

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL No.6655 OF 2019

JC-438061P NAIB SUBEDAR (RETD) SA NABI

... APPELLANT

Versus

CHIEF OF THE ARMY STAFF & ORS.

... RESPONDENTS

O R D E R

1. The appellant was enrolled in the Indian Army as a Sepoy on 31.10.1973. He was promoted as Lance Naik, Naik, Havaldar and then as Naib Subedar between 1973-1995. The appellant became due for promotion to the rank of Subedar but he was denied the same mainly for the reason that he did not fulfil the criteria for such promotion prescribed in the Circular dated 10.10.1997 (Annexure R-2), the relevant part whereof reads as follows:

“For promotion of the rank of Ris/Sub

(a) Last three reports will be considered out of which at least two should be in the rank of Naib Sub and one may be in the rank of Havaldar, 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.”

2. The above reproduced criteria was applied in the backdrop that the appellant while working as Junior Commissioned Officer was awarded one 'high average', two 'above average' and two 'average'

reports in a period of five years starting from 1994. Eventually, the promotion was denied to the appellant on account of the grading during 1995 and 1997 as is evident from the following averments made in the Statement of Case dated 26.04.1999:

"8. The junior commissioned officer's performance has been just average and he has been verbally warned by his superior officers at quite a few occasions to improve his professional competence.

9. The junior commissioned officer was awarded 4 (Average) grading during 1995 and 1997, vide para 9 of the record office instructions 48 of 1997 is not eligible for promotion to the next rank."

3. The appellant has, meanwhile, retired from service on superannuation. He approached the Armed Forces Tribunal, Regional Bench, Jabalpur (for short, 'the Tribunal') seeking a direction for his promotion as Subedar primarily on the ground that no adverse report was ever communicated to him and, therefore, such report could not be relied upon behind his back.

4. The Tribunal vide the impugned order dated 19.12.2017 has turned down the appellant's claim by observing as follows:

"6. We, however, need not express any final opinion on this matter as the clause 63(c)(e) clearly provides that original CRs are in any case to be destroyed after five years. Also, in the present case there appears to be some substance in the contention of the respondents that the information regarding the pendency of the court proceedings may not have been available with the Record Office. Furthermore, it was rightly contended that as no concrete allegation of malafide is made against the individual/officer who had instructed the applicant to make the said purchases from the Shillong Hongkong market which he had refused, unless the said records are available it may not be possible to reach an inference of malafide on part of the respondents."

5. We have heard learned counsel for the appellant as

well as learned Additional Solicitor General appearing on behalf of the respondents and carefully perused the material placed on record.

6. It emerges out that the respondent - authorities have destroyed the original service record pertaining to the Confidential Reports and such a plea has been accepted by the Tribunal on the premise that no motive or malafide intention can be attributed to the destruction of the record.

7. In our considered view, it is not necessary to go into this question for the reason that summary of Confidential Reports of the appellant for the relevant years is available with the respondents, a part of which has already been extracted above. It is further evident that had the appellant earned two 'high average reports' during the relevant period, he would have qualified for promotion to the rank of Subedar. It is an admitted fact that the 'average' reports were not conveyed to the appellant in terms of the policy regime which was in force at the relevant time, whereunder such reports were not required to be communicated. We are, however, of the view that any report which has caused adverse impact on the service carrier of the appellant and has the potentiality to deprive him of due promotion, ought to have been treated as an 'Adverse Report' and conveyed to him. The rectification of this error is not possible, at this stage, when the original Confidential Reports are said to have been destroyed. However, ends of justice would be adequately met by permitting the appellant to submit a fresh representation within two weeks against the

'average' reports giving vivid details of the performance of duties by him during the relevant period to demonstrate that he surely deserved 'high average' evaluation. Such a representation shall be considered by the competent authority objectively and uninfluenced of the previous decisions whereby the claim of the appellant was rejected by different authorities including the Armed Forces Tribunal. The competent authority will show due sympathy towards the appellant while considering his representation essentially for the following three reasons:-

- (i) The appellant is now 68 years' old;
- (ii) He is not responsible for destruction of the subject ACRs; and
- (iii) The appellant had submitted a statutory complaint while in service in the year 1999.

8. If the competent authority finds that based upon the details furnished by the appellant with regard to his performance during the relevant years, it was possible to grade him as 'high average' or above, we further direct that the appellant's claim for promotion to the rank of Subedar shall be reconsidered as per such upgraded/deemed upgraded Confidential Reports. The competent authority shall decide the representation within three months from the date of receipt thereof, and in the event of acceptance of it, the appellant's claim for promotion to the rank of Subedar shall be re-considered within two months thereafter. In the event of acceptance of the claim of the appellant, necessary consequences shall follow.

9. The appeal stands disposed of in the above terms.

10. It goes without saying that the above-mentioned directions have been given keeping in view the peculiar facts and circumstances of the instant case and the same shall not be taken as a precedent in other similar cases.

.....J.
(SURYA KANT)

.....J.
(J.K. MAHESHWARI)

NEW DELHI;
JANUARY 17, 2023.

IEM NO.32

COURT NO.9

SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s).6655/2019

JC-438061P NAIB SUBEDAR (RETD) SA NABI

Appellant(s)

VERSUS

CHIEF OF THE ARMY STAFF & ORS.

Respondent(s)

Date : 17-01-2023 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE J.K. MAHESHWARI

For Appellant(s) Dr. Zulfiqar Ali Khan, Adv.
Mr. H.R. Khan, Adv.
Moh. Parvez Khan, Adv.
Md. Shahid Anwar, AOR

For Respondent(s) Mrs. Aishwarya Bhati, A.S.G.
Mr. Amit Sharma B, Adv.
Mr. Piyush Beriwal, Adv.
Mr. Chinmayee Chandra, Adv.
Mr. Arvind Kumar Sharma, AOR

UPON hearing the counsel the Court made the following
O R D E R

The appeal stands disposed of in terms of the signed order.

(SATISH KUMAR YADAV)
DEPUTY REGISTRAR

(PREETHI T.C.)
COURT MASTER (NSH)

(Signed order is placed on the file)