

Court No.1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****TRANSFERRED APPLICATION No. 62 of 2016**Monday, this the 03rd day of Jul 2017**Hon'ble Mr. Justice D.P. Singh, Member (J)****Hon'ble Air Marshal Anil Chopra, Member (A)**

Ex- Havildar Sudama Singh, of Records ASC of, PIN- 900746, C/o 56 APO, son of Subedar (Retd) Raghunath Singh, resident of House No. SA 6/185-B-2 Anand Bihar Colony Paharia, PS- Sarnath, District – Varanasi (U.P.).

....Petitioner

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

Verses

1. Chief of the Army Staff, Through Legal Cell (Army) MH Compound Allahabad.
2. General Officer Commanding-in-Chief Central Command, Lucknow.
3. General Officer Commanding MP B and O Area Jabalpur Through Station headquarters (Army)
4. CCDA (P), Allahabad, Through Commandant-cum CRO ASC (S) Records Bangalore.

...Respondents

Ld. Counsel for the : **Shri Yogesh Kesarwani, Advocate,**
Respondents. Central Govt Standing Counsel.

Assisted by : Maj Salen Xaxa, OIC Legal Cell.

Order (oral)

1. Being aggrieved by supersession by the respondents on the rank of Naib Subedar, it would appear, the petitioner had preferred a writ petition, being writ Petition No 22082 of 1999 in the High Court of Judicature at Allahabad which stood transferred to this Tribunal in pursuance of the power conferred by section 34 of the Armed Forces Tribunal Act 2007 and now it is registered as T.A. No. 62 of 2016.

2. Admittedly, the petitioner was enrolled in the Indian Army on 19.08.1981 and from 1981 to 1996, he served at various places as member of the Indian Army. In the year 1985, the petitioner stood promoted to the rank of Naik. In the year 1988, he stood promoted as Havildar. In the year 1994, he was ordered to be promoted to the post of Naib Subedar but he was not promoted and was superseded by others which led him to institute a writ petition in the High Court of judicature at Allahabad vide writ petition No 22082 of 1999. The petitioner filed statutory complaint on 30.11.1998 followed by reminder dated 22.01.1998 and 30.06.1998. The statutory complaint culminated in rejection vide order dated 20.04.1999. However, before the statutory complaint could be disposed of, a writ petition was filed vide writ petition no 40834 of 1998 in the High Court of Judicature at Allahabad which was disposed of on 16.12.1998 whereby

the statutory complaint was directed to be disposed of within two months.

3. We have heard learned counsel for the petitioner and also learned counsel for the respondents assisted by OIC Legal Cell.

4. The submission of learned counsel for the petitioner is that inspite of unblemished service record; the petitioner was denied promotion while persons junior to him were promoted to the rank of Naib Subedar. However, in response to the arguments advanced across the bar, it has been submitted by learned counsel for the respondents that after summary trial, the petitioner was punished with severe reprimand on 01.08.1995. It is further submitted that the statutory complaint against the order of punishment was rejected on 20.04.1999 and hence punishment of severe reprimand has attained finality.

5. From a perusal of the reply submitted by learned counsel for the respondents, it appears that the petitioner was punished by summary trial on 07.02.1994 under section 39 (a) of the Army Act for absenting himself without leave and in consequence, the punishment of severe reprimand was awarded. Thereafter, the petitioner was also punished with severe reprimand on 01.08.1995. The precise submission of learned counsel for the respondents is that on

account of punishment awarded to the petitioner on 07.02.1994 followed by other punishment on 01.08.1995, the petitioner's promotion to Naib Subedar was withheld which was due on 10.10.1994.

6. From a perusal of the order passed by Chief of the Army Staff, it is evident that while rejecting statutory complaint, the Chief of the Army Staff had taken into account the punishments awarded on 07.02.1994 and 01.08.1995 as grounds for denial of promotion to the petitioner to the rank of Naib Subedar. In our considered view, the punishments awarded to the petitioner as a result of summary trial, seem to have attained finality for the reason that the petitioner has not preferred any petition at any of the Higher Forums for setting aside of the orders whereby the aforesaid punishments had been awarded.

7. Learned counsel for the petitioner submits that the punishments awarded cannot be sustained as the same have been passed without there being any jurisdiction inhering the authority. Be that as it may, the fact remains that the punishments of severe reprimand stand on the service record which were awarded by orders dated 07.02.1994 and 01.08.1995. In the facts and circumstances of the case, the denial of promotion to the petitioner to the next higher post seems to be justified and does not seem to suffer from any

impropriety or illegality that too under the teeth of the fact that punishment awarded by the authorities have already attained finality as the same have not been taken in challenge to other higher forums.

8. It is worthy of notice that while preferring T.A, the petitioner has averred in para 3 that he was punished on 07.02.1994 with severe reprimand followed by other punishment on 01.08.1995 but there is nothing to indicate on record that punishments awarded to the petitioner were taken in challenge to the next higher forums.

9. It is next submitted by learned counsel for the petitioner that he wants that the orders of severe reprimand rendered in the years 1994 and 1995 be set aside by the High Court and at present by the Tribunal. In connection with the above submission, it may be noticed that while approaching the High Court and now before this Tribunal, the only relief claimed was to treat the petitioner as having been elevated in the rank of Naib Subedar w.e.f the date indicated in ASC Records letter dated 10th Oct 1994 referred in para 2 (c) of the Writ Petition. For ready reference, para (a) of the relief column *is quoted below.*

"It is therefore most respectfully prayed that this Hon'ble Court may most graciously be pleased to issue:-

(a) A writ, order, or direction in the nature of mandamus commanding the Respondents to treat the petitioner as having been elevated in the rank of Naib Subedar w.e.f the date indicated in ASC Records letter dated 10th October 1994 referred in para 2 (c) of the Writ Petition."

10. A plain reading of the relief claimed by the petitioner shows that no relief has been claimed against the impugned orders of punishments awarded in the year 1994 or in the year 1995 passed by Chief of the Army Staff. Unless the orders of punishments are set aside, the relief for promotion cannot be sustained. By this reckoning, the argument advanced by learned counsel for the petitioner is misconceived. It is a matter of common knowledge that unless the orders of punishments are set aside, it is not permissible for the petitioner to seek relief of promotion to the next higher rank. By this reckoning, we feel called to say that the petitioner has abused the process of court by approaching the High Court and now the present Tribunal. Despite being repeatedly called upon to see reasons in the observations of the Court that the petitioner was not entitled to the relief of promotion until he takes in challenge the impugned orders of punishment, the learned counsel went on arguing on other irrelevant points and thereby he has

consumed precious time of the court by prolonging arguments on some irrelevant points.

11. As a result of foregoing discussion, we are of the view that the petition deserves to be dismissed with cost which we quantify at Rs. 1000/-. The cost shall be deposited within a week with the Registry of the Tribunal. On cost being deposited, the same would be remitted to the account of the Local Bar Association, Armed Forces Tribunal, Regional Bench Lucknow for being utilised for up-gradation of its Library.

12. Accordingly, the petition is dismissed as devoid of merit with cost stated above.

(Air Marshal Anil Chopra)
Member (A)

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

Dated : July 3,2017.
MH/-