

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI  
07.**

**O.A. No. 176 of 2012**

**Ex. Hony Nb Sub Satya Prakash**

**.....Petitioner**

**Versus**

**Union of India & Ors.**

**.....Respondents**

**For petitioner: Mr. Arvind Kumar, Advocate.**

**For respondents: Mr. J.S. Yadav, Advocate.**

**CORAM:**

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

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

**ORDER**

**12.10.2012**

1. Petitioner by this petition has prayed that the order dated 12<sup>th</sup> March 2012 passed by OIC Records may be set aside. He has further prayed that the Respondents may be directed to consider the case of the Petitioner in light of the judgment dated 23<sup>rd</sup> May 2011 in T.A. No. 19 of 2009 passed by the Hon'ble Armed Forces Tribunal, and grant promotion to the Petitioner from the rank of Naik to Havildar with effect from January 1988 in consideration as 'fresh case' with all consequential benefits of rank and seniority with all accrued monetary benefits.

2. This is second round of litigation. In the first round of litigation, the petitioner prayed that since his ACR for 1987 which was adverse was already expunged by the Government but his case was not reconsidered by the DPC with the expunged ACR and, therefore, he prayed that directions may be given to the Respondents to consider the case of Petitioner afresh along with

his batch mates as it was held in February 1988. The Tribunal passed the order directing the Respondents to consider the case of the Petitioner afresh.

The operative portion of the order in para 23 reads as under:

“23. In view of the foregoing, we partially uphold the petition and direct that the applicant be considered for promotion by a DPC as of in 1988 as a ‘fresh case’ with the changed profile of ACR of 1987 having been set aside without influencing with his past supersession. Should the applicant qualify for promotion, he shall be entitled to all consequential benefits of rank and seniority. The exercise be completed preferably within 90 days of issue of this order and the applicant be informed of the outcome.”

3. In pursuance of this direction, the Respondents have passed the order dated 12<sup>th</sup> March 2010 and after referring to the various circulars having a bearing on the subject, the Board has found in para 4 as under:

“Whereas, in compliance with the ibid Tribunal Order, you were screened for promotion to the rank of Havildar wef 01 Jan 1988 by a duly constituted Board of Officers held at BEG Records, Krtkee, wherein ACRs earned by you during the years 1985 and 1986 in the rank of Naik have been taken into consideration. ACR for the year 1987 in your respect has not been taken into consideration as it was set aside by the Engineer-in-Chief. You have not been found eligible for promotion to the rank of Havildar wef 01 January 1988 as you have not earned requisite number of ACRs (03 ACRs) in the rank of Naik.”

4. Learned counsel for the Petitioner has submitted that since his ACR for the year 1987 is expunged, the Respondents should have taken into

consideration his Lance Naik report. In case of Petitioner, when ACR for 1987 has already been expunged then automatically his last three years' ACRs i.e. for 1986, 1985 and 1984 should have been considered by the Respondents. There is a circular dated 12<sup>th</sup> January 1988 having a bearing on the subject which was operative from 1<sup>st</sup> January 1988 to 31<sup>st</sup> December 1988 and which reads as under:

"Criteria for promotion of JCOs/NCOs.

1. Further to our letters No. 94930/AG/PS2(c) dated 18 Dec. 85 and even number dated 28 Feb 87.

2. ACR criteria for promotion of JCOs/NCOs will be further modified as given in the succeeding paras.

3. Promotion to the Rank of Daf/Hav. The existing para 3(a) of our letter No. 94930/AG/PS2(c) of 28 Feb 87 will be substituted as follows:-

(i) Only last three reports in the rank of Nk will be counted, in case where three reports in the rank of Nk are not available for consideration, two reports in the rank of Nk and one report in the rank of L/Nk will be considered.

(ii) Two reports earned in the rank of Nk must be 'High Average' and one of these reports should be on regimental duty.

(iii) No report should be lower than 'Average'.

(iv) The individual should have been recommended for promotion in all the three reports.

4. Promotion to the Rank of Nb Sub/Sub/sub Maj.

No change in the existing criteria.

5. Applicability Modifications in the ACR criteria contained in this letter will take effect from 1<sup>st</sup> January 1988 and will be operative upto 31<sup>st</sup> December 1988. Past cases will not be entertained."

5. Since this circular enables the Respondents to take into consideration the two reports of Naik and one report of Lance Naik, in case of Petitioner it appears that in 1984 he was 'Average' and recommended for promotion and in the last two ACRs i.e. for 1985 and 1986 when he was Naik he was recommended for promotion. Therefore his report of 1984 i.e. when he was Lance Naik should have been taken into consideration as per the circular reproduced above which was in force at the relevant time. The Respondents should have taken his last three reports from 1988 because the DPC met in February 1988 i.e. ACRs i.e. for 1984, 1985 and 1986 when 1987 ACR has been set aside.

6. Accordingly, we set aside order dated 12<sup>th</sup> March 2010 and remit the matter back to the Respondents to consider the case of the Petitioner afresh. In case, he is recommended he shall be entitled for all consequential benefits. The petition is allowed with no order as to costs.

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

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

**New Delhi**  
**October 12, 2012**  
**dn/pd**