

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
NEW DELHI.

O.A.No.214 of 2010

Havildar Shajan Thomas

...Petitioners

Versus

Union of India & Ors.

...Respondent

For the Petitioner : Sh. K.Ramesh, Advocate

For the Respondents: Sh. Anil Gautam, Advocate

C O R A M:

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

HON'BLE LT.GEN. S.S.DHILLON, MEMBER (A)

JUDGMENT
(30.5.2012)

BY CHAIRPERSON:

1. Petitioner by this petition has prayed for issuing directions to the Respondents to quash and set aside the age criterion fixed in Para 149 of the Regulations for the Army (1987) duly amended by Ministry of Defence Policy letter dated 4.5.1999, especially in the

light of Army HQ letter dated 1.1.2010 so as to meet the ends of equity, justice and fairplay. Petitioner has also prayed to issue directions to the respondents to immediately send the applicant for NCC course and promote the applicant at par with his batchmates and pay all consequential benefits.

2. Petitioner was enrolled on 26.9.1986 as a Sepoy and with passage of time he was promoted to the rank of Naik and Havildar. However, since January, 1995, he is Havildar but he has not been promoted to Nb. Sub. despite qualifying in his promotion cadre in the first attempt, because he was considered overage for promotion on 6.4.2010 after having attained the age of 46. Petitioner aggrieved by this filed the present petition with the aforesaid prayer.
3. Promotion from the post of Havildar to Nb. Subedar, among other criteria, has a age criteria i.e. he should not be more than 46 years of the age. It is alleged that in the army right from Sepoy to Field Marshal, there is no age criteria for promotion barring Havildar

to Nb. Subedar. Therefore, it is alleged that putting this barrier of age for promotion from Havildar to Nb. Subedar is in violation of Article 21 of the Constitution and it is an archaic law of British India. Therefore, it needs to be scrapped and it should be made open for the Havildars to be promoted to the post of Nb. Subedar irrespective of the age bar.

4. A reply has been filed by the respondent and respondent has contested the matter and pointed out in their reply that the petitioner was detailed for promotion cadre from Havildar to Nb. Subedar, along with his batchmates, and qualified the same on 14.11.2009. This is mandatory for promotion to the rank of Nb. Subedar since he was meeting the basic qualifications for undergoing promotion cadre. However, he could not be sent for NCO Clerk Course Ser. No.NCC-51 commencing wef 15.3.2010 to 8.5.2010 being overage wef 6.4.2010. It was also pointed out that the promotion criteria is contained in Army Order 45/80 and SAO 8/S/78 and letter

No.B/335/AG/PS-2(c) dated 10.10.1997. It was also pointed out that the age criteria for promotion to the rank of Nb. Subedar, through departmental promotion, as per provisions contained in RA Para 149(a) & 149(b) as amended vide Govt. Of India, Min. of Def letter No.F14(3)98/D(AG) dated 18.9.1998, is as under:

- (a) For Clerk, SKT,AT and PA (ASC) categories, 46 years of age or 26 years of service whichever is earlier.
- (b) For all categories of Havildar except those mentioned at para (a) above, 44 of age or 26 years of service whichever is earlier.

5. In the case of petitioner, his date of birth being 6.4.1964 he reached the age of 46 years on 06.04.2010, hence he became overage for promotion to the rank of Nb Sub. It was argued that there no injustice has been done to him as this policy is uniformly applicable to all. However, it was also pointed out that the 3rd financial up gradation to the pay scale of Nb. Subedar is being given under Assured Career Progress(ACP) Scheme to all Havildars who are not promoted to the rank of Nb. Subedar due to

various reasons like, over age/non availability of vacancies even after 24 years of service as per provisions contains in IHQW of MoD (Army) letter no.B/33513/ACP/AG/PS-2(c) dated 3.8.2009. In the case of petitioner the applicant become eligible to earn 3rd financial up gradation under ACP Scheme wef 26.9.2010 i.e. on completion of 24 years physical service in the Army. So far as fixation of age is concerned, it is an age old tradition which is carrying on. Also, it is not that those who could not be promoted because of the age get stagnated, rather they have been given the benefit of ACP scheme wef 26.09.2010 on completion of 24 years of service in the Army. Therefore, respondents submitted that there is no breach of article 21 of the constitution:

6. We have heard learned counsel for the parties and perused the record. It is true that there are certain traditions which are being maintained and should be maintained unless they are outdated because of the time or factors which render those traditions

impracticable. The Army has certain norms /traditions and this tradition of promotion from Havildar to Nb. Subdear, the incumbent should not have attained the age of 46 years has been maintained right from the beginning and we don't see any reason in the present context that present fixation of the age has become outdated or not of utility. The fixation of age has many considerations specially in the army that the incumbent should be physically fit and agile to give leadership. The post of Nb. Subdear is of higher importance in the scheme of things and therefore, if the army has kept 46 years of age then it cannot be said to be bad or has been rendered outdated. However, to keep the morale high of those persons who are stagnating in the rank of Havildar, the government has already invoked a ACP for such persons who have completed 24 years of service and could not be promoted because of age factor or vacancies factor, then such person should be given

financial benefit. That sufficiently meets the ends of justice.

7. Learned Counsel for the petitioner strenuously urged before us that such a law should be changed. We regret that request of learned counsel cannot be acceded to because it has certain cascading effects and further promotion is also affected because as we understand promotion from Nb.Sub to Subedar and Sub. Maj has to earn 5 ACRs and in case he doesn't 5 ACRs for any reasons then such promotion will also be affected and the scheme of things will be seriously disturbed and it will cause repercussions on the entire cadre system established in the army. Therefore, in these circumstances we are of the view that age limit fixed for promotion from the Hav to Nb. Subedar does not suffer from any illegality. However in case the benefit of ACP is not given to the petitioner, then respondents are directed to look into the matter and expedite the benefit of ACP scheme to the petitioner.

8. Consequently, we don't find merit in the petition and the same is dismissed. No order as to costs.

[Justice A.K. Mathur]
Chairperson

[Lt. Genl. SS Dhillon]
Member (A)

New Delhi
30th May, 2012