

RESERVED**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****TRANSFERRED APPLICATION No. 262 of 2010**Thursday, this the 03rd day of January 2019**“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)
Hon’ble Air Marshal BBP Sinha, Member (A)”**Lance Dafadar Narender Pal Tomar (No. 1061493), S/O
Shri Lila Singh Tomar, Electronic Wing, Armoured Corps
Centre & School, Ahmednagar (Maharashtra).

..... Petitioner

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

Versus

1. Union of India Through Secretary, Ministry of
Defence, Govt of India, New Delhi.
2. Chief of the Army Staff, Army Headquarters, DHQ,
P.O. New Delhi.
3. Officer-In-Charge Records Armoured Corps,
Ahmednagar (Maharashtra).
4. Lieutenant Colonel L.V.K. Murthy, Officer
Commanding, 1, Karnataka Armoured Squadron NCC,
Bangalore (Karnataka).

.....Respondents

Ld. Counsel for the : **Dr. Shailendra Sharma Atal**,
Respondents. Central Govt. Standing Counsel

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

1. Aggrieved by denial of promotion, the petitioner had approached the Hon’ble High Court of Judicature, Jabalpur (Madhya Pradesh) by preferring Writ Petition No. 1511 of 1999. Upon establishment of the Armed Forces Tribunal, said Writ Petition has been transferred to this Tribunal under Section 34 of the Armed Forces Tribunal Act, 2007 and renumbered as T.A. No. 262 of 2010.

2. By means of this T.A., the following prayers have been made:-

(i) The Hon’ble court may be pleased to issue a writ order or direction in the nature of certiorari thereby quashing the finding of the DPC which has rejected the case of the petitioner for promotion to the rank of Dafadar.

(ii) The Hon’ble court may be pleased to issue a writ order or direction in the nature of mandamus thereby directing the respondents to reconsider the case of the petitioner for promotion to the rank of Dafadar and grant him promotion with effect from 01.01.95 with all consequential benefits.

(iii) Any other appropriate order or direction which the Hon’ble Tribunal may deem just and proper in the nature and circumstances of the case.

(iv) Cost of the petition may also be awarded to the petitioner.

3. Brief facts of the case are that the petitioner was enrolled in Indian Army (Armoured Corps) as Store Hand Technical (SHT) on 03.02.1978. During course of his service he was promoted to the rank of Acting Lance

Dafadar (ALD) w.e.f. 01.01.1986. While posted with 2 UP Armd Sqn NCC, the petitioner was summarily tried by the Officer Commanding (OC) and was awarded the following punishments and occurrence to this effect was notified by unit Part II Orders:-

<u>Ser No</u>	<u>Nature of Punishment and date</u>	<u>Section</u>
(a)	Severe Reprimand (21.10.1992)	63 of Army Act, 1950
(b)	Depriving acting rank (03.11.1992)	40(a) of Army Act, 1950

4. Against the above punishments, the petitioner submitted a non statutory complaint which was rejected. Subsequently statutory complaint submitted by the petitioner was decided vide order dated 04.02.1997 setting aside the aforementioned punishments as illegal and untenable in law. It appears that the above order was not communicated to the petitioner as he filed Writ Petition No 2651 of 1997 before Hon'ble High Court of Jabalpur challenging award of punishments where the respondents produced copy of the order dated 04.02.1997 by which the aforementioned punishments were quashed and prayed for dismissal of the petition on the ground that the punishments were already set aside by Commander Meerut Sub Area vide order dated 04.02.1997. The aforesaid Writ Petition was disposed off vide order dated

11.12.1998 with directions to the respondents to promote the petitioner as Dafadar (Dfr) w.e.f. 01.01.1995 (subject to fulfilling promotion criteria) on the ground that punishments awarded to him on 03.11.1992 were quashed vide order dated 04.02.1997.

5. The red ink entry incurred on 03.11.1992 resulted in ban for further promotion of the petitioner for a period of one year i.e. up to 02.11.1993. After the ban period was over, the petitioner was considered for further promotion to the rank of LD against the existing vacancy and accordingly he was promoted to the rank of LD and carried seniority for further promotion w.e.f. 01.10.1994. The petitioner, thereafter, came up for promotion to the rank of Dfr w.e.f. 01.07.1996 but due to lacking of mandatory qualification, i.e. requisite number of CRs (total 03 CRs as LD), he could not qualify the promotion test for Dfr at that time. Later, after earning 03 CRs and becoming eligible, the petitioner passed the said test on 26.11.1996. The Departmental Promotion Committee (DPC) held on 15.02.1999 vide Hon'ble High Court's order dated 11.12.1998 found the petitioner unsuitable for promotion to the rank of Dfr due to lacking ACR criteria i.e. not having 03 CRs as LD. Later the petitioner became eligible for promotion to the rank of Dfr w.e.f. 01.01.1998 after

earning 03 CRs as LD and qualifying promotion cadre but due to non availability of vacancy he could not be promoted and retired in the rank of LD. Hence this petition.

6. Ld. Counsel for the petitioner submitted that since punishment dated 03.11.1992 inflicted upon the petitioner was quashed vide order dated 04.02.1997 on the grounds of order being illegal and untenable in law, therefore he should have been promoted to the rank of LD and subsequently to the rank of Dfr w.e.f. 01.01.1995. He vehemently argued that batchmates of the petitioner were promoted to the rank of Dfr on 01.01.1995 but he could not be promoted to the rank of Dfr primarily due to adverse consequences of the illegal punishment awarded on 03.11.1992 which was subsequently quashed vide order dated 04.02.1997. It was pleaded that after quashing of the punishment, the petitioner became entitled for further promotion, however he has basically lost out and suffered because of the delay in restoration of his LD rank and subsequent requirement of 03 CRs in this rank of LD for promotion to the rank of Dfr.

7. Per contra, Ld. Counsel for the respondents submitted that the petitioner's seniority of LD was restored w.e.f. 01.01.1992 after setting aside of the punishments

vide order dated 04.02.1997 and subsequently monetary benefits to this effect were also adjusted. The Ld. Counsel further submitted that since the petitioner cleared the promotion test to the rank of Dfr only on 26.11.1996, he was not eligible to be promoted to the rank of Dfr on 01.01.1995 and when he became eligible for promotion w.e.f. 01.01.1998 there was no vacancy available at that time. It was further submitted that the petitioner was also lacking ACR criteria required for further promotion.

8. Additionally, rebutting arguments advanced by Ld. Counsel for the petitioner in para 5.5 of the petition, Ld. Counsel for the respondents contended that the petitioner was again promoted to the rank of LD w.e.f. 01.10.1994 and he was due for promotion to the rank of Dfr w.e.f. 01.01.1996 but he could not be promoted due to non clearance of promotion test and lacking the required number of CRs. The Ld. Counsel further contended that as per order of the Hon'ble High Court dated 11.12.1998 a fresh DPC for the year 1995 was held where the petitioner was declared unfit to be promoted to the rank of Dfr w.e.f. 01.01.1995 as he was lacking promotion test as well as ACR criteria. It was averred that the respondents have not erred in denying promotion to the petitioner. He pleaded for T.A. to be dismissed.

9. We have heard Ld. Counsel for both the parties and perused the material placed on record.

10. The moot question involved in this case is that had the petitioner's punishment awarded on 03.11.1992 would have been set aside on earlier occasion i.e. not after five years from the date of award of punishment, the petitioner would have earned requisite number of confidential reports in time resulting in his timely detailment in promotion cadre from LD to Dfr and his subsequent promotion to this time scale rank.

11. From the pleadings on record it is born out that there was a ban of one year to the petitioner for promotion to the rank of LD on account of red ink entry incurred on 03.11.1992 and the said punishment was quashed vide order dated 04.02.1997. The respondents restored the petitioner's original seniority w.e.f. 01.11.1992 and casualty to this effect was notified vide order dated 10.12.1997. Thus the petitioner's seniority should have been counted w.e.f. 01.11.1992 and not from 01.10.1994 on which date the petitioner acquired promotion after ban period was over. It appears that the respondents have tried to set up a case that since the petitioner was promoted to the rank of LD in the regular course on 01.10.1994, he carried seniority from said date for further

career promotion. The DPC held on 15.02.1999 considered the case of the petitioner for promotion to the rank of Dfr w.e.f. 01.01.1995 but denied promotion on the ground that the petitioner on 01.01.1995 was lacking ACR criteria as well as he was also lacking promotion test to the rank of Dfr which he could pass only on 26.11.1996. From the proceedings of the DPC held on 15.02.1999, a copy of which has been annexed as R-1 to the counter affidavit, it is born out that the DPC has mentioned that the petitioner was eligible for promotion to the rank of Dfr w.e.f. 01.01.1998 but since there existed no vacancy he could not be considered for promotion. It was further mentioned in the DPC that as and when a clear vacancy would become available the petitioner would be considered for promotion subject to acceptable ACR criteria for the year 1998 and onwards, but presumably the petitioner before being considered and promoted to the next rank superannuated.

12. This whole story of the applicant is an indication that how a wrong punishment by a superior can destroy a soldier's career. This is a case where a punishment of severe reprimand and deprivation of acting rank by a CO has been set aside by his superior officer after five years as illegal and untenable in law. However in these five

years the applicant has got caught in procedural hassles of minimum number of CRs required to do firstly a cadre course for promotion to the rank of Dfr and subsequently has been declared unfit for promotion to Dfr on the ground of lacking CR criteria i.e. not having 03 CRs as LD. Finally when he was cleared for promotion, he is again denied promotion on the ground that there is no vacancy. It is surprising to note that the respondents have restored the pay and allowances of the applicant as LD w.e.f. 01.01.1992 but are totally silent on undoing the injustice done to him in terms of permitting him to do cadre course for promotion as a special case or raising an additional CR for him as a special case, in the interest of justice to help him meet the promotion/ACR criteria within specified time limits.

13. Dfr rank promotion is not a select promotion, it is a time scale promotion and is granted after meeting the minimum eligible criteria. It is abundantly clear that punishment entries have adverse implications on ACRs. Thus even if the punishment is set aside after five years as illegal, the adverse effect of the punishment continues in the ACRs of the said period. Thus the respondents have on one hand damaged the promotional aspects of the applicant to Dfr because of their acts of omission and

commission and on the other hand they have taken no meaningful action to rectify the wrong they have done to the career prospects of the applicant.

14. The O.A. deserves to be allowed, hence **allowed**.

15. We hereby direct the respondents to promote the applicant to the rank of Dfr w.e.f. 01.01.1995 and he shall continue in notional service after his discharge, till he acquires 24 years of total service. We further direct the respondents to pay full salary of Dfr from 01.01.1995 till notional service extension and discharge after 24 years of service. He is also entitled to all other consequential benefits and to receive pension w.e.f. the date of superannuation in the rank of Dfr after notional service and retirement.

16. This order is to be implemented within four months of receiving a certified copy. Default will invite an interest of 9% per annum.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

Dated: January, 2019

gsr

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