

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

**T.A.No. 479 of 2010**

**Writ Petition (Civil) No. 2073 of 2006**

**Cdr. Deepak Shrivastava**

**.....Petitioner**

**Versus**

**Union of India & Ors.**

**.....Respondents**

**For petitioner:** Sh. Rajiv Sharma, Advocate.  
**For respondents:** Ms. Barkha Babbar, Advocate.

**CORAM:**

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

**ORDER**  
**18.07.2011**

**A.K. Mathur, Chairperson**

1. Petitioner by this petition has prayed that by appropriate writ or directions respondents may be directed to calculate and pay all basic pay and associated allowances to the petitioner as if he has been promoted by the Promotion Board-3/95 from the date when his immediate junior of the Aviation Cadre is granted pay and allowance in the same PB-3/95.

2. Petitioner after completing his graduation appeared in Combined Defence Services Examination in the year 1978 and he was selected and he joined Indian Navy in 1979. He was commissioned in the Executive Branch of Indian Navy as Acting Sub-Lieutenant on 1<sup>st</sup> July 1980 and allocated personal

number 02159-F. In 1981 petitioner opted for pilot course and completed training in the year 1982 and joined the Aviation Cadre. He had undergone training on helicopters in 1983 and was awarded Governor of Kerala Rolling Trophy during Helicopter Conversion Course in the year 1983. He was further promoted as Lieutenant Commander in 1989. The petitioner has now been promoted to the rank of Commander. The grievance of the petitioner is that in the year 1995 petitioner was due for promotion as Commander but the Promotion Board of 1995 did not select him and selected persons junior to him i.e. officers like Satish. S, Sharma Rakesh and Sarma Manav Kumar. Satish S. Belongs to Logistic Cadre and Rakesh Sharma and Sarma Manav Kumar were of Aviation Cadre. Petitioner was considered on the basis of incorrect and wrong service reports. He made a representation in the year 1995 itself, against two adverse ACRs as they were biased on account of certain incidents which were ultimately accepted by the respondents and both ACRs were moderated. After that, case of petitioner was reconsidered by competent authority. In 1996 review DPC met and petitioner was promoted as Commander in 1996 as a review case by Promotion Board-3/95. Although he was promoted as Commander from 1<sup>st</sup> January 1996, he was granted seniority as if he has been promoted with his batch mates under the Promotion Board-3/95. However pay and allowances have been denied to the petitioner. Therefore the only grievance which survives in the present case is that though petitioner's case has been considered and he has been restored his seniority, but pay and allowances have been denied to the petitioner for that period. Therefore he filed a representation but the same was rejected by the respondents as he has

not actually assumed or performed the duties of the higher rank. Therefore he cannot be given the benefit with effect from 1<sup>st</sup> January 1995 in terms of Rule 202(3) and 202(7) of Regulations for the Navy, Part-III.

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

4. When the petitioner has been restored his seniority and he has been given the same promotion as was given to the persons junior to him, he is entitled to all the benefits flowing therefrom. It is not the fault of the petitioner, but of the respondents that when they realised that two adverse ACRs were not correctly given therefore they moderated the same. After moderation they reconsidered the case of petitioner under the Promotion Board of 1996 as a review case of the Promotion Board-3/95 and he was granted promotion to the post of Commander from 3<sup>rd</sup> June 1996 as a review case of PB-3/95. He has been confirmed in substantive rank with effect from 1<sup>st</sup> January 1996 and given a seniority with effect from 1<sup>st</sup> January 1996 that is at par with the officers who were promoted by Promotion Band-3/95 and it is stated that petitioner's pay has been upgraded with effect from 1<sup>st</sup> January 1996 but they have denied him the stepping up of pay with reference to the petitioner's job with effect from 1<sup>st</sup> January 1995. In this connection, reference has been made to aforesaid two Regulations. With great respect both the Regulations which have been mentioned i.e. Rule 202(3) and 202(7) of Regulations for the Navy, Part-III have no relevance to the issue under consideration as they refer only to acting rank and read as under:

“(3) General- (a) Acting ranks under the provisions of this Regulation shall initially be unpaid. Acting rank shall become paid after 21 consecutive days of duty in the appointment carrying the higher rank from the date of its grant, though the Grant of Pay shall then become retrospective. Acting rank shall not be converted into paid acting rank unless it is held by an officer on the 22<sup>nd</sup> day.

(7) Commander and above- (a) Acting ranks of Commander and above shall only be granted to officers who are selected to fill appointment carrying a rank higher than their confirmed rank, and will become effective from the date an officer actually assumes and performs duty in appointment. The grant of acting rank shall, however, not be automatic upon an officer assuming the higher appointment.”

A perusal of both these Rules says that “acting ranks under the provisions of this Regulation shall initially be unpaid. Acting rank shall become paid after 21 consecutive days of duty in the appointment carrying the higher rank from the date of its grant, though the Grant of Pay shall then become retrospective. Acting rank shall not be converted into paid acting rank unless it is held by an officer on the 22<sup>nd</sup> day.” Likewise sub Clause 7 also says that “acting ranks of Commander and above shall only be granted to officers who are selected to fill appointment carrying a rank higher than their confirmed rank, and will become effective from the date an officer actually assumes and performs duty in appointment. The grant of acting rank shall, however, not be automatic upon an officer assuming the higher appointment.” In both these rules question of acting rank is considered. In the present case the petitioner was not given an acting

rank. In fact the petitioner could not be selected by the Promotion Board-3/95 because of the adverse remarks. The adverse remarks having been moderated and his case was reconsidered by the next promotion board and he has been promoted and his seniority has been restored. Therefore he should be given all monetary benefits which have been given to persons immediately junior to him. The reference of both these Regulations is misconceived. Petitioner is not aggrieved because of acting rank or because of any reason attributed to him. His case was that his ACRs having been expunged and he has been restored to his position and he has been found suitable by the next review board, which shows that it is the competent authority who is responsible and prevented him to discharge the duties of higher rank and he could not have been deprived, but deprivation was on the part of the respondents as it was their mistake that they did not permit the petitioner to avail the higher rank. When they realised the error they corrected it and gave relief by promoting him as a regular Commander and restoring his seniority. Once his seniority has been restored then he is entitled to the benefit of the same pay and allowances as was given to the persons who were junior to him, but promoted before him.

5. Consequently, we allow this petition and direct respondents to pay the petitioner the pay and allowances as was given to the persons who were junior to him and who were promoted by the Promotion Board-3/95. All his pay and allowances would be worked out within a period of three months and same shall be released to him with interest @ 12% per annum within a period of three months.

6. The petition is allowed with no order as to costs.

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

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

**New Delhi**  
**July 18, 2011**