IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

09.

O.A. No. 220 of 2011

Hav. Raghawandra Kumar Singh .....**Petitioner**

Versus

Union of India & Ors. .....**Respondents**

For petitioner: Mr. K. Ramesh, Advocate.
For respondents: Dr. S.P. Sharma, proxy for Dr. Ashwani Bhardwaj, Advocate.

CORAM:
HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.
HON'BLE LT. GEN. S.S.DHILLON, MEMBER.

ORDER
15.12.2011

1. Petitioner by this petition has prayed; that the order dated 31st January 2010 may be quashed and Respondents may be directed to promote the Petitioner to the rank of Naib Subedar immediately with ante date seniority of 14th March 2009 in accordance with Army Headquarters Policy Letter dated 10th October 1997 to meet the ends of equity, fairplay and justice.

2. Petitioner was enrolled in the Army on 7th June 1985. The promotion order in respect of Petitioner was issued on 26th March 2009 for promotion to the post of Naib Subedar with effect from 1st April 2009 but unfortunately the Petitioner was awarded a red ink entry of severe reprimand with 14 days pay fine on 14th march 2009. Based on this red ink entry as per para 3 (f) of Army HQ Promotion Policy Letter dated 10th October 1997 his promotion was deferred for one year implying that by 14th March 2010 the Petitioner could not be promoted however Commanding Officer of the Petitioner had been sent many official letters for his promotion but of without any avail. Therefore the

grievance of the Petitioner is that since he has been already selected by the Selection Committee and because of the unfortunate severe reprimand his promotion was deferred and by the time a period of one year is over he has become overage for promotion. Hence he has prayed that since he has already been approved for the promotion which was with effect from 1st April 2009 the promotion may be effectuated and in case Petitioner is overage this matter can be dealt with as per para 13 of the circular dated 10th October 1997 by relaxing his age.

3. A reply has been filed by the Respondents and the Respondents in their reply have pointed out that the Petitioner was awarded a red ink entry punishment before implementation of the promotion order and was not eligible for assumption of promotion as on 1st April 2009 and the promotion order was cancelled vide BEG Records letter dated 19th November 2009.

4. We have heard learned counsel for the parties and perused the record.

5. It is true that Petitioner was approved for promotion which was to be effective from 1st April 2009 but unfortunately because of one red ink entry his promotion was deferred and it was cancelled by the Respondents subsequently. Learned counsel for the Petitioner submitted that as per para 13 of the circular dated 19th November 2009 the Chief of the Army Staff has the power to relax the age criterion for promotion. For this, the Petitioner has to file a proper representation before the Chief of the Army Staff for relaxing the period of one year. It was true that Petitioner was selected but unfortunately because of one red ink entry he missed the bus. Be that as it

may, the fact remains that the so-called approval of the DPC does not give him a right to be promoted but that is only a inchoate right. However, it is a hard case and he can make a representation to the Chief of the Army Staff for relaxation and the Chief of the Army Staff may consider the matter sympathetically. However no relief can be given by this Court as the recommendation of the Selection Committee was only inchoate and it has been now cancelled.

6. Consequently, the petition is dismissed with no order as to costs.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
December 15, 2011
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