IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

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T.A. No. 14 of 2011
Writ Petition (Civil) No. 145 of 1996

Sub. Sain Singh Jagwan .....**Petitioner**

Versus

Chief of Army Staff & Ors. .....**Respondents**

For petitioner: Mr. N.L. Bareja, 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
04.01.2012

1. Petitioner by this writ petition has prayed that a writ of mandamus may be issued directing the Respondents to promote the Petitioner to the rank of Sub. Maj and he may be deemed to have been promoted to the said rank with effect from 1st October 1994 i.e. the date when the persons junior to him were promoted with all consequential benefits. He has also prayed that the Respondents may be directed not to retire him on 29th February 1996 pending finalisation of this petition.

2. The writ petition was first heard by the learned Single Judge and the learned Single Judge dismissed the petition in limini by his order dated 28th February 1996. Thereafter the Petitioner filed an LPA before the Division Bench of the Hon'ble Delhi High Court and the order dated 28th February 1996 was set aside by the Division Bench. Meanwhile this Tribunal was

formed and it was directed that this case may be placed before this Tribunal for adjudication. Now the matter has come before us for final adjudication.

3. Petitioner was initially inducted into service as a soldier on 2nd February 1968 in the Garhwal Rifles Regiment and he was promoted in 1984 as a JCO and on 1st December 1989 as a Subedar and he was discharged in November 1993 but he was restored back on 31st December 1993 and his order of discharge was cancelled. Thereafter he was posted on 3rd June 1994 at Lansdowne. In 1993 a DPC met for promotion from the rank of Sub. to Sub. Maj. and he was empanelled but he was not promoted and a person junior to him Mr. Makar Singh was promoted and, therefore, he filed this petition seeking mandamus for promotion to the post of Sub. Maj.

4. A reply was filed by the Respondents and the Respondents in their reply pointed out that it is true that he was empanelled but he was graded 'average' in 1994 and thus his name was removed from panel in terms of the Army HQ letter No. A/00520/153/Org. 1 (pers) (c) dated 8th September 77 as amended vide letter of even No. Dated 3rd September 1991. Since he was graded 'average' in 1994 therefore person junior to him was promoted to the rank of Sub. Maj.

5. Matter was heard at length. Learned counsel for the Petitioner has invited our attention to para 20 of the Records Office Instructions though undated and tried to submit that in such a contingency when a person is already approved in the panel and his performance is dropped then in that case the Commanding Officer will be personally responsible to ensure that

cases of all Subedars who stand approved for promotion by the DPC but are likely to be graded 'average' or 'below' in the ACR(s) after approval by the DPC, are brought to the notice of Senior Reviewing Officer well in time to enable him to assess the performance of the reportees objectively.

6. Learned counsel for the Respondents has produced before us the original record and from the original record it appears that this matter was brought to the notice of the Senior Reviewing Officer on 21st May 1995 and he has approved the average grading of the Petitioner in figurative terms and also not recommended 'fit for promotion'. The ACR was written on 31st May 1994. After perusing the reply and original record shown to us, we are satisfied that all the formalities which are required under the aforesaid circular brought to our notice have been complied with. Hence, we do not find any merit in this petition and same is dismissed with no order as to costs.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
January 04, 2012
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