

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

12.

O.A. No. 586 of 2010

Nb Ris Sher Singh

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Sh K Ramesh, advocate

For respondents: Sh Mohan Kumar, advocate

CORAM:

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

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

ORDER

02.02.2011

1. Petitioner by this petition has prayed that directions may be issued to the Respondent to quash and set aside the Armored Corps Records order dated 07.08.2009 which is operative w.e.f. 30.09.2010 as also issuance of directions to the Respondents to grant two years extension of service to the applicant having fulfilled all the eligibility criteria as laid down in Army Headquarters Policy letter dated 21.09.1998.

2. The applicant was enrolled in the 7th Light Cavalry on 26.09.1984 and with the passage of time he was promoted to the rank of Naib Risaldar on 01.09.2008. He was qualified for JLPT in December, 2009 for the next promotion, but unfortunately he was denied the extension despite the fact that he has given his willingness.

3. Petitioner made a representation that he has been wrongly denied the extension as he was eligible in all respects as per the criteria, but for the bonafide mistake on part of the respondent his willingness has been read as unwillingness. He made a representation but without any result, ultimately, he has filed a present petition with aforesaid prayer.

4. In this connection, learned counsel for the petitioner has also invited our attention to the D.O. Letter dated 16.02.2009 written by the Commandant to Chief Record Officer explaining that the petitioner's case could not be sent to the screening board proceedings inadvertently as it was wrongly understood that he was unwilling to seek two years extension. Therefore, he asked for guidance that what future course of action should be taken so that the screening board for this JCO can review his case for further extension of two years.

5. Again on 17.5.2010, another communication was addressed by the petitioner through his CO to Officer-in-charge (Record), Armored Corps Records requesting that his case should be reviewed by the Board Proceedings as he was ready and willing to serve and he has all requisites qualification for consideration.

6. Then his application was forwarded by the Commandant by communication dated 18.05.2010 requesting the Chief Record Officer that he should look into the matter and accord necessary permission for holding fresh screening board for this JCO. But without any result, therefore, petitioner was driven to file the present petition.

7. Respondent has admitted the fact that there was a bonafide mistake and they admitted "JCO could not be granted extension despite meeting eligibility criteria, due to gross negligence of the unit. Unit was advised to process the case for compulsory retention of the applicant in service as per paragraph 146 of Regulation of Army, 1987 (Revised Edition) read in conjunction with Integrated HQ of MoD (Army) letter No.B/33098/AG/PS-2 (C) dated 06 May 2003 for consideration by the competent authority. Moreover, the case duly recommended by the Colonel of the Regiment and the OIC Records was processed with Integrated HQ of MoD (Army) positively but within the rule position, for decision. In turn, Integrated HQ MoD fully considered the case but rejected vide their letter No.B/33098?AG/PS-2 (C) dated 04 Aug 2010 as the trade strength of the applicant was more than 98%."

8. The learned counsel for the respondent has also pointed out that the extension of below two years is not right of the incumbent.

9. We have heard learned counsel of the parties and perused the record. It is admitted position that there was a bonafide mistake committed by the Unit that person who was ready and willing to seek an extension and fulfill all the criteria was not considered by the board for the reason that they mistakenly took that he was unwilling. This fact was brought to notice of the petitioner, he filed a protest and said that he was always ready and willing and that has been admitted by the CO that mistake has been committed by the Unit that they have wrongly treated him that he is unwilling to seek the extension. This fact is evident from the correspondence of the Commandant who has been consistently requesting the authorities that the guidelines may be given to him for reconvening of the Board but finally his request

was rejected on the ground that there is already 98% strength in that trade. Therefore, basically rejection is on ground of lack of requirement as the trade has already 98% subscribed strength. It is true that may be 98% strength is already there in this trade, but injustice has been done to the petitioner that cannot be denied. It is a mistake of the Unit, which Unit has very frankly admitted. In case if the petitioner's case had been considered and found suitable, then he would have got extension of two years but other persons who are junior to him would not have been recruited. We are not going to go in that question, however, a fact remains that a bonafide mistake had been committed by the unit which has resulted in the denial of right of consideration to the petitioner for extension for the period of two years. Therefore, he has a legitimate right to be considered for extension on account of the bonafide mistake committed by the respondent. Therefore, we allow this petition and direct that the case of petitioner may be considered by the screening board and if he is found suitable he may be given the extension as per rules. Petition is allowed and no order as to costs. The whole process should be done within a period of three months.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
February 02, 2011