

**COURT NO. 3, ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

O.A. No. 483 of 2010

IN THE MATTER OF:

Hav. Amod Kumar Jha

.....Applicant

Through Mr. K. Ramesh, counsel for the Applicant

Versus

Union of India and Others

.....Respondents

Through: Mr. Mohan Kumar, counsel for the Respondents

CORAM:

**HON'BLE MR JUSTICE MANAK MOHTA, JUDICIAL MEMBER,
HON'BLE LT GEN M.L. NAIDU, ADMINISTRATIVE MEMBER**

JUDGMENT

Date: 29-03-2011

1. The O.A. was filed by the applicant on 10-08-2010. Vide this O.A., the applicant has prayed for setting aside Army Headquarters letter dated 11-05-2009. He also seeks re-examination of all records including the DPC board proceedings and impugned ACR of 2002 in the light of Army Order (AO) 1/2002/MP thereby seeking promotion to the rank of Naib Subedar (Nb Sub) at par with his batch mates with consequential financial benefits. A prayer is also made for direction that all financial benefits accrued as Battle Casualty (BC) under the relevant scheme be paid.

2. The brief facts of the case are that applicant was enrolled in the army on 05-02-1988. He became a BC in Jammu and Kashmir on 06-07-2002 where he received a Gun Shot Wound (GSW) on his left thigh. Despite his handicap, he passed the Promotion Cadre from Hav to Nb Sub which was conducted from 16-09-2003 to 30-11-2003. However he received lukewarm reports for the ACR since he was a BC. This led to his supersession.

3. The applicant states that he was not given a fair chance in his ACR for 2002 as he was neither counselled nor warned regarding his performance, in case it was adverse. He also states that though a BC, he has passed his mandatory promotion test in time. The applicant neither has any red ink entry nor he has been any warning or counselling by the Commanding Officer (CO), therefore, there are legitimate expectations for obtaining a good ACR commensurate with his dedicated services.

4. On being superseded, the applicant preferred a statutory complaint on 09-05-2008. The complaint was disposed of vide Army Headquarters letter dated 11-05-2009.

5. Learned counsel for the applicant stated that he has no grievance regarding the applicant being declared BC except that he has not been paid the dues that have been announced by the State Governments as also by the Central Government. The applicant is in receipt of pension as per BC.

6. Learned counsel for the applicant further argued that since the applicant was a BC, he was provided with sheltered appointment. In these appointments, he performed his duties to the best of his ability. No counselling or warning was given by the CO or his immediate superior. He, therefore, expects that his ACRs were positive and recommendatory for promotion. However he alleged that he has been wrongly superseded when the board was held in 2008.

7. Learned counsel for the respondents stated that the averment made by the applicant qua BC is not contested. The applicant has been declared a BC and the factor has been taken into consideration. Since the applicant was a low medical category being a BC, he was granted a sheltered appointment and was constantly graded high average throughout with recommendation for promotion in his ACRs by his superiors.

8. In reply it was submitted that vide Army Headquarters letter dated 10-10-1997, criteria for promotion to the rank of Nb Sub is as under :

“4(b)(i) Only last five reports will be considered, out of which minimum three reports must be in the rank of Havildar and in case of shortfall rest may be in the rank of Naik.

(ii) At last three out of last five reports should be Above Average with a minimum of two in the rank of Havildar and remaining should be not less than High Average.

(iii) The applicant should have been recommended for promotion in all the five reports.”

9. Learned counsel for the respondents pointed out in his written averment vide his reply that applicant had received consistently a high average grading in ACRs, except in 2008 where he was graded Above Average by the Initiating Officer (IO) but High Average by the RO (Reporting Officer). In all the ACRs, the applicant was recommended for promotion. Therefore, it cannot be construed as an adverse report and none of the ACR warranted any warning/counselling by the superior officer.

10. Learned counsel for the respondents further argued that Ex-Gratia payment available to the applicant from the Central Government has been correctly assessed and paid for and a sum of Rs.10,000/- was paid in accordance with the degree of disability that has been determined by the medical board. The State Government of Jammu and Kashmir from where the applicant belongs has already granted Rs.10,000/- to the applicant on 24-08-1993 as Ex-Gratia benefit from the State. Perusal of the disability certificate of the applicant indicates that the disability of the applicant is partial and not permanent and, therefore, he is not entitled for one time grant out of Army Central Welfare Fund.

11. Having heard both the parties and having examined the documents in original, we conclude that the applicant is a BC who suffered from GSW consequent to which he became a low medical category. He has received the compensation from the State Government to which the applicant belongs.

12. As regards the promotion of the applicant, it is obvious that the applicant did not meet all the criteria for being approved to the rank of Nb Sub. He had passed his promotion cadre. He also cleared the other mandatory tests in education and map reading, and was a BC. Hence his medical category was of no consequence. This made him eligible for consideration for promotion to the rank of Nb Sub. However he lacked in the ACR criteria where he should have had at least three Above Average reports and two High Average reports in the last five years. In this case all reports of applicants were of High Average except one ACR of 2002 of average but still he did not meet the ACR criteria as laid down in the Army Headquarters letter dated 10.10.1997. His ACR profiles as stated by the respondents are as under :

Sr.No	Year	Points Awarded by Initiating Officer	Points Awarded by Reviewing Officer	Recommended/Not recommended for promotion
(i)	2002	6 (High Average)	4(Average)	Recommended
(ii)	2003	6 (High Average)	6	Recommended
(iii)	2004	6 (High Average)	6	Recommended
(iv)	2005	6 (High Average)	6	Recommended

(v)	2006	6 (High Average)	5	Recommended
(vi)	2007	6 (High Average)	5	Recommended
(vii)	2008	7 (High Average)	5	Recommended
(viii)	2009	5 (High Average)	5	Recommended

13. In view of the foregoing, we opine that promotion of the applicant to the rank of Nb Sub has correctly been considered by the respondents and since he did not meet the ACR criteria, he was not approved for promotion and thus he was superseded that is not required any interference.

14. The applicant is also entitled to assistance from the Central Government as he falls under Category 6 of Appendix F of Government notification dated 03-02-2000. The extracts of Category 6 are listed as under :

**“CATEGORY 6 (OPERATIONS) OTHER THAN OP VIJAY (KARGIL)
W.E.F. 1 MAY 1999**

Benefits to Next of Kin of the Deceased

Officers, JCOs/OR

1. *Ex-Gratia from Central Government* - *Rs.7.5 lakh*
2. *National Defence Fund* - *Nil*
3. *Army Central Welfare Fund* - *Rs.30,000*

Benefits to Disabled

1. *Ex-Gratia from Central Government* - *Nil*
2. *National Defence Fund* - *Nil*

3. *Army Central Welfare Fund**

(a) *Boarded Out* - *Rs.1 lakh*

(b) *Retained in Service*

(Based on percentage disability) - *Rs.30,000*

Rs.20,000 or Rs.10,000

*Note : ----- *Announced and implemented w.e.f October 1999”*

15. As regards, the applicant being BC and a low medical category, the applicant has been considered as “temporary medical category with scope for improvement”, and hence has been granted Rs.10,000/- from the Army Central Welfare Fund. However, considering the fact the applicant has retired and is in receipt of disability allowance which is governed by para 6 of the Govt of India letter of 07.02.2001, the disability percentage is reckoned “for life”. Hence he is entitled for due payment from the Central Government besides the disability pension that is his due for being a BC. We consider it a fit case to be referred back to the authorities to reconsider the case for grant of due payment as discussed from the Army Central Welfare Fund under Category 6 of Appendix F of Government notification issued on 03-02-2000. The State of Jammu and Kashmir is not party before us, therefore, if any grievances remain against the State, the applicant is free to agitate the same before the appropriate authority.

16. The O.A. is partially allowed. No orders as to costs.

M.L. NAIDU
(Administrative Member)

MANAK MOHTA
(Judicial Member)

**Announced in the open Court
on this 29th day of March 2011**