

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

06.

O.A. No. 509 of 2010

Hav. Surendra Singh

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Mr. Vinod Kumar, Advocate.

For respondents: Mr. Ankur Chhibber, Advocate.

CORAM:

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

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

ORDER

21.02.2012

1. Petitioner by this petition has prayed that the Respondents may be directed to grant promotion to the Petitioner to the rank of Nb. Sub. w.e.f. 1<sup>st</sup> September 2008, the date on which the vacancy occurred and he was fully eligible and qualified for same. He has further prayed that ACR for the year 2007-08 be set aside being illegal, unjust and unsustainable in law. He has also prayed that punishment of severe reprimand may be set aside and impose cost against the Respondents and in favour of the Petitioner.

2. Petitioner was enrolled in the Indian Army on 20<sup>th</sup> February 1985. During the course of his service career he has been promoted to the rank of Hav. in February 2002. He has been a dedicated, sincere and hard working soldier and has rendered approximately 26 years of service. He was posted to the present unit w.e.f. 23<sup>rd</sup> January 2005. His present appointment is CHM, HQ Company w.e.f. 7<sup>th</sup> April 2007. He proceeded on retirement w.e.f. 28<sup>th</sup> February 2011 in his present rank. He has been throughout rated as an

above average officer. The Petitioner was due for promotion on the post of Nb. Sub. on 1<sup>st</sup> September 2008. The vacancy had occurred consequent to the retirement of one JCO (Sub. Tajwar Singh) on 31<sup>st</sup> August 2008. The Petitioner was fully qualified and eligible for the promotion to the rank of Nb. Sub. as he fulfilled all the criteria but he was not promoted. He has also challenged the punishment of severe reprimand which has been awarded to him and challenged the ACR for the year 2007-08.

3. A reply has been filed by the Respondents and the Respondents have taken the position that the Petitioner was not the senior most as alleged by him and there were already two persons senior to him and their proposal against the vacancy was forwarded to the Records Office but because of certain discrepancies their proposals were sent back and finally the proposal was sent on 18<sup>th</sup> August 2008 and their proposal was cleared on 8<sup>th</sup> September 2008. So far as the Petitioner is concerned, he could not be promoted because of the fact that before he could be considered he had already incurred a severed reprimand on 6<sup>th</sup> September 2008 and his ACR rating for 2007-08 has also dropped and he was communicated this ACR on 27<sup>th</sup> November 2008 against which he filed a statutory complaint which was also dismissed on 12<sup>th</sup> January 2011.

4. Learned counsel for the Petitioner submitted that when the vacancy has arisen on 1<sup>st</sup> September 2008 he was eligible in all respects and he should have been promoted. In support of his contention, he has invited our attention to the decision of the Hon'ble Supreme Court in the case of **Bank of India & Anr. v. Degala Suryanarayana (1999) 5 SCC 762**. So far as the

Petitioner is concerned, he was due for promotion against the vacancy of 1<sup>st</sup> September 2008 but his case could not be taken up by the Record Office as the two the proposal of two persons senior to him have not been cleared for the previous two vacancies and their proposal could only be cleared on 8<sup>th</sup> September 2008. Therefore, till 8<sup>th</sup> September 2008 his case could not have been processed as proposal of the two persons senior to him were not cleared by the Records Office thereafter his case could not be taken up. Meanwhile he incurred punishment of severe reprimand and he was given notice and a summary trial was held which Petitioner challenged on the ground that Petitioner has not signed the same. Learned counsel for the Respondents has produced before us summary trial which bears the signature of Petitioner. So far as the contention of the Petitioner that Rules were not followed and summary trial was not conducted properly is concerned, Petitioner has pleaded guilty and summary trial proceedings bear his signature also. Therefore so far as punishment of severe reprimand is concerned that had been duly imposed. His ACR rating for 2007-08 has also dropped and he was communicated the same on 6<sup>th</sup> September 2008 but he declined to accept it and ultimately in presence of two persons on 22<sup>nd</sup> November 2008 a copy was given to him against which he filed a statutory complaint which has been already dismissed. Now in this background, the question whether the Petitioner should have been promoted against the vacancy dated 6<sup>th</sup> September 2008 is concerned, our answer is in negative. The incumbent before being promoted has to be suitable in all respects. In case the incumbent does not have a good record and he does not fulfil ACR criteria then he could not be promoted irrespective of the fact that he was eligible to be considered on a particular date. His ACR should also be



suitable in all respects till the promotion order is issued. In the case of **Bank of India** (supra), the incumbent was considered by DPC and it was put into a sealed cover. Therefore this process of sealed cover is made where a person is facing a departmental enquiry and his recommendations are kept in a sealed cover. In case the incumbent is cleared in departmental inquiry then sealed cover is open and if found suitable on the basis of the recommendations of the Selection Committee then he is entitled for promotion but if the incumbent is punished meanwhile then despite the fact that he was found suitable by the Selection Committee he would not be promoted. This exactly is the case of the petitioner that vacancy was there on 1<sup>st</sup> September 2008 but unfortunately on 6<sup>th</sup> September 2008 he was visited by severe reprimand. Therefore he was not suitable in all respects and his ACR rating has also fallen and same was communicated to him and he filed a statutory complaint which was rejected. Therefore, in these circumstances we are of the opinion that the Respondents have committed no illegality and Petitioner has been rightly rejected for promotion to the post of Nb. Sub. Accordingly, petition is dismissed with no order as to costs.

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

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

New Delhi  
February 21, 2012  
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