

**ARMED FORCES TRIBUNAL CHANDIGARH REGIONAL BENCH
AT CHANDIMANDIR**

O.A No.682 of 2010

Krishna Rai	...	Petitioner
v.		
Union of India and others	...	Respondents

ORDER
11.10.2011

Coram : Justice N.P.Gupta, Judicial Member

Lt. Gen. H.S Panag (Retd), Administrative Member

For the Petitioner : Brig (Retd) Rajinder Kumar, Advocate

For the Respondents : Ms Renu Bala Sharma, CGC

By this petition, the petitioner has prayed for issuance of a direction to the respondents to consider the name of the applicant for promotion to the rank of Naib Risaldar, after the ACR for the period 15.06.2009 to 30.09.2009 having been expunged, for which promotion he is entitled on merit w.e.f. 01.01.2010, when NCOs junior to him were promoted, with all consequential benefits. Other ancillary prayers have been made.

The factual averments are that the petitioner was enrolled on 28.06.1990 and w.e.f. 01.01.2010, 7 NCOs junior to the petitioner were promoted to the rank of Naib Risaldar. The criteria for promotion has been pleaded in Para 4 (c). It is then pleaded that he was not promoted because ACR for the year 2009 came in his way. The petitioner submitted a

statutory petition and the ACR for the period 15.06.2009 to 30.09.2009 was set aside vide communication dated 16.08.2010 (Annexure A-2). However, he was still not promoted and 13 more juniors were promoted. Thus, according to the petitioner, despite meeting all prescribed criteria, he has been wrongly deprived of promotion.

Written statement has been filed on behalf of all the respondents, and in substance, the stand taken by the respondents is that he did lack in ACR criteria. However, ACR for the year 2009 was set aside, and as pleaded in Para 2 of the reply, that after setting aside of the said ACR, the petitioner is still lacking ACR criteria, as required by the HQ, Ministry of Defence, letter dated 10.10.1997. Then, in Para 4, it is pleaded that in view of the said letter dated 10.10.1997, the petitioner was not eligible for promotion, and was not promoted. It is pleaded that after setting aside of ACR for the year 2009, and considering the ACR of the year 2010, the applicant does not meet the criteria, and that during the course of service, he was awarded punishment of severer reprimand vide order dated 09.08.2008. It is also pleaded that the applicant has wrongfully been assisted in processing an unauthorized ACR, through NCC Group Headquarters, Jabalpur for the period 01.09.2008 to 10.12.2008, which is wholly irregular and technically invalid. Delayed ACR cannot be extended beyond November, 2008. For this lapse, he was warned in writing, for being put up an adverse report. The warning was forwarded by the AC Records.

During the pendency of the petition, the petitioner filed an application, being M.A No.80 of 2011, praying for a direction to the respondents to produce certain documents mentioned therein, and in

response thereto, some documents have been made available, including the 2 DPC proceedings, being dated 01.10.2009 and 20.10.2010.

Before proceeding further, it may be noticed here that the punishment of 'severe reprimand' awarded by order dated 09.08.2008, has been reduced to 'reprimand'. This we get from the document dated 29.06.2009 filed by the respondents in the compilation of documents produced before this Tribunal on 27.05.2011 at page 74.

We also find that it is not in dispute, as noticed above, that the ACR for the year 2009 (15.06.2009 to 30.09.2009) had been set aside on the petitioner's statutory complaint, vide Annexure A-2 dated 16.08.2010.

We have perused the proceedings of the DPC, and find that in the DPC held on 01.10.2009, the petitioner was not found eligible, but then, that DPC did take into account the ACR of the petitioner for the year 2009, awarding 4 marks (grading), and the punishment of severe reprimand, as awarded to him vide order dated 09.08.2008, had also been taken into account. It is a different story that by the time that DPC was held, the punishment of severe reprimand stood reduced to punishment of reprimand on 29.06.2009 itself, even though the ACR did not stand set aside by that. That being the position, so far as the DPC proceedings dated 01.10.2009 are concerned, may be that the punishment of severe reprimand was wrongly considered, but then the petitioner did lack ACR criteria.

However, a perusal of DPC proceedings dated 20.10.2010 also shows, that this time ACR for the year 2009 was not taken into account, by observing "ACR set aside" but then, the punishment of severe reprimand was taken into account by observing, "punishment reduced reprimand, and Part-II Order not yet received." With this, it was observed in the remarks, "not eligible lacks ACR criteria and discipline criteria."

In our view, when admittedly, the punishment was reduced, the mere fact that Part-II Order was not received, could not be made a ground to take into account the original punishment, so as to hold the incumbent ineligible. So far as remark given about lacking in ACR criteria is concerned, as appears from the DPC proceedings, that the ACRs for the years 2004, 2005, 2006, and 2007 were taken into account. The ACRs for the years 2008 and 2009 were not there, as for the ACR of 2008, the remark given is "NIR" while for 2009, the ACR was set aside. It obviously appears that, thus, the requisite number of ACRs of five preceding years, were not taken into account as were required to be taken into account as per the Army Headquarters Policy.

Since the matter is already hanging fire since long, and since the ACR of the earlier year 2003 is available with the learned counsel for the respondents in the dossier of the petitioner, we ventured to look into that, and find, that therein the petitioner has been given 7 marks ranking, and had been recommended for promotion. In that view of the matter, if the ACR for the year 2003 were to be considered, which in our view, was required to be considered, the petitioner could not be held "not eligible" as he is not shown to be lacking in other criteria.

Accordingly, the rejection of the petitioner's candidature for promotion in the DPC dated 20.10.2010, is required to be, and is set aside. At the same time, in view of the fact that the ACR for the year 2009 had also been set aside, though by subsequent order, but then as a necessary and logical conclusion, at the time of holding of first DPC dated 01.10.2009 also, he does not appear to be lacking in any criteria.

In that view of the matter, the petitioner is held entitled to be notionally promoted to the rank of Naib Risaldar with effect from the date

persons junior to him had been promoted, being 01.01.2010. However, since the proceedings of second DPC dated 20.10.2010 are being set aside, the petitioner is held entitled to actual pay of the rank of Naib Risaldar, and consequential benefits of promotion etc. with effect from 20.10.2010, but with retrospective notional seniority from 01.01.2010.

The petition is, accordingly, allowed as above.

[Justice N. P. Gupta]

[Lt Gen H. S. Panag (Retd)]

11.10.2011
RS