

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

20.

O. A. No. 59 of 2010

Hav/ Clk Balbir Singh

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Sh. S.S. Pandey, 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

29.4.2011

The petitioner, by this petition has prayed for quashing Regulation 149 of Regulation for the Army, 1987 as the same is illegal and unconstitutional and direct the respondents to promote the petitioner as per the vacancies available as on date his immediate junior was promoted with all consequential benefits including back wages in promoted rank etc. In the alternative, the order dated 24.6.2009 of the respondents by which the case of the petitioner was not considered for grant of age relaxation may be quashed and direct the respondents to grant relaxation of age of less than 6 months required for promotion of the petitioner to the rank of Naib Subedar with further directions that he be promoted to the rank of Naib Subedar from the date his immediate junior was promoted with all consequential benefits including back wages in promoted rank etc.

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2. The petitioner was enrolled in Army as Clerk (General Duties) in Infantry on 19.7.1985 and he became Naik in 1991 and Havildar in 1996 and in 2006, he was detailed for promotion cadre course for promotion to the rank of Naib Subedar. In 2008, he completed the Head Clerk Course (NCC Clerk Course). Therefore, according to the petitioner he had the eligibility to be promoted to the post of Naib Subedar and on 1.2.2009, there were vacancies of Naib Subedar were available but he could not be promoted because of fall out of a decision by the Apex Court in the case of UOI Vs. Rajpal Singh, 2009 (I) SCC 216. All the vacancies which were available were taken away so as to implement the decision of the Apex Court in the said case, as a result of which, the petitioner crossed the age of 46 years on 16.3.2009. The case of the petitioner was strongly recommended for relaxation of the age by the unit on 11.5.2009 detailing all the facts and make out a case that in fact the petitioner is a victim of the circumstances which are beyond his control. The unit has made a detailed case for relaxation but no action was taken on the so called recommendations of the unit. Therefore, the petitioner could not be promoted to the post of Naib Subedar. Hence, the petitioner has approached this Tribunal with the present petition.

3. So far as the policy decision of fixing the age of 46 years for Naib Subedar (Clerk/GD) is concerned, this is a policy decision which has been uniformly followed in every case and we do not find it to be discriminatory. This has been in vogue in Army for a long time and stood test of time. Now coming to the case of relaxation for the petitioner is concerned, as he could not be promoted on account of lack of

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vacancies in the unit for the post of Naib Subedar. In fact, these vacancies of Naib Subedar had been utilized in order to give effect to the decision given by the Apex Court in Rajpal Singh's case (supra). Had these vacancies not been taken away, the petitioner, would in the normal course, have been promoted to the post of Naib Subedar as he had the eligibility and other requirements as detailed by the Unit in their letter for relaxation of the case. Since it is a very hard case and because of the fact that due to decision in Rajpal Singh's case (supra), all these vacancies were taken away, as such, the promotion had been denied to him. But the fact remains that had the judgment in the case of Rajpal Singh's case not been there, he would have have been promoted. Therefore, it is a very hard case and the authorities should consider the matter sympathetically. Since the petitioner is going to retire in July, 2011, the matter may be disposed of expeditiously within a period of two months from the date of receipt of copy of this order. The petition is disposed of accordingly. No order as to costs.

4. A copy of this order be given dasti to Learned counsel for the petitioner.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
April 29, 2011