

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

7.

O. A. No. 63 of 2011

Havildar J. C. Jha

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Sh. S. R. Kalkal, Advocate.
For respondents: Ms. Barkha Babbar, Advocate.

CORAM:

HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.
HON'BLE LT. GEN. S.S.DHILLON, MEMBER.

ORDER
12.5.2011

The petitioner, by this petition has prayed that the respondents may be call to produce the records to satisfy that the mistake squarely lies on the part of EME records for non-detailment of promotion cadre in September-October, 2008 and if duly satisfied, then the impugned EME records letter dated 26.12.2008 read with letter dated 27.11.2008 may be quashed and the petitioner may be reinstated with permission to undergo promotion cadre and if qualified, he be promoted to the rank of Naib Subedar with ante dated seniority, service, pay and allowances and all consequential benefits.

2. The brief facts of the petition are that the petitioner was enrolled in the Indian Army on 1.1.1983 and he became Havildar on 1.7.1998 and a substantive Havildar on 1.7.1999. The petitioner came to learn that for the batch of 1983 Havildars, the promotion cadre names were listed in September-October, 2008 and this was

circulated to only units which were referred to. When he came to know that the persons had been detailed for promotion cadre and the person junior to him, namely, Rajiv Chauhan was also one of them, he immediately approached EME Centre for Discharge Drill on 6.12.2008. The authorities did not take any positive step and he was made to discharge on 31.12.2008. Thereafter, it was brought to the knowledge of the authorities about not sending him to promotion cadre and not promoting him to the post of Naib Subedar and the matter was examined by the unit. They realized the mistake that in fact the petitioner's date of birth has been wrongly entered as 2.1.1964 whereas it should have been 2.1.1965 and on account of this wrong date of birth, he was not sent for promotion cadre. This clerical mistake was rectified subsequently and the unit took up the matter with higher authorities vide communication dated 20.12.2008, in which it was admitted that there is a mistake of wrongly recording of the date of birth of the petitioner, therefore, a suggestion was mooted out that the petitioner may be taken up to a special cadre test for promotion to the post of Naib Subedar and if he is found suitable, he may be promoted. Therefore, permission was sought from Integrated HQ of Ministry of Defence vide letter dated 20.12.2008. A copy of the letter dated 20.12.2008 reads as under:

"Electroniki Aur Yantrik Inginiyari
Abhilekh Karyalaya
EME Records,
Secunderabad -21

1388/CA1/Pro-3/T4

20 Dec 2008

Directorate General of EME (EME Trg)
Master General of the Ordnance Branch
Integrated Headquarters of MoD(Army)
New Delhi – 110 006.

PROMOTION : HAV TO NB SUB

1. Please ref telecom between Offg. Col (Trg), IHQ of MoD (Army), Dte Gen of EME and Col Records this office dt 19 Dec 08.

2. It is submitted that the following NCOs have been superseded for their promotion to the rank of Nb Sub due to lacking Hav to Nb Sub (HNS) Cadre as they could not be detailed for the same due to the reasons as mentioned against each:-

(a) 14550507W Hav VM(MV) -
N Srinivasagan (HQ 28 Inf Bde)
DOB – 02 May 1965
DOE – 06 Dec 1982

The NCO was promoted to the rank of Hav wef 01 Nov 97. However, his name was missing in the Seniority Roll of his trade. His name should have been entered in the Seniority Roll as per his inter-se seniority indtly on his promotion.

(b) 14551209M Hav VM (MV)
Jai Chandra Jha (601 EME Bn)

The NCO was promoted to the rank of Hav wef 01 Jul 98. The date of birth of the NCO was erroneously entered in the Seniority Roll of his trade as 02 Jan 1964 instead of 02 Jan 1965. Thus, he was found overage when he came up for detailment for HNS along with NCOs of his seniority.

3. On detailed checing of service docu/seniority roll maint. by EME Records, it is revealed that the above supersession has taken place because of clerical errors. At the same time, units as well as indls have also not brought out the discrepancies in time despite circulation of their latest Seniority Roll vide EME Records letter No. 1445/P/CA1/Coord dt 10 Aug 07 to the environment through MGsEME and Cat A/01 & 02/2008-09 from 07 July to 04 Oct 08 at 1 EME Centre and Ser 02/2008-09 from 11 Aug to 08 Nov 08 at 3 EME Centre Respectively.

4. The ibid NCOs after reporting to the EME Depot Bn for their disch drill (to be SOS wef 31 Dec 08) have now brought out the discrepancies through EME Depot Bn. These NCOs are meeting all other promotion criteria except HNS cadre and can be detailed for the same but will be finally SOS wef 31 Dec 08 (AN) on completion of 26 yrs of service.

5. The matter is being investigated by a Court of Inquiry to pin point the responsibility for this serious lapse and suitable remedial measures will be instituted to avoid recurrence of such incidents in future. The environment will also be re-sensitised to notice and bring out such discrepancies, if any, in time so that timely action could be taken.

6. In view of the above and to avoid any legal complications at a later stage, it is proposed and recommended that a spl board of Offrs be detailed at 1EME Centre to conduct the HNS cadre test for these NCOs on 26 and 27 Dec 08 as a spl case after obtaining willingness from the NCOs to take the cadre test if such a permission is accorded by DGEME (EME Trg). If they pass the cadre test, they can be promoted as vac are available otherwise they will be disch wef 31 Dec 08 (AN) as ordered. IHQ of MoD (Arm y) are therefore, requested to accord permission to conduct the above test as a spl case.

7. The above has the approval of OIC EME Records.

(Sukhvinder Singh)
Col
Col Record Officer
for OIC Records”

3. In this view of the matter, it appears that there is a bonafide mistake on the part of the unit. When the petitioner protested against his non-promotion and the persons junior to him were promoted, the unit should have immediately taken remedial measures correcting the date of birth of the petitioner and asking him to go for promotion cadre test instead of approaching Directorate General of EME records. Before that could happen, the petitioner, on the basis of his wrong date of birth i. e. 2.1.1964 was discharged from service on 31.12.2008. This was a clear mistake on the part of the respondents, a mistake, which could have been corrected immediately but it was allowed to be perpetuated. These facts were brought to the notice of the Directorate General of EME records and the Directorate General of EME records rejected it vide their signal dated 23.12.2008.

4. We have heard learned counsel for the parties and perused the record.

5. In view of the fact that the letter dated 20.12.2008 had been sent by the unit to Directorate General of EME records, as reproduced above, there is a mistake on the part of the respondents by wrongly entering the date of birth of the petitioner as 2.1.1964 instead of 2.1.1965. Had the date of birth of the petitioner been correctly recorded, this situation would not have arisen. However, on account of this wrong date of birth, the petitioner has been discharged from service on 31.12.2008.

Therefore, the petitioner has claimed all the benefits which his junior Rajiv Chauhan was given, i. e. he was promoted on 27.11.2008. However, we cannot now set aside the order of discharge because by this time, he has become overage. But his grievance can be adequately redressed by treating the petitioner as Naib Subedar at par with the person junior to him, namely Rajiv Chauhan and all consequential benefits including pension should be given to him. The petition is, thus, allowed. Respondents should undertake this exercise expeditiously within a period of three months. Cost of Rs.10,000/- is also awarded to the petitioner.

A.K. MATHUR
(Chairperson)

S. S. DHILLON
(Member)

New Delhi
May 12, 2011