

**COURT NO. 3,  
ARMED FORCES TRIBUNAL,  
PRINCIPAL BENCH, NEW DELHI**

**T.A. No. 215 of 2010  
(Delhi High Court W.P (C) No. 13109 of 2005)**

**IN THE MATTER OF:**

**Hav (SKT) Raj Bahadur** .....**Applicant**  
Through Mr. P.D.P. Deo, counsel for the applicant

Versus

**Union of India and Others** .....**Respondents**  
Through: Ms. Barkha Babbar, counsel for respondents

**CORAM :**

**HON'BLE JUSTICE MANAK MOHTA, JUDICIAL MEMBER,  
HON'BLE LT GEN Z.U.SHAH, ADMINISTRATIVE MEMBER**

**Order**

**Date: 29-4-2010**

1. The applicant filed a writ petition (civil) No.13109 of 2005 in the Hon'ble Delhi High Court against the delay in promotion to the rank of

Havaladar (Hav) by a period of 3 years and 19 days. The same was transferred to the Armed Forces Tribunal on 5.11.2009.

2. The applicant has requested that he be promoted to Hav with effect from the date his batch mates were promoted and also be detailed for Hav to naib subedar (Nb Sub) cadre along with his batch. The applicant was enrolled on 29.5.1984. He was promoted to Naik (Nk) on 5.9.1987. The applicant passed trade test II a prerequisite for being detailed on promotion cadre from Nk to Hav and the same was published in Part II order dated 27.12.1988 (Annexure P-1). The qualification was however published after a lapse of eight months vide Army Ordinance Corp Records Part II order dated 13.8.1989 (Annexure P-2) and entered in the documents of the applicant. This resulted in a delay in his detailment for Nk to Hav cadre. The applicant qualified in upgrading class I cadre in November 1989 and the same was published by AOC record part II order dated 13.1.1990 (Annexure P-3).

3. On 1.1.1990 the batch mates of the applicant were promoted to the rank of Hav but the applicant was not promoted on the grounds of

**“defaulter for second grade”** although he had qualified on the same on 27.12.1988.

4. The applicant contends that he should have been detailed immediately for Nk to Hav cadre. He was instead detailed, in December 1990 for first grade cadre a pre requisite for promotion to the rank of Nb Sub. He also subsequently qualified on Nk to Hav cadre on 29.6.1991. The applicant was ultimately promoted to Hav on 19.1.1993 with seniority with effect from 29.6.1991, three years and 19 days after his batch mates with seniority loss of one year and six months.

5. In October 1994 the batch mates of the applicant were detailed for Hav to Nb Sub Cadre. The applicant submitted an application requesting to be detailed (Annexure P-4). The applicant avers that the mistake on the part of AOC Records in delaying publication of qualification of trade test II resulted in his suppression by a period of three years and 19 days behind his batch mates. The applicant contends that vide letter at (Annexure P-5) the records office accepted their mistake.

6. The applicant submitted a statutory complaint on 29.5.2005. The same was returned by AOC Records on the grounds that the representation could not be accepted at that belated stage. The applicant contends that since the statutory complaint was addressed the Chief of Army Staff (COAS) the return of the statutory complaint, by an intermediary authority, was illegal.

7. The applicant has prayed that his seniority loss of one year and six month to the rank of Hav be restored and he should be paid the financial loss incurred because of delay in promotion to the rank of Hav by three years and 19 days. He has also prayed that he be detailed for Hav to Nb Sub cadre and considered with his batch mates for promotion to Nb Sub.

8. The respondents in their counter affidavit have stated that the applicant was enrolled on 29.5.1984. He was promoted Nk with seniority of 1.7.1987. The applicant was not detailed for Nk to Hav cadre along with his batch mates as during screening in February 1988 he was found to be lacking the mandatory requirement of passing in trade test class II. This fact was brought to the notice of 605 EME Battalion (Bn) where the applicant was serving. 605 EME Bn published

the casualty regarding passing trade test class II on 27.12.1988 (Annexure P-1) part II order dated 13.3.1989 (Annexure P-2) (and not 27.12.1988 as averred by the applicant) was published by AOC Records and the same recorded in the sheet roll of the applicant on 13.6.1989. The applicant was detailed on Nk to Hav cadre from 6.5.1991 to 29.6.1991. Due to lack of vacancy was promoted to Hav on 19.1.1993 with seniority from 29.6.1991.

9. The applicant submitted a statutory complaint 15 years after qualifying for trade test II. This became belated and was rejected. The applicant, when he was superseded should have represented. He has not been able to explain the delayed action on his part.

10. The respondents maintain that individuals are detailed on Nk to Hav cadre according to their seniority. The applicant did not represent when he was superseded by his batch mates on 29.6.1991. The batch mates of the applicant qualified on Nk to Hav cadre during March 1988 and accordingly were promoted to Hav with effect from 1.1.1990.

11. The applicant was detailed for upgrading cadre course I to avoid financial loss to him. The applicant met the requirements for promotion to Hav on 29.6.1991 but could be promoted only on 19.1.1993 when a vacancy arose. He thus could not be detailed for Hav to Nb Sub cadre along with his batch mates. He would however be detailed in his turn. The respondents have recommended that the application be rejected.

12. In a rejoinder to the counter affidavit of the respondents the applicant has reiterated that it was the duty of AOC records to ensure that he was screened and detailed for the Nk to Hav cadre on time. The respondents also took an excessively long time in publishing the Part II order of his Class II test. The applicant avers that once he came to know that he had not been detailed on Hav to Nb Sub cadre he submitted an application on 28.10.2004. Subsequently he submitted his statutory complaint. There is no question of the case being late. The AOC Centre should have detailed him for promotion cadre Nk to Hav at the earliest but instead detailed him for up gradation course from 19.11.1989 to 13.1.1990.

13. We have heard the rival contentions and perused the records. The applicant passed trade test II, a prerequisite for being detailed on Nk to Hav, on 27.12.1988. The casualty of the same was published by his unit on 13.3.1989. The Part II order of the same was however published by AOC Records on 13.8.1989 after a lapse of eight months with no fault of applicant. This resulted in a delay in his detailment for Nk to Hav Cadre as a result he was superseded by his batch mates. The applicant subsequently qualified on the Nk to Hav Cadre on 29.6.1991 and was promoted to Hav on 19.1.1993 with seniority with effect from 29.6.1991. The applicant was not detailed for Nk to Hav cadre along with his batch mates because of delay in publication of his casualty and Part II order. The applicant is not to be blamed for this. Redress is warranted. We therefore direct that he be given seniority and promotion along with his batch mates with all consequential benefits. The application is allowed accordingly. No orders as to costs.

**MANAK MOHTA**  
(Judicial Member)

**Z.U. SHAH**  
(Administrative Member)

**Announced in the open court**  
**Dated: 29-4-2010**