

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

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TA 09 of 2012 (arising out of CWP 2873 of 1990)

**Girdhari Lal Parashar** ..... **Petitioner(s)**  
**Vs**  
**Union of India and others** ..... **Respondent(s)**

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For the Petitioner (s) : Mr. Bhim Sen Sehgal , Advocate  
For the Respondent(s) : Dr. Urmil Gupta, CGC.

**Coram: Justice Vinod Kumar Ahuja, Judicial Member.**  
**Lt Gen (Retd) HS Panag, Administrative Member.**

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**ORDER**  
**07. 10.2013**

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This case has been received on transfer from the Punjab and Haryana High Court and has been treated as Transfer Application under Section 14 of the Armed Forces Tribunal Act, 2007, wherein he sought the following reliefs/directions:-

- (i) A writ of mandamus may kindly be issued directing the respondents to award rank of Lieutenant with effect from 15<sup>th</sup> August 1985 and rank of Captain w.e.f. 26-01-1986 to the petitioner as per standing instructions.
- (ii) That all the arrears and difference of pay along with other benefits may also be directed to be paid to the petitioner along with interest at the current market rate.
- (iii) Any other relief which this Hon'ble Court deems fit and proper in the circumstances of the case may also be allowed.
- (iv) That filing of the certified copies of the Annexure Annexures P-1 to P-16 may kindly be dispensed with.
- (v) That service of advance notices on the respondents may also be dispensed with.
- (vi) That the writ petition of the petitioner be allowed with costs.-

Shorn of unnecessary details, the brief facts of the case are the petitioner was initially recruited in Indian Army as Sapper Clerk in Bengal Engineers, Group, Roorkee. In the course of service, he had served in various filed places, High Altitude Areas and Foreign Service. On account of his hard work, he rose to the rank of Subedar Major. He claims to have participated in the War and was awarded a number of medals/stars as per details given in Annexure P-1. All the ACRs earned by him were above average and his service record had been unblemished throughout. No adverse remarks was ever conveyed to him.

As per Army Head Quarters Letter dated 20<sup>th</sup> August, 1982 whereby detailed policy instructions have been issued for grant of Honorary Commission/Ranks to JCOs and Dafadars/Havildars, all Subedar Majors are given chance for grant of Honorary Commission with a view to confer upon them the monetary benefits and privilege in the matter of pension by awarding them Honorary ranks of Lieutenant/Captain before their retirement.

It is pleaded in the petition that this benefit is available only to those Army Personnel whose service record is meritorious and distinguished and who attained their highest rank through promotional channels. In this way, those Army Personnel are able to attain the honorary ranks by awarding them the Honorary Commission before their retirement.

It is further averred that the petitioner was promoted to the rank of Subedar Major (Clerk) in December, 1980. On March 23, 1981 he was posted to Garrison Engineer (West), Lucknow after decentralisation of M.E.S. Militarised Cadre Clerks. Since the petitioner was initially serving on the strength of Bengal Engineer Group, Roorkee of Indian Army, he was posted to M.E.S. Extra Regimental Employment. Therefore, he was under the direct supervision and control of Garrison Engineer (East) Lucknow, who was subordinate to Commander Works Engineer Lucknow while the overall control was with the Chief Engineer, Lucknow Zone, Lucknow. The Officer In charge Record vide his letter No. A-7/6513/ID-85/9/R dated 20-12-1984 sought recommendations of the petitioner for award of the rank of Honorary Lieutenant from the Garrison Engineer (East), Lucknow, who forwarded the same to former vide letter dated 15-01-1985 (Annexure P-3).

It is also averred that the Honorary Awards to Army Personnel are normally conferred on the eve of 15<sup>th</sup> August and 26<sup>th</sup> January every year. He felt highly surprised when he did not find his name in the list of awardees of Honorary Commission of Lieutenant in the Newspaper dated 15<sup>th</sup> August 1985. Feeling aggrieved, he made a statutory complaint dated 26-09-1985 (Annexure P-4) to the Chief of the Army Staff alleging that he had not been considered for the award of Honorary Rank of Lieutenant. On the receipt of this complaint, the Garrison Engineer (East), Lucknow, wrote a letter to the Record Office, Bengal Engineer, Group, Roorkee, stating therein that Sub Major GL Prashar (petitioner) represented that his name was omitted for the grant of Honorary Commission on the occasion of Independence Day 1985, though the JCO was fully eligible for the same as he had served in the Foreign Countries, Field Area, HA/UCA and also earned sufficient medals/stars. The Record Office was asked to intimate the present position and confirm whether his application was forwarded to the higher formation for the information of the JCO. In response to the aforesaid letter, it was intimated to the Garrison Engineer (East), by the Record Office vide his

letter dated 04-09-1985 (Annexure P-6) that the JCO did not fulfil the ACR Criteria for grant of honorary Commission as laid down in AC 40/79. Vide letter dated 04-12-1985 issued by the Garrison Engineer (East), the petitioner was informed that the last five years ACRS earned by him had been taken into account for grant of Honorary Commission and as per the existing policy, he did not fulfil the criteria and he was declared ineligible by the Board of Officers for grant of Honorary Commission.

Thereafter the petitioner made a supplementary complaint dated 23-12-1985 to the Chief of the Army Staff through proper channel giving therein the reference of his earlier complaint dated 26 September, 1985. This complaint was returned without any action by the Garrison Engineer (East), Lucknow, vide letter dated 19-11-1986 (Annexure P-8). Since the petitioner had also addressed this supplementary complaint direct to the Chief of the Army Staff, it was acknowledged by the Engineer-in-Chief's Branch, Army Head Quarters, New Delhi and he was intimated vide letter dated 21<sup>st</sup> March 1986 that his complaint was under consideration and the progress of the case would be communicated shortly. He was also advised to contact Lt Col B B Sharma, Army HQs, Engineer-in Chief's Branch, New Delhi to know about the progress of the case.

The petitioner retired from service on 1-04-1986 as Subedar Major Clerk. Thereafter, Major General H.S. Sodhi, Additional DG Engineers (Pers), Army HQs, Delhi vide his DO letter dated 18-08-1986 while conveying his congratulations intimated the petitioner that he was awarded the rank of Honorary Lieutenant on the occasion of Independence Day 1986. As he petitioner being not satisfied with this rank, he also served a detailed legal Notice dated 23-09-1986 (Annexure P-14) requesting the authorities to award him the rank of Honorary Lieutenant from 15 August 1985 and Honorary Captain w.e.f. 26 January 1986 and to pay a sum of Rs. 50,000/- upto date of retirement on account of loss of Gratuity, pay & pension, but it yielded not fruit. However, in response to his supplementary statutory complaint, the Engineer-in- Chief vide his letter dated 03-06-1988 informed the petitioner it was got examined and came to the notice that his first statutory complaint on the same subject was under progress. As per para 2 of 361 of Regulations for the Army, 1962, the right of filing statutory complaint can be exercised only once.

Faced with the situation, he filed the present petition seeking directions to the respondents to award him the rank of Honorary Lieutenant from 15 August 1985 and Honorary Captain w.e.f. 26 January 1986 while he was in active list and also release him the payment of difference of retiral benefits and other monetary befits admissible under the rules.

On notice having been issued, the written statement has been filed on behalf of the respondents in which a preliminary objection regarding delay & laches has been raised alleging that though the petitioner retired from service in the year 1986, while the present petition was filed before the Punjab and Haryana High Court in the year 2010. The petition being highly belated is liable to be dismissed on the ground of delay and laches.

On merits, the stand of the respondents is that as per Army HQ letter No A/66204/AG/CW-2 dated 20-8-1982, JCOs who fulfil the basic criteria and conditions for grant of Honorary Commission during last year of colour service in two chances are considered for grant of Honorary Commission on Republic Day and Independence Day respectively. One chance was given to the petitioner immediately after his retirement for Honorary Rank.

In the written statement, it has been admitted by the respondents that the petitioner – Subedar Major Girdhari Lal Prashar, was recommended for the grant of Honorary Commission on the occasion of Independence Day 1985 and Republic Day 1986 respectively. The recommendations of the OC Unit is one of the requirements for grant of Honorary Commission. Apart from it, there are certain other qualitative requirements also viz ACRs and disciplinary criteria. Due to lack of ACR criteria laid down in Army HQs letter dated 20-8-1982 as amended, his case was not considered for the award of Honorary Commission on both the occasions by the Departmental Promotion Committee. As per laid down criteria, a JCO is required to earn at least three ACRs of ‘Above Average’ i.e. 4 points and two ACRs of ‘Average’ i.e. 2 points during the last five years. A detail of the ACR gradings earned by the petitioner during the last five years from 1980 to 1984 has been given in para 4 of the written statement which indicates that he earned three ACRs of ‘High Average (3 Points)’ for the period 1980 to 1982 and for the period 1983 and 1984 he earned ACRs of ‘Above Average’ (4 points). As the petitioner did not fulfil the requisite criteria, he was not eligible for grant of Honorary Commission.

It is pleaded in the written statement that the petitioner was given the Honorary rank of Lieutenant and not Honorary Commission to the rank of Lieutenant as he is not eligible for the grant of Honorary Commission. The Honorary Commission is granted to certain JCOs to recognise their dedicated and meritorious services rendered by them. It is not granted to everyone as a matter of right, who fulfils the eligibility criteria. The petitioner’s statutory complaint as well as his representations were rightly rejected by the authorities. As per rules, the statutory complaint can be made only once. On these pleadings, the petitioner

is not entitled to any relief claimed in the writ petition and as such the same is liable to be dismissed.

The rejoinder to the written statement has been filed by the petitioner in which he reiterated the averments made in the writ petition. However regarding delay in filing the writ petition, he has stated that his counsel had earlier wrongly filed the case before the Central Administrative Tribunal inadvertently in the year 1987 which was returned to be filed to the appropriate forum. Thereafter the writ petition was filed in the High Court in the year 1990. Hence there was no delay in filing the writ petition.

We have heard the learned counsel for the petitioner as well as the respondents and have gone-through the documents placed on record by the respective parties.

In the present case, the respondents have taken a preliminary objection in the written statement regarding limitation. However, during course of arguments, this point was not agitated by the respondents. Hence, it needs not to be gone into by us. Even otherwise while admitting the writ petition vide order dated 08-01-1991 no notice of delay was taken by the High Court.

The admitted facts of the case are that the petitioner was enrolled in the Indian Army as Sapper Clerk in the year 1954. By dint of his hard work and devotion he was granted various promotions during tenure of his service and ultimately he rose to the position of Subedar Major. In the year 1985 while in active service, he was recommended for the grant of Honorary Rank by OC Unit. After completion of maximum tenure of his service, he retired from Army service on 01-04-1986. After retirement, he was granted the rank of Honorary Lieutenant on the occasion of Independence Day of 1986 as is evident from the DO letter of Major General HS Sodhi, dated 18-8-1986 (Annexure P-13) addressed to the petitioner.

It was vehemently argued by the learned counsel for the petitioner that the petitioner was in active list of JCOs in the last year of his colour service i.e 1985. As per Army HQs letter dated 20-08-1982 (Annexure P-16), whereby detailed policy instructions were issued by the Adjutant General Shakha, New Delhi, all Subedar Major are given chance for grant of Honorary Commission to confer upon them the monetary benefits and privilege in the matter of their pay and pension by awarding them Honorary Ranks of Lieutenant/Captain before their retirement. He further emphasised that this benefit is available only to those Army Personnel, who have rendered long distinguished service at the order of Nation by getting them enrolled as Sapper and attained the highest rank through promotions. In this manner, this process enable them to attain the Commission Ranks by awarding the Honorary Commission before their retirement.

His further contention is that the petitioner's service record had been unblemished throughout and he was never conveyed any adverse remarks. He also fulfils the requisite ACR criteria as laid down in Annexure P-16, for the grant of Honorary Ranks. Further according to the counsel, the conferment of award of Honorary rank of Lieutenant to the petitioner after retirement w.e.f. 15-8-1986 and with-holding award of the claimed Honorary Ranks from 15-8-1985 and 26-01-1986, are arbitrary and illegal.

On the other hand, the stand of the respondents is that though during his service tenure the petitioner was recommended for grant of honorary Commission on the occasion of Independence Day 1985 and Republic Day 1986 respectively, but his case was not considered by the Board of Officers as he did not fulfil the required ACR criteria as laid down in Army HQs letter dated 20-08-1982 (Annexure P-16). It is also the case of the respondents that the petitioner was given honorary rank of Lieutenant w.e.f. 15-08-1986 and not Honorary Commission to the rank of Lieutenant.

In the case in hand, petitioner claims that though he was fully eligible for the award of the Honorary Ranks of Lieutenant and Captain as per criteria laid down in policy instructions (Annexure P-16), but he might have been deprived of the same on account of his two ACRs for the years 1981 and 1982 in which the lower grading was given by the Chief Engineer, Lucknow Zone, Lucknow as Senior Reviewing Officer. According to him, this may be the reason in declaring him ineligible in the ACR criteria by the DPC and his case was not considered. On this issue, it was contended by the learned counsel for the petitioner that no weightage should have been given to the grading given in the said ACRs by Senior Reviewing Officer since there are only two channels for recording ACRs in the case of JCOs under which the ACR is to be initiated by the Immediate superior officer and the same is to be reviewed by at least one officer and there is no third channel provided in the rules/instructions for being reviewed by the Senior Reviewing Officer. Further he has never directly worked under him. As such there was no occasion for him to assess his work and conduct at the relevant time. All the ACRs, except for the years 1981 and 1982, earned by the petitioner, were initiated by the IO and reviewed by the RO only. In support of his contention, he placed reliance in para 2 of the instructions contained in Annexure P-12, which reads as under:-

*“ACRs in respect of JCOs/NCOs/OR Clerk (GD) serving in MES formations/Units will be initiated by Immediate Superior Officer and reviewed by at least one superior officer in the chain of command in terms of para 23 of AO 113/79 and Para 4 of AO*

*114/79 respectively. It is, therefore, decided that endorsement by Command/Corps/Zonal Project Chief Engineers as SRO/NSRO is not required in ACRs of Clerks (GD)."*

In order to resolve the controversy and appreciate the contention, we have carefully examined the original ACR Dossier of the petitioner produced by the respondents. For the grant of Honorary Ranks to JCOs only last five years ACRs are required to be considered by the DPC. As per the ACR criteria laid down in Army HQs letter dated 20-08-1982, (Annexure P-16) the individual is required to have at least 3 'Above Average' and two (Average) ACRs in the last five years.

From the careful perusal of the five ACRs for the years 1980 to 1984, we find that in ACR for the year 1980, the petitioner was given the grading of '3' by both the IO as well as the RO. In the ACRs for the years, 1981 and 1982 though he was given the grading of '4' by both the IO as well as the RO, but grading of '3' was given by the SRO. While giving lower grading, he has assigned no reason therein. In the subsequent ACRs for the years 1983 and 1984, this officer was given the grading of '4' by both the IO as well as the RO. These two ACRs were not placed before the SRO for the reasons best known to the authorities. Anyhow, accepting the contention of the petitioner's counsel, if no weightage is accorded to the lower grading given by SRO in the ACRs for 1981- and 1982 for which no reasoning has been assigned, we are of the considered view that out of five ACRs, the petitioner earned four 'Above Average' and one High Average report, whereas according to the laid down criteria he is required to have three 'Above Average' and two 'Average' ACRs. Thus by no stretch of imagination, it can be said that he does not fulfil requisite criteria laid down in Army HQs letter dated 20-08-1982 (Annexure P-16). Apart from the above ACRs, his overall service record has been outstanding. The ACR for the year 1983 clearly reveals that the IO and RO assessed him to be an outstanding JCO who discharged his duties with distinction. In the earlier ACRs for the year 1967 onwards, he was always assessed to be intelligent, hard working and dependable officer.

In the present case, the petitioner retired from service on 01-04-1986 as Subedar Major Clerk after completion of 32 years and 29 days of service in the Army.

The system for grant of Honorary Commission to JCOs on active list was revised by the Army Headquarters vide its detailed policy letter dated 20-08-1982 (Annexure P-16). The revised system is given below in three parts:-

**Part-I Honorary Commission to JCOs on Active List.**

**(b) Part-II Honorary ranks to JCOs on Retirement.**

**(c) Part-III Honorary Ranks to Dafadars/Havildars on retirement.**

Part-I relates to Honorary Commissions to JCOs on Active List

Para 3 of the aforesaid policy letter which is relevant for the Honorary Commission to JCOs on active list reads as under:-

*“All Ris/Sub Majors and Risaldars/Subedars of the Regular Army including those of Defence Security Corps will only be considered for grant of Honorary Commission on the active list in the last of year of their colour service (in two chances) JCOs awarded COAS commendation card twice will also be treated as double decorees. However, double decorees can be recommended in the last two years of their colour service (in four chances). JCOs who are invalided out of service or become permanent low medical category as a result of Battle Casualty, attributable to or aggravated by Military Service, will also be considered for grant of honorary Commission provided they are active list on the respective dates of award.”*

In the last year of service i.e. in the year 1985 the petitioner being on Active List was recommended by the Garrison Engineer, Lucknow-2, vide letter dated 15<sup>th</sup> January 1985 addressed to Record Office, Bengal Engineer Group, Roorkee, for grant of Honorary Commission of Lieutenant on the occasion of Independence Day, 1985. As per the criteria laid down in Annexure P-16, the Petitioner (JCO) was required to have three ‘Above Average’ and two (Average) ACRs in the last five years at the time of his recommendation. Though as per para 2 of the Policy letter dated 26-11-1983 (Annexure P-12) quoted above, there is no provision for endorsing the ACR to the Senior Reviewing Officer, despite that, the ACRs for the years 1981 and 1982 were endorsed to the Senior Reviewing Officers, who awarded the lower grading of ‘3’ to the officer making him ‘average’ from ‘Above Average’ while he was given higher grading of ‘4’ by both the IO as well as the RO, who, as per instructions Annexure P-12, were the competent authorities to initiate and review the ACRs in respect of the petitioner. If the assessment recorded by SRO is not taken into account, then it can be safely inferred that the petitioner fully meets out the ACR criteria laid down in the policy instructions referred to above. Thus the recording of assessment by the SRO in respect of ACRs of the petitioner for the years 1981 and 1982 being itself violative of Army Instructions dated 26-11-1983 (Annexure P-13) is liable to be expunged in toto. In our considered view, after expunction of assessment of the SRO, the petitioner, who was on Active List in the year 1985, fully meets out the ACR

criteria laid down in the latest policy Instructions (Annexure P-16). As such his case for the grant of Honorary Commission in the rank of Lieutenant on the occasion of Independence Day 1985 and further award of Honorary Commission in the rank of Captain (if promoted Honorary Lieutenant on Active List) w.e.f. Republic Day, 1986 deserves to be considered afresh by the Board of Officers and if found fit, he shall be deemed to be promoted notationally to the said honorary ranks.

Having regard to the facts and circumstances of the case, this petition is allowed and the assessment recorded by the Senior Reviewing Officer in respect of the ACRs of the petitioner for the years 1981 and 1982 is quashed and he is deemed fit for consideration of Honorary Commission in the rank of Lieutenant w.e.f. Independence Day 1985. The respondents are directed to consider the case of the petitioner afresh for the grant of Honorary Commission in the rank of Lieutenant w.e.f. Independence Day 1985 and if he is found eligible as per merit he shall be deemed to have been notionally promoted to the rank of Honorary Lieutenant on Active List w.e.f. Independence Day 1985. If found fit for grant of Honorary Commission in the rank of Lieutenant on Independence Day, 1985, he will be further considered for grant of Honorary Commission in the rank of Captain w.e.f. Republic Day, 1986. If found fit as per merit, he would be deemed to have been promoted notionally as Honorary Captain w.e.f. 26-01-1986. Consequently, he shall be entitled to all the pay and allowances as well as the retiral benefits along with other monetary benefits admissible to him under the rules. However, the arrears shall be restricted to a period of three years prior to the filing of this petition with interest @ 10% .

The respondents are also directed to calculate and pay the amount so arrived within a period of six months from the date of receipt of a certified copy of this order. If the amount is not paid within the stipulated time, then the petitioner will also be entitled to interest @ 10% on the principal amount till actual payment.

**(Justice Vinod Kumar Ahuja)**

**(Lt Gen (Retd) HS Panag)**

**07.10.2013**  
**‘dls’**

Whether the judgment for reference to be put on website – Yes/No.