

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

**T.A. No. 279 of 2010
(Delhi High Court W.P (C) No. 567 of 2007)**

IN THE MATTER OF:

Nb Sub Vijay Bahadur Singh**Applicant**
Through Mr. C.P. Singh, counsel for the applicant

Versus

The Union of India and others**Respondents**
Through: Ms Barkha Babbar, counsel for respondents

CORAM :

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

Order

Date: 25-3-2010

1. The applicant had submitted writ petition (civil) No. 567 of 2007 in the Delhi High Court for quashing the order dated 30.6.2006 by which he was of discharged and praying for promotion to the rank of Subedar

with consequential relief. The same was transferred to the Armed Forces Tribunal on 10.11.2009.

2. The applicant was enrolled in the Army on 6.6.1978 and in due course of this service he was promoted to the rank of Havildar on 30.9.1992. After passing the promotion cadre in 1998 he became eligible for promotion to the rank of Naib Subedar. A junior was promoted before him on 1.6.2002. It was stated that he was graded average in the Annual Confidential Report (ACR) 2000 – 2001. This ACR was set aside on 24.1.2003 by higher authority. He was awarded “severe reprimand” in January 2003. That too was expunged on 25.8.2003 but he was not empanelled for the rank of Naib Subedar.

3. It is contended that respondent with malafide intention did not promote him and he was ordered to report to Mech Inf Regimental Centre, Ahmadnagar on 3.11.2003 and he was subsequently retired on 30.6.2006 (**Annexure P-3**). It is submitted that on 31.1.2004 he filed a statutory petition against his suppression but no decision has been conveyed to him. Thereafter he filed WP (C) No. 8198 of 2004 in the Hon’ble Delhi High Court. The respondents conceded and that they

would consider his case for promotion. He was promoted to Naib Subedar on 1.6.2006 in accordance with the Delhi High Court order dated 29.5.2006.

4. The respondents promoted him to Naib Subedar but did not promote him to the rank of Subedar to which he claims he was entitled to, on 1.6.2006 when a clear vacancy arose on that date. It was submitted that in case of promotion to the rank of Subedar it would allow him to serve for another two years and make him eligible for empanelment to the rank of Subedar Major (SM) which would again enable him to serve for an additional four years up to 2012.

5. The applicant contended that the respondents instead of promoting him, illegally discharged him locally on 30.6.2006. The applicant sent a legal notice dated 12.7.2006 (**Annexure P-4**) for the same relief. His representation dated 23.8.2006 was rejected and he was informed on 15.9.2006. The Respondents reply was that he was not promoted because he did not meet the ACR criteria and had not qualified on Junior Leader Proficiency Test (JLPT) vide letter dated 2.9.2006. He avers that he could not earn a CR in the rank of Naib Subedar because he was

illegally denied promotion and was also never detailed on the JLPT. The applicant has prayed that he be reinstated in service and promoted as Subedar with effect from 1.6.2006 with all consequential benefits and retirement order dated 30.6.2006 and respondents reply dated 15.9.2006 rejecting his representation be quashed and exemplary costs be awarded in favour of the applicant and against the respondents.

6. The respondents in their counter affidavit have submitted that the applicant was enrolled in the Army on 6.6.1978 and discharged after completion of his terms of engagement in the rank of Naib Subedar with effect from 30.6.2006 under Army Rule 13 (3) (1) (i) (a). It is further submitted that the applicant was promoted to the rank of Naib Subedar with effect from 14.6.2006 with ante date seniority from 1.6.2002 with pay and allowances in pursuance with Hon'ble Delhi High Court order dated 29.5.2006. He could not be promoted to the rank of Subedar due to lack of JLPT and ACR Criteria. Both the conditions were prerequisites for promotion in terms of Para 803 of Record Office Instruction (ROI) – 2004 (**Annexure R-1**) and Army Headquarter letter dated 14.3.2000 (**Annexure R-2**). The applicant was discharged locally on 30.6.2006 on completion of his terms of engagement in the rank of

Naib Subedar. The request of the applicant for promotion to Subedar is thus not tenable as he was not eligible for the same. It was submitted that the applicant was lacking ACR criteria for promotion to Subedar as he did not have minimum two ACRs in the rank of Naib Subedar.

7. It was further submitted that the ACR of the applicant for the period 1.10.2000 to 30.9.2001 was initiated on 30.11.2001 and set aside only on 24.1.2003. He was awarded “Severe Displeasure” on 3.1.2003. That was set aside on 25.8.2003. Thus he was ineligible for promotion to Naib Subedar with effect from 1.6.2002. The applicant became over age on 27.6.2002 for promotion to Naib Subedar. The applicant thereafter has been promoted to the rank of Naib Subedar and given all consequential benefits. The request of the applicant for further promotion to the rank of Subedar and his presumption that he could have been promoted to the rank of Subedar Major is illogical and should be rejected.

8. The applicant in rejoinder to the counter affidavit submitted that the respondents deliberately did not put him through the JLPT. Further if he had been promoted Naib Subedar on time he would have earned the

CRs necessary for promotion to Subedar. It was stated that this was due to fault of respondents and he should not suffer for the same.

9. The respondents had under taken before the Hon'ble High Court to grant him all consequential relief. They are now backing out from this undertaking. They have also not fixed his pay with effect from 1.6.2002 and increments thereafter. The applicant again prayed that the application be allowed.

10. We have perused the records and heard the arguments at length. During the course of argument learned counsel for the applicant again stressed that if the applicant would have promoted on time to the rank of Naib Subedar, he would have earned the requisite ACRs and also have been detailed for JLPT. These requirements should be overlooked. On the contrary the learned counsel for the respondent rebutted the contention and submitted that applicant was given all due benefits. He had not qualified for further promotion. The respondent authority cannot be blamed for any delay. Now the applicant is not entitled for any relief.

11. On the basis of the rival submissions the point for consideration is whether the applicant is entitled for promotion to the rank of Subedar with consequential benefit? The applicant, pursuant to the Delhi High

Court order was promoted to the rank of Naib Subedar with effect from 14.6.2006 with ante date seniority from 1.6.2002. He was to be paid all consequential pay and allowances with effect from 1.6.2002. If any dues remain he is entitled to it. The applicant completed his terms of engagement as Naib Subedar on 30.6.2006 in the rank of Naib Subedar and retired on that date. Further for promotion to the rank of subedar he required two ACRs in the rank of Naib Subedar as per mandatory rules was lacking in the same. JLPT is also mandatory under Para 803 of Record office Instruction 2004 reproduced below:

“803 For Promotion to the Rank of Subedar

- (a) Last three reports will be considered out of which at least two should be in the rank of Nb Sub and one may be in the rank of Hav, in case of shortfall.*
- (b) All these three reports should not be less than “High Average”.*
- (c) The individual should be recommended for promotion in all the three reports.*

(d) Passing of Junior Leader Proficiency Test from B Sub to Sub is Mandatory.

(Auth: - Army Headquarters letter No. A/16820/GS/MT-2 dated 14 Mar 2000)”

We have considered the contentions but the prerequisite mandatory requirement for promotion to the post of Subedar and Subedar Major cannot be ignored. Thus he was not entitled for further promotion. The applicant cannot claim promotion to the rank of Subedar and Subedar Major with consequential financial benefits since he did not meet the criteria for any further promotion beyond Naib Subedar. Application is dismissed. No costs.

**MANAK MOHTA
(Judicial Member)**

**Z.U. SHAH
(Administrative Member)**

**Announced in the open court
Dated: 25-3-2010**