

**RESERVED**

ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW

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**Court No. 2**

**O.A. No. 134 of 2014**

**Friday, this the 29<sup>th</sup> day of May, 2015**

**“Hon’ble Mr. Justice Virendra Kumar DIXIT, Member (J)  
Hon’ble Lt. Gen. Gyan Bhushan, Member (A)”**

**JC-367771A Naib Subedar B.L. Chauhan (Retired),  
aged about 60 years, son of Late Shri Bhika Ram,  
Village & Post Banjakuri Via Balunda,  
Tahsil: Jetaran, District: Pali (Rajasthan).**

.....Applicant

Versus

1. Union of India, Through Secretary, Ministry of Defence,  
Government of India, New Delhi.
2. Officer-in-Charge, Records Signals Record,  
Jabalpur (M.P.)
3. Colonel B.P.S.Grewal, Ex-Commanding Officer,  
18 Infantry Division Signal Regiment c/o 56 APO.
4. Major A.K. Parashar, Ex Officer Commanding,  
74 Infantry Brigade Signal Company c/o APO.

....Respondents

Ld. Counsel for the Applicant – **Shri R. Chandra  
Advocate**

Ld. Counsel for the Respondents - **Shri Mukund Tewari,  
Central Govt. Counsel**

**'Hon'ble Lt Gen Gyan Bhushan, Member (A)'**

1. This Original Application has been filed under section 14 of the Armed Forces Tribunal Act, 2007, whereby the Applicant has sought following reliefs:-

*(i) The Hon'ble Tribunal may be pleased to quash the order dated 18.09.2012 issued by respondent No.2. (Annexure A/1).*

*(ii) The Hon'ble Tribunal may be pleased to quash the ACR for the year 1995 written on the petitioner by respondent No.3 and 4.*

*(iii) The Hon'ble Tribunal may be pleased to direct the respondents to consider the petitioner for promotion to the rank of Subedar and promote him as Subedar with effect from 01 July, 1997 with all consequential benefits. Including consideration for promotion to the rank of Subedar Major and Honorary rank.*

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

2. The Applicant was enrolled in the Army in the Corps of Signals on 11.08.1971. He was promoted to the rank of Naib Subedar on 27.08.1993 and he retired from service in the same rank on 01.09.1997. The Applicant was considered for promotion to the rank of Subedar by Promotion Board but was not found fit for promotion due to 'not meeting Annual Confidential Report (ACR) criteria'. On inquiry he was informed that he was lacking in ACR criteria. The Applicant preferred a Writ Petition No 3662 of 1997 before Hon'ble High Court of Madhya Pradesh, Jabalpur, which was transferred to this Tribunal and re-numbered as T.A. No 255 of 2010. The T.A. was partially allowed vide Judgment and Order dated 08.11.2010 directing the Respondents to consider the representation of the Applicant against impugned ACR for the year 1995 and constitute a Departmental Promotion Committee based on the outcome of the representation of the Applicant and consider him for promotion and if the Applicant is found eligible and suitable for promotion, he be given all the consequential benefits including notional consideration for extension of service in accordance with the rules. Representation of the Applicant was considered by Respondents in the light of the direction given by this Tribunal but the Applicant was not satisfied and feeling aggrieved he filed Original Application No 319 of 2011 and this Tribunal passed Judgment and Order on 01.11.2011 directing the

Respondents to reconsider his representation strictly in the light of the directions given by this Tribunal in Paragraph 18 of the Judgment and Order dated 08.11.2010. Thereafter, representation of the Applicant against his ACR was re-examined and was disposed of by the Competent Authority and the Applicant was screened afresh by a reconstituted Adhoc Promotion Board held on 12.07.2012 considering all ACRs till 1997 but he was not approved due to 'lacking in ACR Criteria'. Being aggrieved the Applicant filed the instant Original Application.

3. Heard Shri R Chandra, Ld. Counsel for the Applicant and Shri Mukund Tewari, Central Government Counsel for the Respondents.

4. Ld. Counsel for the Applicant argued that the Applicant had an Above Average career profile throughout his service. The ACR for the year 1995 of the Applicant was not in conformity with his overall career profile. No performance counseling or warning was ever administered by Initiating or Reviewing Officers, therefore, the ACR for the year 1995 was inconsistent with his career profile. He further submitted that Respondent No 3 and 4 had given a good ACR to the Applicant for the year 1994. Therefore, there could not be a sudden drop in performance of the Applicant. Since the

Applicant was assessed very low in the impugned ACR, the policy instruction No 68 should have been followed in this case but complete disregard to the policy was shown by the Respondents and no warning or counseling was given before writing of the ACR, thereby the principles of natural justice have been violated. The impugned ACR was subjective and inconsistent with the career profile of the Applicant. While considering the case of the Applicant for promotion to the rank of Subedar, Respondent No 2 should have ignored the impugned ACR.

5. Ld. Counsel for the Applicant submitted that the Applicant had an High/Above Average ACR profile throughout his service. Average ACR grading for the year 1995 which was inconsistent with his overall ACR profile marred his chances for promotion to the rank of Subedar. Respondents were fully aware that an average ACR would disqualify him for promotion by the Departmental Promotion Committee, but they failed to communicate the same so as give him an opportunity to represent against it and get a redressal. Ld. Counsel for the Applicant reiterated that the ACR for the year 1995 be quashed and the Applicant be considered for promotion to the rank of Subedar with effect 01.07.1997 with all consequential benefits including promotion to the Rank of Subedar Major and Hony Rank.

6. On the other hand Ld. Counsel for the Respondents submitted that the Applicant was enrolled in the Army on 11.08.1971. He was promoted to the rank of Naib Subedar on 27.08.1993 and retired from service in the same rank on 01.09.1997. The Applicant was twice considered for promotion to the rank of Subedar by promotion board held from 19 to 20 September 1996 and 12 to 13 March 1997 respectively but was found unfit for promotion to the rank of Subedar due to 'lacking in ACR criteria'. Feeling aggrieved the Applicant filed a writ petition in the Hon'ble Madhya Pradesh High Court at Jabalpur which was transferred to this Tribunal. The case was partially allowed vide Judgment and Order dated 08.11.2010. The Applicant was not satisfied and he again filed O.A. No.319 of 2011 in this Tribunal. This Tribunal vide its Judgment and Order dated 01.11.2011 directed Respondents to reconsidered his representation strictly as per directions given at Para 18 of the Judgment and Order dated 08.11.2010. Representation of the Applicant was considered by the Competent Authority and thereafter, the Applicant was screened afresh by an Adhoc Promotion Board held on 12.07.2012 in accordance with the order of this Tribunal dated 01.11.2011 but the Applicant was found lacking ACR criteria even after taking all ACRs earned by the Applicant till 1997.

7. Ld. Counsel for the Respondents further submitted that as per provisions laid down in the promotion policy issued vide Integrated Headquarters of MOD (Army) letter No B/335-13/AG/PS2(c) dated 18.01.1993 last three ACRs in the rank of Naib Subedar were required to be considered and all the ACRs under consideration should be high average and above average. Applicant did not meet the ACR criteria laid down for promotion to the rank of Subedar.

8. Ld. Counsel for the Respondent further submitted that as per para 41 of Army Order 5/90, the ACR grading was not to be communicated to the rattee, as such in consideration with the policy it was not communicated to the Applicant. All these issues were also highlighted during the pleadings of Transferred Application No 255 of 2010. Keeping these facts and circumstances in view, the Hon'ble Tribunal had in para 18 of Judgment and Order dated 08.11.2010 directed the Respondents to consider the representation of the Applicant against impugned ACR of 1995, if such a representation is submitted. The Applicant had submitted the representation which was re-examined and disposed of by the Competent Authority and thereafter, he was screened afresh by a reconstituted Adhoc Promotion Board held on 12.07.2012 considering all Annual Confidential Reports till 1997 but he was

not approved for promotion to the rank of Subedar due to 'lacking of ACR criteria'. It is, therefore, evident that Hon'ble Tribunal had already considered these issues in T.A. No 255 of 2010 and given partial relief to the Applicant by directing the Respondents to re-consider representation of the Applicant against impugned ACR for the year 1995.

9. Ld. Counsel for the Respondent further submitted that Original Application be dismissed being devoid of merit and lacks of substance.

10. We have heard the arguments of both Counsels and bestowed our best consideration on rival submissions made by both sides and perused all relevant records minutely.

11. In the instant case the Applicant was enrolled in the Army in Corps of Signals on 11.08.1971. He was promoted to the rank of Naib Subedar on 27.08.1993. He was not promoted to the rank of Subedar due to not meeting ACR criteria and retired from service in the same rank on 01.09.1997. Writ Petition No 3662 of 1997 was preferred by the Applicant before Hon'ble High Court of Madhya Pradesh at Jabalpur, which was transferred to this Tribunal and re-numbered as T.A. No 255 of 2010. The T.A. was partially allowed vide Judgment and Order dated 08.11.2010 directing the Respondents to consider the



representation of the Applicant against impugned ACR for the year 1995 and constitute a Departmental Promotion Committee and if the Applicant is found eligible for promotion, he be given all the consequential benefits including notional consideration for extension of service in accordance with the rules. Representation of the Applicant was considered by Respondents but the Applicant was not promoted to the rank of Subedar. Feeling aggrieved he again filed Original Application No 319 of 2011 before this Tribunal. The Tribunal vide its Judgment and Order dated 01.11.2011 directed the Respondents to reconsider his representation as per directions given in Paragraph 18 of Judgment and Order dated 08.11.2010. Representation of the Applicant against his ACR was re-examined by the Competent Authority and disposed of and thereafter, the Applicant was screened afresh by an Adhoc Promotion Board held on 12.07.2012 considering all Annual Confidential Reports till 1997 but he was not approved to the rank of Subedar due to lacking in ACR Criteria.

12. Relevant portions of orders and policies on the subject are:-

- (a) **Criteria for promotion : JCOs/NCOs** issued by Army Headquarters vide letter No. B/33513/AG/PS 2(c) dated 18.01.1993 is reproduced below:

1. to 6.     xxx            xxx            xxx            xxx

7.     For promotion to the rank of Ris/Sub.

(a)     *Last three reports in the rank of Nb Sub will be considered .*

(b)     *All reports under consideration would be High Average and above.*

(c)     *Should be recommended for promotion in the last three reports.*

8. to 17.    xxxxx            xxxxx            xxxxx            xxxxx

(b)     Signal Records, Jabalpur, Policy Instruction No. 68 on Rendition “Annual Confidential Reports – Non Commissioned Officers” (Annexure No. P-3) states that:

*“Units/Formations will take due care while initiating and reviewing the ACRs by initiating officer/reviewing officer. When a reporting officer finds that the performance of the NCO is not satisfactory or he is lacking in mandatory qualities the NCO will counseled by the concerned reporting officer in writing before these aspects are reflected in the ACR.”*

(c) Para 41 of AO 5/90 states as under:

Communication of Weak Points/Adverse Remarks

*41. Weak point /Adverse Remarks of reporting officers in the CR will be communicated to the JCO in writing. Remarks of Reviewing/Senior Reviewing Officers, where applicable will be communicated in writing through the Initiating Officer.*

13. We have observed that based on Judgment and Order dated 08.11.2010 of this Tribunal, representation of the Applicant about ACR for the year 1995 was re-examined by the Competent Authority and it was found to be in conformity with his past performance and it was considered as correctly assessed and hence ACR for the year 1995 was not expunged. Thereafter, eligibility of the Applicant for promotion to the rank of Subedar was re-examined by an Adhoc Promotion Board and he was declared "Lacking ACR criteria" even after taking into consideration ACR earned upto 1997. The ACR grading from 1992 to 1997 are as under:-

Ser No.	Year	Rank	Grading		Remarks
			IO	RO	
(a)	1992	Havildar	2R	2R	Average
(b)	1993	Havildar	3R	2R	Average
(c)	1994	Nb Sub	5R	5R	High Average
(d)	1995	Nb Sub	4R	4R	Average
(e)	1996	Nb Sub	7R	7R	Above Average
(f)	1997	Nb Sub	7R	7R	Above Average

14. As per promotion policy issued vide Army HQ letter No. B/33513/AG/PS 2(c) dated 18 Jan 1993 (extracts of Para 12 above) last three ACRs in the rank of Naib Subedar are required to be considered and all these ACRs should be High Average and above. The Applicant was considered by a reconstituted Adhoc Departmental Promotion Committee and was not approved to the rank of Subedar in view of his ACR for the year 1995 in which the Applicant was graded "Average". All three ACRs earned in the rank of Naib Subedar should have been High Average or Above Average but in the case of the Applicant, he was graded Average in ACR for the year 1995 as such he is lacking ACR criteria for promotion to the rank of Subedar.

15. We examined the policy on writing of ACRs for JCOs/NCOs including policy on communication of grading to the rattee in depth. It clearly emerges that technically no counseling is required by the Initiating/Reviewing Officer for an ACR where rattee has been graded 'Average'. We have also gone through the revised ACR guidelines issued by the Respondents vide Army Order 1/2002/MP wherein, as per paragraph 44, an 'Average' grading has been made communicable in cases of JCOs/NCOs, as they adversely affect the chances of promotion, but since the ACRs of the Applicant was initiated prior to 2001, this policy is not

applicable in this case. We have observed that all these aspects have been considered in totality of facts and circumstances in the Judgment and Order of this Tribunal dated 08.11.2010 before partially allowing the Transferred Application No 255 of 2010 and directing the Respondents to consider the representation of the Applicant against impugned ACR of 1995 and thereafter, consider him for promotion afresh by constituting a Departmental Promotion Committee. We therefore find that all ACRs are technically correct and Respondents have complied with the directions issued by this Tribunal in Judgment and Order dated 08.11.2010.

16. In light of the reasons aforesaid and looking into the facts and circumstances of the case, we are of the considered view that ACR for the year 1995 was re-examined by the Respondents as per Judgment and Order dated 08.11.2010 of this Tribunal. ACR of the Applicant was re-examined and thereafter he was considered for promotion to the rank of Subedar by Adhoc Promotion Board but was not approved since he was lacking in ACR criteria. The Applicant could not become Subedar because he was lacking ACR criteria and no injustice has been done to the Applicant by the Respondents. The Original Application is liable to be dismissed being devoid of merits.

17. Thus the Original Application is dismissed accordingly.  
There shall, however, be no order as to costs.

**(Lt Gen Gyan Bhushan)**  
**Member (A)**

ukt/-

**(Justice V.K. DIXIT)**  
**Member (J)**