

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

06.

O. A. No. 146 of 2010

V.K. Mehta

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Ms. Shikha Roy Pabbi, Advocate.

For respondents: Sh. R. Balasubramanian, Advocate with Lt. Cdr. Varun Singh.

CORAM:

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

HON'BLE LT. GEN. S.S.DHILLON, MEMBER.

ORDER  
18.10.2011

1. Petitioner by this petition has prayed that the Petitioner may be granted the rank of Commander (Time Scale) with effect from 1<sup>st</sup> October 1994 i.e. on completion of 21 years of service and he may be granted pension of Commander (TS) from 1<sup>st</sup> January 1996. He has also prayed that he should be given promotion to the post of Commander (TS) and consequential retiring and pensionary benefit arising out of that promotion.

2. The Petitioner was enrolled in the Navy as a Sailor on 22<sup>nd</sup> August 1960 and with the passage of time he became Sub. Lt. On 30<sup>th</sup> September 1973. On 30<sup>th</sup> December 1995 he retired as a Lt. Cdr. Thereafter he was re-employed in 1996. The main grievance of the Petitioner in this petition is that he should have been promoted to the post of Commander (TS) after putting in 21 years of service as per the Naval Regulations 151, 161 and 199, Chapter VI of Navy (Discipline and Miscellaneous Provisions) Regulations 1965. These Regulations have been framed

under Section 154 of the Navy Act, 1957. Chapter VI deals with General Service Officers Promotion and Ages of Compulsory Retirement. Regulation 151 deals with General i.e. Promotion in Gazetted Appointments. Regulation 161 deals with 'Promotion of Officers from the rank of Lieutenant and above which appears under Section IV of the Electrical Branch-Promotion. Petitioner was a Sailor in the Electrical Branch. Chapter VII deals with the Branch Officers (Other than Instructor Branch) Promotion and Ages of Compulsory Retirement. Section 199 appears under Section II which says that "Lieutenant-Commander and above-Officers shall be promoted to the rank of Lieutenant-Commander and above under the regulations applicable to the General Service Officers." Therefore, learned counsel for the Petitioner submitted that the case of the Petitioner should also be considered in the same manner as if considered for the Officers of the General Service Officers. Therefore the contention of learned counsel for the Petitioner is that the case of the Petitioner should have been considered in the manner as is considered in the case of General Duty Officers and which has not been done as he has already put in more than 21 years of service and as such he should be promoted to the post of Commander (TS).

3. As against this a reply has been filed by the Respondents and the Respondents have taken the position that Chapter VI which deals with General Service Officers Promotion and Ages of Compulsory Retirement is not applicable in the case of Petitioner. Petitioner is recruited as a Sailor and from there he became an officer and those who become Officer from the grade of Sailor they are known as Special Duty List Officers and the General Officers who are recruited they are direct recruits and these Special Duty List Officers are from promotee Officers. The cases of these officers are governed by the Naval Instruction 32 of 1967 which deals with

'Special Duties List Officers- Qualification for Promotion and Ages of Compulsory Retirements and which reads as under:

"Regulations regarding "Special Duties List Officers"- Qualifications for promotion and ages of compulsory retirement are given in Appendix 'A' to this Navy Instruction. A concordance indicating the source of the regulations is furnished in Appendix 'B'. The Regulations for the navy will be amended in due course."

4. Section I deals with the General Regulations and the Procedure which has been laid down for promotion. We are concerned primarily with Section II-Special Duties List-Promotion to Lieutenant and Above which is relevant for our purposes and reads as under:

"Selection for promotion will normally be made on 31<sup>st</sup> March and 30<sup>th</sup> September.

Promotions in the Special Duties List will, at all stages, be by selection within the following zones:-

- |     |                                  |   |
|-----|----------------------------------|---|
| (a) | Sub-Lieut. to Lieutenant         | 5 to 9 years seniority as Sub.<br>Lieut/Ag. Sub. Lieut.             |
| (b) | Lieut. to Lieut. Commander       | 5 years seniority as Lieutenant<br>up to 47½ years of age.          |
| (c) | Lieut. Commander to<br>Commander | 3 years seniority as Lieut.<br>Commander upto 49½ years of<br>age." |



5. As per this procedure the incumbent as Sub Lt. has to put in 5 to 9 years seniority or Acting Lt. and then from Lt. to Lt. Commander 5 years seniority as Lt. up to 47 ½ years of age and then from Lt. Commander to Commander 3 years seniority as Lt. Commander up to 49½ years of age. The promotion is by way of selection. In case of the Petitioner he could not be considered along with the General Duty Officers as the service conditions of the Petitioner are governed by Naval Instruction 32 and the reference made by learned counsel for the Petitioner of the Regulation 199 has no applicability as that is only applicable to the General Duty Officers and especially with regard to the Branch Officers. The post of the Branch Officer has already been abolished and, therefore, these Regulations are not even applicable to Branch Officers except the exceptions made in Rules with which we are not concerned. However so far as the case of the Petitioner is concerned it is not governed by these Regulations and the post of Cdr. (TS) was created for the first time on 2<sup>nd</sup> June 1999. Therefore so far as the post of Commander (TS) is concerned it was created for the first time in 1999 and the Petitioner retired on 31<sup>st</sup> December 1995. Therefore there was no question for considering the Petitioner for the post of Commander (TS) because at that time there was no post of Commander (TS) and it came to be created for the first time in 1999 that is much before Petitioner has retired on attaining superannuation on 31<sup>st</sup> December 1995. Hence no relief for grant of Petitioner with regard to Commander (TS) can be given to him.

6. Learned counsel for the Petitioner has further prayed that the Petitioner may be given the benefit of the order dated 21<sup>st</sup> November 1997 which says that an Officer who becomes substantive Maj. or equivalent on or after 1<sup>st</sup> January 1996 will be granted the scale of Lt. Col. or equivalent on their stagnation for one year in the revised scale of Maj. or equivalent. Such an officer will, however, continue to draw

the rank pay for Maj. or equivalent. Then it further says that as a one time measure, however, those who become substantive Majors or equivalent before 1<sup>st</sup> January 1996, will be granted the scale of Lt. Col. or equivalent on completion of 21 years of commissioned service i.e. in their 22<sup>nd</sup> year with the rank pay of Maj. This order came on 21<sup>st</sup> November 1997 and was pertained to pay and allowance of Armed Forces. The incumbent retired on 31<sup>st</sup> December 1995 therefore he cannot get any benefit of this order also. This order only pertains to grant of pay and allowances for the officers who are stagnating in a particular rank and therefore they made two categories i.e. who are prior to 1<sup>st</sup> January 1996 and post 1<sup>st</sup> January 1996 i.e. the officers who become substantive major or equivalent after 1<sup>st</sup> January 1996 will be granted scale of Lt. Col. or equivalent on completion of 21 years of commissioned service i.e. in their 22<sup>nd</sup> year with the rank pay of Maj. Such officers will, however, continue to draw the rank pay of Maj. or equivalent. In either of the two conditions mentioned above, the Petitioner does not fall and, therefore, he is not entitled to any benefit of pay and allowances of the Col.

7. Consequently, we do not find any merit in this petition and the same is dismissed with no order as to costs.

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

**S.S. DHILLON**  
(Member)

New Delhi  
October 18, 2011  
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