

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

15.

O.A. No. 345 of 2010

Ex. Hav. (DMT) Haripal Singh

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Sh. N. L. Bareja, Advocate.

For respondents: S/Sh. Ankur Chhibber, Advocate.

CORAM:

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

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

ORDER

06.09.2011

The petitioner, by this petition has prayed that the order dated 3.9.2009 whereby the petitioner's statutory complaint dated 20.6.2009 has been returned un-actioned and in pursuance thereof set aside the order dated 16.2.2009 under which the petitioner's non-statutory petition was rejected. He has also prayed that the respondents may be directed to set aside/quash the high average grading awarded by the RO in the assessment of petitioner's ACR for the year 2004 and 2005 and in pursuance thereof, issue appropriate instructions to the concerned authorities for promoting the petitioner to the rank of Naib Sub. w. e. f. the date when Havildar K. N. Pandey, his junior was promoted with all consequential benefits to include the seniority, pay and allowances and other service benefits as admissible to the rank of Naib Subedar.

2. The petitioner was enrolled in the Indian Army on 2.10.1982 in the Artillery and he rose to the rank of Naik in 1997 and Havildar in 2003. He was asked to give his option whether he is willing to continue for another two years period which he

declined in 2004. Subsequently he changed his mind and applied on 5.3.2006 for grant of two years' extension of his service. He was scheduled to retire on 31.10.2006. Therefore, he has prayed that he may be given two years' extension. Secondly, he has prayed that he should be promoted to the rank of Naib Subedar as against the Havildar K. N. Pandey, who was promoted on 12.8.2006. He has also submitted that his ACR for the period 2004-05 was written by IO who has given him above average in the ACRs for the year 2004 and 2005. However, the same had been down graded to high average by the RO for the reasons best known to him and Hav. K. N. Pandey was promoted to the rank of Naib Subedar for the vacancy of 2006. He has also prayed that his ACR should be expunged. Being aggrieved by his non promotion to the rank of Nb. Subedar as also non grant of two years' extension of service, the petitioner vide his application dated 18.8.2006 sought with his Brigade Commander on 19.8.2006, wherein the petitioner, apart from being informed about the rules and eligibility criteria for promotion, was also advised to submit a non-statutory complaint. In response to which, the petitioner was informed vide letter dated 6.9.2006 that since he was not meeting the CR criteria for promotion to the rank of Naib Subedar, the person junior to him was promoted to fulfil the vacancy. The petitioner submitted the statutory complaint on 7.9.2006 while he was still in service. Since the petitioner did not receive any communication on the outcome of his aforesaid complaint, he submitted an application dated 26.9.2006 requesting therein for interview with the Director General, AAD for redressal of his grievances, but to no avail. Being aggrieved, the petitioner approached the Hon'ble Delhi High Court and filed a writ petition bearing Writ Petition (Civil) No. 15906 of 2006 praying therein for setting aside expunging the low grading ACr for the year 2004 and 2005 and for directing the respondents to promote the

petitioner to the rank of Naib Subedar w. e. f. 12.8.2006, when Havildar K. N. Pandey, his junior was promoted as also for grant of extension of two years' service. Meanwhile the petitioner got retired on 31.10.2006 on superannuation. The above said petition was disposed of vide order dated 28.4.2008 wherein the respondents were directed to dispose of the non-statutory complaint within a maximum period of two months from the date of the order by a speaking order to be communicated to the petitioner and at the same time, the petitioner was given the liberty to initiate proceedings in accordance with law, in the event of the adverse orders. Thereafter, non-statutory complaint of the petitioner dated 7.9.2006 was rejected vide order dated 26.6.2008 and that too without a speaking order. Being aggrieved with this, the petitioner again approached the Hon'ble Delhi High Court and filed a Writ Petition (Civil) No. 8004/2008, which was allowed vide order dated 16.12.2008 and a mandamus was issued to the authorities to re-examine the matter by a different officer within a maximum period of three months from the date of the order. Accordingly, the said non-statutory complaint was examined but the same was also rejected vide order dated 16.2.2009. Being aggrieved, the petitioner challenged the said order dated 16.2.2009 by way of the statutory complaint dated 20.6.2009 and now the petitioner has approached this Tribunal.

3. The respondents have contested the matter and filed a reply. It is submitted that so far as grant of extension is concerned, the petitioner was asked to give his option in 1998 and he had given his unwillingness certificate for the same. It is further clarified that as per policy issued by Integrated HQ of Ministry of Defence (Army) vide letter no. B/33098/AG/PS 2(c) dated 21.9.1998 and dated 6.5.2003, the incumbents are required to give their option two years prior to their retirement and in case the option rendered by them shall be final, it cannot be changed subsequently.

Since the petitioner had declined for extension, his subsequent request for extension cannot be allowed as per the abovesaid two policy decisions.

4. We have seen the policy decision dated 21.9.1998 and Integrated HQ of Ministry of Defence order dated 6.5.2003. A detailed procedure has been laid down in the policy decision that the whole process has to start two years prior to the superannuation of an individual. In that, the petitioner declined to seek an extension and his second application after two years for extension was not processed as he had already declined by communication in the year 2004. It is clearly mentioned that once option given shall be final, his subsequent option will have no meaning. Since it is a settled policy which contemplates certain procedure and the petitioner himself is responsible for not getting extension because of his unwillingness. Thus, in this view of the matter, there is no ground to grant two years' extension to the petitioner.

5. Now coming to the question with regard to the ACR for the period 2004-05 is concerned, we have seen the ACRs of the petitioner prior to 2004-05 and we find that the incumbent used to get above average prior to 2004-05. He has been down graded from Above Average to High Average by the RO. We cannot go into the allegations as the RO who has reviewed his ACR during that period is not a party before us. However learned counsel for the petitioner modulated his arguments that his case has been considered for the vacancy of the period from December, 2005 to November, 2006. Therefore, his ACR must have been taken into consideration for the period upto 2004 only and not of 2005. If his ACR for the year 2005 is not taken into consideration perhaps he could have made it. He has also submitted that he made a statutory complaint also which was not considered by the respondents on

the ground that meanwhile the petitioner has retired. Be that as it may, it is a fact that the petitioner was senior to K. N. Pandey and if the vacancy was of 2005 and the ACR upto 2004 was to be considered then the ACR for the year 2005 was not to be considered. We are not informed that what was the provision of relevant time for writing ACR and ACR of upto which period should be considered. Therefore, we direct that let the case of the petitioner be re-considered for the post of Naib Subedar on the basis of the ACRs especially with reference to the period 2005 but that depends upon the norms of the ACRs obtained at the relevant point of time. The petition is allowed in part and we direct the respondents to consider the petitioner as per the rules or orders bearing on the subject for the post of Naib Subedar as far as possible within a period of three months. No order as to costs.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
September 06, 2011