

**COURT NO. 2, ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
T.A. No.666 of 2009
W.P.(C) NO. 7614 OF 2002 OF DELHI HIGH COURT**

IN THE MATTER OF:

Sub Maj. (Retd.) D.S. Atri **....Applicant**

Through: Mr. C. M. Khanna, counsel for the Applicant .

Versus

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

Through: Mr. Anil Gautam, counsel for the Respondents.

CORAM:

**HON'BLE MR JUSTICE MANAK MOHTA, JUDICIAL MEMBER.
HON'BLE LT GEN Z.U.SHAH, ADMINISTRATIVE MEMBER.**

JUDGMENT

Date: 03.05.2012

1. The applicant had filed WPC 7614/2002 in the Hon'ble Delhi High Court. The same was transferred to this Tribunal on 25 Sep 09. The applicant has questioned the denial of Honorary rank of Lieutenant which was denied to him and has prayed that he be given Hony rank of

Lieutenant w.e.f 15 Aug 1996 and be promoted Hony Captain w.e.f 26 Jan 1997 along with all consequential benefits.

2. The applicant was enrolled in the Army as SKT in Oct 1965. He states that because of his sterling performance he was promoted Sub Major (SM) and subsequently retired, in that rank, on 31st Jan 1997.

3. The applicant states that he was not considered for the grant of Hony Commission on 15 Aug 1996 and 26 Jan 1997 since his ACR for 1992 - 1993 was graded "average". This made him ineligible for grant of Hony rank since it is mandatory to earn at least three "above average" and two "high average" ACRs in the last 5 years.

4. The applicant filed statutory compliant against the ACR of 1992 - 1993 and he was granted redress on 31 July 1997 with his ACR for 1992 - 1993 being set aside.

5. Subsequent to setting aside of the ACR Army HQ asked ASC Records to forward recommendation roll for grant of Hony Commission. The same was submitted on 15 Aug 1997 (Annexure P-4). Army HQ (QMG Branch) vide letter dated 24 Feb 1998 informed the applicant that his case for grant of Hony Commission had been rejected. (Annx P-8).

6. The applicant states that he was given a chance by Hon'ble Delhi High Court to examine the documents connected with his consideration for Hony Commission. On examination the applicant found that he was not granted Hony Commission because credit was not given to him for the following :

- a) Participation in Op "PAWAN" in Sri Lanka -5 Marks
- b) Securing above average grading in JCO's leadership Course -2 Marks
- c) Participation in Op "Rakshak" from 19 Feb 95 to 3 may 96 -2 Marks
- d) Participation in Op "Trident" - 2 Marks
- e) Battle casualty in Op "Cactus Lily" - 3 Marks

7. The applicant claims that he should have been awarded a total of 60 marks and not 44 as assessed by the respondents. The cut off marks for grant of Hony Commission was 47 and with 60 marks he would have earned as Hony Commission. The applicant also claims that during the course of arguments in Hon'ble Delhi High Court, one Lt Col Raj Kumar, on 28 July 1999, instructed the ASC Records to cancel an earlier Part-II order showing the applicant's participation in Op "Pawan". The Part-II order was cancelled depriving him of 5 marks. Under instructions from Army HQ 22 Inf Division (at Meerut) ordered a Court of Inquiry vide order dated 3 Aug 1999 (Annx P-9). The Court of

Inquiry was finalised on 19 Sep 99 and its opinion is at Annx P-11 and the direction of GOC 22 Inf Div is at P-12.

8. The applicant states that the C of I investigating his participation in Op "Pawan" violated Army Rule 180 in that he was not present during the conduct of the C of I. The applicant, in support of his contentions of having participated in Op "Pawan", has annexed several affidavits from various officials certifying his participation of Op "Pawan" (Annx P-13).

9. In their counter affidavit the respondents have not disputed that the applicant was enrolled in the Army on 21 Oct 1965. He completed his term of service on 31 Jan 1997 in the rank of Sub Maj and was discharged.

10. In reply respondents further stated that the consideration of the applicant for grant of Hony Commission on Independence Day 1996, Republic Day 1997 and Independence Day 1997 were not processed because the applicant lacked ACR criteria having earned average grading ACR of 1992 - 1993. The applicant was subsequently considered for grant of Hony Commission after his ACR for 1992 - 1993 was set aside by GOC in C Northern Command.

11. The respondents state that the applicant had claimed credit for having served in Op “Pawan” but no entry supporting this claim was found in his service documents. To substantiate his claim the applicant had annexed 522 ASC Bn Part-II order No. O/072 dated 9 Sep 09 (Annex P-7) which reflected participation of the JCO in Op “Pawan” while on attachment with 557 ASC Bn from 20 Nov 87 to 10 April 88. A query was made to the unit of the applicant (522 ASC Bn). His unit replied that the claim was a case of fabrication/forgery (Annex R-1). 522 ASC Bn on rechecking the Part-II Order (Annex R-2) found that the entries were fabricated/forged. The respondents state that subsequent to the retirement of the applicant a C of I was held which opined that the applicant, while posted to 522 SC Bn, did not proceed on attachment to 557 ASC Bn for Op “Pawan” between the period 20 Nov 87 to 10 April 88. This was borne out by the following :

- a) The applicant had drawn pay at Meerut, several times, during the above mentioned period.
- b) The applicant was shown “present” in parade state at Meerut during this period.

12. The respondents also state that there is no record of the applicant being a battle casualty. Thus, he was not entitled any credit on this count as claimed by him.

13. In his rejoinder the applicant has denied the allegation of forgery/fabrication and produced 522 ASC Bn Part-II order which showed his participation in Op "Pawan". The applicant submits that even if 5 marks for participation in Op "Pawan" and 3 marks for being a battle casualty were ignored he would still qualify for grant of Hony Commission on 15 Aug 1996.

14. In a supplementary affidavit the respondents have stated that the applicant, surreptitiously, approached company officers of 557 ASC Bn and claimed non-publication of Part-II order while attached with 522 ASC Bn by producing false/forged movement order and Last Ration Certificate (LRC) from 522 ASC Bn to 557 ASC Bn. Believing these forged documents company officer of 557 ASC Bn published the casualty of the applicant showing the applicant's participation in Op "Pawan" from the period 20 Nov to 10 April 1998 vide Part-II order no. O/087/SUP 98 dated 29 Nov 1998 (Annx - SA2).

15. When this casualty was received by ASC Records they detected the fraud since records showed that between the period 1 Dec 87 to 31 May 88 the applicant was at Meerut and had drawn Higher Ration Allowance (HRA). ASC Records therefore, placed ASC Bn Part-II order under observation (Annx - SA3). The Part-II order was subsequently

cancelled vide 522 ASC Bn Part - II order no. O/081/SUP 99 dated 24 Feb 99 (Annx SA-4)(two years after retirement of the applicant).

16. In view of the detection of fraud a C of I was ordered by GOC 22 Inf Div (at Meerut) which unambiguously found that:

- a) The applicant while posted with 522 SC Bn was not attached for Op "Pawan" with 557 ASC Bn from 20 Nov 1987 to 10 April 1988.
- b) The photocopies of the movement order and LRC which had earlier been produced by the applicant were found to be forged.
- c) During the relevant period the applicant had drawn pay at Meerut from 522 ASC Bn on 30 Dec 87, 1st Feb 88, 2nd April 88 and 30 April 88.
- d) The individual was shown "present" in 522 ASC Bn daily parade state, from where he had availed casual leave from 18 Nov 1987 to 20 Nov 1987 and had remained on temporary duty from 14 May 1998 to 15 May 1998.

17. Subsequent to the C of I, GOC 22 Inf Div took disciplinary action against one officer, one JCO and two OR who were responsible for publication of the Part –II order without verifying the correct facts from records. The Part-II order Annx P-7 showing attachment of the applicant

with 557 ASC Bn, from 20 Nov 87 to 10 April 88, was fake, as no such occurrence had been published in the original Part-II order (Annx SA5).

18. The applicant subsequently also claimed participation in Op “Cactus Lily” and having earned “Paschimi Star”. The applicant claims that the same was published vide 40 company ASC supply Part-II order No. 56/SUP/52 dated 5 Nov 1973 (Annx SA6). It was subsequently found that the entry at serial 52 did not pertain at all to the applicant but pertained to No. 6644651 Nk Clk Balbir Singh, who was awarded Sangram Medal only and not Paschimi Star.

19. The respondents state that the applicant claim that he was a battle casualty based on a purported discharge slip of MH Pathankot which showed the applicant’s admission in the hospital from 10 Dec 1971 to 18 Dec 1971. The diagnosis is “battle CAS, Lt leg”. Medical Authorities invariably reflect their diagnosis and disease in the discharge slip and do not classify cases as battle casualty. The same is done only by administrative authority on production of relevant documents. The respondents aver that there is no entry of the applicant being a battle casualty in a sheet roll or medical documents. No Part-II order supporting the claim was ever published.

20. The respondents have stated that the applicant's claim for having participated in Op "Rakshak" and having earned the "Special Service Medal" while serving with 603 ASC Bn is also false. 603 ASC Bn on 10 May 2011 have confirmed that the unit was never physically deployed in Op "Rakshak" Annx SA-9.

21. The respondents aver that the applicant's claim of service in Nagaland in Op "Orchid" with 50 Company ASC SUP Type C in counter insurgency operation (CI Ops) is also incorrect. It was clarified that this unit was not on the ORBAT of 3 Corp but only under their "jurisdiction" (Annx SA-11). The applicant therefore never participated in CI Ops but only served in "field area" for which he was granted special compensatory allowance. The applicant was thus not entitled for 4 marks as claimed. He was only entitled to 1 mark for having served in field area. The respondents have given the marks initially awarded to the applicant. The same are as under :

(a)	Service over 20 years	11 marks (The applicant was considered for grant of Honorary Commission in his last year of colour service counted before the occasion i.e. 25 Jan/14 Aug at par with all
-----	-----------------------	---

		affected JCOs. Since the applicant had by then only 11 completed years service over 20 years, he was awarded marks accordingly.
(b)	Service in rank of Sub Maj	02 marks
(c)	Field service within India	03 marks
(d)	Service in high altitude and uncongenial climate area	04 marks
(e)	In field area under active hostilities	04 marks
(f)	In counter insurgency area	04 marks
(g)	ACR gradings in last five years	10
(h)	Medals, stars, clasps and commendations	04 marks
	Total	44 marks

22. After the detection of forgery and fabrication on several counts the marks awarded to the applicant were re-evaluated. He was entitled to only 35 marks as under : .

(a)	Service over 20 years	11 marks
(b)	Service in rank of Sub Maj	02 marks
(c)	Field service within India	04 marks (+1)
(d)	Service in high altitude and uncongenial climate area	04 marks
(e)	In field area under active hostilities	Nil (-4)
(f)	In counter insurgency area	Nil (-4)
(g)	ACR gradings in last five years	10 marks
(h)	Medals, stars, clasps and commendations	04 marks (-2)
	Total	35 marks

23. The respondents state that when the applicant was considered for grant of Hony Commission on 15 Aug 1996 the cut off marks were 48 and on 26 Jan 1997 the cut off marks were 41. Since the applicant had

only secured 35 marks he was not entitled to grant of Honorary Commission on both occasions.

24. In a written submission dated 22 March 2012 the applicant has repeated the earlier points raised by him.

25. We have heard the arguments and perused the record including the proceedings of the Boards for grant of Honorary Commission. We find that at each stage the applicant has claimed credit for service in Operations/operational areas in which he did not serve. The applicant claims 5 marks for having participated in Op "Pawan" between the period 20 Nov 87 to 10 April 88. The Part-II order published by 522 ASC Bn was based on false documents produced by the applicant. The fact that the applicant drew pay on 4 different occasions at Meerut during this period on 30 Dec 87, 1 Feb 88, 2 April 88 and 30 April 88 and drew HRA at Meerut shows that he was present there and not in Op "Pawan". We do not give veracity to the certificates given by various officials certifying the presence of the applicant in Op "Pawan" in the light of records. No disciplinary action was initiated against the applicant for this forgery because he had proceeded on retirement two years earlier. GOC 22 Inf Div, however, had taken action against one

officer, one JCO and two ORs who were responsible for publication of the incorrect Part-II order.

26. The applicant claims that he participated in Op “Cactus Lily” and was awarded “Paschimi Star” are also incorrect. Part-II order No.56/SUP/52 dated 5 Nov 1973 (Annx SA6) has been tampered with as serial No. 52 pertain to No. 6644651 Nk Clk (S) Balbir Singh and not to the applicant as claimed by him.

27. The applicant’s claim that he was a battle casualty, is also not established. No casualty or Part-II order in this regard was ever published. That is the final authority for grant of status of “battle casualty”. The applicant is educated and held the rank of Sub Maj having knowledge of military rules and certainly would have know the importance of publication of Part-II order to authorise “battle casualty” status. No credence can be given to the photocopy of the discharge slip given by MH Pathankot as it is not a valid document. Battle casualties are promulgated after injury reports and holding a C of I, followed by publication of Part-II order.

28. The applicant claimed two marks for participation in Op “Rakshak” and award of special service medal with 603 ASC BN. This unit has

however confirmed that it was never physically deployed in Op “Rakshak” (Annex SA9). This claim is also without substance.

29. The applicant’s claim that he served in Nagaland of Op “Orchid” is also incorrect. 3 Corps has confirmed (Annex SA 11) that the applicant’s unit was not deployed in ‘CI’ operations but only in “field area” and was in receipt of special compensatory allowance for field service.

30. The only claim of the applicant for which he might be given credit is his grading of ‘BX’ in “JCO Leadership Course”. This was challenged by the respondents on the ground that only gradings of ‘D’ (distinguished) or ‘AX’ (above average) gets two additional marks. The instruction on the subject at Annex SA10 do not show grading of ‘BX’ and therefore the benefit of doubt can be given to the applicant. Even if two additional marks are given the applicant would secure a total of 35 plus 2 = 37 marks in total and would not qualify for grant of Hony Commission on 15 Aug 1996 where the cut off was 48 marks. Similarly on 26 Jan 1987 the cut off was 41 marks. We noticed that during the course of arguments the applicant vehemently staked his claim for various marks for which he was not entitled. The applicant has wasted precious time of the court by his false claims and deserves to be penalised. However, in view of the fact the applicant retired more than 15 years ago no penalty is being imposed upon him.

31. In view of the above observations, application is dismissed. No costs.

Z. U. SHAH
(Administrative Member)

MANAK MOHTA
(Judicial Member)

Announced in the open Court
on the 3rd day of May, 2012
rk