

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

T.A. No. 194 of 2009

W.P. (C) No. 3285 of 1996 of Delhi High Court

D/r (Hav) Raj Singh

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

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

For respondents: Mr. Anil Gautam, Advocate.

CORAM:

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

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

JUDGMENT

21.03.2012

S.S. Dhillon, Member

1. This writ petition was filed by the petitioner in the Hon'ble Delhi High Court in 1996, seeking promotion to the rank of Niab Risaldar and consequential benefits and the same has been transferred to this Tribunal after its formation.

2. Petitioner joined the Indian Army in the Armoured Corps on 03.02.1971 and by dint of his hard work and dedication, he rose to the rank of Dafadar (Hav) in 1988. Thereafter he was due for the rank of Nb Risaldar (Nb Sub). The criteria for promotion from Dafadar to Nb Risaldar was laid down in Record Office Instruction (ROI) No. 7/94 by which he was required to pass a promotion cadre from Dafadar to Nb Risaldar and in his last five ACRs in the rank of Hav, he should have earned at least three "Above Average" reports and the remaining two should be "High Average". It was also argued that in accordance with Para 6(e) of the same Record Office Instruction i.e. No. 7/94, there was a criteria laid down for detailment on the promotion cadre also.

The criteria for detailment on promotion cadre was that in the last 4 ACRs before the promotion cadre, a Dafadar should have earned at least two "Above Average" and two "High Average" reports. Therefore, the contention of the petitioner was that when he attended the promotion cadre in January, 1994, he should have earned two "Above Average" and two "High Average" reports, otherwise he would not have been detailed for the promotion cadre. Therefore, in the short period of time between January 1994 to January 1995, when he retired, for him to be declared ineligible for promotion, solely on the basis of ACR criteria, was arbitrary and did not stand to logic.

3. Petitioner is also aggrieved by the fact that he was given an Average ACR for the year 1990 which has harmed his career profile and he was not given any counselling prior to the initiation of such ACR and neither were adverse remarks communicated to him after initiation of the ACR.

4. The petitioner is aggrieved that his ACR for the year 1992-1993 was initiated by his earlier unit i.e. Tankodrome Unit and not by the Unit where he was serving i.e. 18 Cavalry. In accordance with the provisions of AO 114/1979, the ACR period was 01st October 1992 to 30th September 1993. He had joined duty at 18 Cavalry on 17.06.1993 and has served more than the mandatory 90 days upto 30th September 1993.

5. Petitioner was discharged from service on 28.02.1995 on completion of 24 years of service and without being given his due promotion i.e. to the rank of Nb Risaldar and hence this petition.

6. Respondents have filed a detailed reply in which they have contested the arguments put across by the petitioner. They have given ACR profile of the petitioner which reads as below;

	<u>Year</u>	<u>Box Grading</u>	<u>Initiated by</u>
(a)	1990	2 (Average)	Tankodrome Unit, Babina
(b)	1991	4 (Above Average)	- do -
(c)	1992	3 (High Average)	- do -
(d)	1993	3 (High Average)	- do -
(e)	1994	3 (High Average)	18 Cavalry

7. According to the criteria for promotion laid down in Army HQ letter of 1989, the ACR requirement for promotion is that in the 5 years preceding DPC, an individual should have earned at least 3 “Above Average” reports and 2 “High Average” reports. In the case of the petitioner, he earned an “Average” report in 1990 and a “High Average” reports in 1992, 1993 and 1994, therefore, he did not meet the ACR criteria for promotion. Arguing about the “Average” report earned by the petitioner in 1990, learned counsel for the respondents stated that the Initiating and Reviewing Officers were well within their right to give an “Average” report to the petitioner, however, this report is not an “Adverse” report and neither did the rules stipulate that its contents be communicated to the ratee. The original ACR for 1990 was placed before us and we have perused the same. While the petitioner was given an “Average” rating, both the IO and RO have recommended him for promotion and there are no adverse remarks in the ACR. Under the regulations prevalent at that point of time, an “Average” ACR, where no adverse remarks are endorsed,

and where a recommendation for promotion to the next rank has been clearly stipulated, no communication of such report is required to be done to the ratee.

8. Learned counsel for the respondents argued that there is no ACR criteria for detailment for the promotion cadre from Hav to Nb Sub. The instructions for detailment on promotion cadre are contained in Army HQ letter of 26.12.1989, wherein the criteria for detailment for promotion cadre is that an individual should have 10 years of service, should have passed Army Certificate of Education Class One, should have passed Army English Certificate Class Third, as well as Map Reading Standard One. He was also required to pass the Second Class Technical Trade Test. This policy does not stipulate any ACR criteria for detailment on the promotion cadre, therefore, the contention of the petitioner was ill-founded.

9. Learned counsel for the respondents further stated that in accordance with the AO 114/79, the petitioner had to serve 90 days under his IO between 01.10.1992 and 30.09.1993 to earn an ACR. However, in the case of the petitioner, he reported to his unit i.e. 18 Cavalry on 17.06.1993. Thereafter he served under Maj. L.C. Sood, who was his Squadron Commander, from 17.06.1993 to 19.08.1993 for a period of 64 days after which Maj. L.C. Sood was transferred out and the petitioner served under Maj P.K. Uppal from 20.08.1993 to 30.09.1993 for a period of 42 days. Accordingly, since he did not complete 90 days under any officer of his unit, his ACR was very rightly sent to his previous unit i.e. Tankodrome, for initiation in accordance with the provisions of AO 114/79.

10. Hence as a result of above discussion, we do not find any merit in the petition. Same is accordingly dismissed. No order as to costs.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
March 21, 2012
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