

**COURT NO. 3, ARMED FORCES TRIBUNAL,  
PRINCIPAL BENCH, NEW DELHI**

**O.A. No. 57 of 2010**

**IN THE MATTER OF:**

**Nk Dharmender Singh Ujjwa** .....**Applicant**  
Through: Mr. S.M. Dalal, Counsel for the applicant

Versus

**Chief of Army Staff & Ors.** .....**Respondents**  
Through: Mr. Romil Pathak for Dr. Ashwani Bhardwaj,  
Counsel for the respondents

**CORAM:**

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

**JUDGMENT**

**Date: 27/01/2011**

1. The applicant had filed O.A. 57/2010 before this Tribunal praying that order dated 11.12.2009 (Annexure A-1), by which his statutory complaint was rejected, be quashed and he be promoted to the rank of Havildar (DS) w.e.f. 01.12.2007 i.e. the date his juniors were promoted with all consequential benefits. In the alternative, the applicant has

prayed promotion to the rank of Havildar (DMT) w.e.f. 01.12.2007 by reckoning his seniority of Naik from 25.12.2001 with all consequential benefits.

2. The applicant was enrolled in the Army as Driver (MT) on 27.06.1997. He claims that in 1998 he was re-mustered as Driver Special (DS) and performed duties in the re-mustered category for 10 years. The applicant avers that his re-mustering can be ascertained from Unit DO Part II orders dated 25.02.2002 (Annexure A-6) wherein his rank has been mentioned as Gunner (DS). His re-mustering is also clear from the quarterly statement of his accounts at Annexure A-2, which states his category as Driver Special (DS). The applicant states that when he was posted from 151 AD Regiment to 38 Battalion (RR) his trade in the movement order was shown as Driver Special (DS) (Annexure A-3). Other documents at Annexure A-4 & A-5 given by his unit, 151 AD Regiment, also show his trade as Driver Special (DS).

3. The applicant states that on 25.12.2001 he was promoted Naik in the category of Driver Special (DS) and continued to drive tanks upto March, 2008.

4. The applicant states that on 10.12.2007 the following Naiks, junior to him, were promoted substantive Havildar (DS) (Annexure A-7):

- (a) Nk DS Narendera Singh;
- (b) Nk DS Suresh Babu;
- (c) Nk DS Swapan Das; and
- (d) Nk DS R. Mahalingam,

5. The applicant contends that he was not given any reason for his supersession. The applicant submitted a statutory complaint on 30.01.2009 in the specified format. The same was rejected, vide letter dated 11.12.2009 (Annexure A-1).

6. The applicant states that when he aired his grievances, he was again given the duties of Driver (MT) w.e.f. March, 2008.

7. In the counter affidavit the respondents have stated that the applicant was enrolled in the Army as Driver (MT) on 27.06.1997. He passed cadre Driver (MT) Class III to Class II on 10.12.2001 while serving with 38 Battalion (RR). Since his records were not available with his parent unit, 151 AD Regiment, the fact of the applicant having passed Driver (MT) Class III to Class II was erroneously included in seniority roll of Driver (DS). As result of this error the applicant was erroneously promoted to the rank of Naik (DS) w.e.f. 25.12.2001 while serving with 38 Battalion (RR). The applicant subsequently passed Driver (MT) Class II to Class I on 10.07.2002, again while serving with 38 Battalion (RR). The applicant's trade as Driver (MT) is, thus, amply supported by the fact that he appeared for promotion test Driver (MT) Class II to Class I on 10.07.2002.

8. The respondents state that the applicant was posted back to his unit 151 AD Regiment on 11.05.2003, where he volunteered again for another posting to an RR Battalion. He was, subsequently, posted to 25 Battalion (RR) on

12.03.2006 and returned back to his parent unit 151 AD Regiment on 25.03.2008.

9. During the promotion conference held in December, 2007, the error with regard to promotion of applicant as Naik (DS) came to light. It was found that he had erroneously been promoted Naik in DS vacancy w.e.f. 25.12.2001. He should have correctly been promoted Naik Driver (MT) w.e.f. 30.11.2003.

10. The applicant submitted a statutory complaint to COAS on 30.01.2009 in the specified format. The same was rejected by the COAS (Annexure A-1). The COAS while rejecting his statutory complaint directed that the period as Naik (DS) from 25.12.2001 to 30.11.2003 be regularised (Annexure R-1). The respondents state that re-mustering Part II orders are published by record officers on the basis of re-mustering rolls submitted by the units and are not published by the unit itself. This was never done. The incorrect trade as Driver (DS) as mentioned in movement orders and authority letters, as averred by the applicant,

cannot be taken as an authority to treat his trade as Driver (DS). The applicant's claim that he performed the duties of Driver (DS) has no relevance in the change of trade unless procedure for re-mustering and, thereafter, notification of the same by Part II order is done. The applicant's trade is Driver (MT) and he cannot be promoted against vacancy of Driver (DS). The applicant also does not meet the eligibility conditions for promotion to the rank of Naik/Havildar as Driver (DS) as he has not passed promotion cadre Class III in DS trade, which was mandatory for re-mustering.

11. The respondents state that the applicant superseded Naik Driver (MT) Birender Kumar and Naik Driver (MT) Jogender Singh who were senior to him, but were promoted to the rank of Havildar according to their seniority Driver (MT) trade. The applicant, however, got accelerated promotion because he was erroneously listed in Driver (DS) trade. The respondents state that if the applicant's contention of getting promoted to Naik (DS) is accepted w.e.f. 25.12.2001 it would lead to supersession of 14 Havildars/Naiks in Driver (MT) trade.

12. The respondents state that the applicant's complaint dated 31.08.2008 was a personal application and not a statutory complaint. The applicant subsequently submitted a statutory complaint in the correct format on 30.01.2009. The same was rejected by the Chief of Army Staff.

13. The respondents state that the applicant was never re-mustered as Driver (DS) and passed technical proficiency tests in Driver (MT) category on 10.12.2001 from III to II and on 10.07.2002 from II to I. The respondents have, therefore, prayed that the application be rejected.

14. In a rejoinder affidavit the applicant has stated that he was re-mustered as Driver (DS) after getting re-mustering training for one month in 1995 in 151 AD Regiment. His unit failed to publish the required Part II order. The applicant claims that he passed Class III to Class II tests as Driver (DS) while serving with 38 Battalion (RR) since a combined cadre was run for both Driver (DS) and Driver (MT). The applicant has also claimed that the order of the COAS is cryptic and non-speaking.

15. We have heard the arguments and perused the records. We have ascertained that the order of the Chief of Army Staff dated 11.12.2009 rejecting the statutory complaint was an elaborate order. The order dated 11.12.2009 (Annexure A-1), merely conveyed that decision of COAS by the Army AD Records.

16. The applicant's claim that he performed the duties of Driver (DS) are not substantiated by any Part II order indicating his re-mustering to Driver (DS). The applicant has appeared and passed in promotion cadres of Driver (MT) and not Driver (DS). He, thus, cannot claim to have been re-mustered since he has not qualified for the same. The respondents have admitted that the applicant was erroneously promoted to the rank of Naik against a vacancy in the DS category. This error could not have been allowed to continue and was corrected when the same was detected. The applicant cannot get the benefit against an irregularity which was subsequently detected and corrected. There are no grounds for the applicant to be promoted to Havildar (DS) w.e.f. 01.12.2007 as his promotion to Havildar should be



against the vacancy of Havildar (MT). In the alternative, the applicant cannot also claim accelerated promotion to the rank of Havildar (MT) w.e.f. 01.12.2007 since the period he was shown as Naik (DS) from 25.12.2001 to 30.11.2003 has been regularised. The applicant's contention that Naik (DS) Narender Singh was promoted earlier despite being junior is not sustainable since the applicant is not of DS trade and cannot claim parity (Annexure A-7).

17. In view of the above observations, we find that no injustice has been done to the applicant and he cannot claim benefit of an erroneous accelerated promotion earlier that was subsequently corrected.

18. Application dismissed. No orders as to costs.

**Z.U. SHAH**  
**(Administrative Member)**

**MANAK MOHTA**  
**(Judicial Member)**

**Announced in the open Court**  
**on this 27<sup>th</sup> day of January, 2010**