

ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW

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**Court No. 3**

**O.A. No. 218 of 2010**

**Tuesday, this the 25<sup>th</sup> day of August, 2015**

**“Hon’ble Mr. Justice D.P. Singh, Member (J)  
Hon’ble Air Marshal Anil Chopra, Member (A)”**

**Sanjay Kumar Singh, (Ex No 15355834X Havildar)  
Son of Shri Ramniwas Prasad Singh, R/O Village and Post  
Madhopur, Via – Danapur, Patna,  
Bihar – Pin Code No 801503**

.....Applicant

Versus

1. Union of India, Through Secretary, Ministry of Defence,  
Government of India, New Delhi.
2. Chief of Army Staff, Army Headquarters, DHQ Post  
Office, New Delhi
3. The Officer Incharge, Signals Records, Jabalpur Cantt  
Jabalpur, District – Jabalpur (M.P.)

....Respondents

Ld. Counsel for the  
Applicant

- **Shri R Chandra,  
Advocate**

Ld. Counsel for the  
Respondents

- **Lt Col Subodh Verma,  
Departmental Representative  
for the Respondents**

**ORDER****(PASSED IN COURT)**

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 kindly be pleased to quash the order dated 19.09.2009 read with order dated 19.05.2010 issued by respondent No. 3 (Annexure A/1) so far it relates to the applicant retiring him from service w.e.f. 30/09/2010.*

*II) The Hon'ble Tribunal may kindly be pleased to direct the respondents to consider and grant promotion to the applicant w.e.f. 01/07/2010 with all consequential benefits including the arrears of salary and seniority etc. On being found fit for promotion to the rank of Naib Subedar he may be reinstated in service and allow the complete the normal tenure of service.*

*III) Any other appropriate order or direction which this Hon'ble Tribunal may deem just and proper in the nature and circumstances of the case including cost of the litigation.*

2. This Original Application has been filed by the applicant against the order of discharge from army service and for not granting promotion to the rank of Naib Subedar w.e.f. 01.07.2010. Grievance of the applicant is that promotion committee while considering the promotion of the applicant had not applied its mind to the decision taken by the Reviewing Officer with regard to ACR for the year 2003, 2005, 2006 and 2007. According to Ld. Counsel for the Applicant the petitioner suffer from the decision taken by the Reviewing Officer with regard to entries for non application of mind.

3. Lt Col Subodh Verma, Departmental Representative for the Respondents submits that the decision taken by the committee is not subject matter of judicial review. It is not open to re-appreciate the material on record.

4. We have considered the arguments of Ld. Counsels for both the parties. The Annual Confidential Reports which were considered by the Adhoc Promotion Board at the time of promotion have been reproduced in the form of chart in the Counter Affidavit. The concerned portion is reproduced as under:-

Sl. No	Year	Rank	Grading			Final Grading	Type of ACR (Regt/ERE)	Remarks
			IO	RO	SRO			
(a)	2003	Hav	7R	5R	-	5R	Regt	High Average

(b)	2004	Hav	4R	6R	-	6R	Regt	High Average
(c)	2005	Hav	7R	6R	-	6R	Regt	High Average
(d)	2006	Hav	7R	7R	-	7R	Regt	Above Average
(e)	2007	Hav	6R	5R	-	5R	Regt	Above Average
(f)	2008	Hav	Discharged in LMC mgt on 31 May 2008 (AN) and hence ACR not initiated.					
(g)	2009	Reported to 1 MTR for re-instatement on 17 May 2010, hence ACR not initiated.						

5. Decision taken by adhoc promotion board was based on the ACR entries for the years 2003 to 2007. It is admitted fact that for promotion from the rank of Havildar to Naib Subedar, it is necessary that the candidate should have 3 Above Average entry and 2 High Average entry. However, in the present case the applicant has been graded only with 1 Above Average entry in the year 2006. Further Ld. Counsel for the Respondents submitted that the IHQ of MoD (Army) letter No B/33513/AG/PS 2 (c) dated 10 October 1997 (Annexure CA-1), opined that the applicant is not meeting the prescribed criteria for promotion to the rank of Naib Subedar.

6. Submission of the Ld. Counsel for the Applicant is that down grading in ACR has no justification. The Applicant is challenging selection for promotion for the next rank on the ground of entries in ACR by the RO but as per promotion policy he is not eligible for promotion. Moreover the petitioner attained the age of superannuation in the year 2010 hence he was not granted extension of service and retired from the army.

He seems not to have approached higher forum against the down gradation of entries from 2003 to 2007 hence they attained finality.

7. Since the down grading of entries made by the Reviewing Officer has not been challenged(Supra), decision taken by Adhoc Promotion Board does not suffer from any propriety or illegality.

8. It is well settled law that right to consider for promotion is the fundamental right and not the right to claim promotion. In case a person is considered in a just and fair manner and he is not found fit for the promotional avenue, then he will have no claim of the judicial review for promotion to higher post. In the present case the applicant was considered for promotion and because of down graded entries, he was not found fit for promotion. Decision of the selection board seems to be correct.

9. Otherwise also, the down graded entries are of the year 2003 to 2007 still stands in the way of the applicant to claim promotion. Unless the entries in question are modified or further enhanced by appropriate forum, petitioner may not have any claim.

10. In view of the above, Original Application lacks merit.
11. Rejected.
12. No order as to cost.

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

ukt/-

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