

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH  
NEW DELHI.

OA No.330 of 2010

**Lt. Col. Praveen**

**...Petitioner**

**Versus**

**Union of India & Ors.**

**...Respondents**

For the Petitioner :

Mr.Nitendra Sharma, Advocate

For the Respondents:

Mr. Ankur Chibber, Advocate.

**C O R A M:**

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

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

**JUDGMENT**  
**(13.7.2011)**

**Justice A.K.Mathur, Chairperson**

1. Petitioner by this petition has prayed to quash the order dated 19.4.2010 and also prayed that case of petitioner may be considered for promotion from Lt. Colonel to Colonel before the No.3 Selection Board.
2. Petitioner was commissioned in Army in Corps of Military Farms as a Major on 16.12.2004. The petitioner passed the promotional examination Part-'D' and was granted

the substantive promotion to the rank of Lt. Colonel on 12.1.2007. He was informed by communication dated-12.4.2007 that his date of revised seniority as 30.10.1994 has been refixed by the order dated 29.3.2007. On receipt of this letter of revised seniority, he sent a representation dated-17.4.2007 and submitted that the respondent has already given the promotion to the 10 RVC officers and one Military Farm officer from the post of Lt.Colonel to Colonel through the Selection Board and their seniority was also revised but for the promotion of Lt.Col to Colonel that was not the hindrance as per the averment and the counter filed in writ petition before the Hon'ble High Court of Delhi and it is said that in their case loss of seniority was revoked. Under such circumstances, the petitioner request that on the same analogy, his case also be taken up for reconsideration. Petitioner filed a Writ Petition in the Hon'ble High Court of Delhi i.e. WP(C) No.9106/2007 and all pleadings were complete meanwhile case was transferred to Armed Forces Tribunal and was listed in Court No.3 and due to

technicalities the liberty was given to the applicant to file a statutory complaint before the respondents with the directions to the respondents that the applicant statutory complaint may be decided before the Selection Board No.3 and Selection Board No.3 is likely to meet in the month of December. Petitioner sent statutory complaint through proper channel and same was not decided. Since it was not decided within the time as directed by the Tribunal a contempt petition was filed and thereafter same was decided on 17.4.2010 and promotion was declined to the petitioner. Hence petitioner has filed this present petition.

3. The main grievance of the petitioner in this petition is that his seniority has been wrongly fixed and he has prayed and submitted that there is a serious discrimination with persons belonging to Army and Military Farms and RVC Officers.
4. The respondent in their reply has pointed out that the petitioner is governed by the Regulations 65 and 79 and as per Regulation 65 of the Army Regulation 1997, the

petitioner is entitled to promotion to the rank of Major subject to fulfilling two conditions namely, 13 years commissioned reckonable service, however, this 13 years of requirement has been reduced to 12 years after qualifying the promotional examination i.e. Part D Promotional Examination. The regulation 79 (b) (ii) of Army Regulations, 1987 provides that:

***“Offices who do not pass the promotions examinations within prescribed length of service for promotion to the ranks of Captain or Major as given in Para 65 will lose seniority to the extent of extra time taken by them to pass the requisite examination.”***

5. The petitioner on completion of 12 years of service on 09.6.2002 was not promoted to the rank of Major. The petitioner in accordance with the Para 79(e) continued to lose seniority until he passed Part ‘D’ Promotional Examination on 30.10.2006 only. Meanwhile the AVSC report was implemented on 16.12.2004 for which passing of promotional examination was not mandatory. In that it was laid down that *“Officers became eligible to the rank of Major after six years of service instead of 12 years of service earlier and qualifying of Part ‘D’*

*Promotional Examination for promotion to the rank of Major became inapplicable”.*

6. The AVSC report further provided that Officers became eligible to the rank of Lt.Col on completion of 13 years of reckonable commissioned service whereas Remount and Veterinary Corps (RVC) Officers in whose case promotion was by time scale on completion of 17 years of reckonable commissioned service. The qualifying Part ‘D’ Examination was made mandatory for promotion to the rank of Lt. Col. which was earlier mandatory for promotion to the rank of Major. It is also pointed out that Officers who failed to pass the Part ‘D’ Examination within prescribed period of 13 years of reckonable commissioned service for the substantive rank of Lt.Col. would lose seniority to the extent of extra period taken by them to pass the examination. This was brought by Special Army Instruction 1/S/2006.
7. The petitioner in this case passed the Part ‘D’ Promotional Examination only on 13.10.2006 and was

promoted to the rank of Lt.Col on the same date. The applicant took extra time of 04 years, 04 months and 21 days to pass Part 'D' Promotional Examination. Accordingly, his revised date of seniority was fixed as 30.10.1994 i.e.

Date of Commission	-	09.06.1990
Extra time taken to pass Part 'D' Promotional Exam	-	04 years, 04 months 21 days
Revised Date of Seniority	-	30.10.2004

8. In this manner petitioner was granted rank of Lt.Col on 30.10.2006. Therefore, petitioner could not be considered for promotion to the rank of Lt.Col with his original seniority i.e.1990. The main grievance of the petitioner was that there is a discrimination between Remount and Veterinary Corps (RVC) Officers & Military Farm who are similarly situated but they are treated differently. Therefore, petitioner's main grievance is discrimination vis-a-vis officers of RVC.

9. The question of discrimination does not arise in the present case for the simple reason that petitioner belongs to Military Farms service whereas Remount and

Veterinary Corps (RVC) Officers are governed by different service conditions. Those service conditions cannot be made applicable in case of petitioner. Discrimination can only be when persons are similarly situated. In the present case i.e. Petitioner belongs to different service Military Farms and other officers belong to different service i.e. Remount Veterinary Corps (RVC), therefore, there cannot be comparison of two services. Both these services belong to different class and their service conditions are different, therefore, petitioner's grievance is misplaced hence there is no question of violation of Article 14 of the Constitution in the present case. Each service has there own peculiar and distinct nature of duties. Therefore, to seek a parity between the two and violation of Article 14 is totally misconceived.

10. Petitioner made grievance with regard to the Lt.Col. S Kashyap who also belong to the Military Farm service. In this case, an affidavit has been filed by the Respondent stating that infact Lt.Col.S Kashyap passed the examination 05 months and 24 days late; therefore,

he lost the seniority by 05 months and 24 days. As such his seniority was revised from 22.04.1988 to 16.10.1988. This has been explained by the respondent by filing an additional affidavit of Col. Devendra Singh, MS (Legal) Branch. It is pointed out that:

*The respondents have official records and submit that the Revised date of seniority of IC-45913 Lt.Col. S. Kashyap has been rightly fixed as 16.10.1988 as he took 05 months and 24 days extra time to pass Part 'D' examination. The details as to how Revised date of seniority has been worked out is as under:-*

(i)	Date of initial seniority	22.4.1988
(ii)	Date of Substantive Major	22.4.2000
(iii)	Completed 12 years of reckonable commissioned service (i.e. due date of passing PE Pt-D as per GOI letter No.14(1)/98/D(AG) dated 14.1.2000	22.4.2000
(iv)	Date of Passing Promotions Exam (PE) Part 'D'	16.10.2000
(v)	Extra time taken by the officer Beyond 12 years	5 months 24 days
(vi)	Completed 13 years of reckonable commissioned service on	22.4.2001
(vii)	Date of Subs Lt.Col.	16 Dec 2004
(viii)	Extra time taken by the Officer beyond 13 years after 16 Dec 04 to Qualify in PE Part 'D' (Post AVSC)	Nil
(ix)	Total of (v) & (viii) above	05 months 24 days
(x)	Revised Date of Seniority i.e.(i) + (ix)	16 October 1988

11. Since there is no change in Batch year of Seniority (BYOS) of the Officer he was considered alongwith his batchmates by No.3 Selection Board. Therefore, the grievance of the petitioner vis-à-vis Lt.Col. Kashyap is



explained by filing of the present additional affidavit by the respondent. Petitioner has filed written submission to additional affidavit filed by Respondent. After going through same position that emerges is that Lt.Col. Kashyap also lost the seniority to the extent of delay in passing trade test. Therefore, the Regulation 79 (b) (ii) has been uniformly followed in the case.

17. Thus in these circumstances we are of the opinion that petitioner has been rightly awarded the seniority AND there is no ground to interfere in this petition, and the same is dismissed.

18. No order as to costs.

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[Justice A.K. Mathur]  
Chairperson

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[Lt. Gen. SS DHILLON]  
Member (A)

New Delhi  
13<sup>th</sup> July, 2011