

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

TA No. 549/2009

[W.P. (C) No.2967/1999 of Delhi High Court]

Wg Cdr Ambreesh Kumar Aggarwal

.....Petitioner

Versus

Union of India & Others

.....Respondents

For petitioner: Petitioner in person

For respondents: Ms.Jyoti Singh, Advocate

CORAM:

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

**ORDER
14.01.2010**

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

2. Petitioner by this writ petition has prayed that writ in
the nature of mandamus be issued directing the respondents to

restore to the petitioner, seniority in the rank of Wing Commander with effect from 17.09.1997 or not lower than that of his juniors promoted on 17.10.1997 onwards and respondents be also directed to restore to the petitioner his entitlement of pay and allowances to Wing Commander rank with effect from 17.09.1997 along with increments whenever due.

3. Petitioner after being graduate in Electronics & Communication Engineering from University of Roorkee joined the Indian Air Force as commissioned officer on 02.07.1979. He was promoted as Squadron Leader in the year 1989 and thereafter, he was posted vide posting order dated 14.07.1997 to Air Headquarters (Directorate of Value Engineering) as 'supernumerary' with effect from 08.09.1997. Thereafter, he was promoted to the post of Wing Commander by Selection Committee with effect from 02.11.1998 by the order dated 30.10.1998. The grievance of the petitioner in this petition is that he should be paid same salary of that of Wing Commander against which he was posted on transfer of acting Wing Commander M.R. Ahir in the Directorate of Value Engineering as

he worked against that post and secondly that he must be given seniority and other benefits following therefrom.

4. The respondents filed the reply wherein they have taken the position that petitioner is not entitled for any benefit while working as Wing Commander because his transfer order is very clear that he was posted on supernumerary post and therefore, his rank continues to be Squadron Leader and he may be worked against the post of Wing Commander. Hence, he is not entitled to any benefit being working as against the post of Wing Commander and salary thereof. Similarly, it has been pointed out that he was not selected in the earlier batch 1997 for the post of Wing Commander. Subsequently, in selection of 1998, he was selected to the post of Wing Commander and order passed on 30.10.1998 to work as acting Wing Commander with effect from 02.11.1998 and all the salary has been paid to him for that post.

5. We have bestowed our best of consideration to the submissions made by the petitioner in person and learned counsel for respondents.

6. The petitioner was working against the post of Wing Commander on transfer of Wing Commander M R Ahir but he was not working as Wing Commander or as Acting Wing Commander. He was posted against the post of supernumerary created in the Directorate of Value Engineering in the rank of Squadron Leader only. Therefore, he is not entitled to the benefits for the post of Wing Commander or even the benefits of rank of Acting Wing Commander. The expression 'supernumerary' defined in the Dictionary reads as under :-

"Supernumerary : *adj. additional to the normal or required number; extra. Noun (supernumeraries): 1. someone or something that is extra or surplus to requirements. 2. an actor who does not have a speaking part. Often shortened to SUPER (noun 3). 3. Someone who is not part of the regular staff, but who can be called on to work or serve, eg in the army or navy when necessary.*

Normally in the Indian Army, Air Force and Navy such arrangements are not new and a person from regular staff can be called to work or serve in the Army against the supernumerary

post. Therefore, petitioner's transfer order is very clear that he was made to work on the supernumerary post against the post of Wing Commander in his own rank of Squadron Leader. Therefore, no benefit flows therefrom either monetary or seniority. He will get the benefit for the post of Wing Commander when he was regularly selected i.e. with effect from 02.11.1998 by the order dated 30.10.1998. Since, he was not working as Acting Wing Commander, he is not entitled to any benefit flowing therefrom either monetary or otherwise. Since, he was working on supernumerary post, he cannot get any benefit of the rank against the post of Wing Commander. He has already been selected on the post of Wing Commander after regular selection by the order dated 30.10.1998. He got the benefit for the post of Wing Commander w.e.f. 02.11.1998. Consequently, we do not find any merit in the petition. Same is dismissed. No order as to costs.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
January 14, 2010.