

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

T.A.No. 307 of 2010

Writ Petition (Civil) No. 18826 of 2006

Hav. Asit Kumar Routh

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Sh.A.K. Bakshi, Advocate.

For respondents: Sh. Romil Pathak proxy counsel for Dr. Ashwani Bhardwaj,
Advocate.

CORAM:

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

**ORDER
25.04.2011**

1. This appeal has been filed by the appellant against denial of promotion to the rank of Naib Subedar. It was contended that he was superseded with effect from 1st September 2003, although he fulfilled all the criteria for promotion. A corollary to such denial of promotion was that the appellant had to retire on 31st December 2006 and if he had been promoted he would have been entitled to serve for four more years. The appellant therefore seeks to set aside the impugned order of 20th May 2005 whereby his non-statutory complaint against supersession and denial of promotion was rejected by the Army Authorities and to grant the appellant his original seniority of Havildar and the rank of Naib Subedar, with consequential benefits.

2. The appellant was enrolled in the Army in 1980 in the Signals Corps with trade of Operator. Because of his hard work and dedication he received regular

promotions and became a Havildar on 1st July 1993. While in this rank (Havildar) he successfully completed all the criteria required for promotion to the rank of Naib Subedar. In 1993, a new criteria was introduced wherein all candidates in the Corps of Signals who were in the promotion zone for Naib Subedar were required to undergo the 'S' course and only subsequently they would be considered for the rank of Naib Subedar. At that point in time the ACR criteria for promotion to the rank of Naib Subedar was governed by the policy letter of 7th December 1994 wherein four reports in the rank of Havildar were mandatory of which no report should have a grading lower than 'High Average'. The same policy letter also laid down that **personnel who were in the promotion zone should be afforded sufficient opportunity to earn regimental/instructional reports so that they do not miss out promotion for want of these reports.** The criteria for selection for the 'S' course as laid down by Army Headquarter vide their letter of 16th December 1999 was as under:

"(i) Four reports in the rank of Havildar will be mandatory.

(ii) Personnel who have earned two 'Above Average' and two 'High Average' reports in the last four ACRs will be considered for 'S' Course.

(iii) No report should be lower than 'High Average' out of the last four ACRs.

(iv) Should have been recommended for further promotion in all the last four ACRs.

(v) Out of four reports, two reports should be on Regimental duty or as an Instructor in an Army School of Instruction, out of which at least one should be 'Above Average'. In case of shortfall of one Regtl report or as an instructor in an Army School of Instruction at the time of Screening, if they are already posted/stand posted to a unit other than ERE and eligible to earn a Regt report before due date of DPC for promotion they will be screened and detailed on 'S' Course. Signals Records will ensure that the personnel likely to come up for detailment on 'S' Course and expected to get promotion to higher rank in near future be given sufficient opportunity to earn Regimental/Instructional reports prior to consideration for 'S' course/promotion board"

3. It was urged that the appellant was first considered for the 'S' course in the screening board held on 10th September 1988 wherein the confidential reports for the period 1994 to 1997 were considered in accordance with the departmental instructions. The appellant was unaware of the fact that because of an "average" grading in his confidential report for the years 1995 he was not selected for the 'S' course. It was argued that in accordance with Army Headquarter policy of 30th September 1997 any "average" grading was required to be communicated to the ratee since it had an adverse effect on his career prospects. The Army authorities further compounded the appellant's problem by detailing him on Extra Regimental Employment ('ERE') with the NCC unit at Kanpur from May 1988 to February 2001. Consequently, he received three ACRs for this period while on ERE. The screening board requirement was that not more than two of the four reports under consideration could be from an ERE

unit. The net result was that while he was rejected in two screening boards from 1998 onwards because of the "average" ACR of 1995, subsequently he was rejected twice for want of regimental reports because of a lapse on the part of the authorities. It has been specifically mentioned at para 207 of the Signals Records Instructions 1984 that a person in promotion zone to Naib Subedar should not be posted on ERE. This direction was reiterated in the General Policy Instruction No. 53 of 7th December 1994.

4. In January 2003 the appellant was found fit for nomination for the 'S' course and accordingly attended the course from 24th March 2003 to 17th May 2003. Consequently, he was considered by the first DPC thereafter i.e. on 24th/25th November 2003 and was approved for promotion to the rank of Naib Subedar. However his juniors were promoted approximately one month before this date. Specific reference was made to Havildar Kailash Chand who was one month junior to the appellant and had been promoted to the rank of Naib Subedar from 1st October 2003. The appellant's approval for Naib Subedar in the DPC held on 24th/25th November 2003 did not benefit the appellant because he became overage for promotion on 31st December 2003 whereas the vacancy was only coming up on 1st January 2004.

5. Counsel for the respondents stated that the appellant proceeded on pension establishment with effect from 30th December 2006 on completion of terms and conditions of engagement of his service including two years' extended period of service under the existing provisions. The appellant had

served for 26 years and is in receipt of appropriate and suitable service pension.

6. It was argued by respondents that the "average" grading given to the appellant was in the year 1995. The instructions in vogue at that point of time were that when an "average" combined with "not recommended" for promotion was given only then was the report required to be communicated to the ratee. In the appellant's case though he was rated as "average" he had been recommended for promotion, therefore, no such communication of average grading was required to be done by the authorities to the appellant. The Army Headquarter policy letter necessitating communication of the "average" grading which has been referred to by the appellant is dated 30th September 1997 and was not in force at the time when the appellant earned his average grading in 1995.

7. The record of the screening board for the 'S' course in respect of the appellant is as under:-

Date of screening	Result of screening
10 Feb 1998	Unfit due Average ACR of 1995
02 Feb 1999	Unfit due Average ACR of 1995
10 Feb 2000	Fit, but not detailed being junior in order of seniority.
02 Mar 2001	Unfit due lacking Regimental Reports.
02 Mar 2002	Unfit due lacking Regimental Reports.
31 Jan 2003	Fit. Detailed on 'S' course.

It was argued by respondents that the appellant was in the zone for consideration for the 'S' course from Feb 1988 onwards. He was aware of the criteria for promotion and had taken measures to ensure that he fulfilled the education/medical/professional criteria. At this stage to assert that he was unaware of the necessity of Regimental tenure ACRs and that he should not have been sent on ERE is unjustified. Just as ignorance of law is not valid ground to infringe the law, similarly ignorance of promotion criteria are not justified/justifiable grounds to condone lapses. Furthermore, Army HQ instructions do not impose any ban on persons in the promotion zone being sent on ERE. The wording is that the authorities should give "**adequate opportunity**" to such persons to earn Regimental reports. In this case against a mandatory two Regimental reports the authorities gave the appellant opportunity to earn five Regimental reports i.e. from 1994-1998. By so doing respondents ensured that the appellant "**did not lose out on promotion for want of Regimental reports**". Furthermore, if the appellant had at any time represented against his posting to NCC the same would have been cancelled. It is not out of place to mention that an ERE tenure is a 'soft' tenure for Army personnel and in normal circumstances individuals volunteer for such assignments. At this stage now to blame the respondents for detailing him for such ERE was improper.

8. With regard to supersession by juniors, especially with reference to Havildar Kailash Chand, it was clarified that Havildar Kailash Chand qualified on the 'S' course in 2002 and was considered by the DPC held on 22nd/23rd April

2003 and was approved for promotion to Naib Subedar. At this point of time the appellant was not qualified to be considered by the DPC because he had not yet qualified on the 'S' course. Havildar Kailash Chand was promoted to the rank of Naib Subedar on 1st October 2003 in his turn. The appellant was considered for promotion by the DPC only in November 2003 and would have been eligible for promotion to the rank of Naib Subedar thereafter. However the first vacancy was on 1st January 2004 but on 31st December 2003 he became overage. Havildar Kailash Chand having already been empanelled was promoted to Naib Subedar in his own turn on 01st October 2003. Respondents stated that it was unfortunate that the appellant could not be promoted in his turn but it was not on account of any inadequacy on the part of the respondents.

9. Keeping the above in view, we do not find any merit in the appeal and the same is dismissed with no order as to costs.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
April 25, 2011