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

**T.A. No. 273 OF 2009
(Delhi High Court W.P (C) No. 7098 of 2009)**

IN THE MATTER OF:

Naib Subedar Bisraj Khan**Applicant**
Through Maj (Retd) K Ramesh, counsel for the applicant

Versus

The Union of India and others**Respondents**
Through: Mr. S.M. Zulifiqar Alam, counsel for respondents

CORAM :

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

Order

Judgment reserved on 3.2.2010

Dated of Order: 11-2-2010

1. The applicant filed this writ petition (c) No. 7098 of 2009 before the Hon'ble Delhi High Court for quashing order dated 23.2.2008 (**Annexure P-2**) by which he was discharged. Further

prayer was also made to direct the respondent authorities to promote him to the higher rank of Subedar as per letter of BEG Records dated 18.12.2008 (**Annexure P-5**). On creation of the Armed Forces Tribunal under the Act of 2007 the case was transferred to this Tribunal. A notice was issued to the respondents and reply was filed. At the request of the learned counsel for the parties and considering the facts of the case matter was heard and decided at the admission stage. The the relevant material facts of the application are narrated in paragraphs below.

2. The applicant was enrolled as a Sepoy on 17.2.1983. In the course of his service he was promoted as Naib Subedar. He was further due for promotion to the rank of subedar which would have given him two years extension of service. He was otherwise due for retirement on 28.2.2009. The allegation against the applicant was that he overstayed leave by 13 days. He was found guilty vide Section 39(b) of the Army Act and the commanding officer awarded the punishment of "**Severe Reprimand**" vide order dated 21.10.2005. General Officer Commanding 9 Corps found legal infirmity in the order and set aside the same "**Severe Reprimand**" and ordered administrative action. A show cause notice was issued vide letter

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dated 4.11.2008 under Section 39 (b) of Army Act (**Annexure P-3**).

The applicant preferred a reply to the show cause notice and the same was considered by General Officer Commanding 9 Corps who instead of "**Severe Reprimand**", awarded lesser punishment of "**Severe Displeasure (Recordable)**" on 2.12.2008 (**Annexure P-4**) that is after an intervening period of 3 years and 2 months.

3. It is further brought out from the record that the applicant has completed 26 years (24+2) of service and was informed of his impending retirement on 28.2.2009, vide letter dated 23.2.2008. It was submitted that the commencement of punishment of "**Severe Displeasure (Recordable)**" should have reckoned from 21.10.2005. It was also submitted that BEG, Records wrote on 18.12.2008 (**Annexure P-5**) that the lesser punishment, should have commenced from original date of punishment that is from 21.10.2005 and not from 2.12.2008. It was further indicated that the embargo on promotion of three years should have been completed by 20 October 2008 making the applicant eligible for promotion after that date. BEG Records maintained that he could be promoted to the rank of Subedar.

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4. It was submitted that no steps were taken despite favourable notes of BEG Records Office dated 18.12.2008 and Deputy Judge Advocate General, Headquarter Southern Command letter dated 7.2.2009 (**Annexure P-7**) and the applicant was discharged on 28.2.2009. He subsequently filed the present writ petition. Reply was filed by respondent where in mostly facts were admitted. It was not denied in reply that the affect of "**Severe Displeasure (Recordable)**" vide letter dated 2.12.2008 on the same charge, should be reckoned from the date of original punishment. A prayer was made to pass appropriate order.

5. We have heard arguments and perused the records. During the course of the arguments learned counsel for the applicant reiterated the grounds stated earlier and submitted that a person cannot be held guilty twice for the same offence. He drew our attention to original punishment of "**Severe Reprimand**" given on 21.10.2005. Later on the concerned authority after realising the legal infirmity was pleased to convert the "**Severe Reprimand**" to "**Severe Displeasure (Recordable)**" vide order dated 2.12.2008. The reviewing authority should have specified that the revised punishment was to be effective from 21.10.2005. If it was so specified the embargo on promotion for

three years that had been completed by October 2008 before his discharge on 28.2.2009 (AN) would be over. Thus the applicant would have been eligible for promotion to the rank of subedar before his discharge. A prayer was made to quash the impugned order of discharge and direction be given to the respondent to promote him to the rank of Subedar. We also heard the counsel for the respondent. After considering the submission and perusal of the record we are of the opinion that punishment of "**Severe Displeasure (Recordable)**" dated 2.12.2008 was given in place of punishment "**Severe Reprimand**" awarded by the commanding officer on the basis of some judicial infirmity at the level of concerned authority of respondent. The embargo on promotion in case of "**Severe Displeasure (Recordable)**" remains for three years and that period should have reckoned from the date of original award that is 21.10.2005 and not from date of 2.12.2008. BEG Records and the Deputy Judge Advocate General also gave favourable note in the applicant's favour. Thus the order of discharge is not sustainable and the applicant was entitled for promotion with all consequential benefits. On the basis of aforesaid discussion the application is allowed and the impugned order dated 23.2.2008 is quashed and the applicant is entitled for promotion to the next higher rank if he is

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found fit for promotion to the higher rank with all consequential benefits. Considering the facts of the case the exercise be done expeditiously and be completed preferably within a period of two months from the date of the order. No order as to costs.

MANAK MOHTA
(Judicial Member)

Z.U. SHAH
(Administrative Member)

Pronounced in the Open Court
Date: 11-2-2010