

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

**T.A. No. 487 of 2010  
(Delhi High Court W.P (C) No. 7162 of 2008)**

**IN THE MATTER OF:**

**Dfr Ashwani Kumar**

**.....Applicant**

Through Mr. D.S. Kauntae, counsel for the applicant

Versus

**Union of India and Others**

**.....Respondents**

Through Mr. Ankur Chhibber, counsel for the respondents

**CORAM:**

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

**Order**

**Date: 1-7-2010**

1. The applicant filed writ petition (civil) No. 7162 of 2008 in the Hon'ble Delhi High Court for quashing the discharge order dated 30.4.2008 and for quashing the order passed on his statutory complaint dated 14.8.2008 rejecting the same. He has also prayed for promotion to

the next higher rank ie. Nb Risaldar with all consequential benefits. The same was transferred to the Armed Forces Tribunal 4.12.2009.

2. The brief facts are that the applicant's date of birth is 16.6.1966. He was enrolled in the Army as a driver/ gunner on 11.4.1984. He was promoted the rank of Dafadar (equivalent to Havildar) with effect from 1.5.2004. It is contended by the applicant that he appeared in the promotion cadre test to Nb Risaldar conducted by Commanding Officer (CO) 76 Armd Regt. The applicant cleared six subjects but failed in remaining five subjects as per result sheet dated 4.10.2009 (**Annexure P-2**). The applicant further contends that on 19.10.2007 as per policy the competent authority Bde Cdr 14(I) Armd Bde constituted a subsequent board of officers in accordance with Army Order 45/80 to attend the promotion cadre test. The applicant was allowed to appear and cleared the remaining subjects which he had not cleared earlier. He was declared passed and the result sheet dated 26.3.2008 was published (**Annexure P-3**). The same was notified by the concerned authorities by General Order S. No. 0/0022/2008 (**Annexure P-4**) and was endorsed in the service documents of the applicant. On 1.4.2008 a vacancy had occurred and the applicant was eligible for promotion as per promotion

policy dated 10.10.1997. He was however not promoted with effect from 1.4.2008 but sent on discharge.

3. On 15.4.2008 the applicant submitted an application along with relevant records stating that he had passed the cadre test and he be promoted to the higher rank of Nb Risaldar with effect from 1.4.2008 as vacancy was available. He was however not promoted. On 25.4.2008 the applicant also filed a statutory complaint(**Annexure P-9**). He also filed a writ petition (civil) No. 3317 of 2008 and CM 6369 of 2008 before the Hon'ble Delhi High Court challenging his discharge order. He also prayed for promotion along with a miscellaneous application for staying his discharge. The said writ was disposed off on 30.4.2008 (**Annexure P-10**) with a direction to dispose off the statutory complaint within three months. The statutory complaint was rejected vide order dated 14.8.2008 and he was intimated on 6.9.2008 (**Annexure P-11**)

4. The applicant filed the present writ petition before the Hon'ble Delhi High Court again challenging his discharge order as well other relief mentioned earlier. The main contention of the applicant in the present application is that he was fit for promotion and a vacancy existed



on 1.4.2008 but he was not promoted to the rank of Nb Risaldar with effect from 1.4.2008 but discharged on 30.4.2008. It was contended that he passed the requisite promotion cadre test and was entitled for promotion as per the promotion policy dated 10.10.1997 but denied the same on the grounds that he had passed the cadre test without obtaining prior permission of the commanding officer of his parent unit. The applicant's contention is that he was permitted to appear in the promotion test and a roll number was allotted. After passing cadre test a Part II order was published and record office was intimated but he was not promoted even though he had qualified the prescribed cadre test and he was made to retire. He has prayed that the letter dated 14.8.2008 rejecting his statutory complaint be quashed and he be promoted to the rank of Nb Risaldar.

5. The respondents in their counter affidavit have stated that the applicant's parent unit was 76 Armd Regiment. On 19.11.2004 he was posted to HQ 6 (I) Armd Bde on extra regimental posting. While posted in his parent unit he attended the cadre test for promotion conducted from 1.10.2007 to 4.10.2007 but failed to clear in five subjects which were mandatory for promotion. The respondents contended that while

the applicant was serving with HQ 6 (I) Armd Bde his parent unit 76 Armd Regiment conducted another promotion cadre test on 6 Jan 2008 for which a letter was issued to the unit where applicant was serving on ERE, along with two other eligible NCOS of the same unit. These two appeared in the cadre test in 76 Armd Regt but the applicant did not appear. The respondents submitted that as per Armoured Corps Records ROI (Record Office Instructions) No. 001/2005 the persons on extra regimental employment are not allowed to attend promotion tests without written permission of the commandant of parent unit. The applicant appeared in cadre test, conducted by 14 HORSE, on 2.1.2008 without obtaining permission from his parent unit ie. 76 Armd regiment. The result was therefore not taken into consideration. The applicant filed a statutory complaint dated 25.4.2008 but that was rejected by the competent authority on 14.8.2008. The same was communicated on 6.9.2009. It is stated the applicant retired from service on 30.4.2008. The respondents prayed that the application be dismissed.

6. We heard the arguments and perused the record. During the course of the argument learned counsel for the applicant reiterated the submissions made earlier in his application. He further stated that the

plea taken by the respondents is not sustainable. The competent authority himself had permitted the applicant to appear in the test and the results were notified. On the basis of that record respondents were under obligation to proceed and to promote him. They however failed to perform their duty despite his written request made on 15.4.2008. The learned counsel for the applicant in support of his contention cited the judgment given in the case of *Dfr Satvir Singh Vs. UOI (2007 (96) DRJ 444 (DB)*. On the basis of the aforesaid submission he prayed that the application be allowed.

7. On the other hand learned counsel appearing on behalf of the respondent refuted the contentions and submitted that the applicant could not be treated as a passed candidate as he has not taken prior permission from his parent regiment before appearing in the test. They requested that the application be rejected.

8. We have considered the rival submissions and perused the judgment cited by the learned counsel for the applicant. The following facts are not under dispute. The applicant appeared in the cadre test conducted by CO 76 Armd Regt, from 1-4 October 2007 but he could



not clear all the subjects. Thereafter on 19.10.2007 he appeared in the test conducted by Bde Cdr 14 (I) Armd Bde in accordance with Army Order 45/80 and he cleared the remaining subjects. Notification in this respect was issued and the same was submitted to the concerned records. The contention of the respondent that prior permission should have been taken before appearing in the cadre test outside the unit is not sustainable as permission to appear was given by a competent authority and roll number was allotted and the applicant cleared all the remaining subjects. The same issue was for adjudication in the case of *Dfr Satvir Singh Vs. UOI (Supra)* the Hon'ble Delhi High Court. The court has observed that main point for consideration was to see the passing of the cadre test. The court observed "*whether the non issue of the permission would render the result of the petitioner liable to be cancelled. Our answer is in the negative*". In this case also the applicant had passed the cadre test. This judgment fully supports the contention of the applicant. The applicant had also made a written representation on 15.4.2008 before his discharge and statutory complaint on 25.4.2008. Both were not examined and not considered properly and were rejected. On the basis of the aforesaid discussion the applicant is entitled for promotion to the rank of Nb Risaldar. We quash the order dated 14.5.2008 passed on his statutory

complaint. We direct that the applicant be considered for promotion to the next higher rank ie. Nb Risaldar and if found fit in all respects he is entitled to all consequential benefits. In that case the discharge order will not come in the way. This exercise should be done preferably within four months from the date of this order. The application is allowed. No costs.

**MANAK MOHTA**  
(Judicial Member)

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

**Announced in the open court**  
**Dated: 1.7.2010**