

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

O.A.No. 233 of 2010

Hav. (DMT) Paresh Deb Nath

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner : Ms. Archana proxy counsel for Mr. K. Ramesh, Advocate.

For respondents: Mr. R. Balasubramanian, Advocate.

CORAM:

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

HON'BLE LT. GEN. M.L. NAIDU, MEMBER.

ORDER

06.01.2011

1. Petitioner by way of this petition has prayed that a direction may be issued to the respondents to quash and set aside the AAD Records Letter dated 3rd March 2008 being violative of Army Order of May 2002 and AAD Letter dated 4th August 2009 being violative of para 44 of Army Order AO 1/2002/MP to meet the ends of equity, fairplay and justice. It is also prayed that a direction be issued to the respondents to call for petitioner's ACRs for the year 2007, 2008 and 2009 and if within the ambit of Army Order of May 2002, the applicant should be promoted and the same may be done with retrospective effect.

2. Petitioner was a Havildar who was selected and appointed as a Battery Havildar Major and because of his misunderstanding with the Commanding Officer that a lukewarm average report for the year 2003-2004 was given to the petitioner against which he filed a statutory complaint which was rejected by the Army H.Q. in 2009. The individual was superannuated on 31st August 2009. The contention of

the petitioner is that adverse average report was initiated without communication and it has no meaning and rationale being violative of para 44 of Army Order. It is submitted that as per the Army Order of 2002 if a person gets an average report then he would be kept under watch and if he earns an above average, he would be promoted. Therefore it is submitted that petitioner has average ACR otherwise his remaining ACRs for 2005 and 2006 and subsequent ACRs of 2007 and 2008 have been above average and he should be considered for the next promotion for the post of Nb. Subedar. The respondents have filed the ^{reply} report and they have pointed out that in 2004 ACR though it was average, it was communicated to the petitioner and they have placed on record the communication Annexure-2 dated 25th October 2004 which bears the signature of the petitioner. Normally for promotion 5 years' ACRs are taken into consideration and out of five, three has to be above average and two has to be higher than average. But unfortunately the petitioner's ACR during 2004 was average therefore he could not make up to the position of Nb. Subedar. In view of the reply filed by the respondents, we do not find any justification to interfere with the impugned order as petitioner was lacking by one ACR and he could not be promoted to the post of Nb. Subedar. Consequently, there is no merit in this petition and the same is dismissed with no order as to costs.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
January 6, 2011.