IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

22.

T.A. No. 278 of 2009
Writ Petition (Civil) No. 982 of 1997

Ram Gopal Meena .....Petitioner

Versus

Union of India & Ors. .....Respondents

For petitioner: Mr. L.C. Rajput, Advocate.
For respondents: Mr. Ankur Chhibber, Advocate.

CORAM:
HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.
HON'BLE LT. GEN. S.S.DHILLON, MEMBER.

O R D E R
09.01.2012

Petitioner vide this petition has prayed that order dated 05.06.1996 passed by respondent no. 3 may be quashed and Mandamus may be issued directing the respondents to consider the petitioner and give him promotion from the rank of Naib Risaldar to the rank of Risaldar w.e.f 01.06.1996 with all consequential benefits. This petition was filed before the Hon'ble Delhi High Court and it was transferred to this Tribunal after its formation.

Petitioner was enrolled in the Indian Army in Remount Veterinary Corps on 27.05.1971 as a Sepoy. During his last 25 years of service, he served in different units and he was last promoted to the rank of Naib Risaldar in March, 1991. He served under various officers and retired from service on 31.05.1997. However, he could not be promoted to the rank of Risaldar, therefore, he filed the statutory complaint on 03.07.1996 which was rejected. He, therefore, approached the Hon'ble Delhi High Court by filing the present petition.

A reply has been filed by the respondents and they also produced the original record before us for perusal. In their reply, it is stated that last three ACR of the petitioner was considered for promotion to rank of Risaldar but he had an average remark in 1994-1995, therefore, he could not make it for promotion to the rank of Risaldar. It is also pointed out that against the aforesaid "average" remark of 1994-1995, he had filed the statutory complaint which was rejected by the Chief of the Army Staff. Therefore, it is submitted that on account of ACR criteria, petitioner could not make it to the post of Risaldar.

We have heard learned counsels for the parties. Learned counsel for the petitioner has submitted that at least petitioner should have been communicated the "average" remarks of 1994-1995 as it is a down grading of the ACR of the petitioner. In support of this, learned counsel for the petitioner has invited our attention to the decision of Hon'ble Supreme Court in the case of **U.P. Jal Nigam and Others Versus Prabhat Chandra Jain and Others (1996) 2 SCC 363**. We have bestowed our best of consideration to the submissions made by the learned counsel for the petitioner but facts remains that "average" remark is not an adverse remark. Therefore, it is not required to be communicated. It is not a downgrading of the petitioner's ACR. Petitioner has also got "Above Average" remarks in 1993-1994 and in 1994-1995, he has been recorded as "Average", therefore, it is not very downgrading the petitioner's ACR.

In the case relied by the learned counsel for the petitioner **U.P. Jal Nigam and Others Versus Prabhat Chandra Jain and Others (Supra)**, their Lordships have said that if there is great downfall from outstanding to satisfactory in that case reasons have to be given but that is not the case of

the petitioner. He has been graded as “Average”, therefore, it is not a drastic downgrading of his ACR. Since he could not make it because of the Average ACR, he was not promoted to the rank of Risaldar.

Learned counsel for the petitioner has submitted that the Officer Commanding has recommended the case of the petitioner for promotion. It is true that Officer Commanding might have given his comments recommending the petitioner for promotion but ultimately the final authority to consider the petitioner’s case for promotion is the Selection Committee and recommendation of the Officer Commanding. The Selection Committee after considering the petitioner’s did not find him fit for promotion, therefore, no illegality or irregularity has been committed.

Hence, we do not find any merit in the case. The petition is accordingly dismissed. No order as to costs.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
January 09, 2012
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