

RESERVED
Court No. 2

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

ORIGINAL APPLICATION No. 160 of 2016

Monday, this the 05th day of February, 2018

Hon'ble Mr. Justice S.V.S.Rathore, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)

No. 6647364-A Ex-Hav Clerk (Stores) Ram Naresh Ram Son of Budha Ram, resident of Village and Post : Agrauli, District - Balia, Uttar Pradesh.

.....**Applicant**

Ld. Counsel for the : **Shri P.K.Shukla, Advocate.**
Applicant

Verses

1. The Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi.
2. Chief of Army Staff, Army Headquarters, South Block, New Delhi.
3. The office Incharge ASC Records, (South) Bangalore-560007.
4. Commanding officer, 883 Animal Transport Battalion, ASC, C/O 56 APO.

.....**Respondents**

Ld. Counsel for the : **Shri R.C. Shukla, Advocate**
Respondents **Addl. C.G.S.C**

Assisted by : Maj Rajshri Nigam, OIC Legal Cell.

ORDER**“Per Hon’ble Air Marshal BBP Sinha, Member (A)”**

1. Present O.A has been preferred under section 14 of the Armed Forces Tribunal Act, 2007 for the relief of setting aside the order dated 25.04.2016 whereby the statutory complaint was rejected attended with the relief of setting aside the Annual Confidential Report for the year 1988 followed by the prayer for direction to promote the applicant to the rank of Naib Subedar from ante date of seniority alongwith all consequential benefits.

2. The facts in nutshell are that the applicant was enrolled in the Indian Army on 17.11.1969 and was discharged on 30.11.1993 on completion of the term of engagement with liberty to serve in the reserve for a period of 2 years or till attainment of 47 years of age. While serving in the Army, the applicant was granted promotion on the rank of Paid Acting Havildar with effect from 17.01.1982 and subsequently, he stood promoted to substantive rank of Havildar with effect from 01.09.1983. While serving in 65 Coy ASC (Sup) the applicant passed promotion cadre from Havildar to Naib Subedar on 26.04.1989. However, he was superseded for lacking ACR Criteria. After superannuation, the applicant was conferred the rank of Honorary Naib Subedar w.e.f 01.12.1993. Aggrieved by his supersession, the applicant

preferred a statutory complaint on 20.01.1992 against the ACR for the year 1988 while in service. The basis in the statutory complaint was that the officer who had initiated the ACR was not competent to award the ACR as the applicant had not served under the Initiating officer for mandatory period of 90 days of physical service. The said statutory complaint ended up in being rejected vide order dated 14.07.1993. Aggrieved by rejection of his statutory complaint, the applicant filed a writ petition in the High Court of Judicature at Allahabad vide Writ Petition No 28587 of 1993 assailing the ACR for the year 1988 coupled with the challenge to the order of rejection of his statutory complaint dated 20.01.1992. The aforesaid writ petition was converted into T.A on transfer to this Tribunal and was renumbered as TA No 1459 of 2010. The aforesaid T.A culminated with the order whereby the impugned order of rejection of statutory complaint dated 14.07.1993 was set aside on the grounds that the order was not a reasoned order and the matter was remitted to the Competent authority for passing a fresh speaking and reasoned order expeditiously within two months. In observance of the order of the Tribunal aforesaid, the competent authority reconsidered the matter and again rejected the statutory complaint by allegedly a speaking and reasoned order which is annexed as Annexure 1 to the present O.A. It is in this backdrop that the present O.A has

come to be filed assailing the reasoned and speaking order dated 25.04.2016.

3. The submission quintessentially is that the applicant had not rendered physical service for 90 days so as to warrant ACR from the Initiating officer concerned as awarded in the year 1988.

4. In this connection, learned counsel for the respondents repudiating the above submission, contended that during the period the applicant had served with 65 Coy ASCO (Sup) with effect from 10 June 1988 to July 1990. The applicant during the aforesaid period had also availed of 64 days Annual Leave for the year 1988 from 65 Copy ASC (SUP) with effect from 11 July 1988 to 12 Sept 1988. The Applicant had resumed duty on 13 Sept 1988 and was deployed to perform duties in Fresh Island Group. During the period Capt Raj Kumar K was performing the duties of R & D officer in addition to the duties of Butchery Officer in 65 Coy ASC (Sup). Our attention has been drawn to the fact that in paras 4.3 to 4.5 of the O.A, it has been averred by the applicant that he had served under the concerned officer only for 10 days while in the statutory complaint dated 20.01.1992 it is mentioned that actual period of service rendered by the applicant under Capt Raj Kumar K was from 21 June 1988 to 10th July 1988 and from 10th Dec 1988 to 31 Dec 1988. The total period comes to 42 days and

not for 10 days. It is also contended that in terms of Army order on the subject issued from time to time, the applicant submitted his ACR Form duly filled in the particulars and signed, to the Initiating officer on due date and there was no misgiving at that time in his mind that he had not rendered 90 days mandatory physical service under the aforesaid officer or the Initiating officer was not competent as the applicant had not served under him for mandatory 90 days of physical service. Our attention has also been drawn to para 8 (a) of the Army order 114/79 which postulate that if an individual does not complete 90 days physical service under the Initiating officer, his ACR can be delayed by 90 days. It is canvassed that the Applicant was a Senior NCO and was well aware of the provisions of the Army order 113/78 and 114/79 and that he never took exception nor raised any objection that the Initiating officer concerned was not competent to award the entry. He raised the issue of incompetence of the Initiating officer only when he came to know that he stood superseded on account of low grading in the ACR.

5. Our attention has also been drawn to the comments of the Initiating officer which were called for in statutory complaint of the applicant in which he has emphatically denied that the Applicant had not served under him for 90 days. Similar is the comment of the R.O. Col H.S.Mankotia in

which it was described that the ACR of NCO should be accepted as initiated during 1985.

6. We have also gone through the reasoned and speaking order under challenge in this O.A. In the order, reference has been made to the Army order 114 of 1979 in which it is postulated that consecutive absence of 10 days and above on leave/temporary duty/hospitalisation will not be counted as physical service. The chart drawn in the order under challenge detailing the duties performed by the applicant under the initiating officer is enumerated below for ready reference.

Ser No	From	To	No of days absence	No of days present	Remarks
(a)	21 Jun 88				Complainant reported on posting from 508 ASC Bn.
(b)	21 Jun 88	10 Jul 88		20	Complainant served under Capt Raj Kumar
(c)	11 July 88	12 Sep 88	64		Complainant was on 64 days AL
(d)	13 Sep 88	31 Dec 88		110	Complainant served under Capt Raj Kumar
	Total		64 days	130 days	

7. It would thus appear from the above chart that the applicant had served under Capt Raj Kumar K for 130 days. In the O.A or in the rejoinder affidavit, the details of duties performed by the applicant under the Initiating officer have not been repudiated.

8. From the above discussion, it would clearly transpire that the order passed by the competent authority under challenge in this O.A was a comprehensive order which can well be called a reasoned and speaking order inasmuch as every point was discussed elaborately and with meticulous precision attended with reasons.

9. It is also submitted by the learned counsel that the officer concerned was a new officer and he has not had enough experience and on account of his ignorance of the Rules and Regulations and the Relevant Army Orders, he assessed as the applicant as average. The learned counsel for the respondents counteracted the above submission and vehemently urged that the officer concerned had to his credit five years of service in the Army and he was well aware of the Army orders, Rules and Regulations and also was well versed with administrative skills/capabilities. From a perusal of the order under challenge and from a plain reading of the comments which were called for from the officer concerned, it does transpire that the officer was quite capable and

experienced and he cannot be said to be a new entrant and inexperienced officer. The reasons given by the officer in his comments to the statutory complaint are quite logical and it seems he was well aware of the Army Rules and Regulations as well as the Army order.

10. Be that as it may, it does appear that the applicant initially had no misgiving in his mind and he had duly submitted the details of his performance in the prescribed format to the officer. The idea of disputing officer's competence to award the ACR, it appears, hit upon his mind at a later stage when he came to know that he stood superseded on account of low grading in ACR. It is nothing but an afterthought and that too at a belated stage as the statutory complaint was put forth in the year 1993. Here in the instant case, there is no challenge that the order passed by the competent authority in pursuance of the direction of the Tribunal is not a speaking or reasoned order and hence, we refrain from dealing with the order by quoting it extensively.

11. To cap it all, the matter relates back to the year 1988 ACR entry and since then much water has flowed down the river. In our view, it would not serve any useful purpose to dig out the entire matter at this belated stage vis a vis the fact that the Applicant was superannuated way back in the

year 1993. The Applicant was conferred the Hony rank of Naib Subedar after his superannuation and in our view, his grievance should stand mitigated to that extent.

12. As a result of foregoing discussion, the petition lacks merit and is accordingly dismissed being devoid of merit.

(Air Marshal BBP Sinha)
Member (A)

(Justice S.V.S. Rathore)
Member (J)

Dated : February, 05 ,2018

MH/-