

FROM NO. 21

(SEE RULE 102(1))

ARMED FORCES TRIBUNAL , REGIONAL BENCH, KOLKATA

APPLICATION NO : O. A NO. 10 OF 2010

ON THIS 20TH DAY OF MARCH, 2014

CORAM

HON'BLE JUSTICE RAGHUNATH RAY , MEMBER (JUDICIAL)

HON'BLE LT GEN KPD SAMANTA, MEMBER (ADMINISTRATIVE)

Havaldar Major Adhir Kumar Mondal, .
Son of Sri Madan Mohan Mondal,
Belonging to 121 Infantry Battalion (Territorial Army),
Garhwal Rifles, ATT – Headquarters,
41 Sub-Area, C – Company,
C/O 99 Army Post Office,
Also Local Office at Sahapur Military Camp.
New Alipore,
Kolkata -- 700 053 ; and a
Permanent resident of Village: Bhulkuri,
Post Office : Bara Purulia,
Police Station : Ketugram,
District Burdwan,
Pin Code 713, 140, West Bengal..

.....Applicant

-VS-

1. Union of India through
The Secretary ,
Ministry of Defence,
South Block New Delhi.
2. The Chief of Army Staff,
Army Headquarters,
New Delhi -- 110 011.
3. Additional Director General of Territorial Army,
GS Branch, L Block,
Army Headquarters,
New Delhi -- 110 011.

4. Commanding Officer,
121, Infantry Battalion (Territorial Army),
Garhwal Rifles, ATT-Headquarters,
41 Sub-Area, C-Company,
C/O 99, Army Post Office,
Also Local Office Address at : Sahapur Military Camp,
New Alipore,
Kolkata – 700 053.
5. Colonel Vinod Awasthy, SM.(Retired).
Former Commanding Officer,
121, Infantry Battalion (Territorial Army),
Garhwal Rifles, C/O Army Headquarters,
New Delhi – 110 011.

.... Respondents

For the petitioner: Mr. Suman Basu, Advocate.

For the respondents: Mr.Mintu Kumar Goswami. Advocate.

ORDER

Per HON'BLE LT GEN KPD SAMANTA, MEMBER (ADMINISTRATIVE)

The applicant was a Havildar in Territorial Army (TA). He was enrolled on 12.09.1990 and on completion of 20 years of total service (embodied plus non-embodied) was retired in the rank of Havildar. He could not be promoted to the next higher rank of Naib Subedar although he was considered for such promotion. Having been rejected for promotion on the ground of ACRs, he felt aggrieved and hence has filed this OA on 11.06.2010 which was subsequently amended and the amended OA was filed on 07.09.2012.

2. Briefly the case relates to the applicant who after having been enrolled in the TA as General Duty Soldier on 12.09.1990 continued to get his further promotion of Lance Naik and

Naik on due dates. He was finally promoted to the rank of Havildar on 20.11.2002. After having come up to the requisite seniority, he attended the Promotion Cadre (Havildar to Naib Subedar Promotion Cadre) from 11.04.2006 to 22.05.2006. Although qualifying in such a Cadre was essential for him to be eligible for promotion, he failed to qualify in the ibid Cadre. The applicant has to a great extent blamed his Commanding Officer at that point of time Colonel Awasthy (respondent No. 5), who, according to him, had influenced the authorities conducting the Cadre so that he did not qualify. However, after three years the applicant again attended the same Promotion Cadre from 25.05.2009 to 19.07.2009 and was declared qualified. Whenever he was considered for his promotion to the rank of Naib Subedar he could not make the grade because of ACR criteria that he could not meet. As per policy letter dated 30.11.2006 issued by the Army HQ (Annexure R-2 of the A/O), as mentioned in para 7(f) therein, out of five ACRs, three ACRs should be 'above average' with minimum two in the rank of Havildar and remaining should not be less than 'high average'. He should also have been recommended for promotion in all the last five ACRs. The said para 7(f) is quoted hereunder:-

*“(f) Out of five ACRs, three should be of Above **Average** with minimum two in the rank of Hav and remaining should not be less than High Average. Should have been '**Recommended**' for promotion in the last five reports.”*

3. As per the above policy letter, he was graded as 'above average' in the ACRs in 2004, 2007 and 2008; but in the remainder ACRs (2005 and 2006) he was graded as 'high average'. The details of the ACRs are as under:

Index to ACRs*Army No. 10274511A**Name: Adhir Kumar Mondal*

| Ser No | Years of report | Rect/ERE | Grading | | | Recommendation | |
|--------|-----------------|----------|---------|----|-----|----------------|------|
| | | | IO | RO | SRO | Prom | Hony |
| 1. | 2004 | Regt | 7 | 7 | - | R | R |
| 2. | 2005 | Regt | 6 | 4 | - | R | R |
| 3 | 2006 | Regt | 7 | 3 | - | NR | R |
| 4. | 2007 | Regt | 8 | 8 | - | R | R |
| 5. | 2008 | Regt | 8 | 8 | - | R | R |

Note. '7' and '8' denote Above Average and '6' means High Average. '4' denotes Average and '3' implies a Low Average report. Therefore the ACRs of 2005 and 2006 stand on the way of the candidate's promotion as per the existing policy.

4. The applicant could not be promoted to the rank of Naib Subedar because he did not meet the ACR criteria. Being aggrieved, he filed a statutory complaint to the Chief of Army Staff on 10.3.2008 which has been appended as annexure "A" to the OA. However, it was later learnt that the said statutory complaint was rejected and the same was communicated to him on 29.01.2009. The respondents have submitted the extracts of the rejection order which is as under:-

“The complaint of the NCO has been analysed in conjunction with related documents and viewed against the redress sought. After consideration of all aspects of the complaint and viewing it against the redress sought, it emerges that assessments in impugned ACRs 2005 and 2006 are objective, performance based and technically valid. The CRs do not merit any interference. I, therefore, direct that the statutory complaint submitted by the NCO be rejected. The NCO be informed accordingly.”

5. Being dissatisfied with the rejection of the statutory complaint, the applicant filed this Original Application (OA No. 10 of 2010) for the first time but it is evident from the OA that the applicant did not disclose the reasons and the facts that the statutory complaint was rejected. Be that as it may, through this OA, the applicant has prayed for setting aside the ACRs of 2005 and 2006 which was initiated by his the then Commanding Officer (CO) Colonel Vinod Awasthy, the respondent No. 5. He further prays that he should be considered to be promoted to the rank of Naib Subedar in the Board held in July, 2009 after the impugned ACRs are removed from his dossier.

6. The applicant further states that except for these two ACRs earned during 2005 and 2006, his performance, profile in medical fitness and discipline criteria were exceptional and there should not be any reason as to why he should not be promoted.

7. Mr. Suman Basu, learned counsel for the applicant, during his oral submission, submitted that even if promotion could not be given, the applicant should at least be given his service pension since, according to him, the applicant has completed 14 years 10 months and 18 days of embodied service. For this purpose, he has annexed a copy of letter dated 16.01.2012 from

Record Office of Garhwal Regiment as annexure to his supplementary affidavit filed on 06.11.2012.

8. Mr. Basu also reiterated on the matters alleging Col. Awasthy, the respondent No. 5 regarding his integrity, moral character and biasness. The allegations included asking for bribe for promotion as well as promotion cadre from the applicant as also not paying for Mrs. Awasthy's train ticket expecting the applicant to pay from his own pocket. There is also an allegation that Col. Awasthy influenced the first promotion cadre in which the applicant failed. He, however, later admitted that he has no evidence written or otherwise to substantiate the above allegations. As per him Col Awasthy was instrumental in spoiling his ACRs of 2005 and 2006.

9. The respondents have relied on their affidavit-in-opposition (A/O) filed in this matter. Mr. Goswami, learned counsel representing respondent No. 5 (Col Awasthy) as well, has also filed A/O on behalf of the respondent No. 5, besides having submitted written notes of arguments on behalf of the respondents.

10. The respondents have agreed with the facts to have reiterated their stand on the policy letter dated 30.11.2006 (Annexure R-2 at page 22 of the A/O). Mr. Goswami, during his oral submissions, has highlighted each aspect of eligibility conditions for promotion to the rank of Naib Subedar. The said policy letter dated 30.11.2006 very clearly stipulates all the terms and conditions and criteria that should be met by a Havildar before he could be considered for promotion to the rank of Naib Subedar in TA. He also drew our attention to Para 7(f) as quoted above to highlight the issue that the applicant did not fulfill the ACR criteria. Moreover, it is evident from the ACRs that the applicant was not recommended for promotion in the ACR for

the year 2006. In fact for this purpose he had filed the statutory complaint on 10.03.2008 which was rejected and communicated to him on 29.01.2009.

11. Mr. Goswami, during his oral submission, also drew our attention to the original ACRs that have been submitted by him to highlight the entire grading in the last five years before he could be considered for promotion to the rank of Naib Subedar. It is evident that he did not fulfill the ACR criteria. Therefore, the respondents were well within their right to reject his case for promotion.

12. As regards setting aside the ACRs for the years 2005 and 2006 are concerned, the matter had been thoroughly looked into by the higher authorities including the Chief of the Army Staff when the statutory complaint was analysed. The authorities felt that there was no reason to interfere with those ACRs which were objective and technically correct.

13. The respondents further submitted that it was very unfair and incorrect for the applicant to throw mischievous allegations against Col. Awasthy affecting his integrity and character without having any proof or evidence. In fact, Mr. Goswami was of the view that such practice was unheard of in the services.

14. Mr. Goswami further submitted that the ACRs were valid documents with lot of reasons and experiences behind those who had initiated and therefore this court should not interfere with the endorsements made in the ACRs for the year 2005 and 2006 as prayed for by the applicant without any valid reason. In this connection, he has cited the following judgements of the Hon`ble Apex Court, Hon`ble Principal Bench, AFT, New Delhi as well as Chandigarh Bench of the AFT:-

(i) Judgement dated 14.09.2011 passed by the Hon`ble Apex Court reported in (2011) 10 Supreme Court Cases 121 in Civil Appeal No. 3973 of 2010 (Hardev Singh vs Union of India & Another);

(ii) Judgement passed by the Hon`ble High Court of Gauhati, Shillong Bench in Civil Rule No. 205 (SH) 1997 reported in Mil LJ 2000 Gau 58;

(iii) Judgement dated 12.09.2011 passed by the Hon`ble Principal Bench, AFT in OA No. 109 of 2011 (Lt. Col. DCS Mayal vs Union of India & Ors.); and

(iv) Judgement dated 10.07.2012 passed by the Hon`ble Chandigarh Bench, AFT in OA No. 1657 of 2011 (Col. L M Chamola vs Union of India & Ors.).

15. As regards the prayer made by the applicant for pension that was emphasised by Mr Basu, the Id counsel for the applicant during his oral submission; Mr Goswami submits that the factual aspects put across by the applicant with regards to the span of embodied service put in by the applicant, are incorrect. He has already given the details of actual length of service of the applicant in his A/O. According to the records the applicant had put in 11 years 10 months and 22 days of embodied service and 8 years and five days of disembodied service. Therefore the claim of the applicant that he had put in 14 years 10 months and 18 days of embodied service is not factually correct.

16. We have heard the rival contentions and submissions of both sides. We have also gone through the original records and respective averments of both sides. We have also gone through the citations put forth by the learned counsel. We are of the view that the ratio of the judgements indicates that without any valid reasons, the ACRs and Promotion Boards should not be interfered with. We have perused the ACRs of 2005 and 2006 that were submitted for our

perusal by the respondents. We do not find any reason to interfere with the appraisals and numeric grades awarded by respective assessors. We find them justified and we also find that the respondent authorities have dealt with the impugned ACRs of 2005 and 2006 in a reasoned manner. There is no need for us to interfere with the above decisions and appraisals. We are of the view that there is no substance to indicate that Respondent No 5 was influenced by any extraneous circumstances while assessing the applicant in his ACRs of 2005 and 2006.

17. As regards the applicant's prayer to condone few days' of shortfall of service to make him eligible for pension, we have analysed the applicant's claim in the light of facts. We find that the applicant had accumulated a total embodied service of 11 years 10 months and 22 days and not 14 years 10 months and 8 days as claimed by the applicant. As per rules, a TA employee would be eligible for pension only after he completes 15 years of embodied service. In the present case the shortfall is more than three years. Therefore we are not inclined to consider condoning of any such shortfall of service to make him eligible for pension in defiance to the existing rules.

18. The allegations raised by the applicant are not only unjustified but appear to be mischievous. Without enough proof, there was no necessity for the applicant or his learned counsel to raise such types of mischievous allegations. However, we also take note of the fact that the learned counsel for the applicant admits that there is no evidence to prove these allegations.

19. In view of what has been discussed above, we find no merit in this application, which is liable to be dismissed. Accordingly, the OA stands dismissed without, however, any order as to costs.

20. Let original records be returned to the respondents on proper receipt.

21. Let a plain copy of the order duly countersigned by the Tribunal Officer be furnished to both sides on observance of due formalities.

(I.T. GEN. K.P.D.SAMANTA)
MEMBER (ADMINISTRATIVE)

(JUSTICE R.N.RAY)
MEMBER (JUDICIAL)