

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

Date of Decision: 17.09.2014

+ **W.P.(C) 5138/2013**

HAVILDAR CHAND Petitioner

Through: Mr. K. Ramesh, Adv.

Versus

UNION OF INDIA AND OTHERS Respondents

Through: Dr. Ashwani Bhardwaj, Adv.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. In this writ petition under Articles 226/227 of the Constitution of India, the petitioner seeks quashing and setting aside of his ACR for the period from 1st January, 1998 to 31st December, 1998 (not in possession of the petitioner) and the judgment dated 26th November, 2010 of the learned Armed Forces Tribunal (AFT), Principal Bench, as also the order dated 24.11.2011 of the AFT passed in the Review Application of the petitioner. The petitioner further seeks mandamus directing the Army to re-fix his seniority as Hawaldar and to give him consequential benefits by promoting him to the rank of Naik Subedar.

2. The petitioner's case is that he was enrolled as a Sepoy in the Rajputana Rifles on 6th November, 1982. He alleged that he had put in

military service of only 71 days under the Initiating Officer (IO) and the Reviewing Officer (RO) for the period from 1st January, 1998 to 31st December, 1998, therefore, the latter could not have written his ACR for that calendar year since the mandatory period of 90 days under the IO and 75 days under the RO had not been complied with to write his ACR.

3. He filed a writ petition before this Court in 2006 challenging the said ACR. Later, the case was transferred to the AFT, Principal Bench in the year 2009 where it was dismissed on 26th November, 2010. On the basis of an order of the AFT dated 10th March 2011 in the case of *Havildar Devi Singh v. Union of India* in Original Application No. 126/2009 holding that any ACR without the “mandatory 90 days physical service” would be bad in law, as laid down in the Army rules, the petitioner sought review of the AFT decision dated 26.11.2010, but, this too was dismissed on 24th November, 2011.

4. The learned counsel for the petitioner would submit that insofar as the requisite period of 90 days under the IO and 75 days under the RO was not met and furthermore, since signatures obtained in the ACR were not that of the petitioner, the ACR itself was not maintainable in law. He submits that the learned AFT has erred both in fact and in law. Therefore, the impugned order should be set aside. The petitioner had sought promotion to the rank of Havildar with effect from the year 1999 with consequential benefits.

5. The learned AFT noted that the petitioner was promoted to the rank of Naik Havildar in 1996 and to the rank of Havildar in January 2003, but the petitioner had a grievance that he was incorrectly superseded in the

interim because of the ACR of 1998 otherwise he would have been promoted to Havildar in the year 1999 itself.

6. The respondents had defended their position on the ground that the criteria for promotion was that the candidate should not have had less than higher average in the rank of Naik Havildar in the last two records; that upon the petitioner having met the ACR criteria in 2001 and 2002, he was accordingly promoted in January, 2003.

7. The learned AFT had noted the affidavit of respondent No. 5 which had recorded that the signature of the petitioner was obtained in his presence and there being no rebuttal by the petitioner to such deposition, the statement of the respondent No. 5 was to be believed. Neither had the petitioner produced relevant documents to indicate his absence during the period concerned in 1998. Therefore the AFT held that the petitioner had completed the mandatory period under the IO and the RO and the ACR was correctly recorded. The application before the AFT was accordingly dismissed. So also was the review application, since it did not show any mistake apparent on the face of the record.

8. This Court is of the view that insofar as the petitioner had accepted his promotion in the rank of Havildar in 2003 and had filed a writ petition only in 2006, and furthermore he had not rebutted the deposition, through affidavit, of respondent No. 5 that the petitioner/applicant had signed the ACR in the presence of the respondent No. 5, no ground is made out for interference with the impugned order or with the ACR. In the affidavit dated 28th October, 2008 filed on behalf of respondent Nos. 1 to 4, filed in the writ petition, it was stated as under:

“That the petitioner had worked under the supervision of the initiating officer Maj. Rajesh Bhardwaj from 10.01.1998 to 31.12.1998 to 31.12.1998 and during that period, Maj. Rajesh Bhardwaj was absent only for a period of 57 days.

That the petitioner had worked under the supervision of the Reviewing Officer Col. Lalit Dutt from 01.01.1998 to 31.12.1998 and during that period, he was absent only for a period of 30 days.

That as far as the signatures of the Petitioner on the ACR/certificate is concerned, the respondent No. 5 had filed an affidavit, inter-alia, stating that the said certificate was signed by the Petitioner physically in his presence, however, he had not matched his signatures from his past signatures, which was not required in the normal course. He had further mentioned in his affidavit that he had no ill will against the Petitioner at any point of time, which is also apparent from the fact that no such allegations have been levelled by the Petitioner in his CWP also and he had initiated the ACR of the Petitioner as per the rules and he had written the ACR of the Petitioner on the basis of the performance, observed by him.”

The details of absence of respondent Nos. 4 and 5 i.e. Major Rajesh Bhardawaj and Colonel Lalit Dutt are given in the afore-noted affidavit dated 28th October, 2008.

Furthermore, in his personal affidavit, respondent No. 5 Major Rajesh Bhardawaj had deposed as under:

“That I was the Initiating Officer of the Petitioner, who had initiated his ACRs for the relevant period in the year 1998. The Petitioner

had worked under my supervision at the relevant time. The exact position regarding the date and place of postings/duties can only be ascertained from the records, which can not be provided by me, as I had already taken VRS w.e.f. 15.11.2003 and as such, I am not privy to records.

That the Petitioner had worked with the undersigned for a period of 90 days and as such, I was competent to initiate the ACR of the Petitioner. The Petitioner had also given a certificate to the effect that he had worked under my supervision for a period of 90 days and as such, I am competent to write his ACRs. The certificate was signed by the Petitioner physically in my presence, however, I had not matched his signatures from his past signatures, which was not required in normal course.”

9. In view of the above, this Court is of the view that there is no case made out for interference with the impugned order of the AFT. The petition is without merit and is accordingly dismissed.

NAJMI WAZIRI, J.

KAILASH GAMBHIR, J.

SEPTEMBER 17, 2014/acm