

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****TRANSFERRED APPLICATION NO 19 of 2010**Wednesday, this the 09th day of December 2015**Hon'ble Mr. Justice D.P. Singh, Member (J)**
Hon'ble Air Marshal Anil Chopra, Member (A)

Rajendra Yadav (Army No. 13961680X Naik/Ambulance Assistant), son of Shri Bechan Yadav, presently working in No. 163, Military Hospital, C/O 99 APO.

.....Petitioner

Ld. Counsel for the: **Shri Yashpal Singh, Advocate**
Petitioner

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi-110001.
 2. Director General Medical Services (Army), Army Headquarters, DHQ, PO New Delhi-110011.
 3. A.M.C. Centre & School, Lucknow-226002, through its Commandant.
 4. Commandant, A.M.C. Centre & School, Lucknow-226002.
 5. Commanding Officer, No. 1 Military Training Battalion, A.M.C. Centre & School, Lucknow-226002.
 6. A.M.C. Records, Lucknow-226001, through its Officer-in-Charge.
- ...Respondents

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

Air Marshal Anil Chopra, Member (A)

1. The writ petition No. 2862 of 2005 was filed in the High Court of Judicature at Allahabad and later transferred to Armed Forces Tribunal, Regional Bench, Lucknow under Section 34 of the Armed Forces Tribunal Act, 2007 and re-numbered as T.A. 19 of 2010. The petitioner is aggrieved by decision of the Commandant, Army Medical Corps Centre and School, Lucknow, communicated by letter dated 16.02.2005 (**Annexure 1**) through which his representation for quashing "Severe Reprimand" awarded by the Commanding Officer, No. 1 Military Training Battalion, AMC Centre was rejected. Petitioner has sought consideration for promotion to the rank of Havildar ignoring the "Severe Reprimand", and also wants his ACR of 2013 with "Average" grading to be set aside.

2. The petitioner was enrolled in the army (Army Medical Corps) as Ambulance Assistant on 01.03.1985. On completion of his training at AMC Centre and School, Lucknow, the petitioner was posted to 317 Field Ambulance, C/O 99 APO where he served till 1988. He was thereafter posted to various units. He was awarded punishment of 7 days Rigorous Imprisonment in military custody for loss of Identity Card in the year 1988.

3. The petitioner was promoted to the rank of Naik/Ambulance Assistant with effect from 22.09.2000. He was detailed to undergo the cadre course for promotion to the rank of Havildar,

which he completed successfully at 404 Field Ambulance from 15.09.2003 to 15.11.2003.

4. While posted at No 1 Military Training Battalion, AMC Centre & School, Lucknow the petitioner requested for 10 days casual leave for attending the marriage of his close relation scheduled for 20.04.2004. Despite repeated requests the leave was not granted but the authorities became annoyed and prejudiced because of repeated requests. With a view to harass the petitioner, while his wife was away, his duty was changed from AMC Centre Headquarters and the petitioner was ordered to stay at a post near Kukrail (Lucknow) and perform the duty there. The requests of the petitioner for not changing the duty at least till his wife returns back was also ignored and the petitioner had to stay at Kukrail leaving behind his two children at the mercy of neighbors.

5. The mother of the petitioner fell ill at home during May 2004 and the petitioner received telephone message and requested for grant of leave, but the Commanding Officer, No 1 Military Training Battalion refused to grant the leave and when an application addressed to the Commandant, AMC Centre & School, Lucknow was submitted by the petitioner, the Commanding Officer did not forward the same and threatened the petitioner for the dire consequences and also told that the ACR of the petitioner would be spoiled and his dream to become Havildar will remain a dream. The Commanding Officer also deputed an NCO to

enquire from the home of the petitioner as to whether the mother of the petitioner was actually ill.

6. On return from leave, the petitioner was charged for an offence under Section 63 of the Army Act, 1950 on 19.06.2004 and awarded the punishment of 'SEVERE REPRIMAND' by the Commanding Officer, No 1 Military Training Battalion (Respondent No 5) without any hearing and without even supplying a copy of the tentative charge sheet to the petitioner. The petitioner submitted an application dated 21.06.2004 to the Commanding Officer of the Battalion and requested that he be sent for interview before the Commandant, AMC Centre & School. However, the application was returned and the Commanding Officer of the Battalion told that the petitioner will not be sent for interview before the Commandant.

7. The petitioner, then submitted a representation-cum-complaint dated 22.06.2004 to the Commandant, AMC Centre & School and requested that the petitioner may be posted to some other Battalion and an inquiry be made in the matter of conspiracy in awarding the punishment to the petitioner. However, nothing was done in the matter. A true copy of the representation-cum-complaint dated 22.06.2004 annexed as **Annexure 2**.

8. Through a Counter Affidavit, the respondents have denied the facts presented by the petitioner. The guarding of Kukrail defence land is a responsibility of the Battalion and as routine,

guard commander duty is required to be performed by all Non Commissioned Officers (Havildar/Naik) of the Battalion in rotation. The petitioner was given facilities to stay with his family and to claim the cost of quarter i.e. CILQ as government accommodation is deficient and allotted as per the seniority in station. That if his wife had gone to his village, it is a personal matter of the petitioner and has nothing with his official duty. It is felt that perhaps, his wife did not go otherwise he should have used the facility of Railway concession vouchers for which he did not apply. The petitioner was reluctant to perform his duty as per his rank and trade as a Naik (Ambulance Assistant) and wished to remain in a sheltered duty without changing him to perform another duty in rotation. That the majority of Non Commissioned Officers/ORs are staying away from their families and he was staying at least with his children/family in station.

9. The petitioner was never denied leave granted, which is clear from his statement that he was granted 10 days leave. The question of threatening by spoiling his Annual Confidential Report does not arise as the Annual Confidential Report is not written alone by Commanding Officer and the entire work of the year is evaluated and judged and not of merely an occasion.

10. The petitioner had committed an offence under Section 63, Army Act 1950 (An Act prejudicial to good order and military discipline) by consuming free food in personnel cook house for

more than 10 days and deprived the entitled food to recruits and claimed ration money in lieu which amounts to fraud. The hearing of charge against the petitioner was done in terms of Army Rule 22 and the instructions contained in Appendix 'A' to Army Order 24/94 were duly complied with. A copy of the Appendix 'A' to Army Order 24/94 is annexed as **Annexure CA-1**. But the petitioner refused to sign and accept the tentative charge sheet with a feeling of his mind that if he does not sign, even after making such an offence, he cannot be dealt with disciplinarily by the authority. The petitioner became violent and hostile during the hearing of charge on 19.06.2004 and thus committed another offences, under section 40 (c) i.e. using insubordinate language to superior officer "AAP MERA KYA KAROGE" and words to that effect and section 42 (c) i.e. resisted the two escort NCOs whose duty was to have him in their charge. However, the case was heard by the Commanding Officer in front of the independent witnesses (NTR-16693M Lt Satish Kumar & JC-692750N Sub/Amb Asst C Manjhi) and a lenient view was taken. As such, the punishment awarded to the petitioner for offence under section 63, Army Act 1950 was just and as per law established. A copy of the tentative charge sheet dated 19.06.2004 and copy of the offence report are annexed as **Annexure CA-2 and CA-3**.

11. It is submitted that at no stage the petitioner had ever submitted any application for redressal of his grievances. The said application was neither received nor stopped by the

Commanding Officer at any stage. As such the allegation made by the petitioner are incorrect.

12. The petitioner was posted to Administrative Battalion from No 1 Military Training Battalion on 15.07.2004 as part of inter unit transfer under the authority of Centre Headquarters. The petitioner has never sought redressal for his grievances through departmental channel prior to filing the previous writ petition No 3833 (S/S) of 2004.

13. On the issue of promotion prayer for which was added later through amendment, the respondents filed a Supplementary Counter Affidavit and stated that the applicant was struck off strength from Army Medical Corps on 01.03.2015 (forenoon). He was promoted to the rank of Substantive Naik on 21.09.2000 with notional seniority with effect from 01.08.2000 and again promoted to the rank of Substantive Havildar on 01.07.2005 with notional seniority with effect from 01.07.2005. Further the applicant was screened for promotion to the rank of Naib Subedar (Ambulance Assistant) against the vacancy of 01.10.2010 as per his Corps seniority and picked up the rank of Naib Subedar on 28.10.2010 with notional seniority with effect from 01.10.2010. Thereafter, the applicant was again promoted to the rank of Substantive Subedar on 02.02.2013 with notional seniority with effect from 01.02.2013. Accordingly, the petitioner was screened for promotion to the rank of Subedar Major in Departmental Promotion Committee (DPC) for the year 2014 against the

vacancy of year 2015, but, as per policy in vogue, the petitioner was not fulfilling the following promotion criteria :-

(a) That as per Integrated Headquarters, Ministry of Defence (Army) letter No B/33513/AGIPS2(c) dated 10.10.1997 (**Exhibit R-1**) for promotion to the rank of Subedar Major last five reports will be considered in JCO rank and in case of shortfall inclusion of one additional confidential report in the lower rank to make up the required mandatory number of Annual Confidential Reports may be projected to Officer-in-Charge Records vide Integrated Headquarters, Ministry of Defence (Army) letter dated 26.03.2010 (**Exhibit R-2**). According to above rule, atleast three out of last five reports should be 'Above Average' and remaining two should be not less than 'High Average'.

14. The Annual Confidential Report grading earned by the petitioner from 2009 to 2014 are as under :-

Year	Annual Confidential Report Grading		Recommendation (R)/Non Recommendation (NR) for promotion by		Unit in which ACR initiated
	IO	RO	IO	RO	
2009	6 (HA)	6 (HA)	R	R	326 Field Hospital
2010	6 (HA)	8 (AA)	R	R	326 Field Hospital
2011	8 (AA)	7 (AA)	R	R	No 2 MT Bn AMC Centre and College, Lucknow
2012	6 (HA)	5 (HA)	R	R	-do-
2013	4 (A)	4 (A)	NR	NR	-do-
2014	8 (AA)	8 (AA)	R	R	121 Field Health Organization

15. The Annual Confidential Report for the year 2013 of the petitioner initiated by No 2 Military Training Battalion, Army Medical Corps Centre and College which was received by Army Medical Corps Record office on 13.06.2013. On scrutiny of ibid Annual Confidential Report, it was observed that the petitioner was graded 'Average' grading with weak points by the Initiating Officer (Lt Col Simon PL) and Reviewing Officer (Colonel Srinath BR), the same was communicated to the petitioner as per policy in vogue. The communication slip pasted in ACR dossier of the petitioner as per policy and the same is accepted as technically correct. The applicant was not fulfilling minimum mandatory requirement of three 'Above Average' grading and two 'High Average' grading in last five Annual Confidential Reports and became ineligible for promotion to the rank of Subedar Major in Departmental Promotion Committee (DPC) for the year 2014 against the vacancy of year 2015. Hence, the petitioner was permanently superseded till date of retirement i.e. on 01.03.2015 (forenoon) due to Annual Confidential Report grading criteria.

16. No cause of action has been accrued for the petitioner and petition lacks merit and is liable to be dismissed with costs.

17. Heard the Ld. Counsels for both the parties and perused the records.

18. The communication of Average Grading (Para 42 to 44 of AO 1/2002/MP is reproduced below :-

“42. The following aspects, whether endorsed in the pen picture, figurative assessment of overall grading will be communicated to the ratee by the IO:-

- (a) Weak points.*
- (b) Adverse remarks.*
- (c) Advisory remarks.*
- (d) ‘Low Average or Below Average’ assessment whether in figurative assessment or overall grading.*

43. Assessment in the CRs, as explained in Para 42 above, will be communicated to the ratee in writing by the IO and signature obtained. Communication slip is duly signed and dated by ratee will be pasted in the Confidential Report before forwarding the same to Record Office. In case ratee is not present in the unit, the assessment will be communicated to him through a registered post, his signature obtained and the slip then pasted in the CR. In case such effected JCO/NCO has been posted out before communicating the assessment to him, extract of the assessment will be forwarded by the IO to the new Commanding Officer of the ratee. The new CO will communicate the assessment to the ratee, obtain his signatures on the extract and return the same to the IO who will then forward the same to the Record Office for pasting the same in the Confidential Report.

Communication of 'Average' Grading

44. *'Average' assessment in any personal quality or demonstrated performance or in overall grading is not an adverse grading, thus, needs no justification in the pen picture. However, since 'Average' grading adversely effects promotion prospects of a JCO/NCO including grant of honorary commission/rank, it will be communicated to the Ratee. However, where a ratee has though been graded 'Average' but not recommended for promotion, the same will be justified in the pen picture by the reporting officer and the grading including pen picture will be communicated to the ratee.*

19. The petitioner was punished for an offence under Army Act Section 63 on 08.05.2004 and awarded "Severe Reprimand", unauthorisedly consuming rations in a mess belonging to other personnel, while continuing to claim allowances for the same in an unlawful act. The punishment seems commensurate. The petitioner has since been promoted to higher ranks and the punishment has not been an impediment to further service. As such we are of the opinion that the punishment has attained finality and does not need any intervention.

20. The petitioner's ACR for 2009 and 2014 indicate that the petitioner had High Average to Above Average grading in the years 2009 to 2012. In all these years, both I.O. and R.O. have recommended the petitioner for promotion. There is a dip in grading for the year 2013 wherein the petitioner has been graded

4 (Average) by both the I.O. and R.O. A detailed study of the ACR for this period indicates that petitioner has been assessed 4 (Average) in most of the columns including in 'Turn out and Bearing', 'maturity' 'Sports & Games' etc. The pen picture written by the I.O. is reproduced below :-

“An Average JCO. The improvement shown by the JCO despite counseling given initially verbally and subsequently in writing vide letter dated 27.12.2012 is not upto the level expected of a JCO who has put in 23 years of service”.

21. Copy of the written performance counseling letter dated 27.12.2012 is reproduced below :-

“CONFIDENTIAL

No 2 Mil Trg Bn
AMC Centre and College
PIN:900450
C/O 56 APO

951105/Coy/2012

27 Dec 2012

JC/69770L
Nb Sub (AA)
Rajendra Yadava (George Coy)
No 2 Mil Trg Bn
AMC Centre and College
PIN:900450
C/O 56 APO

PERFORMANCE COUNSELLING

1. *It has been reported that you are not following the specific instructions given to you by your superior staff in the chain command during performance of your duties as under :-*

(a) *Not reporting to the bn parade ground after completion of Ceremonial Drill practice at No 1 TT Wg Parade ground.*

(b) *Not reporting at all to Sr JCO of the Bn regularly.*

(c) *Not attending evening Roll Call in George Coy of the Bn.*

(d) *Not checking the quality of food prepared in the Cook House of your Coy (George Coy) of the bn where you are posted to.*

(e) *Not visiting the personnel lines to check their hygiene & sanitation, maintenance std and discipline level etc in George Coy.*

2. *The above mentioned laxity on your part and disobedience of lawful order have been viewed seriously by the CO as well as undersigned.*

3. *Therefore, you are hereby counseled to be more careful in future in carrying out the orders given to you otherwise you will be put up on a Adverse Career Report.*

*Sd/- z z z z z
(Simon PL)
Major
Coy Cdr*

Copy to:

*Srinath BR -for info please.
Col
Commanding Officer*

CONFIDENTIAL

22. The remarks of the R.O are :-

"I concur with the remarks of the I.O". Both the I.O. & R.O. have not recommended the petitioner for promotion in his ACR.

23. In the very next ACR (2014) under a different I.O. & R.O., the grading of the petitioner increased to 8 (Above Average). The pen picture of the I.O. states :-

“Tall, slim JCO, he functions as the Security JCO and officiates as the Adm JCO. Of pleasant demeanor, he functions as a good team member. A good sportsman. The pen picture by R.O. states :-

“A committed, pleasant and mature JCO”.

24. From a detailed study of the ACRs it is evident that there has been a sudden dip in the ACR in the year of 2013. In spite of counseling, the dip in ACR is not sufficiently explained. The petitioner's performance in the very next year has had a manifold jump to '8' by both I.O. & R.O. We have reasons to believe that there has been an aberration in the ACR assessment of the year 2013, and the same deserves to be expunged. As such the ACR of the year 2013 is recommended to be expunged.

25. In view of the above, we find that the petitioner has a case. T.A. No. 19 of 2010 is allowed. The ACR of 2013 is set aside. A fresh DPC be held ignoring the ACR of 2013. Further promotion of the petitioner be decided based on the DPC. Petitioner will be entitled to all consequential benefits of the promotion, if so decided by the DPC. Let entire exercise in pursuance to present order be done within six months from date of receipt of certified copy.

No orders to costs.

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

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