

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

T.A. No. 610/2009

[W.P. (C) No. 904/2000 of Delhi High Court]

Sh.Amarjit Singh

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Sh.Amrit Pal Singh Dhaliwal, Advocate.

For respondents: Sh.Mohan Kumar, Advocate.

CORAM:

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

**ORDER
25.02.2010**

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 he should be given all promotions granted to those who were similarly placed till he would have superannuated in due course as a Subedar on 30.06.1994 and also prayed that his pay shall be calculated on that basis.

3. Brief facts which are relevant for the disposal of present writ petition are that petitioner joined Indian Army on 21.06.1966. He was directed to face District Court Martial on charges on 06.09.1986. Ultimately, DCM culminated on 07.11.1987 finding the petitioner guilty and sentenced him to be reduced to ranks and to suffer rigorous imprisonment for one month and fifteen days. This was challenged by the petitioner by filing a writ petition before the Hon'ble Guwahati High Court and the learned Single Judge dismissed the same. Aggrieved by this, he preferred an appeal before the Division Bench of Hon'ble Guwahati High Court and Division Bench vide order dated 28.08.1997 set aside the order of learned Single Judge and also set aside the Convening Order and thereby punishment also. As a result of this, petitioner stood cleared by the punishment imposed by the District Court Marital. Respondents also filed the SLP against the order of Division Bench of Hon'ble Guwahati High Court before the Hon'ble Supreme Court and same was dismissed. Meanwhile, petitioner was retired on 30.06.1988 on attaining the age of superannuation. He made a representation for grant of consequential relief as a result of order of Division

Bench of Hon'ble Guwahati High Court dated 28.08.1997 but without any result. The petitioner filed a writ petition before the Hon'ble Delhi High Court on 08.12.1998 wherein respondents informed the petitioner that since the matter is sub-judice, therefore, no relief can be granted to him. In view of this stand of respondents, the petitioner withdrew the writ petition in the hope that he would get all the reliefs which he desires from the respondents. Thereafter, respondents on 18.06.1999 sent a letter to petitioner informing him that in view of decision of Hon'ble Guwahati High Court his rank of Havaldar has been restored with effect from 07.11.1987 and arrears of pay and allowances amounting to Rs.1,805/- for the period from 07.11.1987 to 20.06.1988 have been remitted to him through money order and necessary corrigendum LPC-cum-Data sheet had also been forwarded to pension sanctioning authority during last month and as and when his pension is revised, he will be informed accordingly. Thereafter, some correspondences were made by the petitioner but without any result. Ultimately, petitioner filed the present writ petition before the Hon'ble Delhi High Court with aforesaid relief.

4. Respondents filed their reply and contested the matter and submitted that petitioner cannot be considered to the post of Naib Subedar because he has not fulfilled the qualification i.e. passing certain test and other necessary requirement for considering him for promotion to the post of Naib Subedar.

5. We have heard learned counsels for the parties and perused the record.

6. Since the petitioner's order of convening the District Court Martial and the punishment followed therefrom have been set aside and he has legitimate right to be restored back to his position as if convening order was not been passed. Learned counsel for petitioner further submitted that all the benefits which would legitimately have been given to the petitioner, should have been given to him. As against this it was submitted by the respondents that on 07th January, 1985, he was severely reprimanded and as a result of that he was not eligible to be considered for promotion for three years i.e. upto 06th January, 1988. Therefore, he could not have been considered for the post of Naib Subedar. But he submits that after the expiry of period of

3 years i.e. on 6th January, 1988, he was required to be considered for the promotion to the post of Naib Subedar/Subedar as from January to June, 1988 till the age of his superannuation as some of the persons junior to him were promoted to the rank of Naib Subedar. The grievance of the petitioner appears to be legitimate when a person who is junior to him promoted to the post of Naib Subedar and his period of three years punishment having been over and the order of District Court Martial has been set aside that means petitioner stood replaced in a position as if the District Court Martial does not stand in the way. Therefore, he is entitled to be promoted when persons junior to him have been promoted to the post of Naib Subedar. Respondents have pointed out that certain requirements had to be completed and he had to undergo certain tests. But he was already facing District Court Martial, he could not have been undergone all these training and he could not have been considered at that relevant time but when the order of District Court Martial has been set aside, he was retired. Meaning thereby petitioner stood without any punishment of District Court Martial in January, 1988 after completion of three years punishment. Then in that case if any person who is junior to him has been promoted to the post of Naib

Subedar then he has to be considered viz-a-viz those persons who are promoted to the post of Naib Subedar. Consequently, we allow the petition in part and direct that case of the petitioner should be considered for the post of Naib Subedar/Subedar viz-a-viz a person who was junior to him and who was promoted to the post of Naib Subedar from January, 1988 to 30th June, 1988 when he was superannuated from service. If he found to be suitable then consequential benefits therefrom shall be given to the petitioner.

7. The petition is allowed in part. No order as to costs.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
February 25, 2010.