

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI  
05.

O. A. No. 64 of 2011

Havildar Amarjit Singh

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Sh. K. Ramesh, Advocate.  
For respondents: Sh. Anil Gautam, Advocate.

CORAM:

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

ORDER  
18.10.2011

1. Petitioner by this petition has prayed that the Respondents may be directed to promote the Petitioner to the rank of Naib Subedar from 1<sup>st</sup> April 1988 and to promote him to the rank of Subedar from 1<sup>st</sup> January 1991 with full pay and allowances till date of superannuation and revised pension in the rank of Subedar till date. We do not want to go in detailed facts as they are already contained in the order passed by this Tribunal on 25<sup>th</sup> February 2010. However for convenient disposal of this petition we may narrate the brief facts. The Petitioner joined Indian Army on 21<sup>st</sup> June 1966 as Havildar and was directed to face a District Court Martial ('DCM') on 6<sup>th</sup> September 1986 and the DCM ultimately culminated on conviction of the Petitioner by the order dated 7<sup>th</sup> November 1987 and the Petitioner superannuated on 30<sup>th</sup> June 1988. The Petitioner filed a writ petition challenging the punishment awarded by the DCM before the Hon'ble Guwahati High Court and the Hon'ble Guwahati High Court set aside the order of the punishment of the Petitioner and left the matter to the Respondents to consider the Petitioner for promotion and

all consequential benefits. Para 18 of the order passed by the Hon'ble Guwahati High Court reads as under:

"In the result, this appeal is allowed with costs throughout. The order of the Learned Single Judge is set aside. Indeed the order made by the Commanding Officer for initiating the General Court Martial also stands quashed.

Before parting with this case, the learned counsel for the appellant has brought to our notice that as on today, the appellant having been retired, has also served the punishment imposed upon him by the Court Martial, therefore, he wants that this Court take cognizance of the factual position to give relief. We only feel sorry as we are not able to give the relief inasmuch as it was open to the writ petitioner to have taken appropriate action to seek for the amendment in the prayer. Such action was not taken in the appeal and, therefore, in the absence of such prayer, it is not right on the part of this Court to consider his prayer. We leave the matter at this stage with liberty to the appellant to seek for appropriate relief in accordance with law, if he is so advised."

2. The net result was that the order of the DCM stands quashed. When the order of the DCM was quashed and consequential benefits not given to Petitioner, he approached to this Tribunal and this Tribunal passed the order on 25<sup>th</sup> February 2010 and directed the Respondents that the case of the Petitioner may be considered for the post of Naib Subedar vis-a-vis the persons who are junior to him and who have been promoted to the post of Naib subedar from January 1988 till 30<sup>th</sup> June 1988 when Petitioner was superannuated from service. The operative portion of the order reads as under:

“Consequently, we allow the petition in part and direct that case of the Petitioner should be considered for the post of Naib Subedar/Subedar vis-a-vis a person who was junior to him and who was promoted to the post of Naib Subedar from January, 1988 to 30<sup>th</sup> June, 1988 when he was superannuated from service. If he found to be suitable then consequential benefits therefrom shall be given to the Petitioner.”

In pursuance of this order case of Petitioner was considered and Respondents denied him the benefits. It is this order dated 22<sup>nd</sup> December 2010 which is being challenged before us.

3. The two reasons have been given by the Respondents. First is that the Petitioner did not pass the Promotion Cadre Course and second is non-qualifying in the Head Clk duties. Therefore, the basic fact which prevailed with the Respondents was that on account of his non-passing the Promotion Cadre Course he could not be given the benefit which was given to persons junior to him. It is admitted fact that the Petitioner was earlier punished for severe reprimand depriving him promotion for three years up to 6<sup>th</sup> January 1988 and during this time he was also attached for disciplinary action which culminated in the DCM and that was also passed on 7<sup>th</sup> September 1987. When this DCM has been quashed by the Hon'ble Guwahati High Court then there was no impediment on the Petitioner to have been sent for the Promotion Cadre Course but he was reduced in rank as a Sepoy on 7<sup>th</sup> September 1987 and this punishment was confirmed on 4<sup>th</sup> January 1988 and he superannuated on 30<sup>th</sup> June 1988. Therefore, a limited direction was given that the same benefit should be given to the Petitioner as was given to persons junior to him because of the pending disciplinary ban he could not undergo Promotion Cadre Course. We confined the benefit of the Petitioner vis-a-vis the persons who are junior to him and

who were promoted during the time when Petitioner was in service. Learned counsel for the Respondents has submitted that persons junior to Petitioner have already passed the Promotion Cadre Course earlier than Petitioner therefore Petitioner cannot be promoted on account of non-passing the Promotion Cadre Course. It is true that persons who are junior to him might have passed the Promotion Cadre Course but Petitioner could not have undergone for Promotion Cadre Course because he was already facing a disciplinary ban from 7<sup>th</sup> January 1985 in one case and in another case of DCM till 4<sup>th</sup> January 1988. On 4<sup>th</sup> January 1988 the order has been passed resulting in the confirmation of the sentence given by the DCM and that has been set aside by the Hon'ble Guwahati High Court by the order dated 28<sup>th</sup> August 1997. Therefore, he could not have passed the Promotion Cadre Course. Once the order has been set aside by the Hon'ble Guwahati High Court the resultant position is that the Petitioner has to be treated as if he is ready to be restored to his position and the fact that he is superannuated and he could not have passed the Promotion Cadre Course because of disciplinary ban placed on him, his position could not be worse than the persons junior to him. It is already admitted by the Respondents in their reply that three persons who were promoted to the post of Naib Subedar were Sub. Clk. Surjit Singh, Sub. Clk. Joginder Singh and Sub. Clk. Piara Singh. Sub. Clk. Surjit Singh and Sub. Clk. Joginder Singh were promoted on 1<sup>st</sup> April 1988 and Sub. Clk. Piara Singh was promoted on 1<sup>st</sup> June 1988. The Petitioner stands superannuated on 30<sup>th</sup> June 1988. Therefore the case of Petitioner will have to be considered vis-a-vis these three persons and they have been promoted as Naib Subedar. Petitioner is required to be promoted from the date when these three persons who were junior to him were promoted irrespective of the fact whether he has passed the Promotion Cadre Course or not. As it was not

possible for him to pass the Promotion Cadre Course for the period when he was facing the disciplinary ban from 1985 till he superannuated on 30<sup>th</sup> June 1988. Hence, in a peculiar situation like the present one there is no except to promote the Petitioner as Naib Subedar from 1<sup>st</sup> April 1988. The Petitioner shall not use any derogatory language in his representation.

4. The petition is allowed in part with no order as to costs.

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

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

**New Delhi**  
**October 18, 2011**  
**dn**