

Court No.3**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****ORIGINAL APPLICATION NO 56 of 2015**Tuesday, this the 08th day of December 2015**Hon'ble Mr. Justice D.P. Singh, Member (J)**
Hon'ble Air Marshal Anil Chopra, Member (A)Ex Sub Shekh Faiyaz Husain (JC-338427-M), Son of Shri
Salamat Ulla, R/o House No 187, Mohalla-Chock Alla
Khan Idgah Road, Shahjahanpur, Pin-242001 (UP)

.....Applicant

Ld. Counsel for the: **Shri R. Chandra, Advocate**
Applicant

Versus

1. Union of India, through, the Secretary, Ministry of Defence, Government of India, New Delhi.
2. Chief of Army Staff, Army Headquarters, DHQ, Post Office New Delhi.
3. The Officer-In-Charge BEG Records, PIN-908779, C/o 56 APO.
4. 66 Engineer Regiment, PIN-914066, C/o 56 APO.
5. 235 Engineer Regiment, PIN-914235, C/o 99 APO.

...Respondents

Ld. Counsel for the : **Shri R.S. Mishra, Central**
Respondents. **Govt Counsel assisted by**
Capt Priti Tyagi, OIC, Legal Cell.

ORDER(ORAL)

1. Heard Ld. Counsel for the parties and perused the record.
2. With the consent of the Ld. Counsel for the parties we proceed to decide the Original Application at this stage.
3. The applicant, a Subedar in the Indian Army has served in Operation RAKSHAK in J&K area and was authorized Special Service Medal with Clasp Suraksha but his part II Order was not published in time hence he was not granted Honorary Commission of Lt/Capt while in service in pursuance to Army Headquarters letter Order 24.06.2009 and other provisions. While filing Counter Affidavit, in para 5, 6 and 7, it has been stated that the applicant's name could not be considered for grant of Honorary Commission to the rank of Lt/Captain on active service because of non publication of part II Order. For convenience, paras 5, 6 and 7 of the Counter Affidavit are reproduced as under:-

“5. That the applicant was promoted to the rank of Subedar with effect from 01st April 2011. The applicant was eligible to be considered for grant of Honorary Commission on the occasion of Republic Day-2013 (Two Chance) and Independence Day-2013 (Last Chance) on active list. Before preparation of recommendation form for grant of Honorary Commission, Bengal Engineer Group

Records Roorkee scrutinized the Sheet Rolls of serving JCOs who were due to discharge and discrepancies if any, the same raised alongwith master sheet for rectification, before 18 months from the date of discharge master sheet for the petitioner was prepared in April 2012 and the same was forwarded to 66 Engineer Regiment vide BEG Records Roorkee letter No. 6513/MS/BEG/RD-13/97/R/CA7 dated 20th April 2012 for rectifying observations and to obtain signature of the petitioner as well as signature of CO unit and early return. The following observations were made in the master sheet of the petitioner:-

Ser No	Discrepancy Observed	Docu/PT-II order reqd for rectification of obsns	Rectification Details
(a)	The JCO Exit/Ctd from Bengal/Assam area wef 15.12.1996 but Enter/Gtd PTO not recorded in the Sheet Roll	Reqd. Enter/Gtd PTO of Bengal/Assam area prior to 15.12.96	
(b)	The JCO Gtd SCA (OP RAKSHAK) wef 15.11.1989, but Ctd PTO recorded in Sheet Roll	Reqd. Ctd. PTO of SCA (OP RAKSHAK) after 15.11.1989	
(c)	The JCO served in OP RAKSHAK area wef 15.11.1997 to 08.06.1998 but Spl. Service Medal W/C SURAKSHA "OP RAKSHAK" (J&K) not entered in Sheet Roll.	Reqd. Spl Service Medal W/C SURAKSHA "OP RAKSHAK" (J&K)	
(d)	The JCO awarded GOC-in-C Central Comd Commendation	Reqd copy of GOC-in-C Commendation Card.	

	<p><i>Card 01st January 2000 vide 63 Engr Regt PTO No. 0/0020/001/2009 but copy of the same not att with Sheet Roll</i></p>		
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6. *That however, the Master Sheet was returned to BEG Records Roorkee duly signed by the petitioner and 2IC of the unit without rectifying the observations vide 6 Engineer Regiment letter No. 8205/129/A dated 7th July 2012. Subsequently, BEG Records Roorkee made the following correspondence with 66 Engr Regt and 235 Engr Regt and to get the observations in the Master Sheet rectified/settled:*

- (a) *Sig No. A-5656 dated 14th July 2012.*
- (b) *Letter No. 6513/MS/OBSN/IN/RD-13/187/RCA-7 dated 21st September 2012.*
- (c) *Sig No A-5305/HC/NC-35 (TC) dated 11th October 2012.*
- (d) *Sig No. A-5084/HC/NC-35 (TC) dated 09th November 2012.*
- (e) *Sig No. A-5717/HC/NC-35 (TC) dated 23rd November 2012.*

7. *That in reply of observations of Sr No. (a) to (d) of BEG Records Roorkee letter No. 6513/MS/BEG/MES/RD-13/97/R/CA-7 dated 20th April 2012, the progress are as under :-*

Ser No	Observations	Reply received vide	Reply	Action taken by BEG Records
(a)	The JCO Exit/td from Bengal/Assam area wef 15.12.96 but Enter/Gtd PTO not recorded in Sheet Roll	235 Engineer Regiment their letter No. 10801/R HQ/01/R dated 08 th April, 2013	Entered in Bengal Assam Area wef 03 rd September 1992 vide PTO No. 0/115/0039/2 013 (copy att)	BEG Records raised observations being time barred publication CFA Sanction is required and the same has been intimated to 66 Engr Regt vide letter No. 14102/Obsn/235/ER/R/R/D3 (b) dated 05 th June 2013. Hence the entries not made in Sheet Roll.
(b)	The JCO Gtd SCA (Op Rakshak) wef 15.11.89 but Ctd PTO not recorded in Sheet Roll		Exit from SCA (OP Rakshak) wef 16 th April 1992 vide PTO No. 0/162/0079/1 992 (copy att)	Since period wef 01 st March 1992 to 15 th April 1992 have already been considered in Master Sheet. PTO received from the unit has not served any purpose (OP Rakshak) after 15 th November 1989 to 01 st March 1992 was required to be considered Recommendation Form and Data Sheet
(c)	The JCO served in OP Rakshak area wef 15.1.1997 to 8.6.1998 but Spl Service Medal W/C Suraksha "OP Rakshak (J&K) not entered in Sheet Roll.	PTO published vide 66 Engineer Regiment vide Part-II Order No. 0/0265/0 04/2013 dated 26 th May 2013.	Reqd Spl Service Medal W/C SURAKSHA "OP Rakshak" (J&K)	But the same could not be included in the Recommendation Form and Data Sheet due to late receipt and entry made in Sheet Roll on 20 th August 2013. BEG Records Roorkee has prepared 1 st and 2 nd amendment/addition/deletion and submitted to Command HQ for last chance which was due on 10 th June 2013 and 5 th July 2013 respectively.
(d)	The JCO awarded GOC-in-C Central Comd Commendation Card 01 st January 2000 vide 63 Engr Regt PTO No. 0/0020/0001/2009 but		Reqd copy of GOC-in-C Commendation Card.	The same was incorporated in the Data Sheet and Recommendation Form".

	<i>copy of the same not att with the Sheet Roll</i>			
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4. A plain reading of Counter Affidavit shows that on account of non publication of Part II Order, the applicant's name could not be considered for grant of Honorary Rank in active service. It is admitted fact that if, the applicant's Part II Order was published in time he would have been considered for grant of Honorary Commission alongwith his batch mates. The applicant has suffered on account of commission and omission on the part of respondents. However Ld. Counsel for the respondents submits that the applicant has not fulfilled the required criteria and could not achieve the merit hence he could have been granted Honorary Commission. The fact remains that while filing counter affidavit, the respondents have admitted that the applicant could not be considered for promotion on account of non availability of required information from the unit though his batch mates were considered for grant of Honorary Commission on active list on Independence Day and Republic Day. Through Counter Affidavit, he came to know that if Part II Order would have been published in time, he would have been granted Honorary Commission in active service.

5. Keeping in view the objections raised by Shri R.S. Mishra, Ld. Counsel for the Respondents and submission made by Shri R Chandra, Ld. Counsel for the Applicant, the applicant is directed to file a fresh representation. In case the applicant submits a fresh representation within one month from today, the competent authority shall look into the matter and decide the representation by a reasoned and speaking order expeditiously say within 3 months after receipt of representation alongwith a certified copy of this order and all supporting documents. Needless to say that in case the respondents find that the applicant is entitled for Honorary commission to the rank of Lt/Captain, keeping in view his status, rank and record of the same period which was taken into account for other similarly situated persons, then the applicant shall be provided the benefits for grant of Honorary Commission to the rank of Lt/Capt on active service.

6. Subject to the aforesaid observations and with the consent of Ld. Counsels for the parties, we dispose of the Original Application finally.

No order as to cost.

Original documents have been returned to Capt Priti Tyagi, OIC Legal Cell.

(Air Marshal Anil Chopra)
Member (A)

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