

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI
09.

O. A. No. 221 of 2010

Havildar Chandu Chavhan

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Mr. K. Ramesh, Advocate.

For respondents: Ms. Susmita Lal, Advocate with Lt Col Randhir Singh

CORAM:

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

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

ORDER
19.12.2011

Petitioner vide this petition has prayed that direction may be issued to the respondents to promote the petitioner to the rank of Naib Subedar (Nb Sub) vice the vacancy that arose on 01.06.2011, instead of Hav Srinivas Reddy, who is admittedly junior to the applicant in all respects.

Petitioner was recruited in the Indian Army as Sepoy on 05.02.1993 and promoted to Hav on 20.12.2005. Thereafter he was sent on Extra Regimental Employment (ERE) to Target Support Unit from 29.01.2006 to 24.05.2010. During this ERE period, Hav Srinivas Reddy who was in the unit qualified in the Nb Sub Promotion cadre. The unit did not inform the petitioner about the Promotion Cadre. When the petitioner rejoined the parent unit on 24.05.2010, learnt of this promotion and he requested to be detailed for the Nb Sub promotion cadre for which he was detailed and qualified on 31.12.2010. It is alleged that since he was senior to Hav Srinivas Reddy, he should have been promoted instead of him. He filed necessary representation

to the respondents but without result. Hence, he approached this Tribunal by filing the present petition.

A reply has been filed by the respondents. They contested the matter and pointed out that the petitioners unit is 403 Light Air Defence Regiment (Composite) informed the Petitioner that he was lacking Map Reading Standard I (One), qualification which is a mandatory education qualification requirement prior to attending Hav to Nb Sub Promotion Cadre. It was submitted that on reporting back to the Unit on 24.05.2010, the petitioner had an interview with Commanding Officer and expressed his apprehension of getting superseded for not having qualified Hav to Nb sub Promotion Cadre. Immediately, CO directed the Battery Commander to take personal interest and initiative to identify the formation/unit where the said cadre was under progress or likely to be conducted shortly. In June, 2010, the petitioner as a special case was sent to 20 Air Defence Regiment at Ferozpur to appear in Hav to Nb Sub Promotion Cadre vide 403 Light Air Defence Regiment (Composite) Movement order dated 21.06.2010. Petitioner was also intimated and explained that as per the existing rule position, the NCOs undertaking the Hav to Nb Sub Promotion Examination need to attend the cadre completely and have at least 90% attendance, which the petitioner did not have. However, petitioner appeared in the examination on 29.06.2010 so that he could at least gain some experience. However, since he did not have the requisite attendance, he could not appear in this test. In the next available opportunity, petitioner was sent to 46 Air Defence Regiment on 20.11.2010 to attend Hav to Nb Sub Promotion Cadre from 22.11.2010 to 31.12.2010. Petitioner passed the said cadre on 31.12.2010. The Regular Unit Promotion Board for Hav to Nb Sub was conducted in the unit on 01.11.2010. On that

day, the petitioner was not eligible for empanelling in Regular Unit Promotion Board as he was lacking Hav to Nb Sub Promotion Cadre. As such, Hav Srinivasa Reddy who was junior to the petitioner was placed in the panel and his promotion orders were issued for assuming Nb Sub rank on 01.06.2011. It was submitted that all reasonable efforts were taken to safeguard the petitioner's promotion.

Learned counsel for the petitioner submitted that since the Promotion Cadres are controlled by the Unit, it was their responsibility to inform the petitioner, as he was sent on ERE due to administrative reasons, therefore, he cannot be blamed for it. It was also admitted that no intimation for Promotion Cadre was ever sent to the petitioner. Therefore, learned counsel submitted that it was not the fault of the petitioner that he could not pass the Promotion Cadre in time. Moreover, he passed the Promotion cadre on 31.12.2010 at the first available opportunity and since he is senior to Hav Srinivasa Reddy, therefore, he should be promoted from that date.

Learned counsel for the respondents pointed out that Hav Srinivasa Reddy is not a party in this petition, therefore, promotion of Hav Srinivasa Reddy cannot be challenged or set aside. Moreover, Hav Srinivasa Reddy was eligible for consideration for promotion at the time DPC was held on 01.11.2010, whereas petitioner was not eligible to be placed before the DPC. Lt Col Randhir Singh appearing on behalf of the respondents submitted that next DPC for promotion to the rank of Nb Sub had already been held in Nov, 2011 and petitioner has been empanelled and as and when the next vacancy arises, petitioner will be considered for promotion to the rank of Nb Sub.

We have bestowed our best of consideration and we are of the opinion that promotion of Hav Srinivasa Reddy cannot be challenged before us as he

is not a party before us. Be that as it may, it was the responsibility of the Unit to inform the petitioner about the holding of the Promotion Cadre. Had the petitioner been informed, he could have appeared for the Map Reading examination as well Promotion Cadre Course. It appears to be bonafide error on the part of unit for that, we do not wish to deprive him of his rightful calaim.

Accordingly, we direct that as and when next vacancy in his trade arises, same may be given to the petitioner and his seniority may be protected so that he may not be put at a loss for no mistake of his. Hence, we allow the petition in part and direct the respondents to promote the petitioner in the next available vacancy and his seniority vis-a'-vis Hav Srinivasa Reddy be protected. The petition is accordingly disposed of. No order as to costs.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
December 19, 2011

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