

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

13.

T. A. No. 482 of 2009

Writ Petition (Civil) No. 4737 of 1997

Hav. Prithi Singh

.....Petitioner

Versus

Chief of the Army Staff & Ors.

.....Respondents

For petitioner: Sh. Vinod Kumar, Advocate.

For respondents: Sh. Anil Gautam, proxy counsel for Sh. Mohan Kumar,
Advocate.

CORAM:

HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.

HON'BLE LT. GEN. S.S. DHILLON, MEMBER.

ORDER
12.7.2011

The petitioner, by this petition has prayed has prayed that the ACR pertaining to the year 1995-1996 which may have been downgraded, if any, without any warning to the petitioner and acted adversely in respect of promotion of the petitioner and consequently to set aside the same and the directions may be issued to the respondents to re-consider the case of the petitioner for promotion to the post of Naib Subedar.

2. The petitioner was enrolled in November, 1973 and he became the Havildar in July, 1987. He passed the promotion cadre course for promotion to the post of Naib Subedar but he could not make it for promotion to the post of Naib Subedar. Therefore, he was driven to file the present petition in

Hon'ble Delhi High Court which has been transferred to this Tribunal after its formation.

3. A reply was filed on behalf of the respondents and in that reply some facts had been incorrectly mentioned, therefore, the respondents have filed an additional affidavit and modified the reply. In the modified reply, it has been pointed out that so far as Departmental Promotion Committee (DPC) of 1995 is concerned, the petitioner could not be placed under consideration for the simple reason that he was too junior in the seniority list for promotion to the post of Naib Subedar but in 1996 DPC, he was placed under the zone of consideration and his ACR for 1991-95 was considered and in that he had 2 "Above Average" and 3 "High Average" ACRs but for promotion to the post of Naib Subedar, the ACR criteria is that there should be 3 "Above Average" and 2 "High Average" ACRs. Therefore, the petitioner could not make to the post Naib Subedar in 1996 also.

4. Learned counsel for the petitioner submitted that the original minutes of the DPC may be summoned. We do not find any reason to summon the same. Since the petitioner was too junior, therefore, he was not considered for promotion to the post of Naib Subedar during the DPC of 1995 and in 1996, he could not make to the post of Naib Subedar because of ACR criteria. Learned counsel for the petitioner submitted that ACR for 1995 has not been correctly written. We have perused the original ACR for the period from 3.9.1995 to 1.12.1995 i. e. after completion of 90 days and it has been pointed out that since the petitioner has not served for 90 days at a particular unit,

therefore, ACR for October, 1994 till September, 1995 was delayed and it was only written from 3.9.1995 to December, 1995 because he has served for more than 90 days under a particular unit. The reason for not writing the ACR from October, 1994 to September, 1995 was justified as he had not served a particular unit physically. It is only for the period from 3.9.1995 to December, 1995 that he has served under a particular unit and that unit has given the petitioner a "High Average" ACR. Therefore, on the basis of the ACR criteria, the petitioner could not make to the post of Naib Subedar. We do not find any merit in the petition. Consequently, the petition is dismissed with no order as to costs.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
July 12, 2011