

**COURT NO. 3, ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
T.A. No.326 of 2010
W.P.(C) No.1491 of 2008 of Delhi High Court**

IN THE MATTER OF:

Nb. Sub. Bag Singh**Applicant**
Through: Mr. K.S. Negi, Counsel for the applicant

Versus

Union of India & Anr.**Respondents**
Through: Mr. Mohan Kumar, Counsel for the respondents

CORAM:

**HON'BLE MR. JUSTICE MANAK MOHTA, JUDICIAL MEMBER
HON'BLE LT. GEN. Z.U. SHAH, ADMINISTRATIVE MEMBER**

JUDGMENT

Date: 27/01/2011

1. The applicant/petitioner filed W.P.(C) No.1491/2008 before the Hon'ble Delhi High Court challenging order of his supersession, which was conveyed to him on 12.06.2006 (Annexure P-2). He has also prayed that he be promoted to the rank of Subedar w.e.f. 01.05.2006 with all consequential

benefits. Notice of the writ petition was issued to the respondents and the respondents filed their counter affidavit. Thereafter, the writ petition was transferred to this Tribunal on its establishment.

2. The applicant was enrolled in Army. He was promoted to the rank of Naib Subedar w.e.f. 09.02.2004 and was posted in 14, Garhwal Rifles, Lansdowne, Uttarakhand. He was assigned the duties of Junior Quarter Master (JQM) w.e.f. April, 2004. It is further contended by the applicant that in the month of May, 2005 he got a warning letter dated 03.07.2004 (Annexure P-I). In the said letter, it was mentioned that there were certain alleged omissions on his (applicant's) part and he was informed that he should improve his work, otherwise, those facts would be endorsed in his Annual Confidential Report. It is alleged by the applicant that in that respect no further counselling or reasons were conveyed to him for showing improvement. The applicant contends that he was due for promotion to the rank of Subedar on 01.05.2006, however, he was

superseded by board meeting held on 02.06.2006. The same was conveyed vide letter dated 12.06.2006 which stated that on being found lacking in ACR criteria, he had been superseded. The applicant made a representation as well as statutory complaint against his supersession, but the statutory complaint was returned un-actioned on the ground of being filed belatedly. A legal notice was also served on 03.07.2006 (Annexure P-6), but of no avail. A prayer was made that supersession be quashed and he be promoted w.e.f. 01.05.2006 with all consequential benefits.

3. Respondents, in their counter affidavit, submitted that while posted at HQ Coy the applicant was assigned the duty of JQM w.e.f. April, 2004 as per Bn Order Part-I. The JCO as JQM was responsible for issuing ordnance stores to the troops as per their entitlement. In June, 2004 during routine checking the entries in clothing cards along with Certified Issued Vouchers (CIVs), it was observed that the personnel were shown as having collected clothing items and signed for them on CIV, but no supporting entries were found

on clothing cards. In that matter, an enquiry was held (Annexure R-III) and on the basis of that enquiry report, warning letter was issued by QM on 03.07.2004 (Annexure R-I) and by Commanding Officer vide letter dated 03.08.2004 (Annexure R-II). It was further contended that at the time of initiation of Confidential Report in the year 2005, the Quarter Master communicated to the applicant that he was being graded as “average” and was not being recommended for promotion. Thereafter, on the basis of Annual Confidential Reports, he was superseded by selection board held on 02.06.2006 and he was conveyed, accordingly. It was also contended that the applicant filed a representation, but that was not within prescribed time. It was, therefore, returned un-actioned. A prayer was made to dismiss the petition/application.

4. Applicant also filed a rejoinder to the reply filed by the respondents, reiterating the grounds as taken in the petition/application.

5. We have heard the arguments at length from both the sides and perused the record. During the course of arguments, again it was submitted by learned counsel for the applicant that no further counselling was made to the applicant for improving his performance. Adverse remarks should, therefore, not have been endorsed in his ACR and he should have been promoted.

6. Learned counsel appearing for the respondents submitted that on the basis of ACR profile the applicant's case was considered, but he was not found suitable for promotion to the rank of Subedar. He was intimated accordingly. He filed representations, but they were of no substance.

7. We have considered the rival submissions and perused the record. The main point remains for consideration is whether the order of supersession requires any fresh consideration. It was borne out from the records that there were some irregularities in maintaining records of

the distribution of clothes and in that respect an enquiry was held and applicant was found involved. From the record it is further clear that on the basis of Court of Enquiry the applicant was warned to improve his performance. Thereafter, remarks were incorporated in the ACR of 2005. He was not recommended for further promotion. Adverse remarks were conveyed to the applicant. On the basis of ACR profile he was not found suitable for promotion to the rank of Subedar. We have considered the allegations levelled against the applicant. They are of serious nature and they were incorporated in the ACR. They are based on facts of the case. The applicant's case was considered for promotion, but he was not found suitable and was informed accordingly. The applicant belatedly filed representation and statutory complaint, therefore, these were returned un-actioned. Looking at the facts of the case, there are no grounds for giving any direction for fresh consideration for promotion. No injustice has been caused to the applicant and he is not entitled for any relief.

8. On the basis of aforesaid discussion, the application is liable to be dismissed. The same is dismissed, accordingly. No order as to costs.

Z.U. SHAH
(Administrative Member)

MANAK MOHTA
(Judicial Member)

Announced in the open Court
on this 27th day of January, 2010