
(2014) 03 P&H CK 0219
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 23747 of 2012 (O&M)

Surinder Singh

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 03-03-2014

Acts Referred:

Citation : (2014) LabIC 1766

Hon'ble Judges : Hemant Gupta, J; Fateh Deep Singh, J

Bench : Division Bench

Advocate : R.A. Sheoran, Advocate for the Appellant; Onkar Singh Batalvi, Sr. Standing Counsel, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Hemant Gupta, J.—The challenge in the present writ petition is to an order passed by the Armed Forces Tribunal on 14.08.2012 (Annexure P-3) whereby the claim of the petitioner for promotion as Naib Subedar (Junior Commissioned Officer-for short "JCO") remained unsuccessful. The petitioner is serving as X-ray Assistant in Armed Medical Corps (AMC) in the rank of Havildar (Non Commissioned Officer-for short "NCO"). The criteria for promotion is detailed in the circular dated 10.10.1997 appended with the reply of the respondent filed before the Armed Forces Tribunal. Clause 3(f) of such criteria contemplate that an individual will not be considered for promotion within one year of the award of red ink entry/recordable censure, as the case may be. Clause 6 of the said circular in respect of promotion reads as under:--

"6. For Promotion to the rank of Nb Ris/Nb Sub

(a) Only last five reports will be considered, out of which minimum three reports must be in the rank of Hav and in case of shortfall rest may be in the rank of Nk.

(b) At least three out of last five reports should be "Above Average" with a minimum of two in the rank of Dfr/Hav and remaining should be not less than "High Average".

(c) The individual must have a minimum of two reports on Regimental Duty or as an Instructor in an Army School of Instructions, including IMA, NDA, OTA and ACC, out of which at least one should be Above Average. One of the Regimental Reports should have been earned in the rank of Dfr/Hav.

(d) The individual should have been recommended for promotion in all the five reports.

2. Exception. ACR criteria for promotion to the rank of Nb Sub of remustered categories of RHM (AISG/TISFC) of Arty/AD Arty, HMT of EME as well as Directly Enrolled Havs will be as follows :--

(i) For promotion to the rank of Nb Sub in Arty and AD Arty from RHM (AISG/TISFC) One report in the rank of RHM is mandatory which should be at least "High Average" and should be on Regimental Duty or as an instructor in an Army School of Instructions, including IMA, NDA, OTA and ACC.

(ii) For promotion to the rank of Nb Sub in EME from HMT-Three Reports in the rank of Hav/HMT are mandatory out of which one should be "Above Average". One Report should be on Regimental Duty or as an "Instructor in an Army School of Instructions including IMA, NDA, OTA and ACC.

(iii) For promotion of the Directly Enrolled Havs to the rank of Nb Sub-Four reports in the rank of Hav are mandatory out of which Two should be "Above Average" and no report should be lower than "High Average". One Report should be on Regimental Duty or as an Instructor in an Army School of Instructions including IMA, NDA, OTA and ACC.

The Annual Confidential Report (for short "ACR") grading of the petitioner from the year 2003 to 2010 has been extracted by the respondent in reply, which is reproduced as under:--

3. The grievance of the petitioner is that initiating Officer has given "Above Average" report to the petitioner for the year 2009 but same was down-graded to "Average" by the Reviewing Officer and maintained by Senior Reviewing Officer. It is contended that such down-grading is without any material. Such report adversely affects the promotion chances of the petitioner and is also contrary to Para 44, 45 and 46 of the Army Order No. 1/2002/MP, and thus cannot be taken into consideration.

4. In the aforesaid background, the challenge was made to the communication dated 10.06.2010 whereby the petitioner was superseded for promotion up to 30.09.2014 due to not fulfilling ACR grading criteria. It may be noticed, at this stage, that the petitioner has sought relaxation of the ACR criteria which has also remained unsuccessful.

5. The application filed by the petitioner before the Armed Forces Tribunal remained unsuccessful, inter alia, for the reason that the petitioner has been graded "Average" and "Not Recommended" for promotion. Such grading has

been communicated to the petitioner in terms of Para 44 of the Army order referred to by the petitioner. The ACR criteria for promotion stipulates that last 5 ACR reports will be considered out of which minimum 3 reports must be in the rank of Havildar, rest may be in the rank of Naik and that three out of last 5 reports shall be "Above Average" with a minimum of 2 in the rank of Havildar and remaining two should be not less than "High Average". Since the petitioner has obtained 4 "Above Average", and 1 "Average", he does not meet the criteria of 2 "High Average" reports and therefore not entitled for promotion.

6. The original record of consideration by the authorities was requisitioned. It was found that petitioner has been considered for promotion, but not found suitable for the reason that he does not meet out the criteria for promotion since he cannot satisfy the criteria for promotion of 2 "High Average" reports till September, 2014 out of five reports, out of which three had to be "Above Average".

7. Learned counsel for the petitioner has vehemently argued that Para 44, 45 and 46 has not been meticulously followed by the respondent while down-grading the report of the petitioner from "Above Average" to "Average". We do not find any merit in the said argument for the reason that on 01.05.2009, (Annexure R-12), petitioner has communicated to the Commandant that he applied for Army Medical Corp (Nursing Training) Short Service Commission for the year 2009 in a completely wrong manner and conveyed his regrets for a gross mistake. It is explained that in fact the petitioner applied for promotion in Short Service Commission directly without obtaining permission from the authorities. It is the said fact which has been taken into consideration for down-grading the "Above Average" report for the year 2009 to "Average" by the Reviewing Officer and affirmed by Senior Reviewing Officer. The record produced also shows that the petitioner has been given red ink entry with severe reprimand and 10 days pay fine. Such red ink entry acts as a bar for promotion within one year of such remarks.

8. The petitioner has not been promoted for the reason that though the petitioner has got 4 "Above Average" reports but does not satisfy the other criteria of "High Average" report. It has been explained that as per the criteria, the sequence of the grading is "Below Average", 1 "Average", "Above Average", "High Average" and "Outstanding". As per the criteria, 3 reports have to be "Above Average" and 2 "High Average". Since the petitioner shall not be able to meet out the criteria of "High Average" till September, 2014, therefore, he has been rightly not promoted. We do not find any merit in the present writ petition. The order dated 10.06.2010 passed by the authorities and that of the Tribunal does not suffer from any patent illegality or irregularity which may warrant interference in the writ jurisdiction of this Court.

Dismissed.