IN THE ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH
NEW DELHI.

TA No.664 of 2009
(WP Nop.148 of 2000)

Ex.Sub/Clk Hazari Lal Yadav ...Petitioner

Versus

Union of India & others ...Respondents

For the Petitioner : Mr. Pratap Singh, Advocate
For the Respondents: Mr. Ankur Chibber, Advocate

C O R A M:

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

ORDER
10.10.2012

1. Petitioner by this petition has prayed that by certiorari the summary punishment of Severe Reprimand, awarded to the petitioner on 10.5.1991 be quashed being illegal, unjust and not in commensurate with the minor nature of the vicarious lapse. Similarly, the ACR for the year 1995-96 being inconsistent with the past and subsequent ACRs be quashed & the petitioner be promoted to his rank of Subedar Major with retrospective effect i.e. 1.11.1998 with all

consequential benefits. He has also sought grant of honorary commission, on merit, with retrospective effect i.e. 15.8.1998 with consequential benefits.

2. The writ petition was filed by the petitioner before Hon'ble Delhi High Court and same was dismissed by the learned Single Judge by its order dated 13.1.2000. Against that petitioner filed Letters Patent Appeal before the Division Bench. The Division Bench after hearing the petitioner set aside the order of the Ld. Single Judge holding that it is not a speaking order and, therefore, remitted the matter back to the Ld. Single Judge. Meanwhile the jurisdiction of the Single Bench was taken over by Division Bench pertaining to the army matters and therefore, it was sent back to the Division Bench of the Hon'ble Delhi High Court. Meanwhile, this tribunal was constituted and this petition was transferred from Hon'ble Delhi High Court to this Tribunal.

3. The petitioner was enrolled on 16.6.1971 and with the passage of time, he became Subedar on 1.8.1995. When his came up for promotion from Subedar to Subedar Major and meeting of Departmental Promotion Committee (DPC) was held on 14.1.1997, the petitioner could not make it in the DPC for promotion to Subedar

Major and accordingly, he was not promoted and likewise he could not be given Honorary Commission on 15.8.1998 because of lacking suitable ACR grading.

4. A reply has been filed by the respondent and they have taken the position that petitioner could not make up in the ACR criteria, therefore, he could not be promoted. Learned Counsel for the petitioner submitted that primarily he could not be promoted because of the fact that he lacked two regimental reports. According to the criteria which has been laid down, out of the five ACRs considered by the DPC, the incumbent should have two 'High Average' and three 'Above Average' ACRs. Also out of these five ACRs there should be minimum two Regimental reports. The petitioner admittedly was not having two regimental reports, but at the time of the DPC the petitioner had only four ACRs as his ACR for the year 1996 was not placed before the DPC. His case was considered with the four ACRs available and he could not make it. Respondent has placed before us the original record of the DPC and in that, his four ACRs have been taken into consideration by the DPC and the fifth ACR of 1996 was not available. The question, therefore, arises as to why the ACR for the year 1996 was not available. The

respondent explained that the petitioner was himself responsible for not sending his ACR as he failed to submit his ACR form for the year 1995-96 to his Initiating Officer. After protracted correspondence, his ACR for the year 1995-1996 was sent by the petitioner in May 1998 and was received by the Record Office on 5.9.1998. On checking, it was found that petitioner was graded 'Average' (4), both by IO and RO. Consequently, his recommendation for grant of Honorary Commission was not submitted to Higher Formation since he did not meet the ACR criteria.

5. We have heard learned counsel for the parties and perused the record. Learned counsel for the petitioner has submitted that primarily because he lacked two regimental ACRs, he could not be promoted in the DPC. It is true that Regimental ACR is not in the hand of the incumbent and it depends on the posting given to him by the respondent, which alone will enable him to earn regimental ACR. Even if the petitioner might have made a request for posting out of 6 PARA to a place close to his home town, still posting lies in the hands of the respondent. Therefore, for time being we take it that this could not be a ground for not qualifying the petitioner for promotion to the post of Subedar Major. But if we consider the case of the

petitioner taking into the consideration his ACR of 1996, though it was received in 1998, but we take it notionally that if this ACR was available to the respondent during DPC of 1997, could the petitioner have made it or not. After going through these five ACRs, it appears that if the ACR of 1996 had been received by the Respondent in time and had been considered by the DPC held in 1997, he would not have made it, because while he has four 'Above Average' reports, he has one 'Average' grading which is a debarring criteria. As per the criteria, the incumbent should have two 'High Average' and three 'Above Average' reports. Therefore, nothing turns in the present case on the basis of the regimental reports. As such the petitioner could not make it to the post of Sub. Major, even if we take notionally that the ACR of 1996 available to the Respondent at the time when DPC met in 1997 was a regimental report. Therefore, in any case petitioner on the basis of the ACRs earned by him cannot make it, as such the non-availability of the regimental report does not make any difference in the present case.

6. After going through the record and after hearing both the parties, we are satisfied that even if this fifth ACR of the year 1996 would have

been available the petitioner would not have made it for the post of Subedar Major.

7. Consequently, we don't find any merit in this petition and same is dismissed. No order as to costs.

[Justice A.K. Mathur]
Chairperson

[Lt. Genl. SS Dhillon]
Member (A)

New Delhi
10th October, 2012