

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

21.

O.A. No. 157/2012

Hav Nupur Sutradhar

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

With OA Nos.156/2012

OA No.151/2012

OA No.152/2012

OA No.153/2012

OA No.154/2012

OA No.155/2012

OA No.158/2012

OA No.159/2012

OA No.160/2012

For petitioner:

Mr. S.S. Pandey, Advocate.

For respondents:

Ms. Sangeeta Tomar, Advocate (OA No.157/2012 and 153/2012)

Mr. Ajai Bhalla (OA No.151/2012)

Mr. Anil Gautam (OA No.152/2012)

Ms. Manisha Singh (OA No.154/2012)

Ms. Jaagriti Singh (OA No.155/2012)

Mr. Satya Saharawat (OA No.158/2012)

Mr. Rohit Pratap proxy for Mr. Mohan Kumar (OA No.159/2012)

Dr. S.P. Sharma (OA No.160/2012)

CORAM:

HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.

HON'BLE LT. GEN. M.L. NAIDU, MEMBER.

ORDER

23.08.2012

1. All these petitions involves similar question of law and facts, therefore, they are disposed off by this common order. For convenient disposal of all these petitions, OA No.157/2012 Hav Nupur Sutradhar is being taken as the lead case for consideration.

2. The petitioner applied in pursuance of the advertisement issued by the Indian Army in the Employment News for the period from 20-26.10.2007 for

recruitment of Havildar in the Army as Surveyor Automated Cartographer (Svy Auto Carto) in the Corps of Engineers in terms of instructions contained in Army Instructions 23 of 1990. It was stipulated in the instructions as well as the advertisement that the selected candidates will undergo 19 weeks of basic military training and on successful completion of training, the candidates will be appointed in the rank of Havildar.

3. In response to this advertisement, the petitioner applied for the post and was enrolled in the Indian Army on 20.03.2008 having found fit. The basic training of the batch of the petitioner was commenced from 24.03.2008 which was of 19 weeks duration and it was concluded on 23.08.2008 which the petitioner completed successfully. After successfully undergoing basic military and trade training at BEG & Centre, Roorkee, the petitioner was attested on 29.12.2009 and was allowed to wear the rank of Havildar. The petitioner was posted at MD & C Wing of HQ CAMS, Delhi Cantt in February 2010 where the applicant is serving till date.

4. The applicant received his statement of account for the quarter ending February 2011 from respondent No.4 and the applicant learnt that his basic pay was fixed @Rs.6760/- per month instead of Rs.8560/- per month as applicable to Direct Entry Havildar and that too w.e.f. 29.12.2009 i.e., from the date of his attestation instead of 23.08.2008 i.e. from the date of completion of his basic training with retrospective seniority from the date of his enrolment as provided under the relevant instructions.

5. The respondents passed a Part-II order dated 17.10.2011 erroneously shown that the petitioner has been promoted to the rank of Havildar from Sepoy that too with effect from his date of attestation i.e. 29.12.2009 instead of the date of his completion of his basic training from 23.08.2008 contrary to

the instructions. The applicant was given the seniority in the rank of Havildar w.e.f. 20.03.2008 i.e. from the date of his enrolment as per the existing instructions. This anomaly was brought to the notice of CO that because of this erroneous notification of the Part-II order, the petitioner was not paid the salary of Rs.8560/- per month from the date of enrolment and accordingly the CDA, Meerut issued the erroneous payment. When this fact was brought to the notice of respondents, they realised their mistake that Part-II order has been erroneously issued and they took necessary steps for rectification of that order. But till this date, the CDA Merrut has not acted upon and nor released the due amount to the petitioner.

6. The respondents have filed their reply and admitted the mistake. They have stated in para 3 of their reply that due to misinterpretation of rule position, personnel of SAC Category were earlier being assigned seniority in Havildar rank from the date of their physical assumption of rank rather than from the date of enrolment. However, consequent on issuance of clarification vide Col Ravin Khosla, VSM, Dir PS-2, Addl Dte Gen Personnel Services, AG's Branch, IHQ of MOD (Army) letter dated 31.01.2011, BEG Records Roorkee had sought clarification from E-in-C's branch, IHQ of MoD for fixation of seniority of the SAC category personnel vide letter dated 22.07.2011. On receipt of the confirmation from E-in-C's Branch, IHQ of MoD vide their letter dated 03.08.2011, seniority of all SAC personnel was required to be refixed from their date of enrolment instead of date of attestation in the interest of all SAC category personnel. Accordingly, BEG Records Roorkee cancelled Part-II Order earlier notified showing physical assumption of Havildar rank by the petitioner and published fresh Part-II Order notifying his physical assumption of Havildar rank w.e.f. 29.12.2009 i.e. date of attestation (Graduate Entry

Havildar) and assigning his seniority w.e.f. 20.03.2008 (date of enrolment) to protect his career interest as per the format provided in Appendix-J to "Manual of Documentation JCO/OR 1999 (Revised).

7. The respondents also clarified in para 4 of the reply that as per the provisions contained in SAI I/S/2008, basic pay of Havildar (Direct Entry/Graduate Havildar) who have been enrolled on or after 01.01.2006 in the revised pay structure should be fixed @8560/- p.m. As per the provisions contained in SAI I/S/98, on successful completion of training, the minimum pay of the group or trade to which individuals are allotted, should be admitted from the date of enrolment less the stipend already paid. The successful completion of training would be determined either the date of attestation or date of initial mustering, whichever is earlier. In the instant case, since the petitioner was attested on 29.12.2009, his entry level pay should have been fixed as Rs.8560/- p.m. from his date of enrolment and the amount due, less the stipend already paid, should have been paid to the applicant by respondents immediately after his attestation.

8. In view of the reply filed by the respondents, nothing remains to be determined on this issue. But as per the terms of advertisement, these persons are Direct Recruit Havildars and they have already successfully completed their training and have already been attested, therefore, they are entitled to the fixation of pay right from the date of their enrolment. Though they are getting stipend, but it is already recommended to the PAO (OR) BEG & Centre Roorkee that the stipend should be deducted from the entitled salary and the remaining amount should have been paid to them. This process has almost taken three years and this petitioner as well as other petitioners are being deprived their legitimate dues and they are being paid the less amount

because of this mistake. It is very strange that this mistake was corrected after more than two years and the implementation has to be made by the concerned authorities. However, in view of the admission made by the respondents and since fresh Part-II Order has already been issued, we are of the opinion that the matter have been put in correct prospective. We direct the respondent authority i.e., PAO (OR) BEG & Centre Roorkee to immediately release the amount to this petitioner as well as other petitioners alongwith the arrears. The petitioners shall also be entitled to the interest @12% on the arrears due to them. Payment of arrears alongwith interest should be made within a period of three months.

9. All the above mentioned petitions stand allowed in the light of aforesaid decision. No order as to costs.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
August 23, 2012

Ns