

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

7.

O.A. No. 213 of 2011

Ex Hav Ram Pukhar Sah

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Mr. S.S. Pandey, Advocate.

For respondents: Mr. Anil Gautam, Advocate.

CORAM:

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

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

ORDER
27.09.2012

1. Petitioner by this petition has prayed that the pay and allowances as applicable to the rank of Havildar from the date of his original seniority i.e. 1st January 1994 alongwith interest @ 18% per annum may be released to him by quashing the order dated 1st March 2005 whereby the Petitioner's seniority has been restored and he has been promoted without affecting pay and allowances.

2. Petitioner was enrolled in the Medical Corps on 13th March 1987 as Sepoy/SKT and he became a Naik but for promotion to the post of Havildar he could not be considered because of lack of his ACR. Thereafter he filed a statutory petition and pointed out that persons junior to him have been promoted and he has been left out. He was granted relief and direction was given that the ACR for 1992 be initiated by his the then IO Lt. Col. M. T. Raju in terms of para 4 of AO 114/79 and if he fulfils the ACR criteria for promotion to the rank of Hav (SKT) after taking into account the above ACR, his original

seniority be restored alongwith his batch mates without affecting pay and allowances.

3. The grievance of the Petitioner is that he has been wrongly denied the pay and allowances for this period. This is a discretionary order and it is always open for the authorities to deny a person the pay and allowances on the basis of 'no work, no pay' because he has not discharged the function of higher responsibility i.e. of Havildar but he has been promoted Havildar subsequently restoring his seniority. Therefore, this order cannot be interfered as a discretionary order passed by the administrative authority. However, it is open for the Petitioner to make a representation to the authorities for the benefit of stepping up as the persons junior to him are getting higher pay. However, we do not think that we can interfere in this matter.

4. With this observation the petition is disposed of. No costs.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
September 27, 2012

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