

**COURT NO. 2, ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
O.A. No. 52 OF 2010**

IN THE MATTER OF:

Risaldar Joginder Singh**Applicant**
Through : Mr. K. Ramesh, counsel for the Applicant

Versus

Union of India and Others**Respondents**
Through: Mr. Anil Gautam, counsel for the Respondents

CORAM:

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

JUDGMENT

Date: 09.11.2011

1. This OA was filed by the applicant before the Armed Forces Tribunal on 25.01.2010.
2. The applicant vide this application has prayed for directions to respondents to quash and set aside the impugned order of PBG Records Letter dated 31.05.2008 (at page 19) and 30.07.2008 (at page 20) by which his statutory complaint for extension in service and for promotion to the rank of Risaldar Major were rejected respectively. He also prayed that impugned ACR of 2006-2007 be quashed being an aberration and inconsistent and had prayed that he be granted promotion to the rank of Risaldar Major with an ante date seniority. In

alternate it is prayed that orders for extension of two years which has been denied to him be also passed.

3. The brief facts of the case are that applicant was enrolled in the Army on 16.08.1980 as President's Body Guard. He was promoted to the rank of Naib Risaldar on 01.06.1998. Thereafter on 01.12.2004 when there was a vacancy of Risaldar, the respondents did not promote him. It is alleged that on his representation, he was promoted to the rank of Risaldar on 01.02.2006 with anti dated seniority of 01.12.2004.

4. In January 2008, a DPC was held for the rank of Risaldar Major. The applicant was not selected for the said rank. On 31.05.2008, a Board of Officers was held to consider grant of extension for two years to the applicant but he was not granted extension. Consequently, applicant put a statutory complaint on 30.07.2008 in which he assailed the ACR of 2006-2007 but no redressal was granted.

5. Learned counsel for the applicant states that respondents malafidely put him down in comparison with Risaldar Sukh Raj Singh. He was not promoted as Risaldar on the due date of 01.12.2004. On the other hand, Risaldar Sukh Raj Singh was given undue preference and he alleged that some incorrect entries were also entered in the record of Risaldar Sukh Raj Singh as having served in Glacier area while in fact he was in New Delhi.

6. Learned counsel for the applicant argued that comparison of other parameters in terms of Courses, Operational Area Services, Instructional/ERE appointments, applicant's profile was better than that of Risaldar Sukh Raj Singh still he was denied promotion in due time.

7. During the DPC of September, 2007, Risaldar Sukh Raj Singh was found to be unfit for promotion to the rank of Subedar Major. Risaldar Arjun Singh was promoted to Subedar Major who was junior to Risaldar Sukh Raj Singh. In January, 2008 another DPC was held with no new ACR having come on record. In this DPC, Risaldar Sukh Raj Singh was found suitable. Though there were no new inputs in terms of fresh ACR having been done on record. It is contended that how Risaldar Sukh Raj Singh could be approved in the next promotion board held in Jan 2008 when he was found to be ineligible for promotion in September, 2007.

8. Learned counsel for the applicant further argued that ACR for 2006-2007 have been initiated in the President's Body Guard (PBG). The applicant believes that he has been harmed by awarding a low grading which may have come in the way of his not being approved in the DPC of September, 2007 and January, 2008. Nothing was communicated to him regarding impugned ACR contrary to Army Order on the subject. The impugned ACR could be compared with the other ACRs and in case his gradings do not match with his past record, the same are required to be quashed and set aside.

9. Learned counsel for the applicant argued that his promotion to the rank of Risaldar actually was carried out on 01.02.2006 with ante dated seniority of 01.12.2004. This action by the respondents has caused serious damage to him because his juniors by then had been promoted to the rank of Risaldar. His juniors were subsequently considered for screening board for extension by two years. The applicant's name was missed out.

10. Learned counsel for the applicant stated that applicant had filed a case in the Hon'ble High Court of Punjab and Haryana at Chandigarh bearing CWP No. 12889 of 2008, however, on similar prayer which was dismissed on 05.09.2009 (page 44) with liberty to file statutory complaint before the authorities and, therefore, the petition was dismissed as withdrawn. Thereafter, he filed statutory complaint on 09.11.2009.

11. Learned counsel for the respondents reiterated the grounds taken in the counter and argued that the applicant has concealed material information that he had not passed the Junior Leadership Proficiency Test (JLPT) despite giving the test several times. He also contested that there is a delay in filing of the petition since the cause of action arose in 2008 and, therefore, the petition needs to be dismissed on the ground of delays and latches without going on merits of the case.

12. Learned counsel for the respondents further argued that applicant has made allegations against the several other serving and retired persons but has not impleaded any of them in the present case. He has also alleged that he has been low graded by the Reporting Officer but he has not impleaded them as party respondent.

13. Learned counsel submits that statutory petition submitted by the applicant on 09.11.2009 was returned vide letter of 07.01.2010 **(Annexure R-1)** as the same was decided earlier and the same was communicated to the counsel vide letter dated 20.01.2010 **(Annexure R-2)**

14. Learned counsel for the respondents pointed out that the applicant had been given a severe reprimand while at Ahmed Nagar on 13.05.1997. He was promoted to the rank of Naib Risaldar on 01.06.1998. However for the promotion to the rank of Risaldar passing of Junior Leadership Proficiency Test (JLPT) was made mandatory for all Naib Risaldar w.e.f 01.08.2000. The promotion of the JCO to the rank of Risaldar was due on 01.12.2004. The applicant appeared in JLPT several times but could not pass the equitation practice test being conducted at PBG as the part of the JLPT. Hence he was not cleared for promotion.

15. Learned counsel for the respondents argued that the formal approval for the equitation practice test being conducted by the PBG was not approved by the Army HQ as such despite the applicant

having not passed the equitation test of PBG, he was promoted to the rank of Risaldar and granted seniority w.e.f 01.12.2004.

16. Learned counsel for the respondents further argued that as regards the extension of two years of service, the Army HQ Policy letter of 21.09.1998 states that the Arms/Services will lay down specific standards with regard to physical fitness related to job content for extension of service/age limit by two years in respect of Personnel Below Officer Rank (PBOR). As PBG is an arm by itself, the specific standards have been spelt out in Army HQ letter of 12.04.2007 which require a candidate to undergo an equitation test for which the candidate is required to be present and complete para refresher for the training year. Despite having been informed, the applicant did not appear/present himself for the test and was hence declared failed. The applicant's statement that he is a seasoned paratropper is not relevant to the case as one of the conditions for extension of service in the PBG is willingness for parachute duties during the extension period and the individual had submitted an application expressing his inability to undergo para refresher course in the training year 2006-2007.

17. Learned counsel for the respondents stated that as regards the promotion to the rank of Risaldar Major, DPC was held in July, 2007 and November, 2007. In the said DPC, four candidates were considered including the applicant. Out of four, Risaldar Arjun Singh was found suitable for promotion as compared to his senior i.e.

Risaldar Sukh Raj Singh. Risaldar Arjun Singh was thus promoted despite the fact that Risaldar Sukh Raj Singh was senior to him. In both the above DPC, the applicant could not be promoted being comparatively lower in the points than the other JCOs.

18. In the second DPC, Risaldar Sukh Raj Singh was promoted. Risaldar Sukh Raj Singh and Risaldar Arjun Singh were both seniors to the applicant.

19. Having heard both the sides at length and having examined the documents especially the DPC record, we are of the considered opinion that applicant has not been superseded by the DPCs which were held in the months of July, 2007 and November, 2007. Since both Risaldar Arjun Singh who was approved in the first board and Risaldar Sukh Raj Singh who was approved in the second board were senior to the applicant, thus no junior persons to the applicant has been approved to the rank of Subedar Major or promoted to the rank of Subedar Major.

20. The applicant has made several allegations against the Risaldar Arjun Singh, Risaldar Sukh Raj Singh and some other officers. However, he has not impleaded anyone of them. Therefore, we considered that the allegations and arguments by the applicant cannot be scrutinized in absence of their reply and representation in a fair manner and, therefore, contentions are not maintainable.

21. We have also gone through the proceedings of DPC. In the DPC held on 17.07.2007, Risaldar Arjun Singh was approved. Risaldar Arjun Singh had 88.44 total points awarded by the DPC. Risaldar Sukh Raj Singh had 82.18 points awarded by the DPC. The applicant had only 70.47 points awarded by the DPC.

22. In the DPC of 22.11.2007, Risaldar Sukh Raj Singh had 82.86 points awarded by the DPC while the applicant had 71.45 points allotted by the DPC. Thus, contentions raised by applicant in this respect that he was having a better profile are not having any force of law.

23. The analysis given above clearly shows that applicant did not qualify to the Subedar Major in the comparative merit. He was neither senior to Risaldar Arjun Singh nor to Risaldar Sukh Raj Singh as such he was not superseded.

24. As regards the two years extension of service, the applicant's name was duly considered by the screening board but since he was not found qualified, therefore, his case was not recommended for extension.

25. The contention of the applicant regarding harm being done in the ACR of 2006-2007 is not correct because the grading that he obtained during this period are at par with gradings obtained by him in the preceding years. Also, remarks were not adverse, therefore, the requirement of counselling and communicating were not needed.

Besides, since he has not impleaded the officer who wrote the report, his contentions cannot be upheld.

26. In view of the foregoing, the O.A. is dismissed. No order as to costs.

M.L. NAIDU
(Administrative Member)

MANAK MOHTA
(Judicial Member)

Announced in the open Court
on this 9th day of November 2011