

Court No.3**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****Transferred Application No. 1141 of 2010**Monday, This the 5th day of October 2015**Hon'ble Mr. Justice D.P. Singh, Member (J)**
Hon'ble Air Marshal Anil Chopra, Member (A)Balwan Singh Parihar
(No. 14248832 Y-CHM (TES))
s/o Shri Ranbir Singh Parihar
r/o Village Bilti P.O. Sarwan Khera
District Kanpur Dehat PIN-20912

.....Applicant

Ld. Counsel for the: **Shri V.P. Pandey, Advocate**
Applicant

Versus

1. Union of India through the Secretary Ministry of Defence
South Block New Delhi.
2. The Chief of the Army Staff, Army Headquarters, D.H.Q.
Post Office, South Block, New Delhi.
3. The General Officer-Commanding-In-Chief
Command Headquarters
Central Command, Lucknow.
4. The Commanding Officer 4 Air Formation Signal Regiment
c/o 56 A.P.O.
5. The Officer-in-Charge, Signal Records, Jabalpur (M.P.).

...Respondents

Ld. Counsel for the : **Shri D.K. Pandey, Central**
Respondents. **Govt Counsel assisted by**
Capt Ridhishri Sharma, OIC
Legal Cell.

ORDER (ORAL)

1. Heard Ld. Counsels for the parties and perused the record.
2. This Civil Misc Writ Petition No 12362 of 2007 has been received by this Tribunal by way of transfer from High Court of Judicature at Allahabad on 03.08.2010 and renumbered as Transfer Application No 1141 of 2010.
3. The applicant was enrolled in the army on 02.03.1983 and was promoted from time to time upto the rank of Havildar with seniority from 01.01.1994. In the year 2004, meeting of Selection Committee was held but the applicant was not promoted and later on he attained the age of superannuation on 02.03.2009. Feeling aggrieved against non consideration of applicant's case for promotion he filed aforesaid Writ Petition.
4. Argument advanced by Ld. Counsel for the Applicant is that the entry which has been relied upon was never communicated to the applicant and it could not be taken into account for the purpose of Promotion Avenue.
5. Ld. Counsel for the respondents submits that for promotion to the rank of Nb Subedar out of last five reports, three reports should be Above Average and remaining two should not be less than High Average. Keeping in view, his

ACR profile, the applicant was not promoted. His ACR entries from the year 2000 to 2006 are reproduced as under:-

Ser No	Year	Unit	Grading		Overall grading
			IO	RO	
1.	2000	551 Sub Gp	4R	4R	4R (Above Average)
2.	2001	15 CASSU	4R	3R	3R (High Average)
3.	2002	15 CASSU	7R	5R	5R (High Average)
4.	2003	4 AFSR	6R	6R	6R (High Average)
5.	2004	4 AFSR	8R	7R	7R (Above Average)
6.	2005	4 AFSR	5R	5R	5R (High Average)
7.	2006	4 AFSR	8R	8R	8R (Above Average)

6. We have verified the entries from original record which seems to be correct. For promotion from rank of Havilar to Nb Subedar, 3 Above Average and 2 High Average are required which the applicant does not possess. Accordingly the selection committee seems to have not committed any error. However, so far as the question of communication is concerned, there is nothing on record to show that the applicant has been awarded adverse entry. The entries in ACR of the petitioner are Above Average and High Average. Due to his ACR entries, he could not make the grade for promotion.

7. Their Lordship of Hon'ble Supreme Court, in the case of ***Dev Dutt vs. Union of India and others***, (Civil Appeal No. 7631 of 2002 decided on 12.05.2008) have held that question with regard to communication of entry does not relate to Armed Forces and decision should be taken with regard to communication in pursuance to rules framed for the purpose by the respondents.

8. So far as question of mala fide is concerned with regard to red ink entries, it may not be looked into in these proceedings. In such case applicant should have preferred Writ Petition or approached a Court having jurisdiction as held by this Tribunal in the case of O.A. No. 168 of 2013 Nk Abhilash Singh Kushwah decided on 23.09.2015. The case relied upon by learned counsel for the applicant does not seem to be applicable in the facts and circumstances of this case where the matter relates to armed forces in view of the judgment in **Dev Dutt's** case (supra). No Rule or Regulation has been brought to our notice which may require that entries must be communicated in the armed forces.

9. In view of the above, the T.A. is dismissed.

No order as to costs.

(Air Marshal Anil Chopra)
Member (A)

ukt/-

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