

Court No.3

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

TRANSFERRED APPLICATION NO 363 of 2010

Tuesday, this the 23rd day of February 2016

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

No. 13953179-W Hav (NA) Ravi Shankeram
S/o Sri Ram Kewal Sharma, Vill- Hirapur,
P.O. – Gurhanwa, P.S. Kundwa- Chainpupur,
District East Champaran (Motihari) Bihar

...Petitioner

Ld. Counsel for the: **Shri Rohit Kumar, Advocate**
Petitioner

Versus

1. Chief of Army Staff New Delhi - 110011
2. GOC UB Area Through Commandant-Cum-CRO AMC
Centre & Recordsl, Lucknow
3. 22 U.P. Girl's Bn NCC, Meerut.
4. Union of India Through Secretary Ministry of Defence,
New Delhi - 110011

.....Respondents

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

ORDER (ORAL)

1. Being aggrieved with the denial of promotion to the rank of Nb Subedar the petitioner preferred Civil Misc. Writ Petition No 26810 of 2006 in High Court of Judicature at Allahabad which has been received by this Tribunal by way of transfer under Section 34 of the Armed Forces Tribunal Act 2007 and re-numbered as T.A. No 363 of 2010.

2. Heard Ld. Counsels for the parties and perused the record.

3. Admittedly, the petitioner was enrolled in the Indian Army on 15.12.1981. In pursuance to service record, he was promoted to the rank of Havildar. However since the promotion to the rank of Nb Subedar was denied by the respondents against the existing vacancy on 01.11.2004, he preferred statutory complaint dated 07.12.2004 but no action was taken by the respondents. Being aggrieved the petitioner approached High Court of Judicature at Allahabad for issuance of direction to Chief of the Army Staff to decide his pending statutory complaint. High Court of Judicature at Allahabad issued order to Chief of the Army Staff to decide the statutory complaint within three months. His statutory complaint was dismissed by Chief of Army Staff on 24.08.2005.

4. Submission of the Ld. Counsel for the petitioner is that the petitioner was eligible for promotion to the rank of Nb Subedar and his juniors were promoted but he was denied promotion on unfounded ground.

5. It has been submitted by Ld. Counsel for the respondents that under Army Order 1/2002/MP, for promotion to the rank of Nb Subedar there is requirement of 3 Above Average and 2 High Average ACR entries. In the case of petitioner, out of his 11 ACRs, he is having only one Above Average and two High Average entries. This fact has been stated in para 3 of the Counter Affidavit. For convenience sake, para 3 of the Counter Affidavit is reproduced as under:-

“3. That the cause of action arose when petitioner could not be promoted to the rank Nb Subedar (N. Asstt) against the existing vacancy Nov 1, 2004 along with his batch mate. But he was found ineligible due to non fulfilling of ACR Grading criteria as laid down in vide para 6 of Army Head Quarter promotion policy No B/33513/AG/PS-2 dated 10th Oct 97. At the time of considering the complaint/Petitioner for promotion to the rank of Nb Subedar (Nursing Asstt) last five years ACR in the rank of Hav from year 2000 – 2004 were considered. The petitioner out of five had earned one above average, against the requirement of three and four high average against the required two. The petitioner was superceded for promotion to the rank of Nb Subedar till the date of his retirement i.e. 1-1-08 as failed to acquire the requisite No of ACRs and he would crossed upper age limit of 44 years on 7th May 2007. The perusal of 11 ACR of the petitioner / NCO from 1994 to 2004, it reveals that out of 11 ACR the petitioner had earned only one above average, eight high average, one average and one below average report

respectively. The grading in the year is consistent with his previous over all performance and therefore the down grading by R.O has not solely blocked the promotion of the petitioner.

6. It has been submitted by Ld. Counsel for the respondents that since under Army Order (supra) there is minimum requirement of 3 Above Average and 2 High Average entries for promotion to the rank of Nb Subedar, which the petitioner does not fulfill, hence denial of promotional avenue does not suffer from illegality. It is well settled preposition of law that a person who does not fulfill the prescribed criteria for promotion, denial of promotional avenue cannot be interfered by judicial review. Since, the petitioner did not meet necessary eligibility criteria and his case was considered at appropriate stage, there appears no illegality while denying him promotional avenue. Apart from above, so far as present controversy is concerned, the petitioner does not fulfill the required criteria for promotion in terms of Army Order (supra), hence promotion has been rightly denied to the petitioner by the respondents.

7. Transfer Application lacks merit. It is accordingly dismissed.

No order as to cost.

(Air Marshal Anil Chopra)
Member (A)

ukt

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