This was not done and the applicant suffered the consequences for that he cannot be blamed. Relief is thus warranted.

10. We have noted the relief given to the applicant. This relief should have also included the full consequential financial benefits at the time of reinstatement on redressal subsequent to his statutory complaint. As the applicant was not initially superseded and his case was deferred. He was subsequently promoted with back seniority. He has thus been deprived of his legitimate right. We therefore quash the order 27.5.1997 to the extent of non granting pay and allowances of the intervening period and direct that the applicant be deemed promoted subedar major with effect from the date next junior to him was promoted subedar major. He be given all consequential

financial benefits after adjusting whatever amount he has been paid by way of pension etc during the intervening period as if there had been no break in his service. Application is allowed accordingly. No order as to costs.

MANAK MOHTA
(Judicial Member)

Z.U. SHAH
(Administrative Member)

Announced in the open court
Dated: 2-2-2010