

Court No. 2
Reserved Judgment

ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW

Original Application No. 73 of 2011

Thursday this the 31st day of March, 2016

Hon'ble Mr. Justice D.P. Singh, Member (J)
Hon'ble Air Marshal Anil Chopra, Member (A)

No. 13969099H Hav/Clk(SD) Om Prakash Rai S/O Shri Sankatha Rai, R/o Vill : Chak Farid, PO : Fatehpur Atwa, TO & Dist : Ghazipur (U.P.) Pin Code-233001 Posted at Army Medical Corps Record Office Lucknow, PIN : 900450 c/o 56 APO

..... Applicant

By Legal Practitioner Shri P.N. Chaturvedi, Advocate

Versus

1. The Union of India, Through the Secretary, Govt of India Ministry of Defence, South Block, DHQ PO, New Delhi-110011.
2. Chief of the Army Staff, Army Headquarters, Integrated Headquarter of MoD (Army), DHQ PO, New Delhi-110011
3. The Director General of Medical Services (Army) Adjutant General's Branch Integrated HQs of MoD (Army), Dte Gen of Med Services/DGMS-3D 'L' Block, New Delhi-110011.
4. Officer-in-Charge Army Medical Corps Record Office PIN-900450 c/o 56 APO.
5. Army No 13958052X (Now JC-697230M) Nb Sub/Clk (SD) Ram Bhaijo Singh (R B Singh) Through Army Medical Corps Record Office, Lucknow PIN 900450 c/o 56 APO

..... Respondents

By Legal Practitioner Shri Shyam Singh, Learned Counsel for the Central Government

ORDER

“Hon’ble Air Marshal Anil Chopra, Member (A)”

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007. The main grievance of the applicant is due to the new Army Policy dated 07.08.2009, the seniority of the applicant and other similarly stated personnel in clerk cadre of AMC got affected and with the result the applicant was deprived of his promotion to the rank of Nb Sub. The applicant has made the following prayers :-

“(a) The Hon’ble Tribunal may be pleased to issue order or direction or any other appropriate order calling for the entire service records pertaining to the promotion of Opp No 5 and another 16 personnel after a thorough investigation quash the promotion order and seniority assigned to opp No 5 and other 16 personnel issued by Opposite Party No 1 to 4.

(a-1) The Hon’ble Tribunal may be pleased to pass order or direction in the form of certiorary quashing the order of opp No. 2 IHQ of MoD (Army) letter No PC B/74240/SC/08/2010/DGMS-3D dt 09 Feb 11 duly conveyed by opp No 4 vide their letter No. 13969099H/PC/OPR/PROM/2010 dated 17 Feb 2011 which is annexed as annexure No. 1 to the application.

(b) To issue order & direction on opposite parties No 1 to 4 to promote the applicant to the rank of Naib

Subedar/Clerk (SD) with Notional seniority and consequential service benefits from the date his immediate junior who have been promoted to the rank of Naib Subedar/Clerk (SD).

- (c) To award the cost of the application in favour of the applicant.*
- (d) Any other relief which this Hon'ble Tribunal may deem fit in favour of the applicant may also be granted."*

2. Brief facts of the case are that the applicant was enrolled in the Army as Matric Entry Rate Clerk (GD) on 30.07.1986. The applicant passed various courses required for promotion and was granted substantive promotion to the rank of Havildar/Clerk (GD) on 01.08.1993. On 07.08.2009, the respondents changed the promotion policy by issuing instructions for re-fixation of seniority for clerks of AMC. As per the said letter, the date of entry to Sepoy was taken for reference of seniority. This altered the applicant's seniority already published and maintained for earlier 20 years. With the result the applicant's seniority in the rank of Havildar got downgraded compared to the re-mustered clerks who were junior to him by many years, and after refixation, these juniors were promoted to the rank of Naib Subedar/Clerk (GD). The applicant has cleared all the courses including NCO's Clerk Course (Head Clerk Duties Course) which authorized him to be promoted to the next higher rank of Naib Subedar. His seniority which has been maintained for the last 20 years was unsettled by granting notional seniority to the re-mustered personnel vide above quoted letter dated 07.08.2009 (**Annexure No. 2**).

3. This letter re-fixing the seniority, based on date of entry into service, ignored the applicant's promotion to the rank of Havildar. The applicant referred the case of respondent No. 5 Naib Subedar R B Singh who was re-mustered into clerical category and was promoted to the rank of Havildar on 01.03.2005, approximately 8-10 years later than the applicant. The applicant preferred a Statutory Complaint on 17.07.2010 (**Annexure No. 3**). Since the applicant was apprehending delay in disposal of the case and he was likely to be overage for promotion, the applicant and his wife wrote letters at different levels for early disposal of this statutory complaint.

4. Since he became overage on 01.01.2011, the applicant had no choice but to file the instant O.A. No. 02 of 2011. The Hon'ble Tribunal vide order dated 06.01.2011 gave directions to Chief of the Army Staff for timely disposal of the statutory complaint.

5. The disposal of the statutory complaint of the applicant was intimated to the applicant vide letter dated 17.02.2011 (**Annexure No. CA-3**). The applicant also brought to notice Para 2 (c) of the policy letter dated 07.08.2009.

6. Applicant's case is that respondent No 5 and another 16 personnel have been granted anti date seniority because of new policy letter dated 07.08.2009 and have superseded those who have already qualified for promotion and had earned last rank earlier.

7. The respondents position is that promotion policy was changed on the basis of large number of representation received from the re-mustered clerks stating that in all other Arms and Services, re-fixation of the seniority of re-

mustered personnel was on the basis of the date of enrolment and was governed by Integrated Headquarters of Ministry of Defence (Army) letter dated 06.02.1960 (**Annexure 4**). Therefore, it was decided to bring all Arms and Services under one common policy and letter dated 07.08.2009 (**Annexure No. 1 to CA**) was issued. Further considering the large number of similarly affected clerks in the Corps and to avoid piecemeal representation/disposal, it was decided by the competent authority to carry out amendment in Army Medical Corps Record Office Instruction 10/2000, which dealt with fixing of seniority on re-mustering and was amended prospectively with effect from 11.09.2009. As per the direction of the higher authorities, it was made applicable to all personnel in the service on the date of implementation. The policy revision had been done in the interest of the organization to uphold principles of natural justice. However, there has been no relaxation in promotional qualitative requirement related to course/medical/discipline or ACR criteria. Out of 68 re-mustered clerks, only 22 Havildar/clerks re-mustered from various Arms and Services were found eligible for promotion and they were accordingly promoted. In order to mitigate the effect on directly enrolled clerks, same number of additional vacancies i.e. 22 were released by the competent authority on a temporary basis for one year i.e. upto 31.12.2010 (**Annexure No. CA-2**).

8. Since the date of enrolment of these re-mustered personnel is earlier than the applicant, on re-fixation of seniority they all became senior to the applicant in terms of Integrated Headquarters of Ministry of Defence (Army) letter dated 06.02.1960. It is pertinent to mention here that

if the seniority of the re-mustered personnel were earlier fixed in terms of Integrated Headquarters of Ministry of Defence (Army) letter dated 06.02.1960, the re-mustered personnel could have been promoted to the next higher much before the applicant.

9. The statutory complaint submitted by the applicant being a policy revision matter, the competent authority had taken time to dispose the complaint but after due consideration, the complaint was rejected. It was once again clarified that no relaxation in terms of the qualification was given to the re-mustered personnel and promoted to the rank of Naib Subedar as they fulfill all eligible criteria for promotion. The O.A. lacks merit and deserves to be dismissed.

10. Heard learned counsel of both the parties and perused the record.

11. The applicant has not challenged the policy letter dated 07.08.2009 though he seems to be affected by the same. The policy dated 07.08.2009 is reproduced below :-

“Tele : 23093735

REGD POST

Integrated HQ of MoD (Army)

Adjutant General's Branch

Dte Gen of Medical Services (Army)

'L' Block, New Delhi-110001

B/74240/DGMS-3D

07 Aug 2009

AMC Records

PIN : 900450

C/O 56 APO

IMPLEMENTATION OF DECISION OF COAS ON STATUTORY COMPLIANTS FILED BY JC-691970Y EX SUB/CLK AC RAI, NO 13958204N EX HAV/CLK ATER SINGH & NO 13956674A HAV/CLK PATIL GANAPATI AND SIMILARLY AFFECTED INDLS

1. A meeting was held in the office of DG (MP & PS) on 09 Jul 09 to discuss modalities of implementation of the decision of COAS & fixation of seniority from the date of enrolment.

2. *Definitive guidelines & directives have been received from MP & PS Dtes on this issue. The same are enumerated below :-*

(a) *Existing ROI 10/2000 be suitably amended immediately by AMC Records to bring it in consonance with relevant AO/Policies issued by MP & PS Dtes. The revision must be completed by 01 Sep 2009. Amendment to ROI will be implemented prospectively.*

(b) *Refixation of seniority on remustering should be applicable from the date of enrolment for all trades and not only clks.*

(c) *No waiver will be given for deficiency in qualification for promotion as dispensation of qualification is not part of consequential benefits. However, age relaxation may be considered & waiver granted in deserving cases. The promotion of such affected pers should be considered for imdt higher rank & not beyond.*

(d) *Re-instatement order in respect of Ex JC-691970Y Ex Sub/Clk AC Rai and No 13958204N Ex Hav/Clk Ater Singh be issued as per redressal granted by COAS. The authority to give re-instatement orders in case of grant of redressal by COAS on statutory complaint for retired PBOR is the OIC Records.*

(e) *All affected pers in the instant case will be adjusted within existing vacs available within AMC. However, in case of shortfall, an addl 10% vac over & above auth str of JCO/Clk in AMC may be released and would be available upto 31 Dec 2010 to tide over the requirement and give relief to directly enrolled Clks whose seniority would be disturbed due to refixation of seniority.*

(f) *The new policy (revised ROI) will be made applicable to serving pers with effect from the date of implementation.*

(g) *The relaxation of age & service are not to be extended to pers who have retired from service.*

(h) *In cases where COAS redressal has been granted to the indls, they may need to be re-instated even if they have retired from service.*

(j) *To effect promotion, in addition to educational qualification, he must meet other laid down criteria like medical category etc.*

3. *These guidelines may be followed while implementing the decision of COAS and granting relief to similarly affected indl.*

4. *Please ack receipt.*

(Tarun Kaul)
Col
Dir MS (T&C)
For DGMS (Army)”

12. The aforesaid policy dated 07.08.2009 has apparently been made to bring seniority fixation of re-mustered clerks into AMC in line with the rest of the Indian Army which was being governed by Army HQ policy dated 06.02.1960. The same is reproduced below :-

“TELEPHONE 31638 No. 83627/AG/PS2 (C)
Army Headquarters
Adjutant General's Branch
DHQ PO, NEW DELHI – 11
6 Feb 60

To

The Officers-in-Charge
All Regt/Corps Record Offices

Subject : **SENIORITY OF COMBATANT CLERKS**

1. It has been noticed that divergent practices are prevalent in different arms/corps of service in assessing seniority of combatant clerks. Such divergent practices have resulted in grant dissatisfaction to the adversely affected combatant clerks as is evident from a large number of representations received at this HQ. Such a state of affairs is not conducive to the efficiency and morale of the army as a whole.

2. With a view to achieving uniformity and standardization of rules in regard to assessment of seniority of combatant clerks the following decision have been taken :-

(a) (i) Seniority of combatant clerks be assessed from the date of enrolment/promotion to a particular rank. NCOs/JCOs holding substantive ranks will take seniority over those holding was substantive or paid acting ranks. In the case of individuals promoted to any particular rank from the same date, their seniority will be in accordance with their relative position in the next below rank.

(ii) Seniority in Lance appointments will not reckon for purpose of promotion to the next higher ranks. L/Naiks or equivalent will take seniority amongst Sepoys or so from the date of their enrolment and similarly L/Havildars amongst Naiks or equivalent from the date of their promotion to that rank. However due weightage will be given to holders

of lance appointments when promotions are made by the competent authorities.

(b) The existing seniority rosters whether based on rank, class or rank and class both, will not be disturbed and the new policy will be applied to future promotions only.

(c) Two rosters will be maintained ie. one existing seniority roster and the other showing the seniority of those who will be governed by the new rules. This is necessitated to safeguard the interests of combatant clerks who may be affected adversely by the change over to new rules. The intention is that the change over to the new rules though show may be smooth. The old roster will fade out automatically and the new seniority roster will replace it gradually. There will eventually be one roster.

3. The following principles will be observed in drawing up seniority rosters of JCOs/OR of this category :-

(a) Separate rolls will be maintained by ranks; Risaldar/Subedar Major, Risaldar/Subedar, Jamadar, Dafadar/Havildar, Lance Dafadar/Naik and Sepoys. L/Naiks or equivalents will be included in Sepoys with appropriate remarks.

(b) Seniority within each rank or their equivalents will be assessed as under :-

- (i) Sepoy/Naik - According to the date of enrolment.*
- (ii) Lance Dafadar/Naik) - According to the date of*
- (iii) Dafadar/Havildar) promotion to the rank held continuously.*
- (iv) Jamadar - According to the date of promotion/appointment.*
- (v) Risaldar/Subedar) - According to the date*
- (vi) Risaldar/Subedar Major)of promotion to the rank held continuously.*

Notes : (1) In case the date of enrolment is the same in respect of Sepoy/L Naik of equivalents, seniority will be assessed in order of Army Numbers.

(2) In case the date of promotion is the same, seniority will be assessed according to the date of promotion in one rank below held continuously.

(3) Seniority of ex-service personnel will be determined according to date of re-enrolment. SSE personnel re-enrolled on regular engagement will reckon seniority from the date of re-enrolment on regular engagement.

(4) Substantive Dafadars/Havildars reverted to lower rank or class of pay for indiscipline or inefficiency will reckon seniority in accordance with para 3 (b) (i) and (ii) of the Special Army Order 13/S/55.

4. *Seniority of personnel reclassified/re-mustered from one trade to another in the interest of service will be governed under para 3 above.*

5. *Seniority in respect of personnel transferred from other arms/services will be determined under para 3 above, except when a transfer has been effected on certain definite terms indicating loss of seniority on such transfer. In the latter case, seniority will be reckoned according to the terms offered, in which case the Record Office will clearly endorse such terms on IAFF-2058 and ensure that the individual accepts them.*

6. *Seniority is not the sole criterion for promotion which will be dependent on a number of other factors such as qualifications and suitability.*

7. *The above decisions take effect from the date of issue of this letter and should be strictly complied with.*

8. *These orders should be given the widest publicity.*

Sd/- x x x x
ADJUTANT GENERAL

Copy to :-

<i>HQ Commands</i>	<i>Bases</i>	
<i>Corps</i>	<i>Divs</i>	<i>Bases</i>
<i>Areas</i>	<i>Bdes</i>	
<i>Sub Area</i>	<i>Cat 'A' Establishment</i>	

Internal Distribution”

13. Para 2 (c) of policy letter dated 07.08.2009 provides for allotting additional temporary vacancies to cater to those adversely affected by the new policy. Out of the 68 re-mustered clerks, 22 Havildar (clerks) re-mustered from various categories were found to be eligible for promotion. In order to mitigate the effect on directly enrolled clerks, same number of additional vacancies (22 vacancies) were released vide letter dated 24.12.2009 on temporary basis. These were to be available till 31.12.2010. Therefore, the directly enrolled personnel would not be affecting adversely by those being re-mustered based on new policy.

14. One of the grievance of the applicant in is statutory complaint (**Annexure 3**) was that Army should release

additional vacancies of Naib Subedar clerks to protect those affected by stagnation caused by direct entry Havildar clerks especially to cater for those clerks for completion of service or becoming overage. The 22 additional vacancies were released and were available till 31.12.2010. The applicant became overage on 01.01.2011. Therefore, the additional vacancies were available till he became overage. The applicant had to wait for a vacancy to be available before his date of becoming overage. Since the same did not occur, he could not be promoted.

15. The applicant has relied upon the Hon'ble Tribunals judgment in **O.A. No. 144 of 2010** passed in the case of **Naib Subedar Upendra Kumar Tomar vs. Union of India and others, Attar Singh Kaushik vs. Transport Department (2008) 1 SCC, JT 2007 (12) 428, B S Bajawa and another vs. State of Pubjeb and others (AIR 1998 SC 758), Nazarudee. A, Head Accountant vs. The State of Kerala in Writ Petition (C) No. 4643 of 2010 (E) and Mukhtar Ahmad vs. Union of India and others**. None of these judgments have direct correlation to the applicant's case.

16. The policy dated 07.08.2009 was to bring uniformity in all the Arms & Services of the Army. AMC (Clerk) cadre was the only one having the anomaly from rest of the Indian Army. The above policy letter corrected the anomaly. Policy was affected for the entire cadre and was not directed against any individual. To cater to those affected by new policy, equal number of additional vacancies were released. The applicant's promotion was therefore not affected by induction of re-mustered personnel at the seniorities based on new policy.

17. In view of the aforesaid, we are of the view that the new policy for fixing seniority of re-mustered personnel in to AMC (Clerk) cadre has not affected the applicant. The applicant has not been able to make out case. The Original Application is liable to be rejected.

18. O.A. No. 73 of 2011 is accordingly rejected.

19. No order to cost.

(Air Marshal Anil Chopra)
Member (A)

(Justice D.P. Singh)
Member (J)

Dated : March, 2016
SB