

AFR**RESERVED****ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****ORIGINAL APPLICATION No. 37 of 2021**Thursday, this the 13th day of January, 2022**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)Hav (Int GD) Umakant Sharma, S/o Late Shri Ram Bilas
Sharma, R/o 1/128 MIG, Ruchi Khand, Lucknow.

..... Applicant

Applicant in person

Versus

1. Union of India through Secretary, Ministry of Defence,
New Delhi.
2. Chief of Army Staff, Army HQ, New Delhi.
3. Adjutant General, Army HQ, New Delhi.
4. Intelligence Records, C/o Mil Intelligence Training School
and Depot, Pune- 40.

.....Respondents

Learned counsel for the
Respondents.: **Ms. Anju Singh,**
Central Govt. Counsel

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

- (i) *To quash the seniority list dated 04.03.2004 reflecting 01 Mar 2003, as seniority of the rank of Naik of the applicant issued by intelligence Records, and supersession list for the rank of N/Subedar being over age as contained in Annexure A-3 and A-4 respectively to the O.A.*
- (ii) *Direct the respondents to restore the original seniority of the applicant from the date of promotion to the rank of Naik, ie 01 Oct 2001, as also thereafter restore the seniority of the rank of Hav from Jan 2005.*
- (iii) *Thereafter, direct the respondents to consider the case of applicant for grant of promotion to the rank of N/Subedar.*
- (iv) *Any other relief which Hon’ble Court may think just and proper may be granted in favour of the applicant.*
- (v) *Cost the case may be allowed.*

2. Brief facts of the case giving rise to this application are that the applicant was enrolled in the army in Pioneer Corps on 26.10.1993. He was transferred to Intelligence Corps in the year 1996. The applicant was promoted to the rank of Naik on

01.10.2001. Later on he was promoted to the rank of Havildar on 09.04.2007 with seniority fixed from 12.11.2006. In seniority list of Naik, name of the applicant was mentioned at serial 399 and date of seniority of the rank of substantive Naik was reflected as 01.10.2001. New policy of seniority was introduced in Army Intelligence Corps in the year 2004 and seniority of the applicant was re-fixed from 01.10.2001 to 01.03.2003. Because of new policy applicant became over age for promotion to the rank of Nb Sub and he was denied for extension of service for two years. Being aggrieved, the applicant has filed instant application to quash the seniority list dated 04.03.2004 reflecting date of promotion to the rank of Naik as 01.03.2003 and restore seniority of the applicant to the rank of Naik from 01.10.2001.

3. Learned counsel for the applicant submitted that in seniority list, seniority of the applicant to the rank of Naik was fixed as 01.10.2001 but new policy was introduced and seniority of the applicant was re-fixed from 01.10.2001 to 01.03.2003. In consequence to new policy, about 251 personnel, who were junior to the applicant were declared senior by taking their date of enrolment as their seniority and the applicant was made junior to these personnel. Intelligence

Corps is a technical and specialized Corps and unless a person attains the requisite qualification for transfer to this Corps, he is not treated as belonging to this corps nor can he be absolved in the corps. Seniority of a person in Intelligence Corps is reckoned from the date he is transferred to this Corps and not from the dated of enrolment. Army Headquarters, Adjutant General's Branch, New Delhi had been following this policy to maintain uniformity and standardization with respect to all personnel of all corps and departments transferred from one trade to another since long. As per Army Headquarters letter No 83627/AG/PS-2 (c) dated 06 Feb 1960 seniority for all promotions of the personnel transferred from one trade to another was reckoned from the date of promotion to the rank of Naik and all further promotions were granted according to the seniority of this rank. The applicant was promoted to the rank of Naik in accordance with this policy only.

4. Learned counsel for the applicant submitted that later on in an arbitrary manner a new policy was introduced by the Records Intelligence Corps according to which the date of enrolment was taken for seniority for the purpose of promotions ignoring the seniority already fixed. In the year 2004, a new seniority roll for the rank of Naik was issued by Intelligence

Records in which seniority of the applicant was re-fixed from 01.10.2001 to 01.03.2003, thereby a loss of seniority by one year and five months. On reshuffling by taking date of enrolment as seniority, it was made 01.03.2003 as seniority for all promotions. Applicant should have been promoted to the rank of Hav during January 2005. Reshuffling of seniority was done during the year 2004. Because of new policy introduced in an arbitrary manner, i.e. instead of taking date of promotion to the rank of Naik as seniority for all future promotions, date of enrolment was taken as seniority for promotions, the applicant suffered heavily for his promotion. In that the applicant became over age and he was denied for promotion as well as for extension of service for two years. As a result he retired from service on completion of 24 years of service on attaining age of 44 years. Applicant came to know about this reshuffling of seniority in the year 2016, when his juniors were promoted to the rank of Nb Sub. The applicant submitted a statutory complaint to the Chief of Army Staff, New Delhi which was rejected. Learned counsel for the applicant pleaded that fixation of seniority from the date of enrolment is illegal, unfair and arbitrary exercise of power and liable to be dismissed and prayed that seniority of the applicant be fixed from the date of

promotion to the rank of Naik and applicant be granted promotion to the rank of Nb Sub.

5. On the other hand, learned counsel for the respondents submitted that applicant was enrolled in the Army on 26.10.1993 and he was transferred to Army Intelligence Corps on 06.12.1997. He was promoted to the rank of Naik wef 01.10.2001 and was granted seniority wef 01.10.2001. Further he was promoted to the rank of Hav wef 09.04.2007 with seniority wef 12.11.2006. Policy for fixing of seniority has been laid down in Army Headquarters letter No 83627/AG/PS2(c) dated 02 April 1960. As per this policy seniority will be determined from the date of enrolment and not from date of promotion. Terms and conditions for volunteers to the Intelligence Corps has been stipulated vide Army Headquarters New Delhi letter No s18516/GSI(X) dated 09 January/11 February 1976. As per para 16 of this letter personnel who are transferred to the Intelligence Corps will be placed on the Corps Seniority Roll from the date of transfer. Their seniority as Sepoy will recon from the date of enrolment. Due to misinterpretation of the rule by Record Office Intelligence Corps with regard to placing of personnel on the Corps seniority roll and seniority, 309 Sepoys including the applicant were promoted during the

period from 01.02.2001 to 01.03.2004 and seniority date was fixed as the date of completion of Basic Intelligence Corps for NCOs (BICN) whereas the seniority should have been fixed as per date of enrolment. The applicant was also promoted based on the seniority fixed on the basis of completion of BINC instead of date of enrolment. When the mistake came to light, Record Office, Intelligence Corps taken up a case with Army Headquarters, New Delhi in December 2003 and Army Headquarters, New Delhi had directed vide letter No A/70502/MI-20(A) dated 04 March 2004 to re-fix seniority as per date of enrolment with effect from 01 February 2001. A Board of Officers was constituted to re-fix the seniority and based on the Board Proceedings, the seniority of all 309 affected personnel were re-fixed and Corps seniority roll amended.

6. The applicant was promoted to the rank of Naik on 08.10.2001 with ante date seniority from 01.10.2001. On re-fixing the seniority by the Board of Officers his seniority for further promotion was fixed as 01 March 2003 (based on date of enrolment). Accordingly, he was promoted to the rank of Havildar wef 09 April 2007 with ante date seniority wef 12.11.2006. Applicant was granted MACP-III (Nb Sub Grade)

with effect from 09 April 2015. Seniority of the applicant was re-fixed to rectify the mistake. All the affected cases (309 cases) whose seniority were erroneously fixed were rectified by a Board of Officers and based on the policy on the subject and duly approved by Army Headquarters. Learned counsel for the respondents prayed that Original Application lacks merit and substance and is liable to be dismissed.

7. We have given our anxious consideration to submissions of both the parties as also perused guide lines and rules and regulations on the subject.

8. The question that remains to be answered is whether the seniority of the applicant can be changed from date of enrolment to date of promotion to the rank of Naik?

9. In Army Intelligence Corps General Duty (GD) persons are not being regularly enrolled directly. Hence, the Corps has three categories of personnel intake ie directly enrolled, voluntarily transferred and compulsorily transferred from other Arms/Services with service brackets of two to eight years. There has been lot of changes from time to time regarding fixing of seniority for direct/lateral entry Intelligence General Duty personnel. As per recent policy issued by Record Office,

Intelligence Corps letter dated 30 May 2003, seniority of Sepoy Int (GD) for promotion to next rank is reckoned from date of enrolment. For clerks category, policy letter No 83627/AG/PS-2 (c) dated 06 February 1960 and dated 08 December 1982 has been issued according to which seniority of clerks is fixed from their date of enrolment. Int Corps Record Office issued letter No 1101/R/CA dated 30 May 2003 according to which seniority of Sepoys whether directly enrolled, voluntarily transferred or compulsorily transferred should be reckoned from the date of enrolment for promotion to next higher rank. Accordingly, vide order of Directorate General of Military Int MI-20, Army HQ, dated 04 March 2004, a Board of officer was appointed and seniority of the personnel of Int Corps was fixed from the date of enrolment.

10. In this matter it is relevant to mention Army HQ policy dated 07.08.2009 which deals with seniority 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)"*

11. This policy dated 07.08.2009 was to bring uniformity in all the Arms & Services of the Army. The above policy letter corrected the anomaly. Policy was affected for the entire cadre and was not directed against any individual. Further applicant was promoted to the rank of Naik due to wrong interpretation of the Headquarter Policy letter No 18516/GS(x) dated 09 Jan/11 Feb 1976 which at Para 16 clearly states that ***“The personnel who are transferred to the Intelligence Corps will be placed on the Corps Seniority Roll from the date of transfer. Their seniority as Sepoy will rackon from the date of enrolment”***, whereas the seniority was wrongly fixed as per the date of passing BICN Course. Due to this lapse a number of other individual who were senior to him as per Date of Enrolment were meted out injustice. In order to impact natural justice to all as per policy, the date of seniority of the individuals was re-fixed in consequence with date of enrolment. This change was made effective retrospectively and uniformity. It would have been unfair to other individuals whose seniority was being fixed

