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

**T.A. No. 275 of 2009
(Delhi High Court W.P (C) No. 230 of 1997)**

IN THE MATTER OF:

Nb Sub Mohar Singh**Applicant**
Through Col (Retd) S. R. Kalkal counsel for the applicant

Versus

Union of India and Others**Respondents**
Through: Mr Anil Gautam counsel for the respondents

CORAM:

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

Order

Date: 01-6-2010

1. The applicant filed a writ petition (civil) No. 230 of 1997 in the Hon'ble Delhi High Court challenging the order of summary rejection of his request for grant of a regimental commission. The same was transferred to the Armed Forces Tribunal on 03.9.2009.

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2. The applicant was enrolled in the Army on 13/8/1974 and subsequently promoted as Havildar Major (Hav Maj) Technical (HMT) on 21 Jan 1989. In December 1992 the applicant applied for commission as a Regimental Commissioned Officer (RCO) against 1993 vacancies under Army Instructions 32/89.

3. The Government of India issued a policy on grant of Regimental Commission (RC) on 16/10/92. In December the applicant was interviewed by Service Selection Board (SSB) from 2/6/93 to 6/6/93. He was declared selected on 15/6/93 and his name was forwarded for final selection to be made by a board of officers at Army HQ vide letter dated 15/6/93 (Annexure -1). The RC officer's course commenced in September 1993 but the applicant was not called up. The applicant submitted a statutory complaint on 07/12/95. The same was rejected on 12/6/96 (Annexure -III).

4. The applicant contends that he has been deprived the opportunity of getting a regimental commission because of wrong interpretation of standard operating procedure (SOP) laid down for selection of RCOs. The SOP of 1984 as spelt out in Army Instructions (AI) 18 and AI -32 of 1989 (Annexure - V) lays down

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three phases of the selection process. In Phase I a preliminary selection will be carried out at Directorate General EME (Pers) based on annual confidential reports (60 marks), course reports (20 marks), educational and technical qualification (10 marks), honours and awards (05 marks) and sport achievements (05 marks). In Phase II selection will be done by SSB. This is the most crucial phase. Phase III would be done by Directorate General Recruiting which is responsible for preparing a merit list for final selection.

5. The laid down procedure was amended vide Army HQ letter No 8/51732/11/Rtg (Service Entry) dated 23/10/91 which clarified that the distribution of marks out of 1000 would be as follows :-

- | | | |
|-----|--|-------|
| (a) | SSB Interview | - 900 |
| (b) | Assessment of last five ACRs | - 50 |
| (c) | NCC certificates, Army Courses, Sports and Honours and Awards | - 50 |

The Directorate General of EME vide letter of 03/6/94 (Annexure VII) directed that out of total of 1000 marks 100 marks were being passed over to the Personnel Section who would award these marks according to service profile. This was applicable for selection from 1994 onwards.

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6. The applicant contends that he had applied for regimental commission in 1992 against 1993 quota of vacancies and his selection process should have been according to policy of AI 32 of 1989 and letter of 16/10/92 (Annexure IV). The amendment conferring power to an Army HQ Board to grant 100 marks in the final stage was illegal as no such sanction had been given for this procedure vide AI - 32 of 1989 (Annexure V). The duty of board at Army HQ was merely to compile the merit list and they had no power to award marks out of 100. The applicant contends that once a candidate has cleared the SSB his name would be considered for grant of RC according to the selection rate and vacancies available.

7. The applicant avers that in 1993 there were 23 vacancies of RCOs in EME. During the selection process both JCOs and NCOs were considered together. Since they were separate categories the right of equal opportunity was denied to him. The applicant states that the retirement age of RCOs had been increased from 48 to 50 years but the eligibility age bracket from 42 to 44 years has not been increased. This was gross injustice as he was denied an additional chance to appear since with the increase in age of retirement vacancies had been blocked. The applicant avers that in

1991 against a vacancy of 28, 37 RCOs were selected and all were Commissioned. In 1992 against a vacancy of 17, 22 RCOs were selected and commissioned. In 1993, however against a vacancy of 23, 31 were selected but only 23 were commissioned. As there is an acute shortage of officers the 31 who were selected should have been given a commission as done in previous two years. The applicant contends that the new policy of marks introduced wef 03/6/94 has been wrongly applied to selection of 93. In the earlier policy there was no allotment of marks by an Army HQ Board or requirement of an interview. He has thus been prejudiced thereby.

8. The applicant has prayed that he be granted Regimental Commission with the retrospective seniority and consequential benefits from the date given to his juniors and the respondents be directed to produce all records of procedure for preparation of merit list at Army HQ.

9. The respondents in their counter affidavit have stated that the applicant was enrolled on 13/8/1974 and promoted to Hav Maj Technical on 20/1/1989. The applicant applied for grant of RC

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against 1993 quota. He was subsequently interviewed by SSB and was recommended for grant of RC. He was also found medically fit.

10. A merit list of all candidates recommended by various selection boards was drawn by Army HQ for 23 vacancies in EME against 1993 quota. The individual stood at Serial No 26 of the merit list drawn on merit irrespective of rank, and was not considered for RC. Increasing the quota to grant commission to the applicant would be incorrect. No one junior to him in the merit list has been commissioned.

11. It was also contended that the applicant lodged a statutory complaint which was rejected by Army HQ. The issue has already been decided by a Division Bench of the Hon'ble Delhi High Court in CWP No 544/1995. Since the candidates came from service background their achievements in terms of ACR, honours/awards, professional courses are given due weightage to have a better overall profile of selected candidates. This was known to all candidates. The marks awarded by respective Directorates are totally transparent as they reflect the achievements of a candidate.

12. The respondents have stressed that procedure for selection of RCOs was applied as per laid down procedure under Army Rules

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and Instructions and recommended that the application be rejected.

13. In a rejoinder affidavit the respondents have stated that vacancies are directly proportional to the selection rate and it was wrong to state that there were only 23 vacancies. Since 31 candidates were selected there should be 31 vacancies as per the earlier practice. Four candidates junior to the applicant, including one with a disciplinary record were granted regimental commission. There cannot be award of arbitrary additional points while compiling the merit list. This manipulation was against the law. The award of marks out of 100 was to alter the merit list and was illegal and was implemented by EME Directorate General vide letter of 03/6/94 and was against declared policies.

14. We have heard the arguments and perused the records. It is brought out that there were 23 vacancies for 1993 quota. Vacancies are determined as per the requirement of the organisation. The applicant cannot claim that vacancies should have been increased to accommodate him. That was a matter for Army HQ to decide. On the basis of past procedure and practice the applicant could not claim selection as matter of right.

15. The applicant has not made out a case that his seniority has

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been affected due to new marking system though in the interest of justice we ascertained if the 26th position obtained by the applicant earlier would have changed on introduction of the new marking system. We however find that the applicant still stood at merit position No 26. There is therefore no justification to examine other contentions. The judgement cited by the applicant given in case of ***Havildar Clerk Hans Raj Sharma Vs Union of India CA No 2562/86 decided on 09/09/94 (1994 (4) SCALE 105)*** does not help his contentions as in that case selection was made on basis of earlier policy.

16. The merit list was drawn according to merit and both JCOs and NCOs were considered in the combined merit list. There is no substance in the application which is dismissed. No costs.

MANAK MOHTA
(Judicial Member)

Z.U.SHAH
(Administrative Member)

Announced in the open court
Dated: 01-6-2010