

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

**T.A. No. 621 of 2009  
(Delhi High Court W.P (C) No. 640 of 2009)**

**IN THE MATTER OF:**

**Vijay Pal Singh** .....**Applicant**  
Through Mr. Duli Chand Malik, counsel for the applicant

Versus

**Union of India and Another** .....**Respondents**  
Through: Mr. Anil Gautam, counsel for respondents

**CORAM :**

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

**Order**

**Date: 6-4-2010**

1. The applicant filed a writ petition (civil) No. 640 of 2000 in the Hon'ble Delhi High Court for directions to promote him in the rank of subedar major as per order of promotion dated 3.1.1996 with all

consequential benefits. The same was transferred to the Armed Forces Tribunal.

2. The applicant whose date of birth is 11.1.1950 and he was enrolled as a sepoy in the Army on 3.5.1968. He was holding the rank of Subedar. He was promoted with effect from 1.2.1996 to the rank of Subedar Major vide EME Records letter dated 3.1.1996 (**Annexure P-1**) but that order was not implemented due to his involvement in criminal case. He further contends that he would also have two chances for consideration for honorary commission on 26.1.1995 and 26.1.1996 had he not been involved in a criminal case. The applicant claims he was falsely implicated in a murder case while he was in his village on vacation by the police under Section 302 read with Section 34 IPC.

3. He submitted that as the order could not be implemented therefore the order for promotion was cancelled vide letter dated 23.1.1996 (**Annexure IV**). The applicant contends that had he promoted it would have enabled him to serve for another four years. The applicant retired on 31.5.1996 after completing 28 years of

service in the rank of subedar but was deprived of the benefit of promotion and grant of honorary commission.

4. The applicant submitted that on 2.11.1999 he was acquitted of the criminal charges and he petitioned the Army authority on 5.11.1999 (**Annexure V**) to reinstate him on promotion as Subedar Major from the date of joining. No reply was received from respondents side. The applicant has prayed that he be reinstated into the Army and be promoted as Subedar Major as per his promotion order with all consequential benefits and he be also granted honorary commission.

5. The respondents in their counter affidavit have confirmed that the orders for promotion of the applicant, with effect from 1.2.1996, were issued on 3.1.1996 but could not be implemented as the applicant was involved in a criminal case. The orders for promotion were cancelled on 23.1.1996. Thereafter the applicant superannuated from service on completion of 28 years service on 31.5.1996 and granted pension of the rank of Subedar. The cases for grant of

honorary commission, on two occasions, were also withdrawn because of the applicant's involvement in a criminal case.

6. Subsequently the applicant was acquitted of the charges in the criminal case but no intimation about the same was received. The representation for reinstatement dated 5.11.1999 (**Annexure V**) was also never received. The applicant is not entitled to any relief and the respondents have recommended that the application be dismissed.

7. We have heard the arguments and perused the records. During the course of argument learned counsel for the applicant urged that as the applicant had been acquitted by the court vide judgment dated 2.11.1999 (**Annexure-III**). Therefore, he was entitled for promotion and other benefits as he was already approved for promotion to subedar major vide order 3.1.1996 (**Annexure-I**) with effect from 1.2.1996. His promotion order was not implemented due to pending criminal case, but later on that was found false and he was acquitted. The learned counsel of the applicant also cited judgment given in case of *Capt M Paul Anthony Vs Bharat Gold Mines Ltd (AIR 1999 SC 1416)* in support of his contentions. He prayed that applicant be

granted relief claimed. On the contrary learned counsel appearing on behalf of respondent rebutted the contention and submitted that the appellant was retired on superannuation in the rank of subedar on 31.5.1996 before his acquittal on 2.11.1999. Therefore he was not entitled for any relief.

8. We have considered the rival submissions and perused the judgment cited by the applicant. In that judgment the petitioner was dismissed on the allegations made against him but in this case the applicant had been retired on attaining age of superannuation on 31.5.1996 as subedar. This judgment therefore does not help the applicant's contentions. From perusal of record it is revealed that the applicant was denied promotion due to his involvement in a criminal case. He was retired on superannuation in the rank of Subedar on 31.5.1996. He was acquitted on 2.11.1999 therefore he deserves notional promotion to the rank of subedar major from 1.2.1996 ignoring his revocation order. Further considering the facts of the case he is not entitled for pay and allowances of that period in the rank of subedar major. We therefore grant partial redress and direct that he be granted notional promotion as subedar major with effect from

1.2.1996 with pensionary benefit in that rank except the grant of honorary commission since his name was withdrawn and never considered. The application is partly accepted accordingly. No order as to costs.

**MANAK MOHTA**  
**(Judicial Member)**

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

**Announced in the open court**  
**Dated: 6-4-2010**