

Court No.2

RESERVED

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 50 of 2013

Friday the 12th day of August, 2016

Hon'ble Mr. Justice D.P. Singh, Member (J)

Hon'ble Air Marshal Anil Chopra, Member (A)

No. 6927923W Ex Hav-Skt GS & CS SK Parida R/O Bn-75, Balram Nagar, Safilguda malkajiri, Secunderabad, A.P. (500047).

.....Applicant

Ld. Counsel for the applicant: **Shri V.A. Singh, Advocate**

Versus

1. Union of India through Secretary, Ministry of Defence, New Delhi-110011.
2. Chief of Army Staff, IHQ of Min of Def (Army), New Delhi-110001.
3. AOC, Records, PIN 900273, C/O 56 APO.
4. CO 17 RR Bn.
5. CO, COD Kanpur.

.....Respondents

Ld. Counsel for the Respondents

**Shri V.P.S. Vats, Advocate
assisted by Col Kamal Singh, OIC Legal
Cell.**

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

1. The present O.A. has been preferred by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 being aggrieved with his non promotion to the rank of Naib Subedar along with his batch mates.

2. The applicant has prayed that the respondents be directed to consider the applicant’s case for promotion to rank of Naib Subedar along with persons who had passed their NH cadre as per January 1996 and re-instate the applicant into service with notional seniority and all consequential benefits of promotion to the rank of Naib Subedar.

3. We have heard Ld. Counsel for the parties and perused the records.

4. The brief facts of the case are that the applicant was enrolled in the Indian Army on 26.03.1997. The applicant was promoted to the rank of Naik in May 1992. The applicant was posted to 17 RR Battalion from 27.05.1994. The applicant was selected and detailed for NH cadre course thrice between 1995 to 1996 as mentioned herein under:-

(i) NH-13 (with effect from 04.09.1995 to 28.10.1995.)

(ii) NH-15 (with effect from 23.09.1995 to 16.12.1995.)

(iii) NH-25 (with effect from 04.03.1995 to 27.04.1995.)

5. Submission of the Ld. Counsel for the applicant is that the applicant was not relieved from 17 Battalion Rashtriya Rifles to attend NH courses as no reliever was sent by the AOC Records to enable him to attend the NH cadre course. On 22.04.1996 the applicant was side stepped to Field Ordnance Depot by Northern Command. Ultimately the applicant attended NH-31 cadre course with effect from 02.07.1996 to 24.08.1996. Admittedly on account of non availability of reliever, the applicant could not attend the NH cadre course in time and there was a delay of approximately one year. The applicant qualified the cadre course and on 01.09.1996 and he was promoted to the post of Havildar. This delay in promotion to the rank of Havildar affected his further promotions for no fault of the applicant.

5. Grievance of the applicant is that had the reliever been sent by the respondents in time when the applicant was detailed for NH-13, NH-15 and NH-25 he would have attended his NH course much earlier. The consequence of this omission and commission on the part of the respondents resulted in delay in his promotion whereas juniors to the applicant were promoted to the rank of Havildar on 01.01.1996 i.e. much earlier to promotion of the applicant on 01.09.1996.

6. When the applicant was posted to AOC Centre Adm Battalion in Feb 2012, the applicant came to know that his juniors were

promoted to Naib Subedar with effect from 01.06.2012. He also came to know that he was not considered for promotion because of seniority fixed during Havildar rank. The applicant became overage on 16.10.2012 and had to retire on 13.03.2013, and that he could have been considered for Naib Subedar only in 2013 due to his seniority fixed in Havildar rank. The applicant has had a clean service record with no red or black entries and had never been counseled or warned. He had remained medically fit.

7. The applicant preferred a statutory complaint to the Chief of Army Staff on 06.08.2012 which was rejected. Feeling aggrieved the present O.A. has been filed.

8. Heard Ld. Counsel of both the parties and perused the records.

9. The respondents have not denied the basic facts of the case. Their case is that the applicant had been detailed for the NH cadre course three times but he did not report for the course and no representation regarding the relief has been received from the applicant or his unit, 17 RR Battalion. There is no record available with the respondents that 17 RR Battalion could not have spared him as it is a sixteen years' old case. It is also mentioned that during the year 1995 there was no provision to provide relief of an NCO for cadre course from RR Battalions. Instructions to this regard have been issued only vide letter dated 09.07.2003 that suitable relief would be provided for cadre course for RR Battalion.

Prior to the instruction issued vide ibid letter, all NCOs from RR Battalion were being detailed for promotion cadre in the 2nd year of their tenure and report for cadre course without relief. Vide IHQ of MoD (Army) letter dated 21.11.1995 all affected NCOs were permitted to attend education classes for short duration without relief. The applicant has not represented his supersession at the time when his batch mates of 01.01.1996 attended/qualified the cadre.

10. There was no provision for grant of ante date seniority without passing all requisite qualification for promotion. The applicant became overage as on 16.10.2012 and due to which he has been discharged from the Army services with effect from 31.03.2013.

11. The applicant had submitted statutory complaint on 06.08.2012 and brought out all the facts enumerated in the complaint and submitted that his request be considered and granted justice by promoting him to the rank of Havildar with effect from 01.01.1996 along with his batch mates and given rank of Naib Subedar with effect from 01.06.2012. He was present in the unit and performing all the duties assigned to him and he could not attend the cadre course not because of personal reasons but because 17 RR Battalion has not been able to spare him.

12. As a follow up, the Officiating Commanding Officer wrote a letter to COD Kanpur on 14.10.2012 (**Annexure No 03 to the O.A.**) and the same is reproduced as under :-

*"17 RR (MARATHA LI)
PIN-934517
c/o 56 APO*

3027/RR/A1

14 Oct 2012

*Central Ordnance Depot Kanpur
PIN-900273
c/o 56 APO*

STATUTORY COMPLAINT

1. *Ref your letter No 6927923/SKP/Pers dt 01 Oct 2012.*
2. *It is intimated that all correspondence on the subject have been destroyed by burning as the same was no longer reqd and the details could not be ascertained being very old case.*
3. *it is also intimated that as per policy in vogue, pers posted to RR Bns are spared for any course/cadre on physical arrival of temporary relief. Therefore onus for provision of relief and supersession, in case relief is not provided totally rest on concerned Record Offices.*
4. *Hence, you are requested to obtain the said information and clarification on the subject from AOC Records at your end.*

*Sd/- x x x x x x x
(Kumar Abhishek)
Maj
Adjt
for Offg CO"*

13. From a perusal of the said letter it is very clear that persons posted in the units indulged in operational tasks are spared for course/cadre on physical arrival of temporary relief and providing such relief was the responsibility of the concerned Record Office. The CRO vide letter dated 15.11.2012 written to COD Kanpur has mentioned that since the applicant was superseded in the year 1996 and had moved his complaint after 16 years, all the correspondence pertaining to that period have been destroyed by burning as the same was no longer required and the details could not be ascertained at this stage being very old case.

14. It is pertinent to mention that the applicant had written a letter to his Commanding Officer on 27.08.1995 (**Annexure No 05 to O.A.**) requesting permission to attend the cadre course NH-13.

Copy of the same is reproduced below :-

“From: 6927923-W Nk/SKT/GS&C

S.K. Parida

To : The Commanding Officer,

17 Rashtriya Rifles Bn,

C/O 56 APO.

*Subject : Permission to proceeding cadre courses at AOC Centre,
Secunderabad*

Sir,

Respectfully, I beg to state following few lines for your kind consideration and favourable orders please.

I, No 6927923-W Nk/SKT/GS&C S.K. Parida detailed in N.H. cadre courses No NH-13 wef 04 Sep, 1995 to 28 Oct 1995.

Hence it is requested kindly permit to me to attend the cadre courses at AOC Centre, Secunderabad to complete my qualification for future promotion.

Thanking you in anticipation.

Yours faithfully,

Sd/- x x x x x x

(Nk S.K. Parida)

Dated: 27.08.1995

15. From the above it is clear that the applicant had a good career report. He has been medically fit and posted in operational area. In his natural turn he was detailed for NH cadre course but for no fault on his part and in spite of his application to the Commanding Officer he was not spared for the course which was crucial for his promotion to the rank of Havildar.

16. Ld. Counsel for the applicant cited a decision in O.A. No. 144 of 2013 **Company Havildar Major Kunjumon Varghese vs. Union of india & Ors** decided by the Lucknow Bench of the Armed Forces Tribunal on 14.10.2014 it was held:-

“7. Admittedly, the delay in receipt of the ACR by the authorities concerned to detail the applicant for promotion cadre was entirely either negligence or procedural defects on the part of the respondents and the applicant had no role to play in this, but the adverse consequence which the applicant faced on account of delayed receipt of ACR cannot be said to be justified on the part of the respondents in any manner”.

17. In yet another decision of this Tribunal rendered in T.A. No. 473 of 2010 **Havildar B.P. Mishra vs. Union of India & Ors** in

which one of us (Justice D.P. Singh) was also a member, it was observed to quote:-

*“By not sending for N Cadre Course and granting promotion along with batch mates for no fault on the part of the petitioner, respondents have treated the petitioner unequally. It is well settled proposition of law that equals cannot be treated unequally vide 1990 Volume 2 SCC 715 para 13 **Direct Recruit Class (ii) Engineer vs State of Maharashtra**. Since the petitioner was not given opportunity to complete N Cadre Course as well as seniority with his batch mates and because of their commission and omission the petitioner has suffered, it also amounts to discrimination on account of unequal treatment; hence hit by Article 14 of the Constitution of India”.*

18. In **Counsel of Scientific and Industrial Research vs. K.G.S. Bhatt**, AIR 1989 SC 1972: 1989 Lab IC 2010 the Supreme Court placed reliance on various writings of known authors and observed that every management must provide real opportunities for promoting employees to move upward. The organization that fails to develop a satisfactory procedure for promotion is bound to pay a severe penalty in terms of administrative cause, mis-allocation of personnel, low morale and ineffectual performance among both non-managerial employees and their supervisors. There cannot be any modern management much less in career

planning man power development, management development etc. which is not related to a system of promotions.

19. From the aforesaid it is evident that despite being detailed for the NH cadre course on time, he could not attend the course purely due to administrative inaction and the respondents have not shown sufficient concern for the career of an upright soldier who has been performing his duty throughout his service career in an exceptional manner. This negligence on the part of the Battalion to strongly follow up for relief, and by the AOC Records, who were to coordinate suitable replacement, has not only prevented the applicant from being promoted to the post of Havildar on time but has affected his subsequent promotions and career for no fault on his part.

20. This is a good example for granting cost to the applicant for the mental pain and agony that he has suffered inasmuch as on account of omission and commission on the part of the respondents he has not only been denied timely promotion but has also suffered monetary loss in terms of non payment of enhanced salary. The cost is quantified to Rs 50,000.00 (Rupees fifty thousand).

21. The O.A. is accordingly is **allowed**. The respondents are directed to notionally promote the applicant to the post of Havildar from the date his juniors were promoted i.e. 01.01.1996 and thereafter consider his case for promotion to the post of Naib Subedar along with his batch mates. If the applicant is promotable

to Naib Subedar, he be paid difference of salary for the entire period till his retirement in the notional Naib Subedar rank. The entire exercise shall be completed within four months from the date of presentation of certified copy of this order.

22. The applicant is entitled to receive cost which we quantify to Rs 50,000.00. The cost shall be deposited by the respondents in this Tribunal within the aforesaid period of three months and shall be released in favour of the applicant by the Registry forthwith.

(Air Marshal Anil Chopra)
Member (A)

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