

Court No. 2**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****ORIGINAL APPLICATION No. 239 of 2013**Friday, this the 5th day of Aug 2016**Hon'ble Mr. Justice D.P. Singh, Member (J)**
Hon'ble Air Marshal Anil Chopra, Member (A)

Ex Subedar & Hony Lieutenant Ram Kishor Dwivedi (JC-810786M) of Intelligence Corps, C/O 56 APO s/o Shri Jamadar Dwivedi, resident of village-Parsu ka Purwa, post Office-Hasren, Tehsil-Tirwa, District-Kannauj (UP).

...Applicant

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

Versus

1. Union of India through the Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarter of the Ministry of Defence, (Army), South Block, New Delhi-110011.
3. Officer-in-Charge, Intelligence Records, Military Intelligence Training School and Depot, Pune-40.

.....Respondents

Ld. Counsel for the : **Shri D.K. Pandey,**
Respondents **Central Govt Counsel, assisted by**
Col Kamal Singh, OIC Legal Cell.

ORDER (ORAL)

1. We have heard Shri P.N. Chaturvedi, Ld. Counsel for the applicant and Shri D.K. Pandey, Ld. Counsel for the respondents assisted by OIC Legal Cell and perused the records.

2. This petition under Section 14 of the Armed Forces Tribunal Act, 2007 has been preferred by applicant being aggrieved with denial of promotion to the rank of Subedar Major.

3. Brief facts of the case are that the applicant was enrolled in the Rajput Regiment on 06.05.1983. He was promoted up to the rank of Subedar by the year 2009. Admittedly, a Departmental Promotion Committee (for short, DPC) was convened in October 2011 to consider the names of persons for promotion to the rank of Subedar Major. It is not disputed that panel of 79 names was considered for promotion to the rank of Subedar Major in which name of the applicant found place at Serial No 31 in the select panel merit list. As there were 15 vacancies and 15 retirements, defacto he was reserve No. 1.

4. Ld. Counsel for the applicant submits that without exhausting the old select panel, DPC was held in October 2012 without promoting the applicant on the post of Subedar Major

the respondents had prepared a fresh list next year and in this panel select list the applicant's name was at Serial No 21. Submission is that the previous year's (2011) select panel should have been exhausted before the select list of 2012 came into action. In short, submission of Ld. Counsel for the applicant is that the applicant should have been promoted on the basis of select panel list of 2011.

5. Attention has been invited to the Guidelines dated 10.10.1997 providing for criteria for promotion of JCOs/NCOs. Para 9, 10, 11, 12 and 13 of said Guidelines is relevant for adjudication of the present controversy, and is reproduced as under :-

“9. Reserve. Number of reserve will be kept to the minimum and under no circumstances it will exceed average of unforeseen vacancies in the last five years. Reserve will be ‘in built’ in the panel and no separate list of reserves will be drawn.

10. Out of turn promotion. DPC can recommend ‘Out of Turn’ promotion on the basis of exceptionally justifiable grounds like award of PVC. Such a recommendation has to be ‘exceptional’ and must be related to an ‘individual act’. Award of ‘outstanding’ grading in ACR is not an exceptional act. DPC can only recommend ‘Out of Turn’ promotion. It will be approved by Army HQ (AGPS).

11. Departmental Promotion Committee (DPC).

Composition. The DPC will be convened by respective Colonel Commandant/Colonel of the Regiment and it will be considered as under :-

- (a) Chairman. Col of the Regiment or Col Comdt
 RVC and Postal -Addl DG
 CMP -PM
 Pnrs and MF -Dy DG
 APTC -Dy DG MT (PT)

- (b) Members (i) OIC Records/Commandant of the Respective Regimental Centre.
 (ii) One Senior Service Regimental/Corps Officer (Col or above).
 (iii) Three Commanding Officers (For APTC- Three Corps Officers in the rank of Lt Col/Maj).
 (For AEC-Three Corps Officers in the rank of Col).
 (iv) The Col Records, CRO or SRO as authorized in a particular Record Office-As secretaries.

Exception 1. For Armoured Corps, the composition of DPC will be as under :-

- (a) AFV Categories.
 (i) Chairman-Colonel of the Regiment.
 (ii) Members-Commandant of the respective Regiment.
 Second- in –Command
 OC, Squadron.

Adjutant as Secretary.

(b) For Clerks and SKT

(i) Chairman-Commandant, AC Centre and School (OIC Records).

(ii) Members -One Brig from AC Centre and School.

-Two colonels from AC Centre and School.

Exception 2. In case Col of the Regt/Col Comdt is unable to preside over a DPC for Sub Maj, an officer not below the rank of Maj Gen, may be detailed after clearance from AG Branch (PS Dte). Offg incumbent, in no case, will be detailed.

12. Periodicity

(a) In all arms and services, DPC will be held annually, (Treating 12 months from 01 Jan to 31 Dec as Annual year for counting number of vacancies.)

(b) Where required such as in case of sudden creation of unforeseen vacancies, a supplementary DPC may be held with the permission of the Head of the Department or Col of the Regt in respect of Infantry / Armd /Regts.

13. Life of the Panel. New panel will come into effect only after old panel has exhausted”.

6. A plain reading of the aforesaid Guidelines of 1997 (supra) shows that under para 12, DPC shall be held annually and reporting year for promotion shall be 01 January to 31 December for counting number of vacancies. However para 13 of the Guidelines (supra) provides that new panel will come into

effect only after old panel has exhausted. It means once panel/select list has been prepared by one DPC containing names of certain persons, then all vacancies arising thereafter shall be filled by same panel/select list. Though the recruitment year is of twelve months but the panel/select list of candidates shall continue in operation and all vacancies shall be filled up from the panel/select list prepared by the DPC and the panel/select list shall not automatically come to an end unless future vacancies are filled up from amongst persons whose names are contained in the previous panel/select list.

7. Ld. Counsel for the respondents vehemently argued that since the second DPC was convened in October 2012, the earlier panel/select list shall stand exhausted and applicant's name shall be liable to be re-considered in the second DPC, and since in the second DPC name of the applicant found place at Serial No. 20 and only 13 vacancies were available, the applicant could not be promoted on the post of Subedar Major.

8. A question cropped up as to what shall be the life of the panel/select list prepared by the DPC in October 2011. Para 13 of the Guidelines (supra) provides that life of the panel shall come into effect only after old panel has exhausted. In case a literal interpretation is given to para 13 of the Guidelines (supra), then once the applicant's name found place in the

panel/select list at Serial No. 31 then his claim would perpetuate till the entire panel/select list is not exhausted. Obviously there were 13 vacancies which were filled by DPC convened in October 2012. It is admitted by Ld. Counsel for the respondents that the 15 vacancies were filled, and 15 others retired, the applicant at 31st position was thus No. 1 thereafter (Next for promotion). In such situation being still a leftover of the select list of 2011, the applicant was entitled for promotion to the post of Subedar Major in view of paras 12 and 13 of the Guidelines dated 10.10.1997.

9. One of the arguments advanced by Ld. Counsel for the respondents is that the panel/select list is to meet out exigencies of unforeseen vacancies, which seems to be contrary to the provisions of para 12 (b) of the Guidelines (supra) which provide that unforeseen vacancies shall be filled up by supplementary DPC. In view of para 12 (supra) panel/select list approved by the DPC shall continue and all vacancies arising during the recruitment year or later on shall be filled up from the existing panel/select list till it is exhausted. It is well settled proposition of law that in case language of the provision is clear, then nothing shall be supplied to impart a different meaning. In the present case there appears to be no ambiguity in the language of paras 12 and 13 of the Guidelines

(supra). Accordingly we are of the view that denial of promotion to the applicant on the basis of panel/select list prepared by DPC convened in Oct 2011 in terms of Guidelines dated 10.10.1997 (supra) seems to be violative of applicant's right to seek promotion to the next higher post and is hit by Articles 14 and 21 of the Constitution of India. Now it is well settled proposition of law that right to be considered for promotion is a fundamental right and once vacancies arose, it was incumbent upon the respondents to consider name of the applicant for promotion to the next higher post from the existing panel/select list.

10. The language of para-13 with regard to life of the panel is quite clear and does not suffer from any ambiguity. Hence confining it to one year does not seem to get support from the guidelines (supra). It is well settled proposition of law that provisions should be considered in its totality. In the case on hand, para-13 seems to be in exclusion of other provisions giving life to list of panel.

11. In AIR 2005 SC 1090, ***Manik Lal Majumdar and others Vs. Gouranga Chandra Dey and others***, Hon'ble Supreme Court reiterated that legislative intent must be found by reading the statute as a whole.

12. In AIR 2007 SC 2742, **M.C.D. Vs. Keemat Rai Gupta** and AIR 2007 SC 2625, **Mohan Vs. State of Maharashtra**, their Lordship of Hon'ble Supreme Court ruled that court should not add or delete the words in statute. *Casus Omisus* should not be supplied when the language of the statute is clear and unambiguous.

13. In AIR 2008 SC 1797, **Karnataka State Financial Corporation vs. N. Narasimahaiah and others**, Hon'ble Supreme Court held that while constructing a statute it cannot be extended to a situation not contemplated thereby. Entire statute must be first read as a whole then section by section, phrase by phrase and word by word. While discharging statutory obligation with regard to take action against a person in a particular manner that should be done in the same manner. Interpretation of statute should not depend upon contingency but it should be interpreted from its own word and language used.

14. In 2006 (2) SCC 670, **Vemareddy Kumaraswami and another Vs. State of Andhra Pradesh**, their Lordship of Hon'ble Supreme Court affirmed the principle of construction and when the language of the statute is clear and unambiguous court cannot make any addition or subtraction of words.

15. Keeping in view the arguments advanced by OIC Legal Cell with regard to applicability of procedure since long time we make the application of present order for other prospective to be followed by respondents so that the position may not be unsettled. In case the respondents want to confine the life of panel to one year, then they may amend para 13 which seems to be executive instructions, to meet out the requirement, in case advised to do so.

16. It is submitted by OIC Legal Cell that the procedure adopted in the present case has been followed in the Indian Army over the years. In case it is being done it appears to be wrong procedure adopted by the Army authorities in view of para 13 of the Guidelines (supra), and the same needs to be corrected by the Indian Army authorities as per the procedure stipulated. The respondents argued that the life of the select panel was only for one year, but were unable to produce any document, rule or regulation to support the same.

17. The crux of the observations made hereinabove is that the original application deserves to be allowed; hence **allowed**. Direction is issued to the respondents to promote the applicant on the post of Subedar Major on the basis of panel/select list of October 2011. The applicant's promotion to the post of

Subedar Major shall be considered with effect from 01 January 2013 with all consequential benefits, but without back wages. Salary of the promotional post shall be paid to the applicant from the date of order of this Tribunal i.e. 05.08.2016. The entire exercise shall be concluded by the respondents within two months from the date of presentation of a certified copy of this order.

No order as to costs.

(Air Marshal Anil Chopra)
Member (A)

anb

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