

Court No.3

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

ORIGINAL APPLICATION NO 258 of 2015

Thursday, this the 04th day of February 2016

Hon'ble Mr. Justice D.P. Singh, Member (J)
Hon'ble Air Marshal Anil Chopra, Member (A)

Ex Hav Jai Shankar Prasad, aged about 46 years, S/O Sri Surya Dev Singh, R/O Vill Rambad, Post Patiala, Distt Patna

...Applicant

Ld. Counsel for the: **Shri K.K. Mishra**
Advocate **Advocate**

Versus

1. The Union of India, through it Secretary, Ministry of Defence, New Delhi.
2. Chief of Army Staff, Army HQ, New Delhi.
3. Records, Army Medical Corps, Lucknow.
4. Commanding Officer Military Hospital, Danapur.

.....Respondents

Ld. Counsel for the : **Shri Shyam Singh, Central**
Respondents. **Govt Counsel assisted by Lt Col**
 Subodh Verma, OIC Legal Cell.

ORDER (ORAL)

1. Heard Ld. Counsel for the parties and perused the records.
2. The short question raised by Ld. Counsel for the applicant in the present O.A. relates to grievance for non consideration with regard to promotion from the rank of Havildar to Naib Subedar.
3. Admittedly the applicant was enrolled in the Indian Army on 26.10.1987. On 01.09.2009 he was promoted to the rank of Havildar and later on retired from service on 31.10.2013. The grievance of the applicant is that he was not considered for promotion avenue on 20.12.2012.
4. On the other hand Ld. counsel for the respondents submits that the applicant was not having required ACR entry i.e. two 'Above Average' and one high average entry in the rank of Havildar. According to Ld. Counsel for the respondents at least three out of five last ACRs should be 'Above Average' with a minimum of two in the rank of Havildar and the remaining should not be less than 'High Average'. The necessary factual matrix have been brought on record in paras 6 and 7 of the counter affidavit. For convenience sake paras 6 and 7 are reproduced as under :-

“6. That the Annual Confidential Report grading earned by the petitioner for last five years are as under :-

Year	ACR grading earned by the complainant			Final grading	Recommendation (R)/Non-Recommendation for promotion by		Unit in which ACR initiated
	INTERIM ORDER	RO	SRO		IO	RO	
2008	8 (Above Average)	7 (Above Average)	-	7 (Above Average)	R	R	12 (I) R and O Flt
2009	7 (Above Average)	7 (Above Average)	-	7 (Above Average)	R	R	21 R R Bn GUARDS
2010	8 (Above Average)	8 (Above Average)	-	8 (Above Average)	R	R	21 R R Bn GUARDS
2011	7 (Above Average)	6 (High Average)	-	6 (High Average)	R	R	21 R R Bn GUARDS
2012	5 (High Average)	5 (High Average)	-	5 (High Average)	R	R	MH Danapur

7. That on perusal of *ibid* Annual Confidential Report, it was observed that the petitioner had earned Annual Confidential Reports for the year 2008 and 2009 in the rank of Naik, whereas, Annual Confidential Reports for the year 2010, 2011 and 2012 were earned by him in the rank of Havildar. Para 6 (b) of Integrated Headquarters of Ministry of Defence (Army) letter No. B/33513/AG/PS-2 (C) dated 10th October 1997 stipulates that **“Atleast three out of last five reports should be “Above Average” with a minimum two in the rank of Dafadar/Havildar and remaining should be not less than “High Average”.** In the instant case, the petitioner had earned only two **“High Average”** and one **“Above Average”** grading in the Annual Confidential Reports out of **three reports earned by him in the rank of Havildar.** Hence, the petitioner was not promoted to the rank of Naib Subedar and permanently superseded till struck off strength from the Corps due to not fulfilling Annual Confidential Reports criteria and become overage on 25th June 2013. A copy of the letter dated 10th October 1997 is being annexed as **ANNEXURE NO. CR-3** to this counter reply.

8. That being aggrieved the petitioner preferred non statutory complaint dated 27.09.2013, the same has

*been retained by HQ J&B Sub Area vide their letter No. 4030/Comp/JCOs/OR/A (MS) dated 15th October 2013 being not submitted within the stipulated period of 120 days from the date of intimation of the requirement of promotion or from the date of result is intimated to the individual whichever is later. A copy of the letter dated 15th October 2013 is being annexed as **ANNEXURE NO. CR-4** to this counter reply.”*

5. While giving reply to the contents of paras 6, 7 and 8 of the counter affidavit the same has not been disputed by the applicant. Since the applicant did not qualify for the promotional avenue to the rank of Naib Subedar his name was not considered. Arguments advanced by the Ld. Counsel for the applicant is to the effect that the applicant should have been superannuated on 31.10.2013 and the ACR for the post of Naib Subedar should have been considered. In other words submission is that the applicant should have been considered along with ACR entry for the year 2013. Ld. Counsel for the respondents submits that at the time of selection/promotion on the post of Naib Subedar in 2013 the applicant had become overage and was not entitled for promotion. It is submitted by Ld. Counsel for the respondents as well as OIC Legal Cell that on 25.06.2013 the applicant had become overage for the post of Naib Subedar. This factual submission has not been disputed by Ld. Counsel for the applicant.

6. Since the applicant did not qualify for the promotional avenue for the post of Naib Subedar when the Departmental Promotion Committee was held there appears to be no reason

to interfere with the decision taken by the respondents. Nothing has been brought on record to rebut the averments made in paras 6, 7 and 8 of the counter affidavit. The applicant could not have been considered for promotion since he did not qualify to be considered for promotion and has rightly been denied promotion by the respondents.

7. O.A. lacks merit and is dismissed.

No orders as to costs.

(Air Marshal Anil Chopra)
Member (A)

anb

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