

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

T.A. No. 190 of 2010

W.P (C) No 5700 of 2005 of Delhi High Court

IN THE MATTER OF:

Subedar Arjun Singh

.....Applicant

Through Mr P.D.P Deo, Counsel for the applicant.

Versus

Union of India & Ors

.....Respondents

Through: Mr Anil Gautam, Counsel for the respondents.

CORAM:

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

JUDGMENT

Date: 01/12/2010

1. The applicant had filed WP(C) No 5700/2005 in Hon'ble Delhi High Court. It was transferred to this tribunal on 05/11/2009. The applicant has challenged the order of nonempanelment in DPC held in September, 2004 and prayed that the respondents be ordered to include his leave periods while giving him credit for periods served in field areas during consideration for promotion to Subedar Major (SM). The applicant has also prayed that the additional vacancy created by the death of Subedar Major (Clerk/GD) Jasbir Singh be taken into account while considering his case and after promotion to Subedar Major (SM) his seniority be restored and he be granted all consequential benefits.

2. The applicant was enrolled in the Army (SHGD in Ordnance) on 13/08/1974. He was promoted Havildar on 01/05/1984 and also qualified in Havildar to Naib Subedar Cadre. The applicant avers that his batchmates were promoted Naib Subedar on 01/11/1993. The applicant was awarded a "**severe reprimand**" on 05/01/1995. His promotion to Naib Subedar was thus delayed till 05/01/1996. This subsequently also adversely affected his promotion to rank of Subedar. The applicant states that his batchmates were promoted Subedar on 01/08/1998 whereas the applicant was promoted on 01/07/2000.

3. The applicant submitted a statutory complaint on 30/10/2001. The Chief of Army Staff quashed the punishment but did not restore his seniority. The applicant subsequently filed WP (C) 5086/2004 in the Hon'ble Delhi High Court which vide order dated 25/08/2004 ruled that review promotion board for his promotion to Naib Subedar be held (Annexure P-1).

4. The review promotion board held on 20/09/2004 restored his lost seniority of two years two months and five days and fixed his date of promotion to Naib Subedar as 01/11/1993 along with his batchmates.

5. The applicant avers that his batchmates were promoted to Subedar Major (SM) in Aug 2003. Subsequently the applicant avers that when he was considered for promotion to the rank of SM by DPC held on 20/09/2004 the period of his leave during service in field areas was deducted and he was not given credit for the leave period. The DPC also did not include the additional vacancy which occurred due to the death of Subedar major (Clerk/GD) Jasbir Singh on 15/09/2004. The applicant also states that he was not given three chances for consideration for promotion to Subedar Major.

6. The applicant avers that he was not promoted SM and retired from service on 01/09/2004. He states that he was granted the rank of Hony SM wef 01/09/2004 on Republic Day 2005.

7. In their counter affidavit the respondents have stated that the applicant, at the time of enrolment on 13/08/1974, produced school leaving certificate showing his date of birth as 20/12/1956. Subsequently in 1976 the applicant produced another civil education certificate showing his date of birth 12/01/1958. In view of suppression of facts the applicant was awarded a "severe reprimand" on 05/01/1985 under Army Act Section 63. On expiry of period of punishment (one year) the applicant was promoted Naib Subedar on 15/05/1996 with ante date seniority of 05/01/1996. The applicant was subsequently promoted Subedar on 01/07/2000.

8. Subsequent to his statutory representation the COAS quashed the award of "severe reprimand".

9. The applicant filed WP (C) 5086/2004 in Hon'ble Delhi High Court which ruled in his favour. This ruling had the affect of restoring his seniority to Naib Subedar as on 01/11/1993 and Subedar wef 01/08/1998.

10. The applicant was considered for promotion to the rank of Subedar Major on 20/09/2004 and not approved based on his overall profile and comparative merit within his batch.

11. The respondents state that for giving credit for service in field areas, the periods of absence, while on leave, are discounted. These periods are also discounted while admitting the monetary allowances vide Govt of India letter dated 13/01/1994 (Annexure L). DPCs for promotion to the rank of SM are held once a year for a 12 months cycle and the applicant was considered twice for

promotion to the rank of SM on 20/09/2004 alongwith data of his batchmates, whose DPC's were held in Nov 2002 and Nov 2003. The applicant therefore got two chances. He could not avail of the third chance as he had already retired from service on 31/08/2004. A supplementary DPC was held in Dec 2004 to cater for one unforeseen vacancy which occurred due to untimely death of Subedar Major (Clerk/GD) Jasbir Singh on 15/09/2004. The JCO was not considered because he had superannuated on 31/08/2004.

12. In a rejoinder to the counter affidavit the applicant had stated that there is no policy/letter which specifies that he could not get credit for leave period during field tenures. The applicant has also restated that an additional vacancy due to untimely death of Subedar Major (Clerk GD) Jasbir Singh arose on 15/09/2004. His DPC was held on 20/09/2004 and the advantage of an additional vacancy was not given to him.

13. We have heard the arguments and perused the record. The applicant got redressal from the COAS who set aside the award of "**severe reprimand**". The Hon'ble Delhi High Court in its order dated 25/08/2004 (Supra) granted him relief with the result that his promotion to the rank of Naib Subedar reckoned from 01/11/1993 alongwith his batchmates. Subsequently the applicant's seniority for promotion to Subedar was also restored to 01/08/1998. The applicant was also considered for promotion to the rank of Subedar Major on 20/09/2004 by supplementary DPC which considered his name in comparison with his batchmates who were considered in Nov 2002 and Nov 2003. Thus the applicant was given two chances. The applicant could not get a third chance in DPC held in December 2004 as he has already superannuated on 31/08/2004.

14. A perusal of the DPC reveals that the period of absence on leave, while serving in field areas was discounted across the board for all persons considered. The applicant has not been able to establish that he was entitled for credit of leave period during his field postings. He has not been able to show any discrimination against him. Thus no case is made out for reconsideration. We also find, after perusal of original records, that even if the applicant had got complete credit for his periods of absence of leave he would have got additional marks of 1.750 which when added to his total of 83.087 would make it a total of 84.837. This still remains below the cut off marks of last person promoted with 84.977 marks. The contention of the applicant is thus having no force.

15. The unforeseen vacancy due to the death of Subedar Major (Clerk/GD) Jasbir Singh occurred on 15/09/2004. The applicant could not be considered for this vacancy as he had already superannuated on 31/08/2004.

16. In view of the aforesaid discussion we find no injustice has been done to the applicant and no relief is warranted. Application is dismissed. No costs.

Z.U.SHAH
(Administrative Member)

MANAK MOHTA
(Judicial Member)

**Announced in the open Court
on the day of 01st December, 2010**