

RESERVED

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

COURT NO. 2

**T.A. No. 1332 of 2010**

**Tuesday, this the 12<sup>th</sup> day of April, 2016**

**"Hon'ble Mr. Justice D.P.Singh, Judicial Member  
Hon'ble Air Marshal Anil Chopra, Administrative Member"**

No. 1403300W CHM Shiva Nand Chaubey son of Shri Kamla Chaubey  
Resident of Vilalge Sohwal District Ghazipur at present posted at Field  
Company 236 Engineer Regiment C/) 56 APO. .... **Petitioner**

Versus

1. Union of India through Chief of the Army Staff, Army Head  
Quarter, New Delhi.
2. Senior Record Officer, Record Office Bengal Engineer Group  
Roorkee, Pin-247667.
3. Officer Commanding, 236, Engineer Regiment C/O 56 APO

....**Respondents**

**Ld. Counsel appeared for the Petitioner - Shri P.N.Chaturvedi,  
Advocate**

**Ld. Counsel appeared for the Respondent - Shri V.K.Singh,  
Central Govt.  
Standing Counsel**

**ORDER (ORAL)**

1. Petitioner, feeling aggrieved with the supersession while holding the post of Havildar, preferred a writ petition bearing No 21105 of 1998, which has been transferred to this Tribunal in pursuance of the provisions contained in Section 34 of the Armed Forces Tribunal Act 2007 and renumbered as T.A. No 1332 of 2010.
2. We have heard Shri P.N.Chaturvedi, learned counsel for the Petitioner and also Shri Virendra Kumar Singh, learned counsel for the Respondents assisted by Col Kamal Singh OIC Legal Cell.
3. The short question that looms large in the instant petition relates to denial of promotion by the respondents from the post of Havildar to the post of Naib Subedar. Admittedly, the petitioner was enrolled in the Indian Army on 05.08.1972. Thereafter, he completed promotion cadre course of Naib Subedar from 22.02.1995 to 12.06.1995. While serving in the Army, the petitioner was promoted to the post of Havildar alongwith his batch mates. However, with effect from 2<sup>nd</sup> December 1996, two of the juniors of the petitioners namely, Mohan Chandra and Rajendra Singh were promoted to the post of Naib Subedar, but the petitioner's name was not considered. In para 5 of the T.A., the petitioner has averred that his batch mates who were junior to him, were considered by the Departmental Promotion Committee which was convened sometime in July 1996 but the petitioner's case was deferred. Being aggrieved, he submitted a statutory complaint which culminated in being rejected. This led the petitioner to approach the High Court.

4. We have perused the original record as well as counter affidavit. From a close scrutiny, it appears that the Departmental Promotion Committee which was constituted to consider the names of Havildars for promotion to the post of Naib Subedar was convened on July 16, 1996. The original record produced before us in Court as well as photo copies of the original Application filed alongwith supplementary affidavit show that Mohan Chandra and Rajendra Singh, who were junior to the Petitioner, were considered for promotion and approved but Petitioner's case was not considered and his case was deferred. The reason assigned in the supplementary affidavit was that the A.C.R for the year 1996 was not available before the Departmental Promotion Committee. A photo copy of the office note dated 14.11.1996 has been filed with the supplementary counter affidavit and for the sake of ready reference the same is reproduced below.

"NOTING SHEET

Record Office

Sec : Promotion (CA-6)

Case No : 4603-3/R/CA-6

Sheet No : 01 of 01

I
<b><u>PROMOTION : HAV (GD) TO NB SUB (GD)</u></b>
<p>1. 08 clear/chain vac are available for promotion to the rk of Nb Sub (GD) on retirement of following JCOs wef 01 Nov 96 :-</p> <p>(a) JC-142162P Sub Maj/E' Ftr Mahipal Singh</p> <p>(b) JC-143939Y Sub Maj/Mech Dalbir Singh</p> <p>(c) JC- 159668W Sub Maj/OWE Baljit Singh</p> <p>(d) JC-177085W Sub/DPMT Narayan Datt</p> <p>(e) JC-191425Y Sub/E' Ftr</p>

	<p style="text-align: center;">Prem Ballabh Pandey</p> <p>(f) JC-207849F Sub/DPMT Indra Giri</p> <p>(g) JC-210648N Nb Sub/DPMT Badri Singh</p> <p>(h) JC-210701N Nb Sub/MSN Jai Nath Singh</p> <p>2. NCOs at data Ser Nos 50, 55, 56 &amp; 62 are eligible for promotion to the rk of Nb Sub (GD) with seniority (without effect on pay &amp; allces) from <u>01 Nov 96</u>.</p> <p>3. NCOs at data Ser Nos 51, 54, 57 &amp; 59 are deferred due to non-receipt of ACR-96. They will be considered for promotion on receipt of the same with appropriate grading or otherwise</p> <p>4. Put up for approval pl.</p> <p style="text-align: right;">Sd/- Capt OIC Promotion Sec</p> <p style="text-align: right;">14 Nov 96"</p>	
	<u>CRO</u>	

5. From a perusal of the aforesaid Annexure 4 to the supplementary affidavit, it is evident that petitioner's name found mention in the list contained in the original record but could not be considered alongwith his batch mates on account of non availability of ACR of the year 1996..

6. It is admitted that the recruitment year, under the Service Rule, was from 1st Oct to 30<sup>th</sup> Sept of the calendar year. Admittedly, since the Departmental Promotion Committee was held between 16<sup>th</sup> July 1996 to 23 July 1996, the A.C.R entries of the year 1991 to 1995 which included A.C.R entries upto Oct 1995 ought to have been taken

into account. It is not disputed that A.C.Rs of preceding five years are taken into account for consideration for promotion. It brooks no dispute that five years' service was completed by the petitioner in Oct 1995. Since five years's service was completed by the Petitioner in Oct 1995, and it is admitted case that the entries upto the year 1995 were available, the respondents ought to have taken into account the petitioner's case alongwith others on the basis of A.C.R entries of preceding five years upto Oct 1995.

7. Learned Counsel for the respndents vehemently argued that in case, A.C.R upto 1996 is taken into account, the petitioner would not qualify. The submission of learned counsel for the respondents seems to be correct to the extent that in case A.C.Rs upto 1996 are taken into account, then the peittioner may not qualify since there would have been one average entry but the fact remains that the preceding five years entries commenced from 1991 to 1995 and not 1996. The entries from 1991 to 1995 were all above or high average entries. In these situations, the peitioner was liable to be considered for promoton on merits alongwith his batch mates namely, Mohan Chandra and Rajinder Singh, taking into account the A.C.Rs of preceding five years.

8. It appears that on account of non-availabillity of A.C.R of the year 1996, the petitioner was not considered on merits. As stated supra, the petiioner had five A.C.Rs upto Ist Oct 1995. The entry of 1996 was not to be taken into account. The default, if any, was on the part of the respondents. It is well settled by the Constitution Bench of Hon'ble Supreme Court in Ajit Singh (II) V State of Punjab (1999) 7 SCC 209, held that any action bieng violative of Article 14 of the Constutiton is arbitrary and if it is found to be de hors the statutory rules, the same cannot be enforced.

9. In view of Ajit Singh's case, it was the fundamental right of the Petitioner to have his case considered alongwith his batch mates on merits taking into account the A.C.Rs of preceding five years which seems to have not been done. Hence, the petitioner not only suffered rank status but also misery, pain and agony, apart from financial hardship.

10. It has been vehemently submitted by learned counsel for the respondents that since A.C.Rs of Havildars fall due to be intiated on Oct 1, every year as per Para 8 of the Army order 7/95, the petitioner's case for promotion to the post of Naib Subedar was deferred till receipt of ACR 1996 with appropriate grading to be considered by the next Departmental Promotion Committee. The argument does not inspire confidence and seems misconceived. Even if it be assumed that if ACRs were to be intiated on Oct 1, every year (in the case of petioenr Ist Oct 1996), how Departmental Promotion Committee could be convened in July 1996 when ACR entries of the year 1996 were yet to be recorded by the competement authority in accordance with Rules. This is an error writ large on the record. Such arguments with regard to respondent seems to seal the error committed during the course of selection. Once junior batch mates were selected by the D.P.C in July 1996, there was no occasion for the respondents to deny promotion to the Petitioner, more so, when the petitioner was fuffilling all the required conditions taking into account the A.C.Rs of preceding five years upto 1995.

11. In view of the above, we are of the view that the petitioner suffered for no fault on his part. There is miscarriage of justice caused by the respondents while taking decision with regard to petitioner's promotional career. The respondents should have considered the A.C.R

entries of preceding five years which was from 1991 upto 1995 on the date when Departmental Promotion Committee was convened to consider the names for promotion. No names could have been considered on the basis of A.C.R entries of five years if one year A.C.R entry was yet to be awarded i.e of the year 1996.

12. Accordingly, T.A. is allowed. It is directed that the respondents shall consider and grant promotion to the petitioner on the post of Naib Subedar with all consequential benefits expeditiously, say, within four months from the date of receipt of a certified copy of this order. Looking to the miscarriage of justice caused to the petitioner for no fault on his part, we are inclined to impose exemplary cost which we quantify at Rs 20,000/-. The cost shall be deposited in the office with the Registrar of the Tribunal within four months. The cost shall be released to the petitioner by way of Bank Draft subject to the order by this Bench.

**(Air Marshal Anil Chopra)**  
**Member (A)**

**(Justice D.P. Singh)**  
**Member (J)**

Dt April 12 ,2016

MH/-