

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

10.

O. A. No. 132 of 2010

Hav. Vishan Swarup

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Mr. D.S. Kauntae, Advocate.

For respondents: Mr. Rohit Pratap, proxy for Mr. Mohan Kumar,
Advocate with Maj. Alifa Akbar

CORAM:

HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.

HON'BLE LT. GEN. S.S. DHILLON, MEMBER.

ORDER
21.07.2011

1. The petitioner has challenged his entire ACRs for the period 2002 to 2007 and prayed to quash/expunge the adverse ACR for the year 2005 or 2006 or any other impugned ACR which has come in the way of petitioner's promotion to the next higher rank of Nb Subedar.
2. The petitioner was enrolled in the Army in Artillery Regiment on 02.11.1997. After having served in exemplary manner, the petitioner was promoted to the rank of Havildar w.e.f. 01.02.2003. Thereafter petitioner also passed Havildar to Nb Subedar promotion cadre in first attempt in September, 2005 in all subjects but that occurrence was not notified by the erstwhile Commanding Officer stating that necessary Part II order with regard to passing of Technical Trade Test Grade II (MT-2) is not found recorded in the service dossier of the petitioner for which the petitioner was not guilty.

3. It is alleged that as per practice and procedure prevailing in the Army, Havildar is only entitled to appear in the promotion cadre test for Havildar to Nb Subedar if he has fulfilled all the essential educational qualifications including departmental tests such as map reading as well as Technical Trade Test also popularly known in the Arty Regiment as MT-2. Petitioner's promotion to the rank of Havildar was already confirmed w.e.f 01.01.2003. This promotion could have been only confirmed by the authorities after ascertaining the aforesaid educational/departmental qualifications.

4. The petitioner was again asked to clear the test of MT-2 which was accordingly cleared in December, 2006 but the promotion cadre from Hav to Nb Subedar was illegally refused by the Commanding Officer 164 Medium Regiment without assigning any reason. That seriously affected his seniority along with other batch mates.

5. The petitioner was again compelled to appear in Hav to Nb Subedar Cadre Test which was also passed by him and subsequently on 21.11.2007, the petitioner's name was included by the unit promotion board for consideration of next higher promotion to the rank of Nb Subedar. But the petitioner was not promoted despite the fact that he appeared in the promotion cadre test twice and passed it successfully. The petitioner's grievance is that he has been wrongly superseded.

6. That on 26.08.2008, the petitioner again pressed this issue but later on it came to the knowledge of the petitioner that Major B.S. Mann was personally interested by creating an undue influence upon the unit promotion board taking undue interest to promote Hav Hira Lal of the his unit.

7. Thereafter on 02.06.2009 the petitioner filed a statutory complaint duly completed in all respects to the Chief of the Army Staff but no decision has been received by the petitioner. Hence the petitioner filed the present petition to which the reply has been filed by the respondents.

8. We have heard the arguments and summoned the original ACR record of the petitioner and found out the reason why he has been superseded from the post. After perusal of the ACRs, it appears that for the period from 2002 to 2006, he has been recorded as "High Average" and for the year 2007, he has been recorded as "Above Average". Again for the year 2008, he has been recorded as "High Average". For the promotion from the post of Hav to Nb Subedar, the requirement is three Above Average and two High Average. In the present case, the petitioner has failed to secure three Above Average, as such he could not make it for the post of Nb Subedar. After having seen the ACRs, we are satisfied that petitioner did not meet the necessary criteria i.e. three Above Average and two High Average for promotion from Hav to Nb Subedar, therefore, petitioner could not be promoted. We do not find any merit in the case, therefore, the petition stands dismissed with no order as to costs.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
July 21, 2011