

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A.No.48 of 2012

Wednesday, the 3rd day of July 2013

THE HONOURABLE JUSTICE V. PERIYA KARUPPIAH  
(MEMBER-JUDICIAL)

AND

THE HONOURABLE LT GEN (RETD) ANAND MOHAN VERMA  
(MEMBER – ADMINISTRATIVE)

Eluri Nageshwar Rao (No.14495836K)

Havildar (GD)

S/o Sh. E. Chenchaiyan

Resident of VPO Komarole Tehsil

Giddalur, District Prakasam

Andhra Pradesh State

..Applicant

By Legal Practitioner:

M/s. D.Ranganathan

and K. Ashok Kumar

vs.

1. Union of India

Through its Secretary

Ministry of Defence

South Block, New Delhi.

2. The Chief of Army Staff

Army Head Quarters

DHQ, PO New Delhi 110011.

3. Commander 2 Corps

C/O 56 APO

4. The Commanding Officer

255 Field Regiment, C/O 99 APO

..Respondents

By Shri B.Shanthakumar, SPC,  
assisted by Maj Jitender Singh,  
JAG Officer.

**ORDER**

(Order of the Tribunal made by  
Hon'ble Lt Gen (Retd) Anand Mohan Verma,  
Member-Administrative)

1. This petition has been filed praying to quash the impugned Confidential Report dated 3<sup>rd</sup> October 2007 and to direct the respondents to give fair and just consideration for promotion to the rank of Naib Subedar with all consequential benefits.

2. The petitioner was enrolled on 7<sup>th</sup> July 1984 and retired from service on 1.8.2008 under Army Rule 13(3) Item III (i), i.e., on fulfilling the conditions of enrolment. During the service, he was promoted to the rank of Havildar. He met the eligibility criteria to the rank of Naib Subedar, but was not promoted to this rank.

3. The petitioner through his application and the pleadings of his learned counsel Mr. K. Ashok Kumar would argue that he had an unblemished record of 24 years service during which he was promoted to successive ranks till he became Havildar. He had the mandatory discipline and medical criteria QR(qualitative requirement) for promotion to the rank of Nb Subedar, but was not promoted on account of ACR criteria. The petitioner filed CWP No.9772 of 2009 before the High Court of Punjab and Haryana which was transferred to Armed Forces Tribunal, Chandigarh

Regional Bench at Chandimandir. The Chandigarh Bench of Armed Forces Tribunal disposed of this re-numbered T.A.No.306 of 2009 with the remarks, " *...the matter is not cognizable for want of territorial jurisdiction by this Tribunal, and may be cognizable either at Chennai Bench or Lucknow Bench, and not by this Bench.* "

4. The petitioner would argue that according to the policy in vogue, a Havildar out of last five ACRs, should have been graded 'Above Average' in at least three and 'High Average' in the rest. Till the year 2006, he had the requisite ACRs. However, in 2007, he was awarded 'Average' grading in the ACR. He was graded 'Average' in physical fitness, command and control, dependability, initiative, drive and integrity. The petitioner would claim that his performance throughout the year had been without any blemish and this 'Average' grading is not in consonance with his past performance and ACR profile and therefore, would pray that the said ACR of 2007 be set aside and consequently he be promoted to the rank of Naib Subedar.

5. The respondents through the counter-affidavit and pleadings of the Senior Panel Counsel assisted by the JAG Officer would admit that he was enrolled on 7<sup>th</sup> July 1984 and was transferred to Pension Establishment with effect from 31<sup>st</sup> July 2008 and on fulfilling the conditions of enrolment. The respondents would bring out the criteria for promotion to the rank of Naib

Subedar as contained in the Army Headquarters letter No.B/33513/AG/PS-2 (C), dated 10th October 1997. ACR Criteria stipulates that out of the last five ACRs minimum three should be 'Above Average' and the remaining should not be less than High Average. The petitioner had earned only two Above Average ACRs in his last five ACRs, two were High Average and one was Average and thus he did not meet the ACR eligibility criteria and consequently, he was not promoted to the rank of Naib Subedar. The respondents would claim that in 2007 the petitioner had been given adequate opportunity to improve and guidance was provided continuously to enhance his performance. However, he was found wanting in supervising any work independently. He needed continuous monitoring and guidance. His performance in the Retention of Efficiency Test, which is to test technical and professional competence, was found to be below the desired standard. He was found to be weak in documentation and was unable to manage the routine function of the 'kote'. Accordingly he was graded in his ACR in 2007 taking into account his performance in all spheres. Since he did not meet the ACR criteria, he was not promoted and consequently superannuated from service on completion of his term and engagement. Under the said facts and circumstances, the respondents would pray that this O.A. be dismissed being devoid of merit.

6. Heard both sides and perused the documents.

7. The points for determination are:

*(1) Whether or not the impugned ACR can be set aside?*

*(2) Is there any other relief to which the petitioner is entitled to ?*

8. POINT NO.1: We peruse the criteria for promotion to the rank of Naib Subedar stipulated in the Promotion Policy issued by Army Headquarter's letter quoted by the respondents. Summarised criteria is as under:

*" (a) The individual should be 44 years of age vide Para 149 of Regulation for the Army 1987 (revised Edition).*

*(b) Last five Annual Confidential Reports from the date of consideration for promotion will be taken into account. Out of last five annual confidential report, minimum three reports must be in the rank of Havildar and rest may be in the rank of Naik.*

*(c) At least three out of last five reports should be 'ABOVE AVERAGE' (with a minimum of two in the rank of Havildar) and remaining two should not be less than 'HIGH AVERAGE'.*

*(d) The individual should have been recommended for promotion in all the five reports.*

*(e) The individual must have a minimum of two reports on regimental duty or as an instructor in an Army School of instructions, including IMA, NDA, OTA and ACC, out of which at*

*least one should be ABOVE AVERAGE, one of the Regimental Reports should have been earned in the rank of Havildar. "*

9. Admittedly, the petitioner met the eligibility criteria with regard to discipline and medical category. The ACR gradings earned by him from 2002 to 2007 were 07(Above Average), 07, 06 (High Average), 06, 07 and 04 (Average). The last ACR was earned in 2007 in which he was graded Average. It is apparent that he did not meet the ACR criteria because of which he was not found fit for promotion to the rank of Naib Subedar. We note that in 2002, the petitioner had been graded 07 which is Above Average. Thus in the last 6 years from 2002 to 2007, he had three Above Average(AA), two High Average(HA) and one Average ACR. The petitioner had AA and HA grading for five years. Suddenly there is a pronounced dip in 2007. This Average grading in 2007 is a departure from normal and it appears to be not in consonance with the petitioner's ACR profile and therefore, we are inclined to associate an element of subjectivity to this ACR. While it is acknowledged that an ACR in a particular year reflects the performance of an individual in that particular reporting year, yet such a sharp drop from Above Average to Average does give rise to a need for proper explanation. An Average report does not call for the procedure that is normally followed in the case of Adverse Report. Yet, the reporting officers would have been well advised to provide written counselling to the petitioner to improve. No such

document has been produced by the respondents. To be fair to the Respondents they have stated that his performance was not upto the mark and including the Retention Efficiency Test in which his performance was below the desired standard. Accordingly, the respondents would claim that the petitioner was graded Average. Now, the issue before us is whether the impugned ACR is liable to be set aside? Undeniably, a Junior Commissioned Officer carries on his shoulders important responsibilities, has to be an effective leader of men and is required to take independent decisions. Therefore, only those who are found fit for such responsibilities must be promoted. The reporting officers graded the petitioner based on his performance during the year 2007 which though out of sync with his ACR profile, renders him ineligible for promotion. How were these qualities of the petitioner, or lack of them, overlooked in the earlier years and not reflected in the earlier ACRs is something we have no answer to. Fact of the matter is that he was graded Average in 2007 and the Respondents have provided justification for doing so. Consequently, we are not inclined to interfere with the ACR of 2007 and are not inclined to set it aside. Point No.1 is answered accordingly.

10. POINT NO.2: Though the petitioner has not asked for any other relief, we explore the possibility of granting such other relief that he may be entitled to. In the event the petitioner is granted the Honorary rank of Naib Subedar, he would be entitled to

the benefit of only the pension of that rank, in accordance with the Government of India, Ministry of Defence letter No.1(8)/2008-D (Pen/Policy), dated 12<sup>th</sup> June 2009 which reads,

*No. 1 (8)/2008-D (Pen/Policy)*

*Government of India*

*Ministry of Defence*

*(Department of Ex-Servicemen Welfare)*

*New Delhi, the 12<sup>th</sup> June, 2009*

*To*

*The Chief of the Army Staff*

*Subject: National Pay Fixation of Honorary*

*Ranks for the purpose of Pension-*

*Recommendations of the Sixth Central Pay*

*Commission contained in Para 5.1.62.*

*Sir,*

*I am directed to say that in pursuance of Governments decision on the recommendations of the Sixth Central Pay Commission contained in Para 5.1.62 of Chapter V of the Report, the President is pleased to decide that Honorary rank of Naib Subedar granted to Havildars will be notionally considered as a promotion to the higher grade of Naib Subedar and benefit of fitment in the pay band and the higher grade pay will be allowed notionally for the purpose of fixation of pension only. Accordingly, additional element of pension of Rs.100/- pm payable to Havildars granted Hony rank of Naib Subedar as per Regn. 137 of Pension Regulations for the Army Part-I (1961), amended vide this Ministry's letter No.1(1)/88/D (Pen/Sers) dated 6.11.1991 will cease to be payable. The notional fixation of pay in the rank of*



*Naib Subedar will not be taken into account for payment of retirement gratuity, encashment of leave, composite transfer grant etc.*

*2. This letter takes effect from 1<sup>st</sup> January, 2006.*

*3. This issues with the concurrence of Finance Division of this Ministry vide their UO No.2351/Finance/Pension dated 3.6. 2009.*

*Sd/-*

*Harbans Singh  
Director  
(Pension/Policy)"*

We examine whether the petitioner meets the criteria for award of Honorary rank. The respondents have produced Proceedings of Board of Officers convened to check the correctness of the names of Havildars included in the panel for the grant of Honorary rank of Naib Subedar on the occasion of Independence Day of 2008. We peruse it and find that the Board find the petitioner eligible for grant of Honorary rank of Naib Subedar. The Board Proceedings were forwarded to the Army Headquarters and the petitioner though eligible for the grant of Naib Subedar, was not granted this rank. We are not privy to the reasons, but it would be reasonable to assume that the dip in the ACR profile of the petitioner may have been the cause for non-award of Honorary rank. We have stated earlier that we are inclined to associate an element of subjectivity to the ACR of 2007. Given the ACR profile prior to 2007, and given the fact that his record of service appears to be without any blemish with regard to the discipline and medical

criteria, we are of the view that the petitioner does deserve to be granted the Honorary rank of Naib Subedar. Point No.2 is answered accordingly.

11. In fine, the application praying for quashing of the impugned ACR is dismissed, however, the respondents are directed to grant the petitioner Honorary rank of Nb Subedar with effect from 15 August 2008, and consequent to the grant of Honorary rank of Naib Subedar, the petitioner would be entitled to pension in accordance with the above quoted Government of India letter No. 1 (8)/2008-D (Pen/Policy) dated 12<sup>th</sup> June 2009. No orders with regard to costs.

Sd/-  
LT GEN (Retd) ANAND MOHAN VERMA  
MEMBER (ADMINISTRATIVE)

Sd/-  
JUSTICE V. PERIYA KARUPPIAH  
MEMBER (JUDICIAL)

**03.07.2013**  
**(True copy)**

**Member (J)** – Index : Yes / No  
**Member (A)** – Index : Yes / No

Internet : Yes / No  
Internet : Yes / No

vs

To,

1. The Secretary  
Ministry of Defence  
South Block, New Delhi

2. The Chief of Army Staff  
Army Head Quarters  
DHQ, PO New Delhi 110 011

3. Commander 2 Corps  
C/O 56 APO

4. The Commanding Officer  
255 Field Regiment, C/O 99 APO

5. M/s. Ranganathan  
and K.Ashok Kumar,  
Counsel for Petitioner

6. Mr. B.Shanthakumar, SPC  
Counsel for Respondents

7.OIC, ATNK & K Area HQ, Chennai.

8.Library, AFT/RBC, Chennai.

**HONOURABLE JUSTICE  
V. PERIYA KARUPPIAH  
(MEMBER-JUDICIAL)**

**AND**

**HONOURABLE LT GEN (RETD)  
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