

**THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
NEW DELHI
(Court No.2)**

O.A. NO.20 of 2010

IN THE MATTER OF:

HAV. GOPAL KRISHAN MANJOTRA**APPLICANT**
Through: Mr. K. Ramesh, counsel for the applicant

Vs.

UNION OF INDIA AND OTHERS**RESPONDENTS**
Through: Mr. Mohan Kumar, counsel for the respondents

CORAM:

**HON'BLE MR. JUSTICE MANAK MOHTA, JUDICIAL MEMBER
HON'BLE LT. GEN. M.L. NAIDU, ADMINISTRATIVE MEMBER**

JUDGMENT

Date: 20.04.2012

1. This OA was filed in the Armed Forces Tribunal on 12.01.2010 and was registered as OA No.20/2010.

2. Vide this OA, the applicant has prayed for quashing and setting aside of the impugned order of Army Ordinance Corps Records letter dated 06.01.2009 and has sought entitled promotion to the rank of Naib Subedar with an amended seniority list of Havildars in terms of Army HQ policy letter dated 06.02.1960 and 13.10.1983. The applicant has also prayed that he be granted promotion to the rank of Naib Subedar with ante date seniority with all consequential benefits.

3. Brief facts of the case are that the applicant was enrolled in the Indian Army on 28.01.1984 in Army Ordinance Corps as a General

Duty soldier. He qualified for the remustering as a Clerk (Store) and was thus remustered. He subsequently qualified in all the mandatory tests and was promoted to Lance Naik, Naik and Havildar at par with his batch mates. The applicant even qualified for the next promotion to a Naib Subedar on 13.06.2009.

4. It is contended that on 23.06.2009, the applicant was intimated for the first time regarding his seniority vide a seniority roll, where he found his name at Serial No.801, according to the applicant which should actually have been at Serial No.43. On enquiry, he was informed that on remustering he lost his seniority from 28.01.1984 to 23.06.1986, which is contended legally untenable and ultra vires to Army HQ policy letters dated 06.02.1960 and 13.10.1983 issued in this respect.

5. Learned counsel for the applicant argued that both policy letters of 06.02.1960 and 13.10.1983 clearly stipulate that on remustering a person does not lose his seniority. He maintains his original seniority from the date of enrolment and this is based on logical and equity based proposition because a Jawan being permanently transferred from a lower trade to a higher trade cannot be put to any penalty as he is improving his career profile. In the instant case the applicant was remustered from General Duty (GD) to the trade of Clerk (Store) and therefore, he has improved his grade. He was thus assigned the seniority on 23.06.1986 though he was enrolled on 28.01.1984.

6. Learned counsel for the applicant further submitted that since the applicant was promoted as Lance Naik, Naik and Havildar alongwith his batch mates, the applicant never realised that his seniority has been put down. The seniority roll was also not promulgated for the information to all concerned. The applicant had passed his promotion cadre to Naik in November 1989, Havildar cadre in December 1993 but promoted w.e.f. February 1994 and had passed the Naib Subedar cadre in June 2009. As per the applicant, he should have been at serial No.43 in the seniority roll of Havildar which was circulated as late as 23.06.2009. In this seniority list he was relegated to Ser 801.

7. In support of his contentions Learned counsel for the applicant cited the judgment of AFT Lucknow Bench in **TA No.59/2010 dated 20.08.2010 Hav/Clk Bharat Singh Jariyal Vs Union of India and others**, in which the petition was allowed with certain conditions and the seniority of the petitioner was maintained as per his original seniority.

8. Learned counsel for the applicant also drew our attention to the Army Medical Corps Record Office letter dated 23.02.2011 which shows compliance of the judgment given by the Lucknow Bench in the above stated matter.

9. On the other hand, the learned counsel for the respondents stated that having been enrolled in the Indian Army on 28.01.1984, the

applicant applied for remustering to Clerk Store Provision (CSP) and was detailed on CSP Remustering Course Serial No.09 commencing from 07.01.1988 to 12.07.1988 and qualified. On occurrence of vacancy, the applicant had been remustered from Store Hand General Duty to Clerk Store Provision (CSP) (Now clerk inventory management) on 01.08.1989 vide part-II Order dated 26.08.1989. Having been remustered as CSP, his seniority for further promotion was fixed in terms of Army HQ letter dated 04.05.1954 and 06.02.1960.

10. Learned counsel for the respondents further argued that after remustering, he underwent promotion cadre course from Sepoy to Lance Naik (SN cadre) in Clerk category and qualified on 22.11.1989. On occurrence of vacancy, he was promoted to the rank of Naik w.e.f. 01.12.1989. Whereas his batchmates were promoted to the rank of Naik prior to his remustering, being senior to him. In this connection, learned counsel for the respondents drew our attention to the averment made in the counter-affidavit where a comparative analysis of the dates of passing of promotion cadre in respect of the applicant and his batch-mates was given.

11. Learned counsel for the respondents further argued that the judgment cited by the applicant is pertaining to personnel who is serving in Army Medical Corps. Since the organisation of the two Corps is different, therefore, different rules and regulations are to be

applied. However, rules are the same to fix the seniority based on IHQ of MOD letter dated 06.02.1960.

12. He further stated that the applicant was promoted to Naik w.e.f. 01.12.1989 and Havildar on 01.02.1994. He further contended that there is no provision to grant ante date seniority to an individual before fulfilling the requisite criteria for promotion. The applicant passed his Havildar to Nb Subedar cadre on 13.06.2009 but he did not come up for promotion to Nb Subedar as per his seniority. Learned counsel for the respondents further contended that the applicant has not exhausted departmental remedies, therefore, the OA should not be entertained.

13. It was contended by the respondents side that the impugned order is dated 06.01.2009 and action has been taken in 2012, thus, the applicant is suffering from delay and out of limitation. In support of his contentions, learned counsel for the respondents cited the judgment of Hon'ble Apex Court in the matter of **Union of India Vs Tarsem Singh dated 13.08.2008 passed in Civil Appeal Nos.5151-5152 of 2008** wherein the Hon'ble Apex Court enunciated the principles of continuing wrong and recurring/successive wrongs.

14. Learned counsel for the respondents also cited the judgment of Hon'ble Apex Court in the matter of **Shiba Shankar Mohapatra & Ors., Vs State of Orissa & Ors., 2010 (12) SCC 471** wherein their Lordships have held that "*the settled proposition that emerges is that*

once the seniority had been fixed and remains in existence for a reasonable period, any challenge to the same should not be entertained. In K.R. Mudgal (supra), this Court has laid down, in crystal clear words that a seniority list which remains in existence for 3 to 4 years unchallenged, should not be disturbed. Thus, 3-4 years is a reasonable period for challenging the seniority and in case someone agitates the issue of seniority beyond this period, he has to explain the delay and laches in approaching the adjudicatory forum, by furnishing satisfactory explanation.”

15. Having heard both the sides in great detail and having examined the documents on record, we also examined the provisions of AO 25/81 which lays down remustering of personnel from one category to another. At para 2(a), the AO lays down that “*remustering is against an authorised vacancy which inter-alia, means that recruitment demand of the quarter in which remustering is carried out has to be adjusted accordingly.*” At para 2(e) it further states that “*Prior approval for remustering from the sanctioning authority mentioned at para 9 below be obtained.*” At para 11 of the same AO, it states that “*Before personnel are detailed on remustering of course, it will be ensured that the conditions laid down above are fulfilled and prior approval of the competent authority for remustering has been obtained.*” A plain reading of this AO clearly brings out that the remustering will be effective from the date an individual qualifies for the same. In this case the applicant was absorbed in the remustering cadre after one year.

16. Though the respondents have not stated the reasons of this delay for one year before absorbing the applicant in the remustered cadre, from the pleadings it emerges that it was because there was no vacancy in the said cadre.

17. The policy letter of 06.02.1960 states at para 4 that seniority of a personnel reclassified/remustered from one cadre to another in the interest of service will be governed vide para 3. Paras 2 and 3 of the said policy read as under:-

"2. With a view to achieving uniformity and standardization of rules in regard to assessment of seniority of combatant clerks the following decisions have been taken:-

(a)(i) Seniority of combatant clerks be from the date of enrolment/promotion to a particular rank. NCOs/JCOs holding substantive ranks will take seniority over those holding war substantive or paid acting ranks. In the case of individual promoted to any particular rank from the same date, their seniority will be in accordance with their relative position in the next below rank.

(ii) Seniority in Lance appointments will not reckon for purpose of promotion to the next higher ranks. Lance Naiks or equivalents will take seniority amongst sepoy per se from the date of their enrolment and similarly Lance/havildars amongst Naiks or equivalents from the date of their promotion to that

rank. However, due weightage will be given to holders of Lance appointments when promotions are made by the competent authorities.

3. The following principles will be observed in drawing up seniority rosters of JCOs/ORs of this category:-

(a) Separate rolls will be maintained by ranks; Risaldar/Subedar Major, Risaldar/Subedar, Jamadar, Dafedar/Havildar, Lance Dafadar/Naik and Sepoys, L/Naiks or equivalents will be included in Sepoys with appropriate remarks.

(b) Seniority within each rank or their equivalents will be assessed as under:-

(i) Sepoy/L. Naik - According to the date of enrolment

*(ii) Lance Dafadar/Naik } - According to the date of
(iii) Dafadar/Havildar } promotion to the rank held
Continuously.*

*(iv) Jamadar - According to the date of promotion/
Appointment.*

*(v) Risaldar/Subedar } - According to the date of
(vi) Risaldar/Subedar Major } promotion to the rank held
continuously.*

Notes:- (1) In case the date of enrolment is the same in respect of Sepoy/L Naik or equivalents, seniority will be assessed in order of Army numbers.

(2) In case the date of promotion is the same, seniority will be assessed according to the date of promotion in the rank below held continuously.

(3) Seniority of ex-service personnel will be determined according to date of re-enrolment. SSE personnel re-enrolled on regular engagement will reckon seniority from the date of re-enrolment on regular engagement.

(4) Substantive Dafadars/Havildars reverted to lower rank or class of pay for indiscipline or inefficiency will reckon seniority in accordance with para 3(a)(i) and (ii) of Special Army Order 13/S/55."

18. We have considered the citation cited by the applicant. The Hon'ble Tribunal, Lucknow Bench judgment in the case of TA No.59 of 2010 Hav/Clk Bharat Jariyal Vs UOI and others, has taken a view that seniority of the petitioner should reckon from the date of enrolment in case the remustering takes place as a Sep/LNK. The provisions of Army HQ letter of 06.02.1960 and 13.10.1983 have been taken into consideration.

19. We have also considered the citations given by the respondents. The citation pertain to delays and latches, as also the interpretation of continuing wrong and successive wrongs. This citation has no

relevance to the case as the seniority list was circulated only on 23.06.1009 (Annexure A-7) for the first time.

20. We have also examined the averment made by the respondents in their reply in which example of seniority have been illustrated. These are as under:-

S. No.	Army Number, Rank Trade & name	Date of enrolment	Date of passing of SN Cadre and promotion to Naik	Date of passing of NH cadre and promotion to Havildar	Remarks
(a)	Applicant	28 Jan 1984	22 Nov 1989 (SN Cadre) 01 Dec 1989 (Promotion Naik)	01 Feb 1984 (Promotion to Havildar)	Ser No.801 of Annexure A-1 of OA 20/2010
(b)	6920108A Hav (Now JC-727514H Nb Sub) Clerk (SD) Danesh Kumar	31 Jan 1984	12 Apr 1986 (SN cadre) 01 Oct 1987 (promotion Naik)	02 Jul 1988 (NH cadre) 01 Oct 1991 (Promotion Havildar)	Ser No.43 of Annexure A-1 of OA 20/2010
(c)	6925589F Havildar (Clerk Store Control) Birendra Singh	23 Jun 1986	24 Dec 1988 (SN Cadre) 01 Nov 1989 (Promotion Naik)	30 May 1992 (NH Cadre) 01 Feb 1994 (Promotion Havildar)	Ser No.794 of Annexure A-1 of OA 20/2010

21. The applicant has contested the above table given by the respondents and have stated in the rejoinder affidavit as follows: -

Direct entry in clerk trade

Army No.	Rank	Name	Date of enrolment	Date of promotion NK
6920108A	Hav/Clk SD	Dhanesh Kumar	31 Jan 1984	01 Oct 1987
6925589F	Hav/Clk IM	Birendra Singh	23 Jun 1986	01 Nov 1989

Remustered in clerk trade

Army No.	Rank	Name	Date of enrolment	Date of promotion NK
6920106 P	Hav/Clk IM	Gopal Krishan Manjotra	28 Jan 1984	01 Dec 1989

22. Analysis of the above suggests that the date of seniority of the applicant being 28.01.1984 is date of enrolment since he was remustered as a Sepoy. Therefore, he should have been detailed to attend the Promotion Cadre to Naik immediately after his remustering in 12.07.1988. Instead his remustering seniority was taken as 01.08.1989 and he was detailed on the promotion cadre to Naik on 09.11.1989. Thus, he became junior to Hav. (now Nb Subedar) Danesh Kumar and also to Hav (Now Nb Subedar) Birendra Singh whose seniority as a Sepoy was 23.06.1986 compared to the applicant seniority as a Sepoy of 28.12.1984.

23. In view of the foregoing, we are of the opinion that though the applicant did not agitate his seniority till it was revealed to him when the seniority roll was published for the first time on 23.06.2009, we feel that his agitation is confined to his fixation of seniority as a Naik and

Havildar which has been done incorrectly by the respondents. It is responsibility of the respondents to have ensured that the vacancy existed before the individual was detailed on the remustered course from 07.01.1988 to 12.07.1988. His remustering seniority should have been fixed w.e.f. 12.07.1988 while it was fixed in the remustered category from 01.08.1989 i.e. a full year after having qualified the remustered course. The additional document submitted by the respondents does not explain the reasons/rationale for delay in remustering the applicant from the date of successfully completing the course. At best the seniority should have been fixed in the same quarter of July, August and September of 1988 as per AO 25/1981. Had the remustering been done correctly, the applicant by virtue of his seniority from the date of enrolment i.e. 28.01.1984 would have been detailed on the Promotion Cadre to Naik earlier and thus would have been promoted as a Naik earlier and certainly before 01.12.1989. Thus, he has been wronged.

24. In the light of above discussion, we are of the opinion that the seniority of the applicant has to be refixed as a Naik. He should have been promoted as a Naik with ante date seniority at par with his batch-mates whose date of enrolment was 28.01.1984 and date of remustering was 12.07.1988. Therefore, we direct that his date of promotion should be ante dated to be at par with his batch-mates whose date of enrolment was 28.01.1984. As mentioned in this case, Havildar (Clerk Store Control) Birendra Singh who was enrolled on

23.06.1986 was detailed on the promotion cadre to Naik on 24.12.1988 and was thus promoted on 01.11.1989. Since the applicant had attended the remustering course and qualified on 12.07.1988, he should have been detailed for the promotion cadre in 1988 itself. Thereby would have been promoted earlier i.e. before 01.11.1989. Accordingly, his seniority as a Naik and its consequential effect on the promotion to Havildar would have been taken and his listing as a Havildar in the seniority roll, instead at Serial No.801 would have been before Serial No.794.

25. We, therefore, direct that the seniority of the applicant be refixed accordingly i.e. by taking him to be remustered on 12.07.1988. Since the applicant had passed the promotion cadre on 22.11.1989, he shall not get the back-wages and allowances of Naik w.e.f. the ante date seniority as fixed by the respondents and the ante date seniority will only be applicable for fixation of seniority. Accordingly, his date of promotion to Havildar will have an ante dated effect. There shall be no back-wages. Thus, as per his standing in the overall list of the Havildars in case he comes within the zone of consideration for promotion to Nb Subedar, he shall be considered accordingly.

26. In view of the foregoing, the applicant be approved to be Naib Subedar based on ante dated seniority of Naik and Havildar, respectively, and he shall be deemed to have retired in the rank of Nb Subedar and shall not be entitled to back-wages and allowances. He

will be entitled to only pensionary benefits of a Nb. Subedar. This order is confined to the applicant only who has agitated the matter before us.

26. This exercise should be completed within 90 days from the date of this order. The O.A. is partly allowed. No orders as to costs.

(M.L. NAIDU)
(Administrative Member)

(MANAK MOHTA)
(Judicial Member)

**Announced in the open Court
on this 20th day of April, 2012.**