

**COURT NO. 3, ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
O.A. NO. 213 OF 2010**

IN THE MATTER OF:

Lt Col Hardeep SodhiApplicant
Through : Mr. K. Ramesh, counsel for the Applicant

Versus

Union of India and OthersRespondents
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**

JUDGMENT

Date: 29.04.2011

1. The applicant has filed this OA for quashing and setting aside the impugned orders dated 02.01.2004 and 01.06.2006 by which his non statutory and statutory complaints were rejected respectively. He has further prayed that directions be issued to respondents for reconsidering him as a fresh case of 1984 batch for the promotion to the higher rank and if he is empanelled then grant of all consequential benefits including seniority and pay and allowances. Respondents appeared and filed their reply to the application.

2. The brief facts of the case for the just disposal of the application are that applicant was granted Short Service Commission on 10.03.1984 and got permanent regular Commission and his seniority was fixed as on 09.11.1984. His batch^e of 1984 was considered for higher rank but applicant's name was neither in the category of fit or unfit or withdrawn or deferred lists of the officers. Thereafter he filed non statutory complaint as well as statutory complaint. During this period, he also moved an RTI application to find out the reasons for non inclusion. In the reply to RTI application, it was revealed that his 1984 batch was factually considered in the August, 1999. But in reply to his statutory complaint, he was intimated that he was considered as fresh case in May, 2000 and again considered as first review in August, 2000. It is submitted that as per RTI information when his batch ~~was~~ of 1984 was considered as fresh in August, 1999 why his name was not considered along with batch mates. It is further submitted that even if this mistake had occurred by considering him belatedly in May, 2000 then why he was put in first review in August, 2000 within three months thereby depriving him of any fresh ACR inputs. His non statutory as well statutory complaints were disposed by impugned orders.

3. Reply to the application was filed on behalf of the respondents stating inter-alia that the applicant was due for promotion to the higher rank but due to some misunderstanding about the applicant qualifying in Part D Promotion Examination, the applicant was not considered in

August, 1999 along with his batch mates of 1984 seniority. When this mistake was detected applicant was considered by No. 4 Selection Board (SB) with the profile of his batch mates but he was not found fit for empanelment by No. 4 SB in value judgment. It was further submitted that in June, 2000, the applicant was informed that he was considered as a fresh case of 1984 seniority is factually correct. He was also informed in September, 2000 about his first review was held in August, 2000. It was also stated in reply that the final review of the applicant was held in February 2001 but he was not empanelled and was intimated vide letter dated 22.03.2001. It was submitted that in this way he was given three considerations by No. 4 SB as entitled but he was not empanelled.

4. In reply it was also submitted that applicant was considered with different base and cut off confidential reports with additional fresh confidential report whenever No. 4 SB was held. The details of consideration by No. 4 SB and grading awarded to the applicant are reproduced as under :

S.No.	Look Type	Month/Year of Consideration	Cut Off	Grading Awarded
(a)	Fresh	May 2000	06/98-11/98	'Z' (Not Empanelled)
(b)	First Review	Aug 2000	12/98-05/99	'Z' (Not Empanelled)
(c)	Final Review	Feb 2001	06/99-05/00	'Z' (Not Empanelled)

5. In reply it was also stated that applicant filed complaints and they were disposed of after due consideration in 2004. However after a lapse of more than three years, the present OA is filed i.e. hit by limitation provided under Section 22 of the Armed Forces Tribunal Act 2007. A prayer was made to dismiss the application.


6. Rejoinder to reply was filed by the applicant reiterating the grounds mentioned in the applicant. Thereafter arguments were heard and records were perused.

7. During the course of arguments, learned counsel for the applicant again submitted that the applicant has been deprived of his legitimate right to be considered in August 1999 along with his batch mates of 1984 seniority. Later on he was considered along with the junior 1985 batch. During his first review, he was considered within three months as a fresh case without a reasonable time with fresh inputs, therefore, injustice has been done with the applicant. He filed statutory complaint but that was not properly considered.

8. On the contrary, learned counsel for the respondents submitted that due to bonafide misunderstanding the name of applicant was not considered along with his batch mates in August 1999. His case was considered as a fresh case along with his batch mates in May 2000 and his service profile was compared along with his batch mates but he was not empanelled. Further, on fresh inputs were available and he was considered for review in August, 2000 and in final review in

February, 2001 according to his revised seniority but he was not empanelled. No prejudice has been caused to the applicant.

9. We have perused the rival submissions and gone through the record. It is admitted position that the applicant is of 1984 batch and he was due for consideration along with his batch mates in August, 1999 but due to a mistake his name was not considered in August, 1999. His name was however considered along with data of his batch mates as a fresh case in May, 2000 up to ACR for period 6/98 to 11/98. He was however not found fit for empanelment. The contention of the learned counsel for the applicant that he was considered along with junior batch of 1985 is not sustainable. Likewise his review was held in August, 2000 with fresh inputs of ACR from 12/98 to 05/99. Though it was after three months but it is seen that he was considered along with fresh inputs. His final review was held in February 2001 with additional ACR input from 07/99 to 05/00. His case was considered along with officers of corresponding seniority but he was not empanelled on relative merit. There is no allegation from applicant side of any malafide or an ulterior motive for depriving him for consideration along with his batch mates in August, 1999. Thereafter his case was considered but on merits he was not empanelled. He filed statutory complaint in this respect but the same was rejected after due consideration.

10. Considering the facts of the case, if ~~had~~ applicant ^{had} been  considered along with batch mates of 1984 in August 1999, even then he would have not been empanelled for promotion to the higher rank on the basis of his service profile. So his late consideration has not adversely affected his chances for promotion.

11. On the basis of aforesaid discussions, no case is made out for interference. The O.A. is dismissed. No orders as to costs.

Z.U. SHAH
(Administrative Member)

MANAK MOHTA
(Judicial Member)

**Announced in the open Court
on this 29th day of April 2011**