

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

12.

O.A. No. 13 of 2012

Sub Maj S.K. Panigrahy

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Mr. S.S. Pandey, Advocate.

For respondents: Dr. S.P. Sharma, Advocate

CORAM:

HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.

HON'BLE LT. GEN. M.L. NAIDU, MEMBER.

ORDER
23.07.2012

1. Petitioner vide this petition has prayed to issue directions to respondents to act upon the corrected assumption certificate and make necessary amendment in the Group Part II Order showing physical assumption of rank by the petitioner on 04.01.2010 instead of 01.01.2010 as has been shown in the said Part II Order now.

2. Petitioner was enrolled in the Indian Army in the Corps of Engineers on 01.03.1996. He performed his duties with various units with all satisfaction between 1996 to 2010. While he was posted with College of Military Engineering, Pune, respondents issued his promotion order to the rank of Sub Maj by giving date of seniority w.e.f. 01.01.2010. He was detailed from 30.12.2009 to 02.01.2010 to perform the duties of Liaison Officer to Maj Gen S Subramanyam, the then Deputy Commandant who was on temporary duty at HQ Southern Command. After having been relieved from such duty on 02.01.2010, he reported to his unit on 04.01.2010 as 03.01.2010 was a Sunday. On the same day i.e. 04.01.2010, he assumed the rank of Sub Maj.

3. It is alleged that there was some mistake committed in preparing of assumption certificate wherein the date of joining of the petitioner was mentioned as 01.01.2010 and same was dispatched to respondent no. 3 vide communication dated 04.01.2010. However the mistake was noticed and on the same day i.e. on 04.01.2010, a fresh assumption certificate was prepared reflecting the actual date of assumption of promoted rank by the petitioner i.e. w.e.f. 04.01.2010 and a covering letter of the said date was published to respondent no. 3 in which it was clearly mentioned that the earlier assumption certificate dated 01.10.2010 was erroneously published and same be treated as cancelled. However, respondent no. 3 without any justified reasons, published Group Part II Order on 12.03.2010 notifying the assumption of the rank by the petitioner w.e.f. 01.01.2010 on the basis of cancelled assumption certificate. The Unit of the petitioner on receipt of such Group Part II Order dated 12.03.2010 sent a letter dated 26.07.2010 to respondent no. 3 requesting to carry out necessary corrections. The Officiating Commander, Faculty of Civil Engineering also wrote a letter dated 25.10.2010 to the Chief Record Officer for carrying out necessary correction and petitioner also submitted several representations however without result. He has, therefore, filed the present petition seeking aforesaid reliefs.

4. A reply has been filed by the respondents and they have contested the matter. It is pointed out that petitioner was promoted to the rank of Sub Maj w.e.f. 01.01.2010 vide BEG Records letter dated 01.12.2009 and the same was issued in advance so as to enable the petitioner to assume the higher rank by due date i.e. on 01.01.2010. As per the assumption certificate received vide CME Pune letter dated 04.01.2010, petitioner physically assumed the rank of Sub Maj on 01.01.2010, therefore, Record Office Part II

Order notifying promotion of the petitioner was published vide Part II Order dated 12.03.2010. It is further pointed out that fresh assumption certificate submitted by CME Pune dated 04.01.2010 showing petitioner's date of assumption as 04.01.2010 was not accepted by the Competent Authority being against the policy.

5. We have heard both the parties and gone through the record. The first communication dated 04.01.2010 regarding promotion order of the petitioner and the assumption certificate of the said date read as under;

"Telephone : 5063

*Faculty of Civil engineering
College of Military Engineering
CME, PO, Pune – 411 031*

1438/A1/138/CE

04.01.2010

*Records Office
BEG
C/O 56 APO
Pin – 9808779*

PROMOTION ORDER NO : 388 (SVY)(2009 SUB TO SUB MAJ (SAC)

- 1. Ref your promotion order No. 4603/R/388/CA6 dt. 01 Dec 09*
- 2. Assumption certificate in respect of JC-329450Y Sub/SAC SK Panigrahy of this College is submitted herewith for your info and further necessary action.*

*(Ritcha Sagar)
Lt Col
Offg SO 1 (Coord)
For Comdt*

*Encl : 01 only
Internal Copy to :-*

*Adm Wing ('A' Coy) – for info
HQ CME (Adm Br) – for info"*

ASSUMPTION CERTIFICATE

- 1. Ref your promotion order No. 4603/R/388/CA6 dt. 01 Dec 09.*

2. Certified that JC-329450Y sub/SAC SK Panigraphy was physically present in the unit on 01 Jan 2010 and assumed the duties of the rank of Sub Maj wef 01 Jan 2010.
3. It is also certified that the above named JCO is not involved in any insp/Vigilance/Criminal case as per Para 3 of AO 01/2001.
4. His present Medical Category is SHAPE 1.

(A Baidur)
Col
Offg Cdr
For Comdt

Station : CME, Pune-31

Date : 04 JAN, 2010”

6. Thereafter on the same date i.e. on 04.01.2010 another communication cancelling the earlier one was sent along with a fresh assumption certificate of the said date which read as under;

“Telephone : 5063

SPEED POST

Faculty of Civil engineering
College of Military Engineering
CME, PO, Pune – 411 031

1438/A1/142/CE

04.01.2010

Records Office
Bengal Engineer Group
C/o 56 APO

PROMOTION ORDER NO : 388 (SVY)/2009 SUB TO SUB MAJ (SAC)

1. Ref your promotion order No. 1438/A1/138/CE dt. 04 Jan 2010.
2. In this connection, it is intimated that JC-329450Y Sub Maj/SAC S K Panigraphy was assumed the rank physically on 04 Jan 2010 but as per assumption certificate attached with our letter under ref reflected the same as on 01 Jan 2010.

3. In this regard, you are requested to cancel above letter under ref and a fresh assumption certificate in r/o above JCO is fwd herewith for your info and further necessary action please.

(Ritcha Sagar)
Lt Col
Offg SO 1 (Coord)
For Comdt

Encl : 01 only

Internal
Copy to :-

Adm Wing ('A' Coy) – for info - for info pl.

HQ CME (Adm Br) – for info”

ASSUMPTION CERTIFICATE

1. Ref your promotion order No. 4603/R/388/CA6 dt. 01 Dec 09.
2. Certified that JC-329450Y Sub/SAC S K Panigraphy was physically present in the unit on 01 Jan 2010 and assumed the duties of the rank of Sub Maj wef 04 Jan 2010.
3. It is also certified that the above named JCO is not involved in any insp/Vigilance/Criminal case as per Para 3 of AO 01/2001.
4. His present Medical Category is SHAPE 1.

(A Baidur)
Col
Offg Cdr
For Comdt

Station : CME, Pune-31
Date : 04 JAN, 2010”

7. Thereafter another communication dated 26.07.2010 was addressed by the Unit to the Record Office regarding promotion of the petitioner which read as under;

“Telephone : 5070

Faculty of Civil engineering
College of Military Engineering
CME, PO, Pune – 411 031

1438/A1/315/CE

26 Jul 2010

Records Office
Bengal Engineer Group
C/o 56 APO

**PROMOTION OF JC-329450Y SUB MAJ S K PANIGRAHY VIDE
ORDER NO 388 (SVY)/2009 SUB TO SUB MAJ (SAC)**

1. Ref your promotion order No. 1438/A1/138/CE dt. 04 Jan 2010 and your Gp Order No 1/0210/2010 dated 12 Mar 2010 ser No. 0009.
2. In this connection, it is intimated that JC-329450Y Sub Maj/SAC S K Panigrahy was assumed the rank physically on 04 Jan 2010. The JCO could not able to wear the respective rank on due date because of unavoidable circumstances/duties. But in your above Gp order under ref reflects the date of assumption of rank of the concerned JCO as 01 Jan 2010.
3. Hence you are requested to cancel the above Gp order under ref to rectify the date of assumption of rank of the JCO as 04 Jan 2010 instead of 01 Jan 2010.
4. The photocopies of above reference letters and assumption certificate in r/o the above JCO is fwd herewith for your info and further necessary action please.

(A Baindur)
Col
OIC CA & Museum
For Comdt

Station : CME, Pune-31
Date 26 Jul 2010
Encl : 03 (three) only

*Internal
Copy to :-*

Adm Wing ('A' Coy) – for info - for info pl.

HQ CME (Adm Br) – for info”

8. Learned counsel for the petitioner submitted that thereafter on 25.10.2010 a letter was written by Brig PS Samudra to the Chief Record Officer, Record Office stating that *“it is seen from the documents of the JCO that his case is genuine. Hence I request you to kindly look into the matter and help the JCO to resolve his case especially wrt to para 12 of his personal application so that his career and service in the Army is not affected which in turn would also help him to avoid any financial loss.”*

9. Records bear that this communication of Brig PS Samudra has duly been replied by the respondents vide letter dated 19.11.2010 wherein it is mentioned that *“the case for amendment of the date of physical assumption to the rank of Sub Maj in respect of JC-329450Y Sub/SAC SK Panigrahy has been examined in detail. Assumption certificate has already recd vide your est letter No. 1438/A1/138/CE dated 04 Jan 2010 and Part II order to this effect has also been published vide Gp Part II order No 1/0210/0009/2010 dt 12 Mar 2010. Hence no fresh assumption certificate can be accepted. In view of above it is not feasible to change the date of assumption and cancellation of Gp Part II order at this stage”*.

10. The two communications addressed on the same date i.e. on 04.01.2010 along with assumption certificate create confusion either earlier letter written by the CO was wrong or the subsequent one. Normally once a letter has been written by the CO with all sense of responsibility certifying that petitioner was physically present in the unit on 01.01.2010, we see no reason

why the petitioner did not assume the rank on the same date. Normally as per human conduct when a promotion order is received then a person is

11. always anxious to join forthwith but in the present case according to first communication of 04.01.2010, petitioner assumed the rank of Sub Maj w.e.f. 01.01.2010, however subsequently by the another communication of the same date i.e. on 04.01.2010, it is notified by the CO that petitioner assumed the rank w.e.f. 04.01.2010.

12. We do not want to express any opinion and we leave it to the authority to investigate the matter properly by appointing a Senior CO who after hearing the petitioner and all the officials concerned involved in the present case and after doing a fair investigation shall resolve the case of the petitioner. This exercise should be completed within three months from the date of this order.

13. The petition is disposed of in view of above observations. No order as to costs.

**A.K. MATHUR
(Chairperson)**

**M.L. NAIDU
(Member)**

**New Delhi
July 23, 2012
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