

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI**

11.

**O.A. No. 370 of 2010**  
**With M.A. No. 410 of 2010**

**Hav. Shankar Singh**

**.....Petitioner**

**Versus**

**Union of India & Ors.**

**.....Respondents**

**For petitioner:** Sh. S.R. Kalkal, Advocate.

**For respondents:** Sh. Mohan Kumar, Advocate.

**CORAM:**

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

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

**O R D E R**  
**01.02.2011**

1. Petitioner by this petition has prayed that a direction may be issued to the respondents to maintain the notional seniority of the applicant and consider his promotion to the rank of Nb. Sub. w.e.f. 1<sup>st</sup> August 2008, the date on which his junior was promoted by waiving his age limit and he may be compensated by awarding Rs. 5 lakhs to him for the harassment and financial loss suffered by him.

2. The incumbent was recruited as a Sepoy in Indian Army on 6<sup>th</sup> November 1984 and he was promoted to the rank of Naik with effect from 1<sup>st</sup> March 2000 though he did not pass the Class-II Test but he has passed the Class-II Test on 22<sup>nd</sup> March 2003. Thereafter he was promoted to the post of Hav. on 5<sup>th</sup> May 2004 but he could not be sent to the necessary qualifying course for promotion from one Hav. to Nb.Sub. and that also he passed on 5<sup>th</sup> July 2008 but before he could be promoted



he has already crossed the upper age limit for consideration to the post of Nb. Sub. Hence he was not granted a promotion to the post of Nb. Sub but his case was recommended by the Record Office for relaxation in the upper age limit by the communication dated 9<sup>th</sup> March 2009 giving the details of the case and explaining the difficulties which have arisen in the matter and that he was not intimated for passing the test because of his frequent posting from one place to another and this was admitted by the respondents while forwarding his case and that there was a default on their part that petitioner should have been intimated well in time. Therefore, petitioner could not be considered for the post of Nb. Sub. in 2008 vacancies. Meanwhile he was superannuated on account of crossing the upper age limit w.e.f. 15<sup>th</sup> January 2009. It was also pointed out that his promotion to the post of Nb. Sub. will not make an extra financial burden to the Exchequer. It is further recommended that his notional seniority in the rank of Hav. w.e.f. 1<sup>st</sup> August 2000 be granted to him since he could not come up for promotion to the rank of Nb. Sub. due to non-availability of vacancy. He may be granted relaxation in upper age limit as vacancies are available from 1<sup>st</sup> April 2009 so that he could be considered for the promotion to the post of Nb. Sub. Thereafter a query was raised by DGEME and that clarification was also sent on 24<sup>th</sup> November 2009 requesting that the relaxation of upper age limit may be reconsidered by the competent authority. But when the petitioner did not hear from respondents, he was driven to file the present petition before us.

3. The respondents have filed their reply and they have contested the matter and submitted that the petitioner could not have been promoted to the post of Nb.



Sub. on 1<sup>st</sup> March 2000 when he had not passed the Class-II Test which was necessary but he passed on 22<sup>nd</sup> March 2003 and, therefore, he lost the seniority.

4. Learned counsel for the petitioner has contested the matter that this was not the requirement for promotion to the post of Nb. Sub. Be that as it may, we are not going to go into this question in the present case for the simple reason that the incumbent has already superannuated and the respondents have already recommended for relaxation of upper age limit so as to facilitate his promotion to the post of Nb. Sub. because incumbent has retired and no extra financial burden will be on the Exchequer. Therefore, looking into the facts and circumstances of the case, we direct the respondents to dispose of this matter as recommended by the Record Office, sympathetically and expeditiously.

5. With this observation, the petition is disposed of.

**A.K. MATHUR**  
**(Chairperson)**

**S.S. DHILLON**  
**(Member)**

**New Delhi**  
**February 01, 2011**