

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
NEW DELHI**

(Court No.2)

T.A NO. 331 of 2010

Writ Petition (C) No.5887 of 2002 of Delhi High Court

IN THE MATTER OF:

WO Ummed Singh ChoudhuryAPPLICANT

Through : Mr. Narender Kaushik, counsel for the applicant

Versus

UNION OF INDIA AND OTHERS ...RESPONDENTS

Through: Mr. Ajai Bhalla counsel for the respondents

CORAM:

HON'BLE MR. JUSTICE MANAK MOHTA, JUDICIAL MEMBER

HON'BLE LT. GEN. M.L. NAIDU, ADMINISTRATIVE MEMBER

JUDGMENT

Date: 08.02.2012

1. This case was originally filed before the Hon'ble High Court of Delhi as WP(C) No.5887 of 2002 and it was transferred to this Tribunal on 19.01.2010 and registered as T.A. No.331/2010.

2. Vide this petition, the applicant has prayed for quashing the orders dated 22.12.1998 and dated 30.5.1999 (Annexure P-3 and P-5) withholding of increments and for grant of promotion w.e.f. 01.12.1996 pursuant to the judgment and order dated 24.3.1998 of the Hon'ble Gauhati High Court (Shillong Bench) passed in CWP Civil Rules 119 and 208 of 1997 (Annexure P-1). The applicant has further prayed for quashing the charge-sheet dated 03.07.2002 (Annexure P-10)

alongwith punishment award of reprimand vide order dated 08.07.2002 and regularisation of his leave as sanctioned with all consequential relief.

3. Brief facts of the case are that the applicant was enrolled in the Indian Air Force as an Airman on 04.07.1969 and became JWO in 1987. He was promoted as Warrant Officer in 1998 with seniority from 01.12.1996. On 30.03.1992, the applicant was posted at Air NCC Sqn Trichy. It is submitted that on 06.08.1992 he caught one JWO R.L. Bhardwaj stealing 12 Bore Cartridges from the store. On reporting the said matter to the authorities, he faced harassment from all concerned. From 31.12.1993 till 21.7.1995 he kept representing against the harassment but received no response.

4. It is further submitted that on 01.02.1996 he was superseded for promotion to the rank of Warrant Officer due to poor ARs from 1992 to 1994. On 21.8.1997 he was also not granted extension and was directed to be discharged in July 1998 upon completing normal terms of engagement. Thereafter, the applicant approached the Hon'ble High Court of Gauhati (Shillong Bench) and filed writ petitions Nos.119/97 and 208/97 challenging his denial of promotion and extension. On 24.3.1998, the Hon'ble High Court allowed the writs of the applicant and consequently the applicant was promoted on 30.06.1998 with seniority w.e.f. December 1996. But financial benefits were not given.

5. Thereafter, the applicant made several representations lastly on 26.10.1998 (Annexure P-2) for grant of increments. However, the respondents vide their letter dated 22.12.1998 though confirmed granting seniority but denied the financial benefits of higher rank (Annexure P-3) against the said order and sprit of Hon'ble High Court of Gauhati. He again made a representation for grant of increments on 08.3.1999 (Annexure P-4) which was also rejected by the respondents on 30.5.99 (Annexure P-5).

6. It is further submitted that on 05.11.1999 the applicant filed a representation (ROG) against Flt Lt R. Walia (Annexure P-6). On 08.11.1999 the applicant was forced to accept apology from Flt Lt R. Walia despite the fact that the allegations against Flt Lt R. Walia was for assaulting a subordinate. Respondents failed to take any action against the said officer. On 30.04.2001 the applicant refused to pay Rs.10,600/- as directed by Sqn Ldr R.R. Singh for repair of the equipment knowing fully well to be illegal being Government property and same could be repaired from the Government fund only. To harass the applicant, he was sent for Air Force Day parade at Delhi. On return from the Air Force Parade, the applicant applied for 20 days leave and proceeded on leave. When he returned back from leave, he was informed that his leave was not sanctioned and he was charged for AWOL for 20 days. He was charge-sheeted (Annexure P-10). It was contended that without following due process he was penalised.

7. Learned counsel for the applicant argued that since he has been promoted w.e.f. 30.06.1998 and was given seniority w.e.f. December 1996, his promotion was wrongly denied in past, thereafter the ARs were set aside by the respondents themselves, he was not at fault and his juniors were promoted w.e.f. 1996, therefore, he is also entitled for increments from that date. In this way the applicant has been deprived of financial benefits w.e.f. December 1996. Learned counsel for the applicant also drew our attention to the operative part of Hon'ble High Court's order. The same is reproduced as under:-

“On perusal of the said office letter of 24.2.98 in it has been recorded in revealed that the competent authority had considered the case of the present petitioner and a decision had already been taken to set aside the ACRs of the petitioner for the year 1992-94 as the case for promotion and extension is under review. In my considered view, the writ petitioner has almost got the relief from the end of the competent authority. However, it is needless to make it clear that the respondents/competent authority shall consider the case of the writ petitioner by taking into account of the fact that the juniors to the writ petitioner had been given promotion to a higher post. This existing fact of super session by juniors to the writ petitioner shall be taken into account while reviewing the case of the writ petitioner for the purpose of his promotion and extension of his services.”

8. Learned counsel for the applicant argued that he has been granted promotion and extension of engagement and has finally retired

on 03.07.2004, he is now seeking increments consequent to his promotion to the rank of Warrant Officer with effect from 1996 at par with his juniors. The punishments given to him in 1998 are also of no consequence as these did not come in his way of promotion and extension.

9. In support of his contentions, learned counsel for the applicant cited the judgment given in case of **(2009) 10 SCC 552** in the matter of **Union of India and Others Vs A.K. Pandey** which is related to the GCM proceedings. In this case it has been observed that after informing charge, requisite time provided under Rule 34 should have been given to the accused person. He has also relied on the judgment given in **Civil Appeal Nos.1429-1430 of 2010** in **Angad Das Vs. UOI & Ors.**, decided on 18.02.2010 wherein the Hon'ble Apex Court has observed regarding power of higher authority while deciding revision/representation.

10. Learned counsel for the respondents refuted the allegations of the applicant and submitted that the applicant had applied for extension of engagement for a period of three years from 04.07.1998 to 03.07.2001. The case was examined in terms of policy dated 06.11.1995. It was found that the applicant was not meeting the minimum AR grading required for extension of engagement. However, as per para 4(f) of policy dated 06.11.1995, he was required to score an average of minimum of 72.5% in the last five ACRs whereas the

applicant's score was only 72.3%. Accordingly, discharge order dated 07.08.1997 was issued to discharge the applicant from the service on completion of then running regular engagement.

11. He further argued that the ACRs for the years 1992, 1993, and 1994 were set aside vide Air HQ letter dated 11.02.1998 in pursuance to the order dated 24.3.1998 passed by Hon'ble High Court of Guawhati in CWP Nos.119/97 and 208/1997. Consequently, his case for promotion and extension of engagement was reviewed and he was granted promotion and extension of engagement as requested by the applicant for the period from 04.07.1998 to 31.07.2001 vide order dated 27.2.1998. The applicant was granted another extension for three years w.e.f. 04.07.2001 for a period of three years vide AFRO POR SL No.RO/Extn/26/2000. His extended term expired on 03.07.2004.

12. Learned counsel for the respondents argued that the seniority of the applicant was from December 1996 but he could not be promoted to next higher rank as he did not make the minimum grade for promotion to the rank of WO i.e. 479 marks and marked as Below Grade. Later on, when the ARs for the years 1992 to 1994 were set aside and average marks of remaining two years taken into consideration on representation of the applicant and in terms of orders of Hon'ble High Court of Guwahati dated 24.3.1996, his case was referred to the Competent Authority who in pursuance to the High

Court's order, as a special case promoted the applicant vide order dated 11.2.1998.

13. Learned counsel for the respondents argued that there is no provision to grant promotion from retrospective date, as the individual is required to work in acting unpaid capacity for 28 days in terms of para 16 of AFI 12/S/48. Therefore, the applicant cannot claim arrears with retrospective date, since, the applicant has not served in that rank for that period. However, his seniority has been protected from the retrospective date for the future promotion, the advantage of which was given to him when he was considered for his next promotion as Warrant Officer.

14. Having heard both the parties at length and having examined the records produced before us, we are of the opinion that the applicant has been given a fair chance for consideration for promotion and also for extension by the authorities consequent to the orders of Hon'ble High Court of Guwhati (Shillong Bench). The respondents have after expunging the ARs pertaining to the period 1992-94 pursuant to the orders of Hon'ble High Court have promoted him with ante-date seniority, and also granted extension. He was further granted extension in his new rank. He is now pressing that he should be given increments as is due to him w.e.f. 01.12.1996.

15. We have deliberated over the issue in great detail. Since the applicant has been granted ante date seniority, it is understood that his

other rights are also to be protected. The Hon'ble High Court in its order has also directed to consider in that respect as they have directed that "***This existing fact of super session by juniors to the writ petitioner shall be taken into account while reviewing the case of the writ petitioner for the purpose of his promotion and extension of his services***". But, the respondent authorities have not given due weightage in letter and spirit of the judgment of Hon'ble High Court and had denied increments. Therefore, it is essential that his fixation of pay in the rank of Warrant Officer needs to be done as per his batch i.e. at the same level as his immediate junior has been drawing as on 11.02.1998. That will imply that he will not be considered junior to his batch in terms of pay and other allowances from the date he was promoted on 11.02.1998. We recognise the requirement of the applicant having served in the rank in order to start drawing his pay which is w.e.f. 11.02.1998. But his interest in terms of ante date seniority also needs to be protected and that can only be achieved if the due increments are granted as if he was promoted in December 1996. Difference in amount, if any, thereof has to be adjusted. He shall, thus be entitled to all consequential financial benefits. We have also considered the contentions with regard to chargesheet (Annexure P-10) and punishment awarded thereon, but we do not intend to interfere and do not find that any injustice had been done. Further, now the applicant has retired and these proceedings have not harmed his promotional benefits. The

judgments cited by the applicant, in this respect, do not help his contentions.

16. The TA is partly allowed limited to the above discussion. This exercise of granting increments from 1996 at par with juniors be completed preferably within a period of 90 days from the date of this order or else interest of 12% p.a. will be levied on the amount so found due. No orders as to cost. File be consigned to records.

(M.L. NAIDU)
(Administrative Member)

(MANAK MOHTA)
(Judicial Member)

Announced in the open Court
on this 08th day of February, 2012