

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

COURT NO. 2

T.A. No. 86 of 2011

Thursday, this the 3rd day of November, 2016

**“Hon’ble Mr. Justice D.P.Singh, Judicial Member
Hon’ble Air Marshal Anil Chopra, Administrative Member”**

Hav. G.C. Yadav (No. 13955482 W) son of Amar Chandra Yadav R/O
Hav. Clerk 60 Para Fd. Ambulance C/O 56 A.P.O. (The place under
the opp. Party No. 3).

..... Petitioner

Versus

1. Union of India, through secretary Ministry of Defence (DGFMS ‘M’ Block) Central Secretariat, New Delhi.
2. Chief of the Army Staff, Army Headquarters, New Delhi.
3. Adjutant General, Army Headquarter, (D.G.M.S. ‘L’ Block), New Delhi-11.
4. OIC/A.M.C. Record, Lucknow-2.
5. Hav R.D. Thangkhiew now Lt. (Training) Under the Opp. Party. No. 4 in OTS AMC Centre, Lucknow.

..... Respondents

**Ld. Counsel appeared for the - Shri Rohit Kumar, Advocate.
Petitioner**

**Ld. Counsel appeared for the - Shri D.K. Pandey, Advocate
Respondents
Assisted by OIC Legal Cell Maj Soma John**

Order (Oral)

1. Being aggrieved by order dated 14.01.2004 rejecting the statutory complaint preferred by the petitioner, the petitioner preferred Writ Petition No. 3221 of 2002 (SS) in the High Court of Judicature at Allahabad, Lucknow Bench Lucknow which on constitution of the Tribunal has been transferred to this Tribunal under Section 34 of the Armed Forces Tribunal Act, 2007 and renumbered as T.A. No. 86 of 2011.
2. We have heard Ld. Counsel for the petitioner Shri Rohit Kumar and Shri D.K.Pandey, Ld. Counsel for the respondents assisted by OIC, Legal Cell and perused the record.
3. The petitioner was enrolled in the Indian Army on 22.10.1983 as Sepoy Clerk. Thereafter on 28.10.1986 he was promoted to the post of Naik and later on 05.05.1989 he was promoted to the post of Havildar. According to Ld. Counsel for the petitioner, the petitioner is highly qualified and has obtained degree of M.A. in Political Science. He successfully completed Senior Cadre Course, Non Commissioned Officer Course, Clerk Course, Instructor Course, Basic and Advance Mountaineering Course and Para Trouping Course. Having bright service record, the petitioner applied for Short Service Commission against 20 vacancies notified for the year 2001 by the respondents. The petitioner appeared in the Service Selection Board (SSB) Bangalore and was found fit. The petitioner appeared before the Medical and Special Medical Board in which he was found to be fit. However, the petitioner could not be selected since in the merit list, the

petitioner's name was at Serial No. 22 and the 20 vacancies notified for the year 2001 were filled in by the respondents in order of merit.

4. While preferring the petition, the petitioner has made the following substantial prayers:

- “(i) Issue a writ order or direction in the nature of CERTIORARI declaring the grant of Short Service Commission to opp. Party no. 5 is null and void as he has been wrongly selected/granted the commission in A.M.C. a Non Technical Officer to the rank of Lt after summoning the record of O.Ps.
- (ia) Issue writ, order or direction in the nature of Certiorari quashing the impugned Order i.e. rejection of statutory complaint date 14.1.2004, contained as Annexure No-6 to this Writ Petition.
- (ii) Issue a writ, order or direction in the nature of mandamus command and directing the opp. parties that the petitioner be granted Short Service Commission against the vacancy 2001 and be provided Training and finally selected person qualified S.S.B. and the petitioner be provided the rank known as Lt. in A.M.C (N.T.) and necessary training be allowed under the opp. Party No. 4 and be posted as non Technical Officer.
- (iii)

5. Submission of Ld. Counsel for the petitioner is that one Maj R.K. Thangkhiew had suffered red ink entry and one Capt K.S. Sriekumar also suffered red ink entry and they were wrongly promoted.

6. Ld. Counsel for the respondent invited our attention to the judgement of Delhi High Court in Writ Petition No. 21638 of 2005, **Nk Mohan Kumar B vs. Union of India** whereby the Division Bench by

order dated 21.05.2008 after hearing Ld. Counsel for the parties dismissed the Writ Petition with regard to same controversy and raising same grounds.

7. Admittedly, all the 20 persons were selected against 20 regular vacancies of Short Service Commission (SSC). Out of these 20 selected persons, as submitted by Ld. Counsel for the petitioner, 2 persons suffered red ink entries. However, only 1 person has been made party in the present petition as opposite party no. 5, i.e. Hav R.D. Thangkhiew (now Major). Ld. Counsel for the respondents submitted that all the selectees were arrayed as parties in the Writ Petition (supra) preferred in the Delhi High Court, but the Writ Petition was dismissed.

8. There appears no room of doubt that all the 20 vacancies for the relevant year were filled up in order of merit without ignoring any qualified person. The selection has been made on the basis of comparative merit of the candidates who appeared in the selection/competition. It is not for the Court or the Tribunal, as the case may be, to interfere in such matters unless there is flagrant violation of service rules or statutory rules on the subject. While preferring the petition, the petitioner has not come forward with a specific prayer by impleading any Member of the Selection Committee as opposite party against whom he had grievance. The decision of the Selection Committee does not suffer from any mala fide. Moreover, our attention has not been invited to any statutory rule or Regulation which has been flouted by the Selection Committee. The

power of judicial review is not to look into decision itself, but ordinarily it is to ensure the compliance of procedural formalities. We do not find any plausible reason to interfere with the decision of the Selection Committee while filling up the vacancies of the year 2001. Admittedly, selection has been done from amongst persons who were higher in merit than the petitioner in the test. It is pertinent to notice that selection in question as made in pursuance to test/interview was completed in five days and a comparative merit list was prepared as against the 20 vacancies for the selection year 2001. The vacancies were filled up strictly in accordance with the merit list.

9. Having given our anxious consideration to the facts and circumstances of the case, we do not find any merit in the petition.

10. It is accordingly **dismissed**.

No order as to costs

(Air Marshal Anil Chopra)
Member (A)

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

Dt: 3rd November, 2016.

jpt