

**ARMED FORCES TRIBUNAL,  
PRINCIPAL BENCH, NEW DELHI  
T.A. 516 OF 2009  
W.P.(C) No. 2177 of 1998 of Delhi High Court**

**IN THE MATTER OF:**

**HAV BHAGMAL** .....**Applicant**  
Through: Mr. A. K. Trivedi, counsel for the applicant

Versus

**The Union of India and others** .....**Respondents**  
Through: Mr. Anil Gautam, Counsel for the respondents

**CORAM:**

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

**JUDGMENT**

**Dated: 06.09.2011**

1. The applicant had filed WP(C) 2177/1998 in the Hon'ble Delhi High Court. The same was transferred to this Tribunal on 23 Sep 09.

The applicant has prayed that he be promoted to Nb Sub from the date his junior was promoted with all consequential benefits.

2. The applicant states that he was born on 10 May 1955 and was enrolled in the Army (Artillery) on 15 May 1974. The applicant submits that subsequently he rose through the ranks and was promoted a substantive Hav on 1 June 1991.

3. The applicant avers that in 1997 he was superseded for promotion to the rank of Nb Sub by one Nb Sub Satnam Singh who was junior to him despite the fact that he (applicant) was eligible for promotion. The applicant was discharged on 31 May 1998 on completion of his term of service in the rank of substantive Hav.

4. The applicant represented against his suppression and states that Army HQ (Directorate General of Artillery), vide their letter dated 26 Sep 1997 (Annexure P-1), had allotted an ERE vacancy and directed Artillery Records to examine his case for promotion. He was, however, not promoted.

5. The respondents in their counter affidavit have stated that the applicant's date of birth is 5 Oct 1955 and not 10 May 1955 as given in his application. The applicant was enrolled in the Army on 5 May 1974 and subsequently was promoted substantive Hav on 1 June 1991.

6. An Annual Promotion Board was held in the applicant's unit i.e. 20 SATA Regiment on 30 Nov 1996 to cater for vacancies in the rank of Nb Sub which were to arise between the period 1 Dec 1996 to 30 Nov 1997. The name of the applicant was not placed before the Promotion Board as he, at that time, lacked the qualification of promotion cadre Hav to Nb Sub.

7. The applicant subsequently passed promotion cadre on 7 Dec 1996. The second Promotion Board was held on 1 June 1997 but the applicant was not empanelled since he lacked ACR criteria as laid down in Army HQ letter no. B/33513/AG/PS-2(C) dated 18 Jan 1993 (Annx. R-1). This policy letter stipulated that the applicant was required to have earned minimum 3 "above average" ACRs and two "high average" ACRs in the last five years ACRs. The applicant however, in the ACR for 1992 was awarded an "average" ACR (2 points) and thus did not meet the ACR criteria. Hav Satnam Singh, junior to the applicant, was however fully qualified and was approved by the Promotion Board held on 30 Nov 1996 to fill the vacancy arising on 1 April 1997. The applicant was thus superseded.

8. The applicant became overage for promotion on 4 Oct 1997 having attained the age of 42 years. He superannuated on 31 May

1998 on completion of his term of service in the rank of substantive Hav i.e. 24 years service (22 + 2 years).

9. Army HQs vide their letter dated 26 Sep 1997 (Annx. P-1) had issued instructions to create an additional vacancy to promote the applicant, he however, could not be promoted as he lacked ACR criteria.

10. In a rejoinder affidavit the applicant has stated that the contentions of the respondents that he lacked the qualification of promotion cadre, was incorrect. The applicant restates that he was considered by the Promotion Board on 30 Nov 1996 and was empanelled for promotion to the rank of Nb Sub but not promoted. During the course of arguments the applicant prayed that the relevant records be called and perused.

11. In their reply the respondents have stated that the ACR dossier of the applicant was destroyed by burning on recommendations of Boards of Officers held on 7 Feb 2004. The Promotion Board proceedings of the relevant period was also destroyed on recommendations of Board of Officers held on 3 March 2008 and 19 Dec 2009.

12. We have heard the arguments but were unable to peruse ACRs and Promotion Board proceedings since they have been destroyed. The applicant claims that when his first Promotion Board was held on 30 Nov

1996 he was fully qualified for promotion to the rank of Nb Sub. The applicant, however, has not denied the averments of the respondents that he passed the promotion cadre only on 7 Dec 1996 i.e. after the date of first Promotion Board. Thus to the extent of denial of promotion in 1996, there is no illegality. We also cannot ascertain whether the applicant met the ACR criteria for promotion to the rank of Nb Sub at the time of second Promotion Board in 1997 since the records have been destroyed by burning. The concerned record of ACRs and Promotion Board proceedings should not have been destroyed as the case was pending in court.

13. The applicant has cited the case of **UNION OF INDIA V/S EX MAJ SUDARSHAN GUPTA (2009) 2 SCC (L & S) 197** in which the absence of production of records by the respondents, adverse inference was taken and writ petition was allowed but that judgment was related to GCM proceedings where appreciation of evidence was under consideration but that is not the position in this case since this writ petition was pending and the relevant records ought to have been retained. The applicant has filed his present WP (C) 2177/1998 in the Hon'ble Delhi High Court in 1998 and the relevant records had been stated to be

destroyed on 7 Feb 2004, 3 March 2008 and 19 Dec 2009 during pendency of the applicant's writ petition.

14. The applicant has not been able to prove that he was fully qualified for promotion, however, the ACRs and Promotion Board proceedings were kept in the custody of respondents therefore they can not escape from liability since the facts can not be ascertained as the records have been destroyed. Grant of promotion is not warranted but the applicant deserves compensation on the count of fault of the respondents. We, therefore, direct that the respondents pay a sum of 25,000/- to the applicant as damages. The application is dismissed accordingly with aforesaid directions. No order as to costs of litigation.

**Z.U. SHAH**  
**(Administrative Member)**

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

**Announced in the open Court**  
**on 6th day of Sept, 2011**