

COURT NO. 2**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 178 of 2012****Tuesday, this the 16th day of August, 2016****“Hon’ble Mr. Justice D.P.Singh, Judicial Member
Hon’ble Air Marshal Anil Chopra, Administrative Member”**

Havildar/GIT Krishan Kumar Khola (Army No. 1482311-F) of Centre for Automated Military Survey, C/o 56 APO, son of Late Samander Singh, resident of House No. P-12/7 Yogender Vihar, near APS Shankar Vihar, Delhi Cantt. Pin code – 110010.

.... Applicant

Versus

1. Chief of the Army Staff, Integrated Headquarter of the Ministry of Defence (Army), South Block, New Delhi – 110011.
2. Engineer-in-Chief, Integrated Headquarter of the Ministry of Defence (Army), DHQ Post Office, Kashmir House, Rajaji Marg, New Delhi – 110011.
3. Officer-in-Charge BEG Records and Commandant, Bengal Engineer Group and Centre, Roorkee (U.K) – 247667.
4. Commanding Officer, Centre for Automated Military Survey, C/o 56 APO, PIN CODE - 900106

....Respondents

Ld. Counsel appeared : **Shri P.N. Chaturvedi,**
For the Applicant **Advocate**

Ld. Counsel appeared for **Shri V.P.S. Vats Central**
 Govt Standing Counsel
 Assisted by Col Kamal Singh,
 OIC Legal Cell.

ORDER (Oral)

1. This is an application filed under Section 14 of the Armed Forces Tribunal Act, 2007 being aggrieved with order dated 12.03.2012 whereby applicant's alleged juniors Dinesh Singh and Rajender Pal have been declared senior to the applicant (**Annexure A-1 to the O.A.**). Further prayer made by the applicant is for a direction to promote the applicant as Naib Subedar.

2. We have heard Shri P.N. Chaturvedi, Ld. Counsel for the applicant and Shri V.P.S. Vats, Ld. Counsel for the respondents assisted by Col Kamal Singh, OIC Legal Cell and perused the records.

3. It is not disputed that the applicant was enrolled in the Army on 01.09.1988 in the trade of Survey Topo trade in the Bengal Engineering Group (BEG) Roorkee. On 01.06.2002 the applicant was promoted to the rank of Naik and on 28.03.2003 he was remustered in Air Survey Draughtsman (ASD) trade. Subsequently vide Integrated Headquarters of MoD (Army) letter dated 05.01.2009 there had been merger/amalgamation of the trade and presently the applicant is serving in the Geo Information Technologists (GIT) trade.

4. Grievance of the applicant is that two persons viz. Dinesh Singh and Rajender Pal, who were junior to the applicant have been shown senior to him in the order dated 12.03.2012. Further submission is that the applicant should have been promoted on the rank of Naib Subedar.

5. Ld. Counsel for the respondents vehemently argued and opposed the O.A. stating that said two persons i.e. Dinesh Singh and Rajender Pal were promoted in their respective cadre before merger in the trade of Air Survey Draughtsman (ASD) trade, hence they have been shown senior to the applicant. This fact is evident from the impugned order dated 12.03.2012. It has further been submitted by Ld. Counsel for the respondents that no batch mate of the applicant has been promoted till date and also no junior to the applicant has been promoted. Accordingly, it is submitted that there is no reason to state that discrimination has been caused to the applicant's service career.

6. We have considered the arguments advanced by Ld. Counsel for the parties. From the factual matrix on record it appears that Dinesh Singh and Rajender Pal were promoted in their previous cadre i.e. Survey Topo Trade (STT) earlier to the applicant hence they became senior after their remustering in Air Survey Draughtsman (ASD) trade. This fact has not been disputed by Ld. Counsel for the parties.

7. Needless to say that in case the applicant was having any grievance, he should have challenged the promotional order passed in regard to Dinesh Singh and Rajender Pal by impleading them as respondents in the present O.A. which has not been done. Since the said two affected persons have not been impleaded and their promotional avenue has not been challenged, which makes them senior (supra), in view of well settled proposition of law it is not permissible to unsettle the promotional

avenue vis-a-vis the affected persons who have not been impleaded in the O.A.

8. Apart from above, it is also well settled proposition of law that right to be considered is a fundamental right enshrined in Articles 14 and 21 of the Constitution of India. Since the batch mates including juniors have not been considered as pleaded in the counter affidavit, the applicant may not raise any grievance with regard to promotion avenue. Of course, whenever applicant's batch mates are promoted, it shall be obligatory on the part of the respondents to consider applicant's case along with other batch mates. There is no violation of any fundamental or statutory right of the applicant in not considering his case for higher promotion.

9. It is also worth mentioning that we been informed by Ld. Counsel for the respondents as well as OIC. Legal Cell that any persons had not been promoted till the applicant became over age.

10. In view of above, we do not find any justifiable reason to interfere with the order dated 12.03.2012. The O.A. merits rejection.

11. O. A. is accordingly rejected.

No order as to costs.

(Air Marshal Anil Chopra)
Member (A)

anb

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