

RESERVED

COURT NO.1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 215 of 2014

Tuesday, this the 03rd day of April, 2018

**“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)
Hon’ble Air Marshal BBP Sinha, Member (A)”**

**No. JC- 269486-L Sub Rameshwar Dayal (Retd), S/o Late Shri
Basdev Singh, R/o Village: Inda Nagala, Post: Budhagaon,
Tehsil: Atrauli, Distt: Aligarh (UP) - 202134
..... Applicant**

**Ld. Counsel for the : Shri Shailendra Kumar Singh, Advocate
Applicant**

Versus

1. Union of India through Defence Secretary, Ministry of Defence, South Block, New Delhi – 110106.
2. Chief of the Army Staff, Integrated HQ of Ministry of Defence (Army), South Block, New Delhi - 110011.
3. Directorate General of Artillery (Arty - 7), General Staff, Branch Integrated HQ of Min of Def (Army) DHQ PO New Delhi 110011.
4. OIC Records, Artillery Records, PIN: 908802 C/O 56 APO.
5. OIC Records, Army Aviation Corps C/o Artillery Records, Nasik Road Camp (MH) - 422102.

...Respondents

**Ld. Counsel for the: : Mrs. Deepti Prasad Bajpai, Advocate
Respondents. CGSC**

Assisted by : Maj Salen Xaxa, OIC Legal Cell.

ORDER

“Per Hon’ble Air Marshal BBP Sinha, Member (A)”

1. Present O.A has been preferred under section 14 of the Armed Forces Tribunal Act, 2007 by the Applicant for the following reliefs.

“(a) summon with the criteria and guidelines and the Order of the competent authority under which (Subedar Clerks SD) personnel were transferred from Regiment of Artillery by Artillery Records to its new Arm of Army Aviation Corps and to quash the same, being illogical and illegal for not giving due consideration to the seniority of the personnel prior to said transfer.

“(b) to issue necessary direction/orders to the respondents to consider the case of the applicant’s afresh for re-instatement and be granted the rank of Subedar Major from the date his junior has been promoted in Army Aviation Corps with full pay and allowances.

“(c) to issue directions/orders to the respondents to prepare the proper guidelines and procedure to avoid such occurrence where senior has been discharged and junior has been promoted to next higher rank alongwith extension of service.”

2. The salient facts in nutshell are that the Applicant was enrolled as Clerk SD in the Indian Army (Regiment of Artillery) on 30.12.1983. In due course of time, he was promoted to the rank of Naik on 01.10.1992 and subsequently, he was promoted to the rank of Havildar w.e.f 01.10.1992. He was again considered and approved for promotion to the rank of Naib Subedar on 01.10.2006. During the period of years 1985 to 1986 the personnel of other trades like gunner, Operator, Technical Assistant, Dvr MT were re-mustered to the trade of CLERKS. At the time of

next promotion, the seniority of these re-mustered CLERKS was not taken from date of their re-mustering but from the date of enrolment. This resulted in loss of seniority by the applicant and his batch-mates who were originally enrolled in CLERK trade. A new arm of Regiment of Artillery namely, Air Defence Artillery, was established on 10 Jan 1995 and personnel from regiment of Artillery were transferred to it without any consideration of seniority in particular rank or trade. The applicant was promoted to the rank of Naib Subedar on 01.10.2006 and thereafter to the rank of Subedar on 01.01.2010. Applicant's next promotion in the rank of Subedar Major was due in terms of Adjutant General's branch letter No. B/33513/AG/PS2 (c) dated 10.10.1997. As per the guidelines of letter, Departmental Promotion Committee (DPC) will be held annually (treating 12 months from 01 Jan to 31 Dec as Annual year for counting number of vacancies). As per para 14 of Appendix 'C' letter, a Risaldar/Subedar Major may be given maximum three chances/looks for consideration by the DPC for promotion to the rank Sub Major from the time he comes up for consideration by the DPC, initially, however, to avail second and third chance/look, he should continue to remain in service. The photocopy of Adj't's General Branch letter dated 10.10.1997 is marked as Annexure A-3 and annexed to this Original Application.

3. That applicant was considered for the first time for promotion to Subedar Major and found fit in the DPC held in the year 2013. The result of DPC for promotion to the rank of Subedar Major for the year 2014 was first time published vide Arty Records letter No. 1281/CCC/65/RA-2 dated 14 Dec 2013.

4. The grievance of the applicant is that while he retired as Subedar on 31.12.2013 before any vacancy for promotion could come up, Subedars junior to the applicant, were promoted to the rank of Subedar Major in Army Aviation Corps which is an arm recently separated from Regiment of Artillery under approval of Government of India and Ministry of Defence. The grievance further is that no criteria were laid down or followed by Artillery Records about the seniority of Subedar who were transferred into the army Aviation Corps. The Applicant also laments that how Artillery Records has given No OBJECTION CERTIFICATE to the army Aviation Corps to conduct its own DPC as the senior Subedar (Clks SD) were available in the promotion panel.

5. That it is also pertinent to mention that applicant has also rendered his exemplary services. Having been found Fit in DPC-2013, the applicant was discharged from service with effect from 31.12.2013 after rendering 25 years of service in the rank of Subedar.

6. The applicant made a representation dated 03 Mar 2014 about his grievances against non promotion to the rank of Subedar Major to Officer-in-Charge Records, artillery Records with copy to the Chief of army Staff and Dir Gen of Artillery (Arty - 7) for necessary intervention in his matter. The Artillery records vide their letter dated 12 May 2014 (Impugned Order and Annexure A-1) replied to the applicant that his case has been examined in details with relevant records and no injustice has been done to him. The applicant again addressed to OIC Artillery Records with respect to their letter dated 12 May 2014 vide his representation dated 23.06.2014, that Regiment of Artillery is still providing manpower, promotion cadre, Discharge drill and other support to Army Aviation Corps. Hence, promotion to the rank of Subedar Major granted to person junior to him and non-grant of said promotion to him does not appear justifiable. The Artillery Records vide their letter dated 16.07.2014 replied to the applicant with the similar contents that of their earlier letter dated 12 May 2014. It is in the above perspective that the applicant has approached this Tribunal for redressals of his grievance.

7. Per contra, it is contended that on completion of service limit as laid down in para 163 of Regulation for the Army Revised Edition 1987 under item I (i) (a) of Army Rule 13 (3) the applicant was transferred to pension establishment with effect from 28.02.2014 with a liability to serve in reserve for

5 years or till attainment of 54 years of age whichever is earlier. It is further contended that the Corps/Regiment will themselves decide the size of the batch suited to the corps/regiment as per seniority & emerging vacancies within the Corps/Regiment. It is also contended that since the Applicant was promoted to the rank of Subedar on 01.01.2010, his name came up in select panel but could not be promoted to the higher rank due to his retirement from service on 31.12.2013 before occurrence of vacancy. It is also contended that as per Para 8 (d) of IHQ of MoD (Army) letter No B/33513/AG/PS-2 (c) dated 10 Oct 1997, merely qualifying for consideration by DPC does not entitle a Subedar for promotion to the rank of Subedar Major and selection will be based on seniority cum merit depending upon the vacancies available. In this way, it is contended, no injustice has been done to the applicant and he has been rightly discharged from service. It is further contended that as per IHQ Ministry of Defence (Army) letter no 83627/AG/PS-2 © dated 06.02.1960, persons who have been re-mustered from one trade to another trade, their seniority will be counted in previous trade and rank and there is no provision to count their seniority from date of re-mustering. Army Aviation Corps was raised with effect from Jun 2012 and Departmental Promotion committee for promotion to the rank of Subedar Major was held in 2013 for the Junior Commissioned Officers who were on the roll of

Army Aviation Corps. Since, Subedars junior to the applicant and the applicant were serving in two different Regiment/Corps, their inter-se-seniority for promotions to the rank of Sub Maj (Clk/SD) cannot be compared. Willingness from Junior Commissioned Officers/Other rank from all Arty units for permanent transfer to Army Aviation Corps was asked vide our letter No 1328/Rasn/AAS/25/RA-4 dated 03 Dec 2012 and A-4197 dated 29 May 2013. The applicant had neither submitted willingness certificate nor fulfilled the requisite quantitative requirements. In accordance with Para 2 (b) of Integrated Headquarters Ministry of Defence (Army) Service Note No B/10235/Army Avn/MP-3 dated 30 Apr 2013, one should not be due for retirement during the next three years for permanent transfer to Army Aviation Corps. The petitioner was left with only one year of residual service.

8. We have heard learned counsel for the Applicant as also learned counsel for the respondents. We have also gone through the materials on record.

9. The basic grievance of the applicant is that though Army Aviation Corps was created basically out of man power of Artillery Corps for Clerk trade men however a relatively junior Naib Subedar as compared with applicant has got promoted to Subedar where as the applicant despite being senior in service has retired as Nb Subedar only due to lack

of Subedar vacancy in Artillery Corps. He has questioned the very concept of distribution of vacancy and promotion of clerk trade in Army Aviation Corps.

10. Armed Forces are guided by compulsions of National Security in the creation of a new Corps. If National Security imperatives demand creation of a new corps then the same has to be created at the earliest and lateral transfer of volunteers at different experience levels is the standard norm for such creations. In addition if volunteers fall short then personnel can be detailed for such new formations in public interest. Once the new corps is created it will be guided by its own standard norms for promotion in terms of available man power vis - a - vis vacancies. It is not practical for any fighting force to start comparing relative seniority level of various trades men vis-a-vis emerging vacancies in various corps & balance the same. Since creation of vacancies in any corps is dynamic in nature & besides normal planned retirement is linked to unforeseen factors like death, medical fitness, medical invalidation, voluntary retirement etc therefore such balancing of inter corps seniority is neither practical nor desirable in organizational interest.

11. In this particular case the applicant was not eligible for transfer to the new corps because he had less than three years service. Hence, if a Subedar few months junior to him in service has picked up Subedar to Subedar Major

promotion 02-03 months earlier than the applicants expected vacancy and the applicant has retired because the expected vacancy could not come up before his retirement in his own corps, it cannot be said that injustice has been done to applicant.

12. It is borne out from the record that Army Aviation Corps was raised with effect from Jun 2012 and Departmental Promotion committee for promotion to the rank of Subedar Major was held in 2013 for the Junior Commissioned Officers who were on the roll of Army Aviation Corps. Since, Subedars junior to the Applicant were serving in two different Regiment/Corps, their inter-se-seniority for promotions to the rank of Sub Maj (Clk/SD) cannot be compared. Willingness from Junior Commissioned Officers/Other rank from all Arty units for permanent transfer to Army Aviation Corps was asked vide our letter No 1328/Rasn/AAS/25/RA-4 dated 03 Dec 2012 and A-4197 dated 29 May 2013. The applicant had not submitted his willingness certificate for the same because he was not eligible for the transfer as per laid down criteria. In accordance with Para 2 (b) of Integrated Headquarters Ministry of Defence (Army) Service Note No B/10235/Army Avn/MP-3 dated 30 Apr 2013, one should not be due for retirement during the next three years for permanent transfer to Army Aviation Corps. Since the Applicant was left with only one year of residual service at

this decision point, he was prima facie not eligible for transfer.

13. It would thus appear that since Army Aviation corps was established in the year 2012 and one of the condition postulated therein was that the person who applies to be transferred to Army Aviation Corps should have minimum three years of service left to serve. By this reckoning, it would appear that the Applicant on account of his retirement being due in 2013, was not eligible to be considered for transfer. Notwithstanding the above facts, there is nothing on record to show that the Applicant had ever applied for being transferred to Army Aviation Corps or complained against the policy of transfer to Aviation Corps. On repeated queries during hearing the learned counsel for applicant failed to produce any credible evidence to substantiate that he had volunteered for this transfer to new corps or represented against the new policy of transfer to Aviation Corps. Thus it appears to be a complaint by applicant in hind sight after missing his promotion before retirement. Again it would appear that since Subedars junior to the Applicant and the applicant were serving in two different Regiment/Corps, their inter-se-seniority for promotions to the rank of Sub Maj (Clk/SD) cannot be compared.

14. As a result of foregoing discussions, we are of the view that the O.A is devoid of merit having no substance and is liable to be dismissed.

15. The O.A is accordingly **dismissed**.

(Air Marshal BBP Sinha)
Member (A)

(Justice S.V.S. Rathore)
Member (J)

Dated: April, 03 ,2018
MH/-