

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

**T.A. No. 643 of 2009
(Delhi High Court W.P (C) No. 14174 of 2006)**

IN THE MATTER OF:

Hav /X-ray Parhlad Singh**Applicant**
Through Mr C.M. Khanna, counsel for the applicant

Versus

The Chief of Army Staff & 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: 22-4-2010

1. The applicant filed a writ petition (civil) No. 14174 of 2006 in the Hon'ble Delhi High Court against his suppression to the rank of Naib

Subedar (Nb Sub) vide order dated 8.3.2004 (Annexure P-1) and for quashing the order dated 9.5.2006 (Annexure P-7) rejecting his statutory complaint. He also made prayer to direct the respondents to promote him to the rank of Naib Subedar. The same was transferred to the Armed Forces Tribunal on 25.9.2009.

2. The applicant, born on 10.6.1961, was enrolled in the Army on 18.2.1983. He has filed this petition against his suppression to the rank of Naib Subedar (Nb Sub). The applicant contends that during the period 1.10.1998 to 31.9.1999 he served with 403 Fd Amb and earned one “regimental” annual confidential report (ACR). Subsequently he was posted to Institute of Nuclear Medicine & Applied Sciences (INMAS), Delhi from October 1999 to November 2003 during which period he earned four ACRs which have been considered “non regimental” ACRs by the respondents.

3. A departmental promotion committee (DPC) was held in November/ December 2003 where he was informed on 8.3.2004 (Annexure P-1) that he had not been approved for promotion against a

vacancy on 1.4.2004 because he lacked one additional regimental ACR. The applicant applied on 20.4.2004 for relaxation of short fall of additional regimental ACR. The applicant contends that the four reports he earned in INMAS were wrongly considered as “non regimental” since same reports earned by Hav Surendran P and Hav Satyapalan, while serving in INMAS, were treated as regimental ACRs. Subsequently the applicant was posted on 15.9.2002 to a unit where he could earn a regimental report in year 2003 but the posting order was not implemented till 26.11.2003. The respondents, belatedly, in November 2004 waived off the requirement of one additional regimental ACR. The applicant maintains that on receipt of the waiver he should have been considered for promotion and granted the rank of Nb Sub with effect from 1.4.2004.

4. The applicant avers that on 6.9.2004 the applicant was downgraded to medical category S3 and was not considered for promotion. The applicant maintains that he should have been considered for promotion despite being in low medical category and given promotion with effect from 1.4.2004. On 10.6.2005 the applicant was intimated that he had become overage for promotion as he had crossed

the upper age limit of 44 years on 10.6.2005. The applicant maintains that he had been upgraded to medical category S-1 on 8.8.2005 and therefore he was entitled for promotion on 8.8.2005 with seniority with effect from 1.4.2004 the day when the vacancy existed. He has quoted Para 14 Army Headquarter letter dated 10.10.1997 which reads as follows

“14. Medical Criteria: Medical criteria for all ranks will be applied at the time of physical promotion only. A person in low medical category will be screened by the DPC / Promotion Board and placed on the panel if he meets the prescribed promotion criteria. He will be promoted in his own terms if he meets the medical criteria at the time of physical promotion”.

5. The applicant maintains that the decision of the respondents not to consider reports earned in INMAS as non regimental is against Army Headquarters policy for promotion on 10.10.1997 (**Annexure P-2**). He also contends that on 1.4.2004 the original date of seniority, he has not completed the age of 44 years. That date should be taken in to consideration for promotion.

6. The applicant submitted a statutory complaint on 7.6.2005 requesting for promotion with effect from 1.4.2004 and also for waiving

the condition of upper age limit of 44 years if the physical promotion was granted. The applicant maintains that in his case the age criteria of 44 years be applicable with effect from 1.4.2004. The statutory complaint was rejected vide letter dated 9.5.2006 (**Annexure P-7**).

7. The applicant has requested that in case the age criteria is to be applied with effect from 8.8.2005, ie the date he was upgraded to S1, he may be granted relaxation of two months.

8. The applicant has prayed that the order dated 9.5.2006 rejecting his statutory complaint be quashed and he be granted promotion to the rank of Nb Sub with effect from 1.4.2004 and if necessary grant of relaxation of age criteria of two months.

9. The respondents in their counter affidavit have stated that the applicant was considered for promotion to the rank of Nb Sub against a vacancy of 1.4.2004. He was found ineligible for promotion because of short fall of one regimental ACR. The four reports the applicant had earned in INMAS, Delhi were ERE reports as per Army Order 1/2002/MP (**Annexure R-1**). The applicant had, vide application dated

20.4.2004, applied for waiver of one regimental ACR. This waiver was accorded by Additional DG PS on 9.11.2004 (Annexure R-3). The applicant was again considered for promotion for the first available vacancy arising on 7.11.2004 but was found medically ineligible as he had been placed in medical category S3 (T-24) with effect from 6.9.2004 (Alcohol Dependence Syndrome). By the time of his medical re-categorisation on 8.8.2005, where in he upgraded to SHAPE – 1 the applicant had crossed the age limit of 44 years on 10.6.2005. The applicant was thus superseded till his retirement vide letter dated 10.6.2005 (Annexure R-4). The respondents have stated a person downgraded to S3 can only be upgraded to S2 after observing him for six months provided the individual has shown complete abstinence from alcohol for another six months before he can be upgraded to category S-1. This is in accordance to AO 3/2001 (**Annexure R-9**). The applicant's statutory representation dated 7.6.2005 was rejected by Army Headquarter on 3.5.2006 (Annexure R-5).

10. The respondents maintain that in order to enable the applicant to earn another regimental ACR he had been posted out of INMAS on 15.10.2002 but the posting was implemented, only on 26.11.2003. with

the result that the applicant could not earn second regimental report for the year 2003. The applicant applied for waiver which was granted and he was again considered for an unforeseen vacancy on 7.11.2004 but was found ineligible as he had been placed in low medical category (S-3/T-24) “**Alcohol Dependence Syndrome**” with effect from 6.9.2004. This category is not acceptable medical category for promotion vide Army Headquarter letter dated 10.10.1997 as amended on 6.5.2002 (**Annexure P-5**). There is no provision to promote the applicant retrospectively with effect from 1.4.2006. The respondents have recommended that the application be dismissed.

11. The applicant in his rejoinder affidavit has stated that the respondents have not denied that the ACRs of Hav Surendran P and Hav Satyapalan, during their tenure at INMAS, were treated as regimental reports. Army Order 1/2000 which has been quoted to show that ACRs earned during tenure with INMAS are non regimental was to take effect from confidential reports due for initiation on 1.6.2002 and thereafter. Thus the confidential reports earned by him in the year 2000 and 2001 at INMAS should be treated as regimental CRs. The respondents have wrongly interpreted the policy as contained in annexure P-2 read with

annexure P-5 and considered him ineligible for consideration for promotion. The applicant, even in low medical category should have been considered for promotion and given actual promotion on attaining medical fitness.

12. We have perused the records and heard the arguments at length. The applicant could not be blamed for not earning a second regimental report because he was retained at INMAS for four years because of requirements of service. This was acknowledged by the Army by according him a waiver of the second regimental report. Due to this shortfall of one regimental ACR he has been deprived promotion with effect from 1.4.2004. The applicant was also denied consideration for promotion by a promotion board whilst he was a low medical category. We have also considered the request of the applicant for grant of two months relaxation in age criteria. There are no grounds for grant of such relaxation. We therefore grant partial redress and direct that the applicant be granted notional promotion and seniority with effect from 1.4.2004 including pensionary benefits in the rank of Naib Subedar because on 1.4.2004 he only lacked one regimental ACR, the requirement for which was subsequently waived. He was otherwise fully

qualified for promotion. Subsequently he was medically downgraded but when he was upgraded to SHAPE – 1 on 8.8.2005 he had become overage. Notional promotion is therefore justified. On the basis of aforesaid conclusion the application is partly allowed, and the applicant is entitled to get relief as granted. No orders as to costs.

MANAK MOHTA
(Judicial Member)

Z.U. SHAH
(Administrative Member)

Announced in the open court
Dated: 22-4-2010