

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI**

**13.**

**T.A.No. 299 of 2009**  
**Writ Petition(Civil) No. 7446 of 2009**

**Hav. Jagdish Chander**

**.....Petitioner**

**Versus**

**Union of India & Ors.**

**.....Respondents**

**For petitioner:** Sh. D.S. Kauntae, Advocate.

**For respondents:** Sh. Anil Gautam, Advocate with Capt. Alifa Akbar.

**CORAM:**

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

**ORDER**  
**15.02.2011**

1. Petitioner by this petition has prayed that respondents may be directed to review petitioner's case by constituting a fresh DPC for the promotion to the next higher rank of Nb. Sub. w.e.f. due date i.e. March 2003 and after constituting the fresh DPC, further issue a writ order or direction in the nature of mandamus to the respondents to reconsider petitioner's reinstatement in army even in permanent low medical category A3 & P3 permanent w.e.f. 22<sup>nd</sup> August 2004 as the petitioner was never declared medically unfit.

2. Petitioner was enrolled in the Army on 17<sup>th</sup> March 1982 and he was promoted as Havildar on 8<sup>th</sup> April 1995. In March 2003 petitioner's name came up in the

seniority roster for promotion to the next higher rank of Nb. Sub. In the DPC of March 2003, petitioner could not be promoted to the post of Nb. Sub and thereafter he made a representation but without any result and ultimately he filed a writ petition in 2009 in Hon'ble Delhi High Court, which was transferred to this Tribunal after its formation. The grievance of the petitioner as mentioned above is that he has not been found suitable for promotion to the post of Nb.Sub. and in that connection he submitted that his ACR for the year 2000 is average and therefore it should have been communicated to him and looking to his previous ACRs his ACR should be moderated. Secondly, he submitted that in 2000 IO has given 3 marks and RO has given 2 marks and that should mean that petitioner has a full requirement of ACR for promotion to the post of Nb. Sub.

3. A reply has been filed by the respondents and respondents have submitted that since petitioner could not fulfil the ACR criteria therefore person junior to him has been promoted. Question of delay was also raised as it is pointed out that he could not be promoted in 2003 and he filed a writ petition in High Court in 2009 and, therefore, this delay is fatal in petitioner's case as the person junior to him has already been promoted and that promotion now at that distance of time cannot be challenged.

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

5. We have called the original ACRs of the petitioner and found that in 1995, 1996, 1997, 1998, 2000, 2001 and 2003 he has been getting the marking 2, 3 and 4 out of 5 marks. But in the year 2000 he got 3 marks from the IO and 2 marks from

the RO though the RO has also recommended for his honorary commission. Learned counsel for the petitioner submitted that the 2 marks which have been given by the RO should have been properly reconsidered by the Record Office and should have moderated it looking to his past ACRs. There is no such provision which has been brought to our notice which gives a direction to the RO to upgrade the ACR by looking to his past performance. Therefore, securing 2 marks, average grading does not warrant any moderation.

6. Learned counsel for the respondents submitted that para 39 of the Army Order 7 of 1995 says that average ACR need not be shown to the NCO concerned as it is not adverse. The adverse remarks, weak points and below average points or anything contained in para 12 of the ACR format will be communicated in writing in form of a letter to the NCO concerned by the Initiating Officer. Therefore it is only at the relevant time the requirement was that if it is below average this is required to be communicated and there was no provision for communicating an average ACR. Learned counsel for the petitioner has also invited out attention to Army Order 1 of 2002/MP but that has no relevance so far as controversy involved in the present case is concerned because the relevant provision which had bearing on the subject was of the Army Order 7 of 1995. Therefore the submission of learned counsel for the petitioner that he should have been communicated his average ACR or moderated looking to his previous ACRs, cannot be sustained. Secondly, with regard to the fact that the RO has recommended for his honorary commission that also does not improve his ACR. His case was considered by the DPC along with ACRs of other eligible candidates and those persons who had better ACR had a march over the petitioner.

7. Consequently, there is no merit in this petition and the same is dismissed with no order as to costs.

**A.K. MATHUR**  
**(Chairperson)**

**S.S. DHILLON**  
**(Member)**

**New Delhi**  
**February 15, 2011**