

**COURT NO.2, ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
O.A. No.354 of 2010**

IN THE MATTER OF:

M.A. Imam**Applicant**
Through : Mr. Jafar Alam, counsel for the Applicant

Versus

Union of India and Others**Respondents**
Through: Mr. Ajai Bhalla, counsel for the Respondents

CORAM:

**HON'BLE MR JUSTICE MANAK MOHTA, JUDICIAL MEMBER,
HON'BLE LT GEN M.L. NAIDU, ADMINISTRATIVE MEMBER**

JUDGMENT

Date: 30.08.2011

1. The present O.A. was filed in this Tribunal on 31.05.2010.
2. Vide this O.A. the applicant has sought quashing and setting aside of the impugned order and all orders, decisions, letters, endorsements and remarks related thereto {probably order dated 04.05.2007 cancelling his result of the Sergeant Promotion Test (SPE) (**Annexure A-1**); order dated 07.03.2008 rejecting his representation of 28.10.2007 (**Annexure A-8**), and the order dated 28.04.2010 rejecting his request for premature retirement (PMR)}. He also prays for promotion to the rank of Sergeant with all consequential benefits.
3. In April, 2005 the Sergeant Promotion Exam (SPE) was ordered to be conducted by Regional Examining Board (REB),

Western Zone, as per the new pattern on Airmen Promotion Exam (APE) which was to be now conducted by REB. Accordingly, the applicant also refers the Air Force Order (AFO) 21/01 and policy letter dated 28.11.2005.

4. In May, 2006 the applicant applied for promotion to appear in the SPE during July-December, 2006 cycle. His application was duly recommended by the authorities in chain, who verified the details and checked for correctness. Accordingly, he was permitted to take exam by REB (West). The application goes through a series of checks at each Command level including that at the Command Headquarters, in the Education Branch and finally the REB also conducts a check to ascertain the correctness and entitlement of the applicant.

5. With effect from April, 2005 the SPE was to be conducted by REB as per the new APE, details of which are in the AFO 21/01 dated 19.10.2001 (**Annexure A-5**), which lays down – “RECLASSIFICATION AND PROMOTION EXAMINATION FOR AIRMEN IN THE IAF”. Appendix C to this AFO (**Annexure A-6**) vide letter dated 28.11.2005 the old pattern of APE was divided into two parts. Part 1 of the APE was referred to as SPE and was conducted by the Trade Examining Board (TEB). Part 2 of the APE was conducted by the Ground Crew Examining Board (GEB). Since April, 2005 the new pattern of APE was established and the GEB was abolished and the old TEB was designated as REB.

6. During the transition stage it was decided as per policy that everyone will get three chances in order to clear the APE. This included attempts made by a candidate in old GEB Part 1 and 2 and combined with REB. It was designated vide para 11 of AFO 21/01.

Para 11 reads as under:

“11. All airmen are eligible to avail maximum of three chances, for both Part I and Part II together or separately, for passing each test/promotion examination i.e. LAC RT, CPE, SPE and JPE. Further, to cater for smooth transition from old to new system, all previous failure cases to be given additional three chances before the prescribed period of passing promotion examinations in the old system (Refers to para 4(d) of AFO 11/99). The airmen who fail to qualify in three attempts are to be permanently passed over for future promotions. It is the responsibility of Stations/Wings/Units and TEB/GEB to maintain an up to date record of the chances availed of by airmen, in various tests/exams, on IAFF (T) 792 (Revised) as per Appx F. This form is to be kept along with the airman's documents at the Unit/Station. Detailed Instructions on the maintenance of Form (T) 792 (Revised) and disposal of airmen who have failed in their last chance are given in para 77 to 85. It is mandatory for all candidates who have registered for LAC RT, CPE, SPE, and JPE to appear in the respective examination. However, if any candidate is going to absent himself due to service exigencies or on compassionate grounds, the parent unit of the candidate is to intimate the same to the concerned Exam Centre/TEB/GEB. The chance is likely to be counted as utilised, if no intimation about the absence of the candidate is received by the respective Examining Board.”

7. This AFO was further clarified by a letter issued on 28.11.2005, which again emphasised the requirement of a candidate

taking three chances in order to pass the APE. It clarified as to how many chances a candidate is permitted, taking into account the old GEB and the chances for new REB. The letter reads as under:-

“1. All those airmen who already availed all three chances of either REB (old TEB) or GEB and not cleared will not be permitted to appear in the APE.

2. All those airmen who availed two chances in both GEB and REB and not cleared will have only one chance to clear the APE under the new pattern of promotion exam.

3. All those airmen who availed one chance of GEB and two chances of REB or vice versa and not cleared will have two chances to clear the APE under the new pattern of promotion exam.

4. All those airmen who availed one chance in both GEB and REB and not cleared will have two chances to clear the APE under the new pattern of promotion exam.

5. All those airmen who have availed one chance in GEB and no chance in REB or vice versa and not cleared will have three chances and they are to appear in new pattern promotion examination.

Note: All those airmen appearing for the first time for APE under the new pattern promotion examination are to clear both phase I and II (Skill Test) at one go in their respective APE with in three chances. Failure in any one parts considered as candidature failed and the candidates has to appear for all parts in next exam.

6. All those airmen who have availed two chances in GEB and no chance in REB or vice versa & not cleared will have three chances & they are to appear under the new pattern promotion exam.

(Para 6 is added vide SWAC signal No.ED/10 dtd. 12 Jan 06) & Air HQ ltr no.Air HQ/19509/ED (TS&T) dtd 29 Dec. 05).”

8. The applicant was permitted to take the REB exam after he applied through proper channel and the Candidates Acceptance Form (CAF) was accepted. The applicant appeared for the REB and he finally passed the exam on 07.12.2006. However, on 04.05.2007 the authorities decided to cancel his result since he had taken more than three chances (**Annexure A-8**).

9. Learned counsel for the applicant argued that the policy letter issued has amplification of the provisions of AFO 21/2001 and clearly indicates that every person is required to avail three chances whether in the old system or in the new system. In this case, the applicant was given the third chance for passing REB which was turned down by the authorities at a later stage. The applicant also made a representation to the Chief of Air Staff. This representation was incorrectly disposed off by the President, REB, despite the fact that the case was recommended by authorities in the chain right upto the Command Headquarter level.

10. Learned counsel for the applicant further argued that the very fact that CAF was issued after due vetting by all the authorities in the chain of command and subsequently he was made to take the exam which he passed in normal course; cancelling the result on the plea that he was not eligible to take the exam amounts to promissory estoppels being denied to the applicant. The respondents thereby

estopped the consequences of the “passed” result by revoking the same.

11. Learned counsel for the applicant quoted the judgments passed in (1996 1 SCR 817 **Harbhajan Singh Vs. Karam Singh & Ors.** in which their lordships held that “*We are of the opinion that the same principle applies to the present case and the Director, Consolidation of Holdings had no power to review his previous order dated 3rd April, 1958 rejecting the application of Harbhajan Singh under Section 42 of the Act. It follows that the subsequent order of the Director, Consolidation of Holdings dated 29th August, 1958 allowing the application of Harbhajan Singh was ultra vires and illegal and was rightly quashed by the High Court.*” Learned counsel for the applicant submitted that once the CAF has been issued and passing of the examination notified, there was no question of the same being cancelled by AFRO. Learned counsel for the applicant also cited (!976) 1 SCC 311 **Shri Krishnan Vs. The Kurukshetra University, Kurukshetra.** This case deals with power to withdraw candidature before examination cannot be exercised after the candidate has appeared at the examination – Lack of diligence and failure to exercise due care in scrutinising the application form etc. are no reasons for cancelling the candidature from taking the exam. In this case, the applicant’s CAF was accepted and accordingly the applicant took the REB and qualified on 07.12.2006.

12. Learned counsel for the applicant further cited the judgment passed in (1981) 2 SCC 70 ***Kanshi Ram Verma Vs. Municipal Committee, Mansa***. In this case, their lordships held that in terms of labour and service appointment once made by the authority accepting substantial compliance by the candidate with the requisites and appointing him; such requirement cannot thereafter be strictly construed ineligible and appointment set aside as it amounts to promissory estoppel. In this case, a candidate had already passed the exam and was in the pool for promotion to the next rank as Sergeant.

13. Learned counsel for the applicant also cited the judgment passed in (1990) 3 SCC 23 ***Sanatan Gauda Vs. Berhampur University & Ors.*** This case deals with the eligibility for admission into three years' law degree course. In this case, the candidate had qualified but with less percentage. Their lordships held that since the percentage was based on masters' degree the candidate could not be considered as being eligible for promotion in the said course.

14. Learned counsel for the applicant further cited the judgment passed in (2010) 9 SCC 437 ***Kalabharti Advertising Vs. Hemant Vimalnath Narichania & Ors.*** in which their lordships had held that though an authority was at liberty to recall its order and issue fresh orders, but could not do so unless other party, who has benefited by the first order was also given hearing as consequent to the subsequent order the party stood to lose.

15. Learned counsel for the applicant stated that the applicant applied for premature retirement, however, the same was rejected on the grounds of “manpower shortage in the trade”. The applicant is thoroughly demoralised and has to contend with a loss of face within his peer group.

16. Learned counsel for the respondents stated that the number of chances as laid down in the AFO 21/2001 is clearly to show that every individual will have three chances in order to take and pass an exam. The new system was promulgated in which these examinations were combined as also the syllabus restructured to meet the organisational requirement and was made effective from April, 2005. It was again clarified that every candidate will get three chances for passing the various APE. In this case, the applicant was enrolled on 03.05.1994 and was classified as AC w.e.f. 26.11.1996. He passed his LACRT during January, 1998 cycle and reclassification to LAC w.e.f. 01.02.1998. He was promoted to the rank of Corporal w.e.f. 31.12.1999. As per the policy the applicant was required to pass the SPE within three attempts in order to become eligible for promotion to Sergeant. In the case of the applicant he availed the following three chances: -

Exam	Exam cycle	Attempt	Result	POR Authority
SPE-I	Feb 2001	-	Pass	AIR HQ/19200/1/ CPL/Sgt/ Feb 2001/ ED dated 17 Jul 2001.

SPE-II	Apr-Sep 03	1	Fail	GEB/S2/3/03 dated 23 Aug 03.
SPE-II	Oct 03 – Mar 04	2	Fail	GEB/S2/4/04 dated 31 Mar 04.
SPE-II	Jul – Dec 05	3	Fail	REB (E)/S2/2/06 dated 28 Apr 06.

17. Learned counsel for the respondents further stated that the fact that the new promotion exam policies were implemented from July to December, 2005 cycle which clearly laid down the exemption/eligibility criteria and counting the number of attempts as stated vide letter dated 28.11.2005 (supra). Therefore, the candidates who had partially cleared the examination under the old pattern were permitted to appear and clear the remaining part only for one time i.e. July to December, 2005 cycle or January to June, 2006 cycle. They were to appear for promotion examination in one go, if left with any permissible attempt. The letters of 22.07.2005 (**Annexure R-1**) and 30.01.2006 (**Annexure R-2**) give out the details.

18. Learned counsel for the respondents argued that accordingly the applicant had appeared in SPE Part 2 during July to December, 2005 cycle which was his third attempt and declared 'Failed' by REB letter of 28.04.2006. Therefore, he had availed all the three permissible chances for APE.

19. Learned counsel for the respondents further submitted that the candidate applied for the fourth time during July – December, 2006 and wrongly quoted the number of previous attempts. He also

submitted that the applicant was not eligible as per AFO 21/2001 and other policy letters. The result declared vide letter of 07.12.2006 was based on information submitted by the applicant. Normally, the number of attempts availed is recorded in the Air Force Record Office which is updated regularly and the REB is intimated. Thus, the declared result dated 07.12.2006 was cancelled on 04.05.2007 stating clearly that "*Airman has already availed three permissible chances*".

20. Learned counsel for the respondent cited the judgment passed in (2008) 9 SCC 403 ***T. Jayakumar Vs. A. Gopu & Anr.*** in which their lordships held that a candidate can be excluded from consideration at the interview stage also, on account of defect in his application; calling for interview does not operate as estoppel. Their lordships further held that as per service law the recruitment process and rejection of application form for any infirmity even after the closing date can be rejected even after the interview has been notified and cannot be considered as arbitrary and unreasonable. On the same basis the learned counsel for the respondents stated that mere passing of the exam based on incorrect information and CAF should not be termed as estoppel nor the cancellation of the results by the REB be held as arbitrary since no notice was given to the applicant.

21. Learned counsel for the respondents also cited the judgment passed in (2009) 1 SCC 610 ***Guru Nanak Dev University Vs. Sanjay Kumar Katwal & Anr.*** in which case their lordships maintained that

the candidate can only be held eligible provided he meets the additionality laid down by the authorities concerned. Therefore, he submitted that in this case the applicant was not meeting the conditions of having availed less than three chances.

22. Learned counsel for the applicant, in response, stated that as per the duties of the Commanding Officer, the Education Officer as also the AFRO, it is the responsibility of the organisation to maintain one record and verify the authenticity of the record when the CAF is being submitted. He submitted that everyone in the chain right upto the command level accepted the fact that the applicant had not availed all the three chances. In the representation to Chief of the Air Staff (**Annexure A-2**) was amply clear, a position which was also concurred by the Commanding Officer and the Education Officer at the Command Headquarters. However, this was rejected by the President of the REB. The organisation (his unit and station) took up the case on behalf of the applicant on several occasions, however, his case was never accepted. He, therefore, argued that perhaps it was the genuine mistake and now since the applicant has qualified to become a Sergeant, the case should have been disposed of by the Chief of Air Staff in the light of the fact that the applicant had perhaps genuinely understood that he was eligible for this chance. Be that as it may, he has passed the exam and is eligible for promotion to the post of Sergeant. Besides, his premature retirement is not being accepted by the organisation. So, in order to ensure that he remains motivated he

should be considered as passed. He should be considered for promotion to the rank of Sergeant since his request for premature retirement has not been accepted.

23. Having heard both the sides at length and having examined the documents, we are of the opinion that this was a peculiar case in which both the applicant and the organisation right upto the command level held a view that the applicant had not availed three chances and, therefore, was eligible for the exam he took in 2006 and was declared as passed in December, 2006. However, the President of REB and AFRO held that the applicant had already availed his three chances and, therefore, was not eligible for the fourth chance, in which he qualified and, therefore, cancelled the result on 04.05.2007 (**Annexure A-1**).

24. We also observe that the representation of 27 Oct 2007 (**Annexure A-2**) submitted by the applicant under para 621 of the Air Force Regulation 1964 read in conjunction with Section 26(1) of the Air Force Act, has not been disposed of by the Chief of Air Staff, as is mandatory. All recommendations up in the channel of command except for the Commanding Officer have been signed by Staff Officers and could be construed that the Commanders in the chain of Command have given a favourable recommendation. But, the application was turned down by the President of the REB who is not

the “Competent Authority”. Relevant portion of Regulation 621 are reproduced hereunder: -

“621. Remedy for Aggrieved Airmen

(a) The manner in which an airman should proceed to obtain redress for any grievance which he considers himself to be suffering from is prescribed in Section 26 of the Air Force Act. This para lays down the procedure.

(b) Every officer receiving any such complaint shall make as complete an investigation into it as may be possible for giving full redress to the complaint, or when necessary, refer the complaint to superior authority.

(c) Every such complaint shall be preferred in such a manner as may from time to time be specified by the proper authority.

(d) The Central government may revise any decision by the Chief of the Air staff under this rule but subject thereto, the decision of the Chief of the Air Staff shall be final.

(e) Scope of complaints, complaints purporting to be made under Section 26 of the Air Force Act, 1950 must show that a service wrong has been done to the complainant in that he has been deprived of a service right or privilege. An airman may make a complaint on matters not arising from the service, but such complaints will not be deemed to have been made under Section 26 of the Air Force Act.

(f)

(g)

(h)

(j) Proper Channels. An airman's application for redress of grievance will be submitted through proper channels as given below and, except as provided in sub para (l) will always be submitted to his section commander in the first instance. Advance copies of the application will not be sent to any higher authority.

(i) Section Commander

(ii) Unit/Detachment Commander

(iii) Station Commander

(iv) Group Headquarters, where applicable

(v) Command Headquarters

(vi) Air Headquarters

(k) Procedure for progressing Petition. On receipt of the application, the section commander will investigate the case, and if possible, redress the grievance of the airman. If however, he is unable to do so, the application together with a report from him on the points raised in the application will be forwarded to the Unit/Detachment commander, and the airman concerned informed of the fact in writing. The application will continue to be forwarded to the next higher authority in the chain mentioned in sub para (j) in a similar manner, until such time as the grievance of the airman is redressed or a final decision on the case is given by Air Headquarters.

(l) Exemption to Rules about Proper Channel. Complaints/ Applications for redress of grievances may be addressed direct to next higher authorities only when the commanding officer or next higher authority refuses to give legitimate redress asked for or unnecessarily delays the forwarding of the complaints to higher authorities. Under such circumstances the complainant will inform the intermediate authority of his action.

.....”

25. Considering the facts of the case and the way the case has been dealt with at various levels of command it is essential that the grievance raised by the applicant should have been disposed off by the competent authority, which, in this case, should be the Chief of Air Staff.

26. It is also evident that the applicant did not conceal any facts while submitting the CAF. The authorities endorsed the form, genuinely believing that the applicant was eligible for this attempt in 2006. Even after the cancellation of the result on 04.05.2007, applicant's unit and station took up the case with Higher Headquarters

on 5 Sep 08 (**Annexure A-9**), shows that the authorities too were not clear in calculating the number of attempts already made by an air-warrior. We also note that though the policy was promulgated vide AF Order 21/2001 and became effective with effect from Apr 2005, clarifications are being issued especially pertaining to number of attempts permissible during the transition period. Exhaustive notes to clarify the numbers of attempts have been issued on 28 Nov 05 and even as late as 8 Feb 07. This clearly indicates that the issue of calculation of number of attempts availed by a candidate was never very clear in the AF Order 21/2001. Thus, only the examinee cannot be faulted for genuine miscalculation of attempts already availed.

27. In this case, the applicant passed the exam in December 2006, the result of which was cancelled on 04.05.2007. Thus for about six months his aspirations were raised and he must have looked forward to his promotion to the rank of a Sergeant. Denying him this opportunity will certainly affect the morale and level of motivation of the individual to continue to serve in the Air Force. Considering the 'manpower shortage in the trade' and to retain a motivated air-warrior, his case needs to be considered sympathetically by the competent authority.

28. In view of the foregoing, without going into the merits of the case, we remand the case to the competent authority under Regulation 621 of the Air Force Regulations 1964 read with Section 26

(1) of the Air Force Act 1950. We further direct that the competent authority should keep in mind our observations made above, while considering the case for its disposal.

29. The applicant may apply for restoring/resurrecting his representation of 29.10.2007 within four weeks of this order for disposal by the competent authority. The applicant is at liberty to agitate in an appropriate manner should he not be satisfied with the outcome of his representation.

30. Application is partially allowed. No orders as to costs.

M.L. NAIDU
(Administrative Member)

MANAK MOHTA
(Judicial Member)

Announced in the open Court
on this 30th day of August, 2011