

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 2221/2012

NAIB SUBEDAR VIJAY BAHADUR SINGH Petitioner
Through Mr. S. M. Dalal, Advocate

versus

THE UNION OF INDIA & ORS. Respondents
Through Ms. Barkha Babbar, Advocate for
the UOI

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR
HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER
% **12.09.2014**

KAILASH GAMBHIR, J. (ORAL)

1. The petitioner has filed the instant writ petition under Articles 226 and 227 of the Constitution of India challenging the orders dated 25.03.2010 and 19.01.2012 passed in T.A. No.279/2010 and R.A. No.49/2011 respectively, by the learned Armed Forces Tribunal, Principal Bench, New Delhi. The petitioner also seeks quashing of the order dated 30.06.2006 whereby he was discharged from service w.e.f. 30.06.2006. The petitioner also seeks a direction for his promotion to the next higher rank of Subedar with all consequential benefits and/or in the alternative to award him a lump sum amount of Rs.8.00 lacs as

compensation.

2. The petitioner enrolled in the Indian Army on 06.06.1978 and in due course of his service, he was promoted to the rank of Havildar on 19.09.1992. The petitioner had passed the promotion cadre examination in the year 1998 and became eligible for promotion to the next higher rank of Naib Subedar. The petitioner was graded average in his Annual Confidential Report (in short 'ACR') for the period 2000-2001 and due to this adverse ACR, he was not promoted to the rank of Naib Subedar while his juniors got promoted. This adverse ACR was communicated to the petitioner in June, 2002 and the same was set aside by the Competent Authority on 24.01.2003. The petitioner was again awarded 'severe reprimand' on 3rd January, 2003 and this too was expunged on August 25, 2003.

3. Feeling aggrieved by the illegal action of the respondents in denying him promotion to the next higher rank of Naib Subedar, the petitioner had filed a writ petition before this Court bearing W.P.(C) No.8198/2004. Disposing off the said writ petition of the petitioner, the Division Bench of this Court vide order dated 29.05.2006 passed the following order:

Learned counsel for the respondents during the course

of hearing has stated that the respondents would consider the case of the petitioner for promotion from Hawaldar to the rank of Naib Subedar in accordance with rules by 15th June, 2006. This consideration by the respondents is primarily for the reason that though the petitioner had become over age in June, 2002 but because of the red entry existed in his ACR which was subsequently corrected in the year 2002, the deponent would not wish to cause prejudice to the petitioner and would consider his case for promotion and other consequential reliefs which he may be entitled to by 15th June, 2006.

In view of the statement made on behalf of the respondents, the petitioner does not press this petition. This petition is accordingly disposed of as not pressed. The respondents would abide by their statement. It is not in dispute before us that the red entry in the ACR of the petitioner has been corrected and the remark of 'severe reprimand' has already been deleted from the service record of the petitioner. The order may be communicated to the petitioner by 15th June, 2006. Till that date, the services of the petitioner will not be dispensed with."

4. In compliance of the said order passed by this Court, the petitioner got promoted to the next higher rank of Naib Subedar w.e.f. 14.06.2006 with ante date seniority from 01.06.2002 alongwith necessary pay and allowances. As per the petitioner, after he was granted the said

promotion, he also became eligible for promotion to the rank of Subedar w.e.f. 01.06.2006 when such a vacancy arose. It is also the grievance of the petitioner that on promotion to the rank of Subedar, he would have remained in service till 30.06.2008 and in the meanwhile, he would have become eligible for promotion to the rank of Subedar Major which would have given him the benefit of a further four years in service but instead, the respondents illegally discharged the petitioner from service w.e.f. 30.06.2006 by Order No.1177/A dated 30.06.2006.

5. Feeling aggrieved by the order of the respondents, the petitioner had filed a writ petition being W.P.(C) No.567/2007 and the same was transferred to the learned Armed Forces Tribunal after 'The Armed Forces Tribunal Act, 2007' came into force. Vide order dated 25.03.2010, the learned Armed Forces Tribunal dismissed the said transferred writ petition filed by the petitioner. Aggrieved by the said order, the petitioner filed a writ petition before this Court being W.P.(C).5156/2010 but the same was withdrawn by the petitioner with a liberty to seek a review before the learned Armed Forces Tribunal. The said writ petition was accordingly dismissed as withdrawn vide order dated 05.07.2011 by a Division Bench of this Court. The petitioner, thereafter, filed R.A.

No.49/2011 before the learned Armed Forces Tribunal and the same vide order dated 19.01.2012 was dismissed, which led to the filing of the present writ petition.

6. Representing the case of the petitioner, Mr. S. M. Dalal, the learned counsel for the petitioner, vehemently contended that it was not on account of any fault or lapse on the part of the petitioner that he could not fulfil the eligibility criteria of earning the requisite ACRs in the rank of Naib Subedar and also passing the Junior Leader Proficiency Test (in short JLPT). The contention raised by the learned counsel for the petitioner is that once the average grading in the ACR of the petitioner for the year 2000-2001 and the 'severe reprimand' awarded to him in January, 2003 were set aside and he was promoted to the higher rank of Naib Subedar, then his name should have come up for promotion to the higher rank of Subedar from the date when a vacancy to the said rank had arisen. The learned counsel for the petitioner further submits that the petitioner was granted promotion to the rank of Naib Subedar on 14.06.2006 pursuant to directions given by this Court vide order dated 29.05.2006 disposing off the writ petition being W.P.(C) No.8198/2001 preferred by the petitioner.

7. The said writ petition was disposed off by this Court taking into consideration the submissions made by the respondents that they would consider the case of the petitioner for promotion from the rank of Havildar to the rank of Naib Subedar and grant of other consequential benefits which he may be entitled to in accordance with the rules by 15.06.2006. Although, the petitioner got promoted to the rank of Naib Subedar on 14.06.2006 with ante date seniority from 01.06.2002 with the grant of applicable pay and allowances but he also got superannuated on 30.06.2006 on the said rank of Naib Subedar. The petitioner was still not satisfied with the grant of promotion to the next higher rank of Naib Subedar and thus, filed a fresh writ petition being W.P.(C) No.567/2007 seeking a direction for his promotion to the rank of Subedar w.e.f. 01.06.2006 with all consequential benefits and with a further direction to take him back in service to serve a further period of six years. The grievance raised by the petitioner was that the petitioner became eligible for promotion to the rank of Subedar w.e.f. 01.06.2006 when vacancy for this post arose and he was deprived of the said promotion for no fault of his and this was done only because of his illegally downgraded ACR for the year 2000-2001; that otherwise he would have been promoted to the

rank of Naib Subedar along with his batchmates itself in June, 2002. The petitioner in the said writ petition had also claimed that on promotion to the rank of Subedar, he would have been entitled to serve till 30th June, 2008 and on the said rank he would have become due for empanelment to the rank of Subedar Major, which would have given him a further period of four years in service thereby, enabling him to serve till the year 2012. The learned counsel for the petitioner also contends that had the petitioner been promoted timely to the rank of Naib Subedar then he would have earned at least two ACRs on the said rank and would have also qualified the JLPT course to fulfil the eligibility requirements for promotion to the next rank of Subedar. The contention raised by the learned counsel for the petitioner was that, the fault squarely lies with the respondents in denying promotion to the petitioner to the rank of Naib Subedar because of the said illegal down grading of his ACRs for the year 2000-2001 which was later set aside. In support of his arguments, the learned counsel for the petitioner has placed strong reliance upon a judgment of this Court in the case of *Havildar Tilak Raj Singh v. Union of India & Ors.* (W.P.(C) No.22970/2005 decided on 21.08.2008), wherein this Court in similar circumstances not only ordered promotion

to the next rank but was also pleased to award a sum of Rs.1.00 Lac as compensation in favour of the petitioner therein for denial of further opportunities for promotion and extended the term of service for a period of two years.

8. The present petition has been strongly opposed by Ms. Barkha Babbar, the learned counsel for the respondents who submits that the petitioner was ineligible for the grant of promotion to the rank of Subedar as he had not passed the JLPT course and also lacked the requisite ACRs for promotion to the said rank as per the existing promotion policy; that the petitioner did not meet the mandatory prerequisite qualitative requirements for promotion to the rank of Subedar as provided in Para 803 of Record Office Instructions read with Instructions contained in Dte. General of Military Training Letter dated 14.03.2000; that the present writ petition filed by the petitioner is not tenable and is highly misconceived and therefore, the same should be outrightly rejected.

9. For promotion to the rank of Subedar, the eligibility criteria has been laid down in Para 803 of Record Office Instructions, 2004 which are reproduced as under:-

"a. Last three reports will be considered out of which at least two should be in the rank of Nb Sub and one may be in the rank of Hav, in case of shortfall.

- b. *All these three reports should not be less than "High Average."*
- c. *The individual should be recommended for promotion in all the three reports.*
- a. *Passing of Junior Leader Proficiency Test from NB Sub to Sub is Mandatory.*

(Auth: - Army Headquarters letter No. A/16820/GS/MT-2 dated 14 Mar 2000)"

10. Undeniably, the petitioner does not fulfil the said mandatory requirements since he never passed the JLPT course and neither did he have the requisite two ACRs on the rank of Naib Subedar out of the three ACRs to be considered for promotion to the rank of Subedar. It is also a requirement that all these three ACRs should not be less than high average. The petitioner has built his case on the premise that it was not his fault for which he was denied timely promotion to the rank of Naib Subedar and had he been promoted in the year 2002 itself then he would have certainly had the advantage of fulfilling both the said requirements of passing the JLPT course and that of possessing the requisite two ACRs on the said rank. As per the petitioner, the vacancy for the next higher rank of Subedar had arisen on 01.06.2006 and he should be granted promotion from the said date since this Court while disposing off his writ petition being W.P.(C) No.8198/2004 had given a direction for his ante date promotion to the rank of Naib Subedar with all consequential

benefits. This stand taken by the petitioner is presumptuous and is not based on any legal right. The Writ Petition (Civil) No. 8198/2004 was disposed off by this Court vide order dated 29.05.2006 and the petitioner had never claimed that he be further promoted from the rank of Naib Subedar to Subedar and from Subedar to Subedar Major. The petitioner perhaps had woken up from his deep slumber after he was superannuated from service on the rank of Naib Subedar vide order dated 30.06.2006.

11. The learned AFT is correct in taking a view that the petitioner did not meet the eligibility criteria required for the grant of further promotion from the rank of Naib Subedar to Subedar and therefore, he was ineligible for the grant of the said promotion. The learned AFT has also rightly dismissed the review petition filed by the petitioner seeking compensation for being promoted late on the ground that no such plea was ever raised by the petitioner at the time of the final disposal of his T.A. No.279/2010 and nor was any reliance placed on the judgment of this Court in the case of *Havildar Tilak Raj Singh (supra)* at that stage.

12. We find ourselves in agreement with the reasoning given by the learned AFT in both the orders, which are under challenge and we are further of the view that it was for the petitioner to have claimed the relief

of further promotion in the earlier Writ Petition No.8198/2004. Having not done so, the petitioner cannot be allowed to rake up any further controversy at a later stage. In compliance of the order dated 29.05.2006 passed in the aforementioned Writ Petition, the petitioner was promoted from the rank of Havildar to Naib Subedar vide order dated 14.06.2006 with ante date seniority w.e.f. 01.06.2002 with all consequential benefits. However, we cannot stretch the expression 'consequential benefits' to mean the grant of all further promotions and consequent extensions in the service of the petitioner as per the tenure of higher ranks.

There is no merit in the present petition and the same is accordingly dismissed.

KAILASH GAMBHIR, J.

NAJMI WAZIRI, J.

SEPTEMBER 12, 2014

v