

Neutral Citation No. - 2023:AHC-LKO:76352-DB

Court No. - 1

Case :- WRIT - A No. - 9008 of 2023

Petitioner :- Ex Sub Manohar Lal (Jc-422169h)

Respondent :- Union Of India Thru. Secy. Ministry Of Defence New Delhi And Others

Counsel for Petitioner :- Krishna Gopal

Counsel for Respondent :- A.S.G.I.

Hon'ble Attau Rahman Masoodi,J.

Hon'ble Om Prakash Shukla,J.

- (1) Heard learned Counsel for the petitioner at length and perused the material available before this Court in the instant writ petition.
- (2) The challenge in the instant writ petition under Article 226 of the Constitution of India is to the impugned order dated 12th July, 2023 passed by the Armed Forces Tribunal, Regional Bench at Lucknow (hereinafter referred to as '**Tribunal**'), whereby Original Application No. 67 of 2021 filed by the petitioner against the denial of his promotion to the rank of Subedar Major and grant of Honorary Commission to the rank of Lieutenant and Captain, has been dismissed.
- (3) The record of the instant writ petition reveals that the petitioner was enrolled in the Indian Army in the Mechanized Infantry (1 JAT LI) on 27.12.1990 and earned his promotions up to the rank of Subedar w.e.f. 1st November, 2016. The petitioner claims to have earned outstanding Annual Confidential Remarks (ACRs) in 2017 and 2018 which resulted in his

posting in critical posts, however, his ACRs of preceding two years and succeeding two years were not as good i.e. outstanding. The consequence was that when the candidates were being considered for promotion to the rank of Subedar Major, although the candidature of the petitioner was considered, however, he was not found eligible for promotion to the post of Subedar Major and as such, he was not granted promotion to the rank of Subedar Major.

- (4) The petitioner submitted a complaint against the denial of promotion to the rank of Subedar Major but the same was rejected. Thereafter, the petitioner preferred Original Application No. 67 of 2021 before the Tribunal with the following reliefs :-

“(a) That inconsistent and under rated ACRs in respect of the applicant between 2015 to 2019 be set aside and he be granted the rank of a Subedar Major on the basis of consistent ACRs and other carrier achievement w.e.f. January 2020 i.e. prior to date of promotion of his junior.

(b) That the applicant should be granted the rank of a Hony LT w.e.f. 26 Jan 2020 if found fit after setting aside his aforesaid inconsistent and under rated ACRs between 2015 to 2019.

(c) That the applicant should be granted the rank of a Hony Capt w.e.f. 15 Aug 2020, if in merit, after quashing inconsistencies.

(d) That necessary action as deemed appropriate in aforesaid facts and circumstances be taken in the interest of justice as well as in organizational interest.

(e) *Allow this application with cost."*

- (5) A perusal of the impugned judgment/order passed by the learned Tribunal, what we find is that the learned Tribunal, after analyzing the submissions of the parties and perusing the record, opined that promotion to the rank of Subjedar Major is a Selection Grade and ought to be purely on the basis of merit drawn by the Departmental Promotion Committee in Army and it is not given on the basis of seniority and only best amongst the best can make through the same, because of various reasons including, there being less number of vacancies of Subjedar Major. Noticing this fact, the learned Tribunal opined that since the ACRs of the petitioner of preceding and succeeding two years were not good i.e. Outstanding, therefore, his claim to set-aside his ACR for the year 2015 and 2016 and to consider him for promotion to the rank of Subedar Major and Honorary Commission is not logical and is against the rules and regulations. As far as grant of Honorary Commission is concerned, the learned Tribunal, after perusing the original extract of allotted marks (confidential) placed before it by the departmental representative, opined that the case of the petitioner was considered for grant of Honorary Commission twice vis-a-vis one on the occasion of Republic Day 2020 and another on the Independence Day, 2020, however, he did not make the merit against the vacancies allotted in both the

chances. In this backdrop, the learned Tribunal has arrived at a conclusion that there was no illegality in rejecting the claim of the petitioner for promotion to the rank of Subedar Major as well as for grant of Hony. Commission to the rank of Lieutenant and as such, the learned Tribunal dismissed the original application vide judgment/order dated 12.07.2023. It is this judgment/order dated 12.07.2023, which has been challenged in the instant writ petition.

- (6) The sum and substance of the submissions of the learned counsel for the petitioner was that the ACRs for the period 2015 and 2016 were an aberration in the overall profile of the petitioner. The petitioner had maintained an outstanding profile in the succeeding years 2017 and 2018. The only exception was the ACR for the period of 2015 and 2016 in which he was graded not Outstanding. The ACRs preceding 2017 i.e. 2015 and 2016 must have been at least 'Above Average' if not outstanding since an individual could not improve his performance to outstanding from high average. It was thus only the ACR for the year 2015 and 2016 which came in the way of the promotion of the petitioner. Learned Counsel, thus, submitted that the learned Tribunal, while dismissing the original application, has failed to consider the fact that the petitioner has served diligently in various fields/modified field/foreign areas as per the direction of higher army personnel

and there was no complaint whatsoever in any corner but the promotion of the petitioner was denied only on the basis of lower performance recorded in ACRs for the year 2015 and 2016. Therefore, the impugned judgment/order is liable to be set-aside.

- (7) Learned counsel for the respondents, on the other hand, has vehemently opposed the aforesaid submissions of the learned Counsel for the petitioner and has argued that the Army has its own procedure for recording of the ACR. In the instant case, promotion of the petitioner was denied on account of the fact that though the petitioner was awarded outstanding ACRs in the year 2017 and 2018, however, his ACRs in the preceding two years and succeeding two years were not as good i.e. Outstanding. According to learned Counsel, the scope of the judicial review was limited in such circumstances and the Court could not go into the correctness of adverse remarks in order to go into the assessment of merit made in the matter of promotion. Judicial review was permissible only to the extent of finding whether process in reaching to a decision had been observed correctly and not the decision as such. Learned Counsel, thus, has submitted that the learned Tribunal has rightly dismissed the original application preferred by the petitioner by means of the impugned judgment/order and there is no illegality or infirmity in the impugned judgment/order.

- (8) Having regard to the submissions advanced by the learned Counsel for the parties and going through the record in the instant writ petition, it is required to be noted that in **Lt Col Amrik Singh Vs Union of India** : 2001 (1) SCC 424, the Apex Court has observed that the High Court while exercising writ jurisdiction under Article 226 of the Constitution of India does not sit as a court of appeal. There cannot be a substitution of the view of the Court for the view expressed by the authorities while appraising total profile of a personnel. The Hon'ble Apex Court, some four decades ago, in the case of **Dalpat Abasaheb Solunke & Ors. v. Dr.B.S.Mahajan & Ors.**; AIR 1990 SC 434 has invariably held that whether a candidate is fit for a particular post or not has to be decided by the Selection Committee which has the expertise on the subject. Of course, no doubt, if relevant considerations have not been taken note of or irrelevant aspects not eschewed from consideration, the Court would, certainly not be without jurisdiction to interfere in the matter. Now, the question thus is whether there has been such procedural failure in the present case.
- (9) The record reveals and there is no doubt that though the petitioner was graded 'outstanding' in his ACRs for the year 2017 and 2018, however, his ACRs in the preceding two years and succeeding two years were not as good i.e. outstanding.

The said period is thus certainly an aberration in the overall profile of the petitioner. The Court would certainly have to see whether there are reasons for such aberration. From perusal of the impugned judgment/order, what we find is that the learned Tribunal has not only recorded the various grounds adduced by the petitioner but the Tribunal has also recorded the reasons for such aberration while passing the impugned judgment/order.

- (10) Learned Counsel for the petitioner has failed to show any illegality or infirmity in the impugned judgment/order nor show any procedural error in awarding the ACRs.
- (11) In view of the aforesaid, we are of the view that the reasoning assigned in the impugned judgment/order is convincing and does not leave any scope for Judicial Review of this Court, so as to interfere in exercise of writ jurisdiction under Article 226 of the Constitution of India.
- (12) The writ petition is, accordingly, **dismissed** leaving the parties to bear their own costs.

(Om Prakash Shukla, J.) (Attau Rahman Masoodi, J.)

Order Date :- 21.11.2023

A. Nigam/Ajit/-