

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI
18.

O.A. No. 04 of 2012

Ex Hav/Tech Comn Suresh Kumar

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Mr. S.M. Dalal, Advocate.

For respondents: Ms. Shilpa Singh, Advocate.

CORAM:

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

ORDER
05.11.2012

1. Petitioner by this petition has prayed that the policy letters dated 30th January 2009 and 24th April 2009 may be quashed as being arbitrary, unreasonable and inequitable. He has also prayed that the order dated 22nd August 2011 passed by EME Records may also be quashed being without jurisdiction and he may be reinstated in service and be promoted to the rank of Nb Sub from the date first vacancy was available in TCM(RO) trade or Tech Comn trade. He has further prayed that Respondents may be directed to promote him to the rank of Nb Sub with effect from the date the ACP Scheme of Government of India, Ministry of Defence was implemented.

2. Petitioner was enrolled as a Sepoy in Corps of EME in the trade of Tele Communication Mechanic (Radio) (TCM RO) and he was promoted to the rank of Nk on 1st April 1995 and Hav on 1st August 1997. He was working sincerely and had all qualifications for further promotion. He also successfully qualified for promotion from

Hav to Nb Sub on 7th March 2009. From this date the Petitioner was seniormost Hav in his trade of TCM-RO and was fully qualified for promotion to the rank of Nb Sub. Then as per policy decisions dated 30th January 2009 and 24th April 2009, trades of TCM (RO) and TCM (Line) were merged into a new trade called Technician Communication (Tech Comm). This policy was executed by Respondents by letter dated 24th April 2009. A total of 26 JCOs in the trade of Tech Comm superannuated from service between 1st July 2009 and 30th August 2010. Accordingly, 26 chain vacancies in the rank of Nb Sub were created but the Petitioner was not promoted though he was at Serial No.1 in the seniority list of Havs Tech Comm Trade. It is also alleged that one Hav Binu was promoted to the rank of Nb Sub on 8th November 2009 though he was junior to the Petitioner. No explanation justifying supersession was communicated to the Petitioner. He has also submitted that policy of Army HQ was arbitrary, unjust and unfair because it resulted into 26 JCOs being surplus only in one trade i.e. Tech Comm whereas the surplus should have been divided equally between Tech Comm and Tech Computer. He has also submitted that Modified Assured Career Progression (ACP) Scheme has been introduced by the Ministry of Defence on 14th January 2010 and Petitioner was eligible to get promotion to the rank of Nb Sub under this policy, as he had stagnated in the rank of Hav for 13 years, but he was deprived of this benefit without assigning any reason. In this background the present petition was filed with the aforesaid prayers.

3. A reply was filed by the Respondents and the Respondents in their reply pointed out that by the letter dated 24th April 2009, the Integrated HQ of MoD introduced a new trade/category named Tech (Computer) and 550 persons from the erstwhile trade of TCM (Line), who were qualified in Class III and Class II, were

selected for re-mustering into the new trade Tech (Computer). The remaining persons in the category of TCM (RO) have been merged into Tech (Comm) after fixing their inter-se-seniority in common roster as indicated by the aforesaid letter. The existing strength of both the trade (i.e. TCM (RO) re-designated as Tech (Comm) and remaining person in TCM(L) have been added and held against the existing authorisation only of Tech (Comm) and no additional authorisation in existing authorisation has been released to the newly merged trade. It was also pointed out that the holding strength of JCOs in the erstwhile traders of TCM (RO) and TCM (L) have also been added up therein. It was also argued that due to this merging, and no release of any additional JCO vacancies, the holding strength of JCOs had become surplus by 26 in the newly merged trade i.e. Tech (Comm), and as such the surplus vacancies were liquidated in a phased manner against the ensuing monthly wastage. As a result of this, promotion in this category remained stagnant till October 2010, which consequently debarred the Petitioner to come up for promotion to the rank of Nb Sub in the newly merged trade Tech (Comm). It was also submitted that after fixing their seniority and made into one trade as Tech (Comm), there were 54 individuals in the roster who were senior to the Petitioner, as on effective strength, and they all originated from the erstwhile trade of TCM (RO) and the seniority of the Petitioner was fixed at 'check Seniority No. 55'. It was only after full liquidation of surplus strength, out of monthly wastage, that a vacancy occurred during the month of November 2010 and first promotion panel of senior Havs in the newly merged trade was done. However, it was found that a total of 155 persons, including the Petitioner, who were considered for empanelling in aforesaid panel have already retired from service on fulfilling their terms and conditions. The

Petitioner also retired from service with effect from 31st August 2010 on completion of term of engagement applicable to him.

4. It is also pointed out that the benefit for promotion from rank of Hav to Nb Sub in erstwhile trade was done on 6th May 2009, wherein only 6 persons senior to the Petitioner have been promoted to the rank of Nb Sub, and last man promoted was on Corps seniority at 1383, whereas seniority of Petitioner was 1395, therefore he could not be promoted due to the non-availability of vacancies in the erstwhile trade.

5. So far as the promotion of Hav Binu is concerned, it has been explained that he has been given promotion in accordance with rules against sports quota being an outstanding sportsman. So far as grant of MACP is concerned, the Respondents submitted that a clarification has been issued from MoD on 13th June 2011 and the matter is already under consideration and he is eligible for benefit of this MACP from 1st September 2008.

6. Learned counsel for the Petitioner has primarily submitted that the surplus JCOs have been added to only one particular trade which was not justified, especially when the trade was divided into two categories, and it should have been distributed equally so that all concerned could have got equal benefit. Since it is a matter of policy, therefore, we do not want to interfere in this decision. However, we do not see any illegality in such policy decision. So far as the issue that Hav Binu who was junior to Petitioner was promoted, it has been clarified by the Respondents wherein they have referred to the order dated 19th April 2010 of the Government, in which it has been mentioned that he has been granted out of turn promotion to the

rank of Nb Sub on representing the country in the 13th Asian Rowing Championship held at Yi-Lan, Taiwan from 4th to 8th November 2009 and won Gold Medal and, therefore, he has been given out of turn promotion. This is an exceptional promotion, which would not affect the Petitioner's seniority. However, so far as the grant of MACP is concerned, now that all the necessary formalities are complete, the Respondents should not delay the grant of MACP to the petitioner.

7. The Respondents are directed to undertake the exercise and complete the whole process as far as possible within three months, so that the Petitioner who has been waiting for promotion for such a long time may get some relief from the MACP at the earliest. We direct the Respondents that so far as grant of MACP to Petitioner is concerned, it should be done expeditiously. In case the process is not completed in three months, the Petitioner may be entitled to interest thereof.

8. With this observation, the petition is disposed of. No order ~~as~~ to costs.

A.K. MATHUR

S.S. DHILLON
(Member)

New Delhi
November 5, 2012
dn/pd