

**COURT NO. 3, ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
T.A.297 OF 2010**

Writ Petition (C) No.15904 of 2006 of Delhi High Court

IN THE MATTER OF:

EX NB SUB BALRAJ

.....APPLICANT

Through: Mr. Y.D. Nagar, Advocate

Versus

THE UNION OF INDIA AND OTHERS

.....RESPONDENTS

Through: Mr. Anil Gautam & Mr. Ankur Chibber, Advocates

CORAM:

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

JUDGMENT

Date: 04.05.2011

1. The applicant had filed WPC 15904/2006. The same was transferred to this Tribunal on 10th Nov 2009. In his application the applicant has prayed that the adverse remarks endorsed in his ACR for 2004 alongwith the figurative assessment of 3 marks and non-recommendation for promotion to the rank of Sub be quashed and he be promoted Sub w.e.f. June2004 i.e. the date his junior NB Sub Naresh Kumar, respondent No.5, was promoted. The applicant has also prayed that the order of COAS dt 31 Jan2006 (page 23), rejecting

his statutory complaint, be quashed and he be reinstated in service with all consequential benefits.

2. The applicant was enrolled in the Army on 23 Jan 1980. He was subsequently promoted Nb Sub in March 2003. The applicant states that in his ACR for 2003 he was graded “high average” and recommended for promotion both by IOs and RO. In his ACR for 2004 his IO graded him “high average” and recommended him for promotion. His RO, Col Naresh Kumar, respondent No.3, however, graded him “below average” with figurative assessment of 3 and did not recommend him for promotion. The applicant states that this low average grading and non-recommendation for promotion was not communicated to him at the time of endorsement in violation of Para 44 of Army Order 1/2002/MP which is quoted below:

Para 44 of the Army Order 1/2002

MP deals with the procedure for communication of Average grading: “Average” assessment in any personal quality or demonstrated performance or in overall grading is not an adverse grading thus needs no justification in the pin picture, however, since Average grading adversely affects promotion prospects of JCO/NCO including

grant of Honorary Commission rank, it will be communicated. However, where a Ratee has though been graded, "Average" but "Not Recommended" for promotion, the same will be justified in the pen picture by the reporting officers and the grading including the pen picture will be communicated to the Ratee.

3. The applicant states that in June 2004 he was superseded for promotion to the rank of Sub by his junior Nb Sub Naresh Kumar. The applicant on 10 May 2005 filed a statutory complaint against his supersession. This statutory complaint was returned to him on technical ground. He again submitted statutory complaint, but no response. The applicant subsequently filed W.P.(C) No.20115/05 on 6th Oct 2005 in the Hon'ble Delhi High Court which in its order directed that the complaint of the applicant be disposed of by reasoned order before 31st Dec,2005. The respondents did not comply. on time with the Hon'ble High Court order and the applicant retired on 31st Jan 2006 in the rank of Nb Sub. On 2nd March 2006 he was informed by the respondents that the COAS had rejected his statutory complaint. Hence, again he filed present writ petition.

4. In the counter affidavit the respondents have stated that the applicant was found unfit for promotion to the rank of Sub by Unit

Promotion Board held on 2 Aug 2004 as he did not meet the ACR criteria as per promotion policy dated 10.10.1997 which is as under :

“That as per policy, for promotion to the post of Subedar, no report should be below “High Average” during the last three years in the ACR at the time of holding Promotion Board in terms of para 7 of Army HQ letter No. B/33513/AG/Ps 2 (c) dt 10.10.1997 which lays down the criteria for promotion to the rank of Subedar as under :

- a. Last three reports will be considered out of which at least two should be in the rank of Naib Subedar and one may be in the rank of Havaldar, in case of shortfall.***
- b. All these three reports should not be less than High Average.***
- c. The individual should be recommended for promotion in all the three reports.”***

5. The above criteria states that no ACR should be below “High Average” during last three years. The applicant in his ACR for 2004 was graded “High Average” by the I.O. but only “Average” by RO and thus did not meet the ACR criteria for promotion. The R.O. nowhere remarked as “not recommended”. The respondents maintained that there is no infirmity in the ACR of the applicant and the same was found technically correct.

6. The respondents state that the applicant filed a statutory complaint against denial of promotion to the rank of Sub. While this was being processed the applicant also filed WPC 20115/5 in Hon’ble Delhi High Court which directed that the statutory representation of the applicant be disposed of before 31 Dec 05. The COAS rejected the statutory complaint on 23 Jan 2006 and the applicant was duly informed accordingly. The applicant retired in the rank of Nb Sub on 31 Jan 2006.

7. The respondents maintained that the applicant was a competent NCO till 2002. His performance deteriorated on his promotion to the rank of JCO and despite his low grading in ACR for 2003, the applicant did not make efforts to improve. The applicant was given numerous warnings/counselling/guidance to show improvement.

8. The respondents maintained that assessment of the RO in ACR for 2004 was communicated to the applicant on 5 March 2005 in terms of Army Order 1/2002/MP and signatures of the applicant were obtained on the communication slip. The respondents maintain that delay in communication of adverse remark/non-recommendation for promotion do not change the status of ACR and have recommended that the application be rejected.

9. In a rejoinder the applicant has maintained that he was never cautioned about poor performance and non-communication of adverse remarks was a deliberate act to professionally cause him harm and to give undue benefit to Nb Sub Naresh Kumar.

10. We have heard the arguments and perused the records. The applicant was not promoted to the rank of Sub as he did not have required minimum "High Average" gradings in his last three reports. The applicant in his ACR for 2004 was graded "High Average " by the IO but only "Average" by the RO. Since this assessment by the RO adversely affected the chances of promotion of the applicant to the rank of Sub which was held in June 2004, the same should have been communicated to the applicant at the time of endorsement i.e. 14 July 2004 to enable him to represent against the assessment in time. Admittedly, remarks were communicated in March, 2005. This violated Army Order 1/2002/MP.

11. The applicant retired on 31st Jan 2006 . The assessment which adversely affected the chances of promotion was communicated to the applicant on 5 March 2005 well after the unit promotion Board held on 2 Aug 2004. The applicant subsequently retired in the rank of Nb Sub on 31 Jan 2006.

12. In view of the above observations, we find that the applicant was not given the chance to represent against the impugned ACR before his Promotion Board held on 2 Aug 2004. The average assessment of the RO and his non-communication is in violation of Army Order 1/2002/MP. We, therefore, direct that the complete assessment of the RO in the ACR for 2004 be set aside and the remarks given by I.O. be maintained. The applicant is to be considered again for promotion to the rank of Sub and if found fit be considered for promotion to Sub w.e.f. Jun 2004 when the junior to him was promoted along with all consequential benefits. His discharge order will not come in his way and he will be entitled for all financial benefits including pensionary benefits. The order of COAS dated 31 Jan 2006 is also quashed. Application is partly allowed. No costs.

Z.U. SHAH
(Administrative Member)

MANAK MOHTA
(Judicial Member)

Announced in the open Court
on this 04th day of May, 2011

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COURT NO. 2, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
TA No. 158/2012

In TA 297/2010 in W.P.(C) No. (C) 15904/06

IN THE MATTER OF :

Ex.Nb Sub Balraj

..... Petitioner

VERSUS

Union of India & ors

.....Respondents

CORAM

HON'BLE MR. JUSTICE N.P.GUPTA

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

Dated: 11.01.2013

Present: Mr. Y. D. Nagar Counsel for the petitioner.
Mr. Anil Gautam Counsel for the respondents.

Learned counsel for the respondents has delivered copy of the PPO to the learned counsel for the petitioner so also notional promotion order has also been delivered. Thus, both the learned counsels are at one that judgement dated 4.5.2011 has been complied. The proceedings are accordingly dropped.

S.S.DHILLON
Administrative Member

N.P. GUPTA
Judicial Member

Dated: 11.01.2013

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