

**COURT NO. 3, ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

T.A. No. 472 OF 2009

WP(C) No. 6820 OF 2007 of Delhi High Court

IN THE MATTER OF :

Sub (NT) Raj Kumar

.....Applicant

VERSUS

Union of India & Others

.....Respondents

Dated: 26-05-2010

Present: Mr. D.S. Yadav, counsel for the Applicant.

Ms. Rashmi Singh, proxy for Dr. Ashwani Bhardwaj, counsel for the Respondents.

M.A. No. 18/2010

Heard and perused the record.

Reply to the amended application has been filed by the Respondents. Learned proxy counsel for the Respondents is directed to supply copy of the same to the Applicant today itself. Applicant is free to file the rejoinder on or before the next date of hearing. Application is disposed of accordingly. Record of the miscellaneous application be attached with the main file.

T.A. 472/2009

Renotify on 20-08-2010.

**MANAK MOHTA,
(Judicial Member)**

**Z.U. SHAH,
(Administrative Member)**

Dated: 26-05-2010

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI
15.

T.A. No. 472 of 2009
Writ Petition (Civil) No. 6820 of 2007

Sub (NT) Raj Kumar

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Mr. Rohit Pratap, Advocate.

For respondents: Dr. S.P. Sharma for Dr. Ashwani Bhardwaj, Advocate.

CORAM:

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

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

ORDER

31.10.2012

1. This petition has been transferred from Hon'ble Delhi High Court after formation of this Tribunal.
2. The petitioner was enrolled in the Army on 31st October 1980 in Army Medical Corps and he was working to the entire satisfaction of the respondents and reached the rank of Subedar. The petitioner was posted to M.H. Avadi with effect from 01.01.2005 and was discharging duties assigned as senior JCO and Chief Ward Master. On 26th June 2005, the petitioner on the instructions of his Commanding Officer Lt. Col. Alok Kulshretha detailed Sub. K. Kariappan and Nk/Dvr. J.S. Rajan to escort the wife and daughter-in-law of Brig. P.B. Pillai from their residence Avadi to Airport Chennai in their own civil Maruti Car but unfortunately that car met with an accident while on the way to airport and Sub. K. Kariappan got minor injuries and Nk/Dvr J.S. Rajan sustained severe injuries on his head, abdomen and legs. The case was investigated by a Station Court of Inquiry. During said enquiry, the

petitioner was called as a witness and he was instructed by Respondent No. 6 and 7 to make a statement that the Sub. K. Kariappan and Nk/Dvr J.S. Rajan are the relatives of Brig. P.B. Pilali and they volunteered themselves for the said work and the unit had nothing to do with this, but the petitioner did not oblige them and stated facts as they are before the Court of Inquiry. In that Court of Inquiry, Respondent No. 6 and 7 were found guilty of some omissions and commissions. On account of this both Respondent No. 6 and 7 got annoyed with the petitioner and thereby his ACR for 2005-06 was deliberately spoiled. Whereas he had acquired a high or above average ACR throughout his service career, the Respondents had very cleverly downgraded his ACR for 2005-06, thereby affecting his entire career. Hence, he filed an application in the High Court for expunging of that ACR. Thereafter the High Court directed on 2nd September 2008 to file a representation against that ACR to the authorities. He filed a representation which was rejected on 18th May 2009. Therefore, this petition was revived and amended and in the amended petition, the petitioner has prayed to set aside the order dated 18th May 2009 and for quashing and setting aside the ACR for the period from 1st June 2005 till 31st May 2006.

3. A reply has been filed by the respondents and the respondents have contested the matter and placed all his ACRs in the reply. In the counter the respondents have detailed the ACR performance of the petitioner.

4. From a brief survey of the ACR of the Petitioner from 1997 to 2008, it appears that the petitioner has been getting 'Above Average' varying from 7 to 8 marks out of 9 and even in 2005 he got 8 marks, whereas in 2006 he has been given only 'Average' with 4 marks i.e. by IO and RO i.e. Respondents 6 and 7. Thereafter in

2007 also he has been given 'Above Average' with 8 marks and in 2008, he got 'Above Average' with 7 marks both by IO and RO. Therefore, it appears that there is a dip in the performance of the petitioner only for the period 2005-2006 when he got average mark of 4. The contention of the learned counsel for the petitioner is that since petitioner did not oblige Respondents 6 and 7 in Court of Inquiry and deposed the truth about the event and did not state that Sub. K. Kariappan and Nk/Dvr. J.S. Rajan both are relatives of Brig. P.B. Pillai, therefore, he has been punished by giving him a relatively poor ACR and harassed him by giving him frequent out station duties and by giving counselling also. So far as counselling part is concerned that has been expunged by GOC, Chennai. Therefore there remains no counselling whatsoever against the petitioner and remarks given in 2006 speak eloquently that a man who has been getting 'Above Average' from 1997 to 2008 except for 2006, that for itself shows that the grievance made by the petitioner has some kind of truth in it. We called for the record of the ACR and it appears that no reason whatsoever has been given as to why his performance has dipped so miserably, that when he has been getting 8 marks in 2005 and 8 marks in 2007, what was the reason for letting down his performance in 2006, especially when the counselling has been already expunged by the GOC. We do not find any reason mentioned in the ACR for lowering the performance of the petitioner. Therefore the only conclusion appears to be that this seems to be on account of annoyance of Respondents 6 and 7. If his previous and subsequent ACRs do not concur with the impugned ACR then there has to be some explanation for it, but in the present case we do not find any explanation as to why his performance has been downgraded to 4 marks, thereby making him unsuitable for promotion. This is indirect way of hitting the petitioner for reasons as mentioned by the petitioner i.e. annoyance of Respondents 6 and 7.

5. Hence we are of the opinion that these remarks are totally unwarranted and we expunge the ACR for 2006 and direct that the case of petitioner should be reconsidered for promotion to the post of Sub Major by the same DPC which was held on 20th July 2006 and in case, he is found suitable he may be given all consequential benefits.

6. The petition is allowed with no order as to costs.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
October 31, 2012

dn/pd