

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

10.

O. A. No. 178 of 2011

Hav Mohammad Iqbal

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Sh. K. Ramesh, Advocate.

For respondents: Sh. J.S Yadav, Advocate

CORAM:

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

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

ORDER
17.10.2011

1. Petitioner by this petition has prayed that directions may be issued to the Respondents to waive the shortfall of one Regimental ACR and Petitioner may be considered by DPC by considering the previous ACR of 2004 for promotion to the rank of Naib Subedar in the light of Army HQ Policy Letter dated 27th February 2009 as recommended by the Unit and also in the light of the decision given by the Hon'ble Delhi High Court in the case of **RHM Rajinder Singh v. Union Of India**.

2. The brief facts which are necessary for disposal of this petition are that the Petitioner was enrolled as Sepoy on 13th September 1988 and during the service he got promoted to the rank of Naik on 1st February 2001 and Havildar on 1st October 2003. He was qualified for the post of Naib Subedar on 2nd May 2007 and ultimately he was promoted on 28th December 2010 as a Naib Subedar but his belated promotion has caused supersession. It is pointed out that Petitioner was posted from Unit 8 Grenadiers to Sainik Aramgarh, Delhi Station on 17th April 2005 and was

posted out back to the Unit on 19th June 2009 and due to serious medical condition of his wife he had to seek extension and on account of this he could not earn two Regimental ACRs. He submits that his previous Regimental ACR of 2004 may be taken into consideration as per the Army HQ Policy Letter.

3. A reply was filed by the Respondents and the Respondents have pointed out that according to the Army HQ Policy Letter dated 10th October 1997 the incumbent has to earn in last five years out of which minimum 3 reports must be in the rank of Havildar and in case of a shortfall rest may be in the post of Naik. Then it further says that "At least three out of last five reports should be 'Above Average' with a minimum of two in the rank of Dfr/Hav and remaining should be not less than 'High Average'. The individual must have a minimum of two reports Regimental Duty or as an instructor in an Army School Instructions, including IMA, NDA, OTA and ACC out of which at least one should be 'Above Average'. One of Regimental Reports should have been earned in the rank of Dfr/Hav and the individual should have been recommended promotion in all the five reports." In the present case the Petitioner had only one Regimental report out of five years. Thereafter he could not be promoted on 1st October 2009 when his case was considered along with his batch mates. But subsequently when he earned another Regimental report in 2010 that means he had two Regimental reports of 2009 and 2010 he was promoted on 28th December 2010.

4. Learned counsel for the Petitioner has submitted that in fact Petitioner could not go back to regiment and sought an extension of his stay in Delhi on account of the condition beyond his control that his wife was seriously ill as she had lost her

both kidneys and, therefore, on these compelling reasons he sought extension. Learned counsel for the Petitioner has invited our attention to the decision in the case of **RHM Rajinder Singh v. Union of India** (supra). It is true that it is a hard case that Petitioner could not obtain two Regimental reports on account of the reasons beyond his control and, therefore, we asked learned counsel for the Petitioner to show us any provision of law on which waiver could be made out. But no rule has been pointed out with regard to waiving of a report in the circumstances in which Petitioner was placed. However, learned counsel for the Petitioner tried to draw some inference from the decision of the Hon'ble Delhi High Court in **Rajinder Singh v. Union of India** (supra). In that case the Petitioner in fact could not obtain second Regimental report on account of the fact that the incumbent was transferred but he could not be relieved from his posting on account of the new incumbent not joining. Therefore he could not earn a minimum period of serving in that Regiment and the Regimental report was denied to him. In this case, the reason for not joining the Regiment in time and not obtaining Regimental reports was not within the scope of the Petitioner. It was on account of the authorities that they did not relieve the Petitioner and that was denied in obtaining Regimental report. Therefore in the case of **Rajinder Singh v. Union of India** (supra) the reason attributable was "government not implementing their own orders and the sufferer was the Petitioner." Therefore their Lordships have allowed the petition and directed that Petitioner cannot be held responsible if he had not been relieved earlier to obtain a Regimental report. But in the present case as Petitioner voluntarily sought the extension of his stay in Delhi and did not join his Regiment therefore the case of **Rajinder Singh v. Union of India** (supra) is distinguishable with the case of the Petitioner. However, the Petitioner has now been promoted in 2010. His Regiment

report of 2004 cannot be taken into consideration because the general rule is that last five ACRs should have been taken into consideration. If we permit waiver in the case like present one then it will be unnecessarily opening the flood gate. In this view of the matter, we are satisfied that the Petitioner could not be promoted along with his juniors on account of lack of one Regimental report. Consequently, we do not find any merit in this petition and the same is dismissed with no order as to costs.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
October 17, 2011
dn