

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****ORIGINAL APPLICATION NO 284 of 2013**Tuesday, this the 24th day of November 2015**Hon'ble Mr. Justice D.P. Singh, Member (J)**
Hon'ble Air Marshal Anil Chopra, Member (A)

Binod Kumar Sharma (No. 7774925Y Ex Hav (MP), S/o Shri Tapeshwar Singh, R/o Vill. Fatehpur, PO. Paliganj, Distt. Patna-801110 (Bihar), now serving at Lucknow in 35 DSC Platoon, Attached 25 Wireless Experimental Unit, PIN-904825, C/o 56 APO.

.....Applicant

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

Versus

1. The Union of India through the Secretary, Ministry of Defence, DHQ PO, New Delhi.
2. The Chief of Army Staff, IHQ of MoD (Army), DHQ PO, New Delhi-11.
3. Commanding Officer, 24 Inf Div Provost Unit, PIN-908424, C/o 56 APO.
4. Commanding Officer, Bengal Area Provost Unit, PIN-900285, C/o 56 APO.
5. Officer-in-Charge, CMP Records, PIN-900493, C/o 56 APO.
6. Principal Controller of Defence Accounts (Pensions), Allahabad-211014 (U.P.).

...Respondents

Ld. Counsel for the :
Respondents.**Shri Dileep Singh, Central
Govt Counsel assisted by
Lt Col Subodh Verma,
OIC, Legal Cell.**

ORDER (ORAL)

1. We have heard Ld. Counsel for the parties and perused the record.
2. This Original Application has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, being aggrieved for not giving seniority.
3. The applicant was enrolled in the Corps of Military Police on 22.11.1985. Later on he was promoted to rank of Havildar on 01.11.2001. On 10.07.2006 he proceeded on leave from Jammu & Kashmir to visit his family by train to Bangalore and suffered with Jahar Khurani and lost Rs 55,000/- cash and belongings. According to Ld. Counsel for the applicant he was handed over unconsciously to GRP at Nagpur. He was admitted in Intensive Care Unit at Military Hospital Kamptee followed by FIR on 26.07.2006. The Registrar Military Hospital Kamptee informed the army that the applicant is in possession of one cartridge of AK-47. The applicant was convicted with disciplinary action and was awarded severe reprimand on 10.12.2007 for violation of good order and military discipline. The applicant submitted statutory complaint dated 28.09.2009 to Chief of Army Staff against the severe reprimand which was rejected on 22.10.2010. On 13.11.2011 he was superannuated but not allowed to proceed to centre for discharge drill. Again the applicant was implicated with regard to loss of furniture. The committee constituted for the enquiry did not find him guilty for the loss of furniture.

4. The promotion board considered the applicant for promotion from Naik to Havildar on 01.12.2011 but on account of only one High Average entry, he was superseded. Further the applicant was promoted in the next year on fulfilling the ACR criteria. The applicant had submitted statutory complaint which was rejected on 22.10.2010 pointing out that he is ineligible for promotion to the rank of Hav because he was having average grading in his ACR.

5. On receipt of ACR for the year 2001 the applicant was promoted to the rank of Havildar with seniority with effect from 01.01.2002. Submission of Ld. Counsel for the applicant is that the applicant should have been given seniority from Nov 2001 with his batchmates. Fact remains that he was considered for promotion on 01.11.2001 but he was having only one High Average entry though the requirement for promotion under the Army Order is two High Average entries. Accordingly the applicant was superseded for promotion in terms of Army HQ letter dated 10.10.1997. Further later on after fulfilling the criteria for promotion he was promoted to the rank of Havildar giving seniority with effect from 01.01.2002 with loss of seniority of one year. We have been informed by OIC Legal Cell that against the average entry of 2001 the applicant has submitted a complaint which has been rejected by an order dated 31.03.2009 and communicated to the applicant. Rejection order has not been impugned by the applicant. Since it is still operative and has been in the service record no order may be passed as claimed by the applicant.

6. In view of the above we are of the view that his promotion and seniority do not suffer from any illegality and arbitrariness.

7. The Original Application has no force and is rejected.

No order as to costs.

(Air Marshal Anil Chopra)
Member (A)

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

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