

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

**T.A. No. 172 of 2010
(Delhi High Court W.P (C) No. 3514 of 2005)**

IN THE MATTER OF:

Hav Anil Kumar Sharma

.....Applicant

Through : Mr C.M Khanna with Mr C.P Singh counsel for the applicant

VERSUS

Union of India and Others

.....Respondents

Through: Mr Ankur Chhibber counsel for the respondents

CORAM:

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

JUDGMENT

Date: 02-07-2010

1. The applicant has filled WP (C) 3514/2005 in the Hon'ble Delhi High Court praying that he be reinstated in service and be promoted to the rank of Naib Subedar with all consequential benefits. The same was transferred to the AFT on 04/11/2009.

2. The date of birth of applicant is 05/03/61. He was enrolled in the Army on 29/05/1979 and was promoted Havildar on 01/02/94. He informed on 25/01/2005 that he had been awarded severe reprimand on 04/12/91 vide 6 Mountain Division Signal Regiment Part II order No 419/02/1991. The applicant avers that no entry of this punishment exists in his record. He however is apprehensive that some of his ACRs may also have been affected. No adverse remarks were however conveyed to him but he alleges that he has been denied promotion at the appropriate time.

3. The applicant submits that he was initially not nominated for senior NCOs course alongwith his batch mates. This is a mandatory course for promotion to Naib Subedar. Subsequently on being detailed for Senior NCOs Course the applicant submitted a non statutory complaint on 17/01/2005 stating that he would become over age for promotion on 05/03/2005. The applicant was not promoted and retired in the rank of Havildar on 31/05/2005.

4. The applicant has prayed that he be reinstated in service and promoted to the rank of Naib Subedar with all consequential benefits.

5. In the counter affidavit the respondents has mentioned that the applicant was screened for senior NCOs course on 30/04/03. He was declared "**not yet fit as not fulfilling the ACR criteria**" since he had earned only "**average**" reports in ACRs for 1999 and 2000. The ACR criteria for detailment on Senior NCOs Course (Annexure R-1) is as under :-

- (a) Should have earned 04 ACRs in the rank of Havildar.
- (b) Out of the above minimum two must be Above Average and two High Average.
- (c) Must be recommended for promotion in all 04 ACRs.

6. The applicant was screened for the second time for the senior NCOs course on 05/02/2004 and again was not found fit as his ACRs for 1999 and 2000 was again taken into account. The ACR profile of the application was as follows :-

<u>Year</u>	<u>Overall Grading</u>	<u>Remarks</u>
1999	02 (Average)	Recommended
2000	02 (Average)	Recommended
2001	04 (Above Average)	Recommended
2002	09 (Outstanding)	Recommended
2003	09 (Outstanding)	Recommended
2004	08 (Above Average)	Recommended

7. In the third screening when the ACRs for 1999 and 2000 were excluded the applicant was found fit and detailed for Senior NCOs Course from Oct 04 to Dec 04. The respondents maintain that detailment on this course is not the sole criteria for promotion.

8. The applicant was considered for promotion by board held on 17 & 18 Dec 2004. He was declared "**not yet fit**" as he did not met the ACR criteria laid down in Army HQ letter dated 20/10/1987 (Annexure R-2). The criteria for selection for promotion to Naib Subedar are that last 05 ACRs in the rank of Havildar are to be considered. Out of these 03 must be Above Average and minimum two should be High Average.

9. The applicant's date of birth is 05/03/1961. He was enrolled on 29/05/1979. The retirement age as laid down in Ministry of Defence letter dated 03/09/98 (Annexure R-3) is 24 + 2 years of service /49 years of age whichever is earlier. The applicant retired in May 2005 on completion of 26 years service.

10. The respondents state that the applicant was awarded severe reprimand in 1991 but this had no bearing for promotion to the rank of Naib Subedar.

11. In the rejoinder affidavit by the applicant has stated that he was detailed for Senior NCOs Course for which only persons eligible for promotion are detailed. He further contends that no adverse remarks in his ACR were ever communicated to him. If there were any adverse remarks by IO/RO the same should have been communicated to him and he would have had an opportunity to represent. He was awarded severe reprimand in 1991 but the same was conveyed to him only in year 2005.

12. In reply to the rejoinder affidavit the respondents has stated that the applicant completed his extended service on 31/05/2005. He was granted redress on his non statutory complaint dated 15/09/2005 by GOC 16 Corps after his retirement on 31/05/2005. His ACRs for 1999 and 2000 was set aside by the redress.

13. We have heard the arguments and perused the records. The applicant has submitted non statutory complaint on 17/01/2004 well before his retirement. The redress was given after the retirement. In view of the fact that ACR for 1999 and 2000 had been set aside and the applicant met all the criteria for promotion to the rank of Naib Subedar wef 01/10/2004, we direct that he be considered afresh for promotion. If found to be fit he be granted the rank of

Naib Subedar wef 01/10/2004 with all consequential benefits including retirement benefits in the rank of Naib Subedar. Application partially allowed. No costs.

MANAK MOHTA
(Judicial Member)

Z.U. SHAH
(Administrative Member)

Announced in the open court
Dated: 02-07-2010