

**COURT NO. 3, ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
O.A. No. 256 of 2010**

IN THE MATTER OF:

Havildar Chanchal SahaApplicant
Through Mr. K. Ramesh, counsel for the Applicant .

Versus

Union of India and OthersRespondents
Through: Mr. Anil Gautam counsel for the Respondents.

CORAM:

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

JUDGMENT

Date: 04.03.2011

1. The applicant has filed O.A. 256/2010 before this Tribunal praying for quashing of order of discharge vide ASC Records letter dated 21 May 2009(page 12 paper book) and directions of COAS dt. 21 August 2009 rejecting his statutory complaint. The applicant has also prayed that he be detailed for Hav to Nb Sub promotion cadre cou

rse and be promoted Nb Sub with ante date seniority alongwith his batch mates.

2. The applicant was enrolled in the Army as Clerk (GD) on 25 May 1984 and promoted to the rank of Hav on 1 Jan1991.

3. The applicant contends that he was not detailed for Hav to Nb Sub promotion cadre from 10 September 2007 to 27 October 2007(Annx A1) wherein persons junior to him were detailed for this course. The applicant submitted a statutory complaint on 18 August 2008 (Annx A4). The same was rejected by the COAS on 21 August 09 (page 10 of paper book). The applicant was discharged on 31 May 2010 on attaining the age of superannuation in the rank of Hav (page 12 of paper book).

4. The respondents in their counter affidavit have stated that the applicant was enrolled in the Army on 25 May1984. He was promoted Hav on 1 January 1991. The seniority roll of Hav Clk GD was issued vide ASC Records letter dated 9 May 06 wherein the applicant stands at seniority 1887 (a) (page 35 of paper book).

5. Havs of the requisite seniority were detailed on Hav to Nb Sub Cadre, PCJ-1 held at ASC Centre North from 5 July 07 to 25 August 07. Personnel upto seniority number 1845 were detailed for this course. Subsequently for course PCJ-2 from 10 September 07 to 22 October

2007 personnel upto seniority 1887 were detailed. The applicant stood at seniority 1887A and thus was not detailed. Again personnel were detailed for course PCJ-3 from 19 Nov 2007 to 5 January 2008. The applicant was to attain the age of 46 on 28 Oct 2007 after which he would become overage for promotion to the rank of Nb Sub. As per Govt. of India, Ministry of Defence letter dated 10.05.1999 (Annex. R-1) the applicant was thus overage on 28 October 07 before commencement of course PCJ-3.

6. The respondents have stated that Hav to Nb Sub promotion cadre is a mandatory requirement for promotion. The applicant has not qualified on the same and thus could not be promoted. The respondents have recommended that the application be rejected.

7. In a rejoinder affidavit the applicant has repeated the earlier points given by him.

8. We have heard the arguments and perused the records, specially the seniority roll of Hav Clks at page 28 of paper book. The applicant's name figures at seniority 1887A. Nominations for Hav to Nb Sub cadre for PCJ-1 and PCJ-2 were made upto seniority 1887 and the applicant narrowly missed the opportunity of being detailed. Subsequently for course PCJ-3 from 19 Nov 2007 to 5 January 2008 the applicant had become overage for promotion and thus no purpose was served in

detailing him for the course. The applicant superannuated in the rank of Hav on 31 May,2010. We find that the applicant was below the merit position for detailment on Hav to Nb Sub promotion cadre course held between 05.07.2007 to 25.08.2008 and between 10.09.2007 to 22.10.2007 as per the seniority roll. Thereafter he became overage by attaining the age of 46 years on 28.10.2007 and could not be considered for promotion to the rank of Nb Sub. Thus no purpose was going to be served in detailing him for the course. The denial of detailment in course held between 19.11.2007 to 05.01.2008 was not unjustified. No prejudice was caused to the applicant. He was also not entitled to be promoted due to lacking qualification in cadre course. No injustice has been done to the applicant and relief is not warranted. Application is dismissed. No cost.

Z.U.SHAH
(Administrative Member)

MANAK MOHTA
(Judicial Member)

Announced in the open Court
on the day of 4th March, 2011