



It is then stated that as per Army Headquarters letter dated 18.12.1985, ACR criteria for promotion to Subedar is three high average reports and remaining two reports may be average and no report should be lower than average in last three years (Annexure P4).

With the above alleged facts, the petitioner claims that he was qualified to be promoted and directions as above, are sought.

Written statement was filed by the respondents and it is stated that one of the criteria laid down vide Army Headquarters letter No. 94930/AG/PS2 dated 18.12.1985 for promotion to the rank of Subedar is that a Naib Subedar should have obtained High Average ACR on Regimental Duty out of the last five ACRs considered for promotion (Annexure R1). The petitioner came up for promotion in August, 1991, but was not promoted as he had not obtained a High Average Regimental Duty report. While serving on Regimental Duty with 988 Air Defence Regiment Workshop, he had been graded Average. Since he was not meeting the ACR criteria, he was not promoted and eligible JCOs junior to him were promoted as per Rules.

On transfer to this Tribunal from the Hon'ble Punjab and Haryana High Court, the matter came up for hearing on 26.10.2010 and after repeated adjournments MA No.436 of 2011 was moved by the petitioner on 14.11.2011 for placing some documents on record, which was allowed and then again after adjournments it came up for final hearing on 18.09.2013.

Vide M.A No.436 of 2011, the petitioner filed an affidavit giving the names of juniors who were promoted w.e.f. 01.08.1991. It was further stated that he was posted to PH and HP area at Shimla which was not the fault of the petitioner and, therefore, he could not be held responsible for the Regimental Report. Then, copies of the judgment of the Punjab and Haryana High Court in **Naib Subedar Satpal Sample versus Union of India**, reported in **1991 (S) SLR 447** and Delhi High Court in **Civil Writ Petition No.1658 of 1991** dated **24.07.1993** were also placed on record.

While arguing the matter, the learned counsel for the petitioner contended that being posted to non-regimental appointment was not the petitioner's choice or fault and, therefore, any ACR related to such appointment which did not count towards the criteria could not be held against him. Even otherwise he had met the promotion criteria and was wrongly denied the promotion. The learned counsel for the respondents stated that as per the promotion policy in vogue, the petitioner did not meet the promotion criteria.

Heard the learned counsel for the parties and perused the records.

It is not in dispute that the petitioner had earned an 'Average' ACR as a JCO in the year 1989 while serving with 988 AD Regiment Workshop, EME which was 'Regimental' appointment and ACR. This ACR was neither challenged nor represented against and is also not the subject matter of challenge in this petition.

Para 3(C) of Promotion Policy promulgated vide Army Headquarter letter of 18.12.1985 (Annexure R1) stipulates that for promotion to the rank of Subedar three out of the last five ACRs rendered on a individual should be 'High Average' out of which at least one should be on Regimental Duty or as an instructor in an Army School of Instruction in the rank of Naib Subedar / Naib Risaldar. No report should be lower than 'Average' and the individual should have been recommended for promotion in the last three reports. In other words three 'High Average' and two 'Average' reports are acceptable, however, at least one report should be on Regimental/ Instructional appointment and should not be less than 'High Average'.

The policy requires at least one report to be on 'Regimental Duty' which should be 'High Average'. The petitioner had earned an 'Average' ACR as a Naib Subedar in the year 1989 while serving with 988 AD Regiment Workshop, EME which was a 'Regimental' appointment and ACR. He did not meet the promotion criteria and was appropriately not promoted. Consequently qualified Naib Subedars junior to him were promoted.

The petitioner had been posted on a Regimental appointment to allow him to earn a Regimental report to enable him to meet the criteria and had earned an Average report. He was thereafter posted on an Extra Regimental Appointment.

The judgments relied upon by the petitioner all relate to individuals being posted on non regimental appointments or extra regimental appointments and thereafter being denied promotion for want of regimental reports. This is not the case of the petitioner.

In view of the facts and circumstances of the case we find no illegality or irregularity in the petitioner not being promoted as Subedar. The petition is accordingly dismissed.

**[Justice Vinod Kumar Ahuja]**

**[Lt Gen (Retd) N.S.Brar]**

21.10.2013

RS

Whether the judgment for reference is to be put on internet? Yes/No