

ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW

T.A. No. 727 of 2010

Monday, this the 24th August, 2015

**“Hon’ble Mr. Justice D.P. Singh, Judicial Member
Hon’ble Air Marshal Anil Chopra, Administrative Member”**

No 1074169A Dafedar Jaswant Singh
C/O Prasant Medical Store, Station Road,
Pokhraya, Kanpur Nagar

.....Petitioner

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

Versus

1. Union of India through Secretary, Ministry of Defence, Government of India, New Delhi.
2. Chief of the Army Staff, Army Headquarters, New Delhi
3. IC-37807A, Col Atma Sharma, Commanding Officer, 74, Armoured Regiment, C/O 56 APO
4. IC-43412P Lt Col M.S. Jodha, 2 I/C 74, Armoured Regiment, C/O 56 APO
5. Chief Record Officer, Armoured Corps Records, Ahmed Nagar, Mahrastra.

....Respondents

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

ORDER**(Passed in Court)**

1 The Civil Misc. Writ Petition No. 42743 of 2005 has been received by this Tribunal by way transfer from High Court of Judicature at Allahabad on 11.06.2010 and renumbered as Transferred Application No. 727 of 2010.

2. The applicant through this Transferred Application(T.A.) has prayed as under :

(a) Issue a writ of certiorari quashing the N.R. (not recommended) on the basis of ACR Entry recorded by the Reporting Officer, Respondent No 3 who may also be directed to produce the same in the Court as it was not issued to the petitioner under the garb of being confidential record.

(b) to issue order or direction setting aside/quash the order dated 20 April 2006 passed by Respondent No. 2 rejecting the Statutory Complaint of applicant contained in Annexure SA-7 and direct the respondent to consider the case of the applicant for promotion to the rank of Naib Risaldar with effect from 2.9.2004 with consequential benefits.

(c) to issue any writ, order or direction, which this Hon'ble Court may deem fit and proper.

(d) to call for the entire record.

(e) to award the cost.

3. In brief, the facts of the case are that the petitioner was enrolled in the Indian Army on 18.01.1983 and was promoted to the rank of Lance Dafedar (L.D.) on 27.07.1994 and to the post of Dafadar (DFR) on 6.5.1999. He was due for promotion to the rank of Naib Risaldar on 2.7.2004. In the ACR for the year 2004 he was graded 7 marks by the Initiating Officer and 3 marks by the Reviewing Officer which debarred him for promotion to the rank of Naib Resaldar. Aggrieved by this the petitioner filed this petition.

4. Heard Shri V.A. Singh, Ld. Counsel for the petitioner and Lt Col Subodh Verma, Departmental Representative for the respondents at length and perused the relevant documents available on record.

5. Ld. Counsel for the petitioner submitted that the petitioner was not granted promotion as he was wrongly awarded 3 marks by the Reviewing officer. He filed a Statutory Complaint under Section 26 of the Army Act on 14.02.2005.

During pendency of the Transfer Applicant (T.A.), Statutory Complaint of the petitioner was rejected by the competent authority of the Indian Army without entering into the controversy, merely on the ground of pendency of Transfer Application in this Tribunal. Section 26 of the Army Act clearly provides that it is the duty of the appropriate authority of the Army to decide the Statutory complaint on the merit. Ld. Counsel for the petitioner amended the Transfer Application vide order dated 06.07.2006. Order of the Tribunal was to decide the Statutory Complaint within one month on merit. The Statutory Complaint has not been disposed of as per order on disposal of Statutory Complaint. Military authorities should have disposed of Statutory Complaint with speaking and reasoned order on merit. In **2013 AIR SCW 2752, Union of India V Ibrahim Uddin and another** it has been held that:-

“It is settled legal proposition that not only administrative order, but also judicial order must be supported by reasons, recorded in it. Thus while deciding an issue, the Court is bound to give reasons for its conclusion. It is the duty and obligation on the part of the Court to record reasons while disposing of the case. The hallmark of order and exercise of judicial power by a judicial forum is for the forum to disclose its reasons by itself and giving of reasons has always been insisted upon as

one of the fundamentals of sound administration of the justice – delivery system, to make it known that there had been proper and due application of mind to the issue before the Court and also as an essential requisite of the principles of natural justice. The reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, the order becomes lifeless. Reasons substitute subjectivity with objectivity. The absence of reasons renders an order indefensible/unsustainable particularly when the order is subject to further challenge before a higher forum. Recording of reasons is principle of natural justice and every judicial order must be supported by reasons recorded in writing. It ensures transparency and fairness in decision making. The person who is adversely affected must know why his application has been rejected. (vide : State of Orissa v. Dhaniram Luhar, AIR 2004 SC 1974; State of Uttarakhand & Anr. V. Sunil Kumar Singh Negi, AIR 2008 SC 2026; The Secretary & Curator, Victoria Memorial Hall v. Howrah Ganatantrik Nagrik Samity & Ors, AIR 2010 SC 1285; and Sant Lal Gupta & Ors. V. Modern Cooperative Group Housing Society Limited & Ors, (2010) 13 SCC 336.”

6. Thus in view of the above, we are of the opinion that the appropriate competent authority of the Respondents should decide the statutory complaint on merit by passing a reasoned and speaking order. Impugned order dated 06.07.2006 suffers from non compliance of principal of natural justice being non speaking. Accordingly we allow the T.A. and quash the order dated 20.04.2006. Respondents are directed to decide Statutory Complaint afresh keeping in view the ground raised by the applicant, within three months from the date of receipt of copy of this order and communicate the decision. With the aforesaid directions we dispose of the Transfer Application .

7. No order as to cost.

8. Complete copy of this order be given to both the parties.

(Air Marshal Anil Chopra)
Member (A)

ukt/-

(Justice D.P Singh)
Member (J)