

**COURT NO. 3, ARMED FORCES TRIBUNAL,  
PRINCIPAL BENCH, NEW DELHI**

**T.A. No.512 of 2010**

**W.P.(C) No.16348 of 2004 of Delhi High Court**

**IN THE MATTER OF:**

**Nb Sub Rakesh Kumar** .....**Applicant**

Through : Mr. A.K. Trivedi, counsel for the Applicant

Versus

**Union of India and Others** .....**Respondents**

Through: Mr. Mohan Kumar, counsel for the Respondents

**CORAM:**

**HON'BLE MR JUSTICE MANAK MOHTA, JUDICIAL MEMBER,  
HON'BLE LT GEN M.L. NAIDU, ADMINISTRATIVE MEMBER**

**JUDGMENT**

**Date: 08-04-2011**

1. The present petition was filed in the Delhi High Court on 30.09.2004. Notice was issued and reply was filed by the respondents and thereafter it was transferred to the Armed Forces Tribunal on its formation on 23.02.2010. The petitioner/applicant filed this petition/application challenging the order dated 21.03.2002 (**Annexure P-1**) by which his non statutory complaint was partially disallowed and order dated 30.04.2004 (**Annexure P-2**) by which his statutory complaint was rejected. Further the applicant has prayed that he be granted promotion in the rank of Naib Subedar w.e.f. 01.01.2000 and

be awarded pay and allowances from 01.01.2000 to 23.04.2002 in the said rank.

**2.** The applicant was initially posted in 513 Air Defence Missile Regiment (SP) on 01.11.1985. On 12.04.1996 he was posted to 615 (Independent) Brigade on ERE. It was submitted that 615 (Independent) Air Defence Brigade was involved in Operation Vijay and the applicant was deployed in the operational area. Thereafter, he was posted out from 615 (Independent) Air Defence Brigade and SOS to 153 Air Defence Missile Regiment (Self Propelled) on 04.07.1999. He submitted his ACR form for the year 1998-99, which was sent to headquarter 615 (Independent) Air Defence Brigade Camp. It is submitted that applicant was due for next promotion to the rank of Naib Subedar in the year 2002, but he was not empanelled to the rank of Naib Subedar and a person, junior to him, namely, Havildar M.L. Rana was promoted on 12.06.2000. It is contended that the applicant was told that due to lacking of one regimental ACR he was denied for promotion.

**3.** The applicant submitted non-statutory complaint against non-empanelment in the month of March, 2001 before the competent authority and that complaint was partly accepted vide order dated 21.03.2002 (Annexure P-1) and it was decided to promote the applicant in the rank of Naib Subedar with ante date seniority without effect on pay and allowances w.e.f. the date of his junior was

promoted to the rank of Naib Subedar. Relevant portion of the order dated 21.03.2002 while partly accepting his statutory complaint is as under: -

“Keeping in view career prospects of the above individual, you are requested to allot an addl ERE vac of JCO to 513 AD Msl Regt (SP) for one yr to facilitate promotion of the above NCO to the rank of Nb Sub. Any other adjustment regarding shifting of ERE vac within the unit as brought out vide your sig quoted above if required, may be made at your end. The above NCO will be considered for promotion to the rank of Nb Sub with ante date seniority without effect on pay and allces wef the date his immediate junior was promoted to the rank of Nb Sub.”

4. It is contended that thereafter he was promoted with ante date seniority on 24.04.2002 to the rank of Naib Subedar but his pay and allowances in the rank of Naib Subedar from 01.01.2000 to 23.04.2002 was not awarded. He again filed a statutory complaint on 27.06.2003 but the same was rejected vide order dated 30.04.2004 (Annexure P-2). It was submitted by the applicant that once he has been promoted with ante date seniority, he is also entitled for the pay and allowances of the said period. The applicant was wrongly denied promotion by the respondents on the count that one regimental ACR was lacking but the same was not within his power. Therefore, the applicant cannot be made sufferer for no fault of him. It is contended that applicant is entitled for promotion w.e.f. the date when his junior was promoted and he is also entitled for pay and allowances from the said date.

5. Reply was filed by the respondents stating, inter alia, that applicant had earned only one regimental ACR and four other extra regimental employment records during the period of consideration i.e. from 1995 to 1999, whereas a minimum of 2 regimental reports out of five reports for the period under consideration are required for promotion. As applicant was lacking by one regimental report he was not promoted. The vacancy was carried forwarded and Havildar Madan Lal Rana was promoted to the rank of Naib Subedar. It was also stated in the reply that the applicant submitted a non-statutory complaint on 10.04.2001 for seeking waiver of one regimental Annual Confidential Report. The respondents, in their reply, have also given details of the Annual Confidential Reports earned by the applicant for the period 1995 to 1999. The same reads as under:

<b>"S. No.</b>	<b>Year</b>	<b>Grading</b>	<b>Regimental/ Extra Regimental Employment</b>
(a)	1995	4R	Regimental
(b)	1996	4R	Extra Regimental Employment
(c)	1997	4R	Extra Regimental Employment
(d)	1998	3R	Extra Regimental Employment
(e)	1999	3R	Extra Regimental Employment"

6. It was contended by respondents that the matter was considered and keeping in view the career prospects he was directed to be considered for promotion to the rank of Naib Subedar with ante date seniority w.e.f. 01.01.2000 without effect on pay and allowances.

It was also clarified that with regard to entitlement of pay and allowances again matter was examined at the time of deciding the statutory complaint filed by the applicant, as the applicant has assumed the rank of Naib Subedar on 24.04.2002 as per para 25 of the Pay and Allowances Regulations, 1979, the higher rate of pay and allowances on promotion can commence only from the date of promotion. In reply it was stated that his statutory complaint was considered by the Chief of Army Staff, but the same was rejected.

7. Rejoinder to the reply was filed, reiterating the grounds as stated earlier in the petition.

8. Arguments heard. During the course of arguments, learned counsel for the applicant has submitted that he was not empanelled due to lack of one regimental ACR, but for that he cannot be blamed. In that respect he made non-statutory complaint, but that was partly allowed while granting ante date seniority. He has been deprived from pay and allowances for the period 01.01.2000 to 23.04.2002. His promotion should also have been made effective from the date his junior was promoted and his pay and allowances should also have been granted from that date. Learned counsel for the applicant also relied on the judgment given in the case of **Vasant Rao Romand vs. The Union of India & Ors.** JT 1993 (2) SC 451 and submitted that due to administrative reasons the applicant should not be made sufferer. He also cited another judgment given in the case of **State of**

***Kerala & Ors. vs. E.K. Bhaskaran Pillai*** JT 2007 (6) SC 83 and submitted that as the applicant has been wrongly denied his promotion and thereafter he has been promoted and his seniority has been maintained, therefore, he is entitled for pay and allowances for the said period.

9. On the contrary, learned counsel for the respondents states that as the applicant was lacking the required mandatory two regimental ACRs for promotion to the rank of Naib Subedar, therefore, he was not promoted. Thereafter, realising his future career he had been promoted with ante date seniority. There is no administrative laches on the part of respondents and there is no allegation of the applicant of malafide or of an ulterior motive, but due to not meeting the ACR criteria, he was denied promotion, thereafter he was promoted w.e.f. 24.04.2002. Therefore, he is not entitled for pay and allowances for the period in question. A prayer was made to dismiss his application.

10. After considering the rival submissions and perusal of record it is revealed that the applicant was considered for promotion along with his junior in the year 2000, but at that time he had not earned the requisite two regimental ACRs. He was only having one regimental ACR. Therefore, he was not promoted. Thereafter, he made a non-statutory complaint and prayed for dispensing with one requisite regimental ACR. The matter was considered and the applicant was

promoted to the rank of Naib Subedar with ante date seniority. There is no allegation of the applicant of any sort of malafide or ulterior motive. The applicant himself was aware about the promotion criteria to the said rank, he has not been able to show that he has informed in this respect to the respondents. Therefore, on availability of vacancy the applicant was promoted on 24.04.2002 with ante date seniority. We have also considered the judgments cited by the applicant. The case of **Vasant Rao Roman** (supra) was related to railway administration. In that case there was shortage of literate Shunters. Therefore, the petitioner was deputed for table work. Due to that he could not qualify the requisite requirement. Likewise in the case of **State of Kerala & Ors. vs. E.K. Bhaskaran Pillai** (supra) the petitioner was wrongly denied promotion. Thereafter, he filed writ petition before the Hon'ble Delhi High Court and the Hon'ble Court directed to consider his case. But, none of these two is the position in the instant case. Hence, the applicant was not meeting the ACR criteria and was denied promotion. Therefore, the judgments cited by the applicant do not help his contentions. The applicant assumed the charge of Naib Subedar on 24.04.2002, therefore, he is entitled to pay and allowances from the date when he actually assumed the charge of the said rank. No injustice has been caused. No interference is needed.

11. On the basis of the aforesaid discussion, the application is dismissed. No orders as to costs.

**M.L. NAIDU**  
**(Administrative Member)**

**MANAK MOHTA**  
**(Judicial Member)**

**Announced in the open Court**  
**on this 08<sup>th</sup> day of April 2011**