

**COURT NO.2, ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
T.A. No.411 of 2009
W.P.(C) No.3145 of 1998 of Delhi High Court**

IN THE MATTER OF:

D.S. Rathore**Applicant**
Through: Mr. A.K. Trivedi, Counsel for the applicant

Versus

Union of India & Ors.**Respondents**
Through: Mr. Ankur Chibber, Counsel for the respondents

CORAM:

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

JUDGMENT

Date: 06.09.2011

1. The petitioner/applicant filed the aforesaid writ petition before the Hon'ble High Court for quashing the order dated 10.05.1995 (**Annexure P-3**) by which his representation dated 17.04.1995 was rejected and prayed for further promotion to the rank of Warrant Officer (WO) w.e.f. the date when his juniors have been promoted i.e. August, 1992. Thereafter, vide order dated 17.09.2009 the case was transferred to this Tribunal.

2. Brief facts of the case are enumerated in the foregoing paras.

3. The applicant was enrolled in Indian Air Force on 11.01.1963 as Airman. In due course he was promoted to the rank of Sergeant on 01.07.1979 and thereafter, to the substantive rank of Junior Warrant Officer (JWO) w.e.f. 06.07.1988. It is submitted by the applicant that he was detailed for Quality Technical Instructions Course, on merit, from 27.01.1992 to 08.05.1992 and his service record is excellent. He was due for promotion to the rank of WO, but his name was not included in promotion panel and against his name a remark was mentioned that he was "Below Grade" (BG). It is contended that on 20.10.1992 he made a representation (**Annexure P-9**) against the non-empanelment, but no response was given. He further submitted that again in the year 1993 & 1994 he was considered for promotion to the rank of Warrant Officer (WO), but he was not empanelled. He also made representation in that regard. He was communicated by Air Headquarters vide letter dated 10.05.1995 (**Annexure P-3**) that his representation had not been accepted as he could not score minimum required marks for promotion. He had been placed "Below Grade" (BG). The applicant further submits that thereafter under mistaken advice he filed a writ petition No.2466/1995 before the Hon'ble Rajasthan High Court challenging the order of non-empanelment and rejection of his representation, but his

writ petition was dismissed on the ground of territorial jurisdiction with liberty to approach to the appropriate forum vide order dated 03.04.16998 (**Annexure P-2**). Thereafter, he filed the present writ petition on 19.06.1998. It is contended by the applicant that his service record has been very good and he has wrongly been declared "below grade". It was also contended that during the relevant period he was never communicated any adverse remarks. He was never awarded red or black entries and on the other hand was awarded appreciation and commendation card by the superior authorities for his excellent work. He has been declared "Below Grade" for the first time in the year 1992. A prayer was made to allow his petition.

4. Counter was filed by the respondents stating that applicant was due for promotion to the rank of Warrant Officer and he was considered in the years 1992-93, 1993-94 and 1994-95. He failed to score the minimum required marks for the promotion to the rank of Warrant Officer during the consideration period as per policy dated 16.11.1989, thus, he has been placed "below grade" and he was not promoted. It was also contended in reply that there were no adverse entries in the concerned years' ACRs. There was, therefore, no question of communicating the same. The applicant was assessed

between 1987 and 1993. During this period the applicant was awarded “above average” three times and “average” four times.

5. It was also contended that applicant himself submitted his unwillingness for the future extension in service w.e.f. 01.01.1995. He was discharged from the service w.e.f. 31.01.1995. In reply it was also submitted that with regard to promotion from JWO to WO in air force there was a policy bearing No.AFI 12/s/48 and AIR HQ letter No.Air/HQ/S/40651/3/PA dated 16.11.1989 and as per said policy the applicant was required to score the minimum laid down 479 marks out of 660 marks in the last 5 years’ ACRs for promotion, but in the concerned years on the basis of preceding five years ACRs the applicant could not make the grade. His representation was considered, but found without merit. It was, therefore, rejected.

6. Rejoinder to the counter was filed stating the grounds made earlier.

7. Arguments were heard and record perused.

8. During the course of arguments learned counsel for the applicant reiterated the grounds stated earlier and submitted that the service profile of the applicant was excellent. He had wrongly been

downgraded. On that basis, he had been denied promotion. It was also submitted that administrative instructions stated to be of 16.11.1989 cannot take away the right of petitioner to be considered for promotion fairly. A request was made to quash the non-empanelment orders and directions be issued for promotion of the applicant.

9. Learned counsel for the respondents submitted that the concerned policy prevailing at that time was based after due consideration and was more scientific. In the present case, there were no adverse remarks in the ACRs of the applicant. There was, therefore, no question of intimating any remarks. ACRs were based on the performance of the concerned years and on that basis assessments were made, but the applicant could not make the grade as per the criteria laid down in the policy dated 16.11.1989. The applicant could not score the requisite marks of 479 out of last 5 years' ACRs, therefore, he was not promoted. Subsequently, the applicant voluntarily gave his unwillingness for extension of service and was discharged on 31.01.1995. There was now no question of his reinstatement into service. A prayer was made to dismiss the petition.

10. We have considered the rival submissions and perused the report. The applicant was considered for promotion in the year 1992,

therefore, in his case the policy bearing No.Air/HQ/S/40651/3/PA dated 16.11.1989 would be made applicable and not the policy dated 31.01.1995, as the same was not in existence in the year 1992. The policy dated 16.11.1989 has been revised in 1995 and in that policy the same criteria, as in the policy dated 16.11.1989, has been maintained. According to the policy dated 16.11.1989 for promotion to the post of WO from JWO the prerequisite was to score 479 marks out of 660 marks on the basis of preceding 5 years' ACRs. The relevant portion of that policy is reproduced hereunder:

“REVISED SELECTION CRITERIA FOR PROMOTION : AIRMEN

1. Consequent to the decision taken in the Air Force Commanders' Conference held in Apr & Sep 89, the selection criteria for promotion of airmen has been revised as given in the succeeding paragraphs.

The minimum marks required for promotion to various ranks are: -

| Assessment/ ACR marks Promotion Stage | Maximum marks against Assessment/ ACRs (last 5 years) | Minimum marks required for making the grade | |
|--|---|--|------------|
| | | Marks | Percentage |
| Cpl to Sgt | 500* | 300 | 60 |
| Sgt to JWO | 500* | 350 | 70 |
| JWO to WO | 660 | 479 | 72.5 |

| | | | |
|-----------|-----|-----|-----|
| WO to MWO | 660 | 495 | 75" |
|-----------|-----|-----|-----|

11. As per record the applicant was considered for promotion in the years 1992-93, 1993-94 and 1994-95, but on all the three occasions he could not make the grade. He was, therefore, not promoted. If a candidate is not able to score the minimum required cut off marks then he is categorised as "below grade". This grading denotes that the person so graded is below the cut off marks for promotion. It is not a "below average" grading.

12. It is also brought on record that none of the ACRs of the concerned years of the applicant were of adverse nature. There was, thus, no requirement of counselling or warning as enumerated in AFCCO 2/91. During the course of arguments, a contention was also raised that the case of the applicant was examined for promotion in view of the administrative letter dated 16.11.1989, but this contention is not sustainable as the same is more or less a guideline for fair consideration of the prospective candidates for promotion to higher rank and the concerned assessment is also based on preceding 5 years' ACRs. In this way, the guideline is not creating any adverse effect in fair consideration and has been made applicable to all. The applicant himself, in this case, had given unwillingness for further promotion and,

therefore, he had been retired from 31.01.1995. He filed representation on 17.04.1995. The same was considered and properly dealt with.

13. On the basis of the aforesaid discussion, we do not find any irregularity, infirmity or illegality in the impugned orders. The application of the applicant is liable to be dismissed. The same is, thus, dismissed. No order as to costs.

Z.U. SHAH
(Administrative Member)

MANAK MOHTA
(Judicial Member)

Announced in the open Court
on this 06th day of September, 2011