

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT
NEW DELHI**

T.A. No. 437/2010

[WP(C) No.974/05 of Delhi High Court]

Ex Nb Sub Rattan Singh

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Sh.J.C. Malik, Advocate with Sh.Manohar Singh,
Advocate

For respondents: Sh.Mohan Kumar, Advocate with Ms.Rashmi
Singh, Advocate

CORAM:

**HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.
HON'BLE LT. GEN. M.L. NAIDU, MEMBER.**

**ORDER
23.03.2010**

1. The present petition has been transferred from
Hon'ble Delhi High Court to this Tribunal on its formation.

2. Petitioner by this petition has prayed to issue an
appropriate writ for payment of 4 years of pay as Naib Subedar to
him amounting to approximately Rs.5,76,000/- and award him due

benefits in his pension, commutation and gratuity, had he retired after serving for 4 years in the rank of Naib Subedar.

3. Brief facts which are necessary for the present petition are that petitioner joined the Indian Army on 11.08.1972 as a regular Soldier and in due course, he was promoted to the post of Lance Naik and Naik. He was promoted to the rank of Havaldar with effect from 01.09.1989. It is alleged that due to personal animosity on the part of Lt Col S.C. Basu, who was the initiating officer in respect of his confidential report, being the commanding officer, he spoiled the ACR of the petitioner for the year 1993 and as result of this, he was denied the promotion to the post of Naib Subedar as he was not found suitable. Aggrieved by this, he approached High Court by filing a writ petition bearing no.1857/1997 and Hon'ble Delhi High Court vide order dated 29.05.2001 allowed the petition and directed the Ministry of Defence to reconsider the case of the petitioner for promotion to the post of Naib Subedar. In compliance of this order passed by Hon'ble Delhi High Court, the respondents passed the order on 2nd May, 2002 and directed that on the recommendation of Review Departmental Promotion Committee, the petitioner is

promoted to the post of Naib Subedar and is given notional promotion from the date his juniors were promoted i.e. with effect from 01.06.1990 with all consequential benefits as would be entitled to him under the Rules. In pursuance of this, petitioner was paid Rs.1340/- i.e. difference of salary from the rank of Havaldar to the post of Naib Subedar from 01.01.1996 till his retirement i.e. 31.08.1996.

4. Petitioner has now filed this petition and submitted that as per the Defence Services Order 163, 1987 Edition, a JCO when is promoted to the post of Naib Subedar is entitled to continue up to 26 years of pensionable service or 50 years of age whichever is earlier. Petitioner was promoted to the post of Naib Subedar by the order dated 02nd May, 2002 with effect from 01.06.1996 when persons junior to him were promoted. In ordinary course, he would have continued for two years of service more. But the Authorities did not give him pay and allowance for the period of two years and paid him only the benefits from the date of order i.e. 01.01.1996 from the date of when persons junior to him were promoted till the date he deemed to have retired on 31.08.1996. Therefore, learned counsel for the petitioner

submitted that petitioner is entitled to at least 2 years of arrears of salary for the post of Naib Subedar because he has retired as Havaldar on completion of 24 years of service. Therefore, as per the Regulation 163, he was entitled to continue upto 26 years pensionable service and since respondents denied him this benefit, they should be directed to pay him the arrears of salary and other allowances pertaining to the post of Naib Subedar.

5. Secondly, learned counsel for petitioner submitted that even after promoting petitioner notionally to the post of Naib Subedar, he can be considered for promotion to the post of Subedar and in case he is not promoted as Subedar, he is entitled to further continue for a period of two years on the post of Naib Subedar as per the recommendations of Fifth Pay Commission. So far as this part is concerned, we have strong reservations because promotion to the post of Subedar is subject to selection by DPC and extension of two years is always discretion subject to the suitability of the candidates. Therefore, benefit of deemed promotion to the post of Subedar and further extension of two years on the post of Naib Subedar cannot be granted to him. However, he is entitled to pay and allowances for a period of two

years on the post of Naib Subedar because he has not been given the full benefits for the post of Naib Subedar i.e. 26 years service has not been counted and only 24 years service has been counted. Therefore, he is entitled to difference of salary for the post of Naib Subedar for period of two years and other benefits flowing therefrom. Accordingly, we direct all the consequential benefits and the arrears should be paid to the petitioner. This whole exercise should be done within 3 months from today.

6. Petition is accordingly allowed. No order as to costs.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
March 23, 2010.