

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

O.A NO. 230 of 2011

IN THE MATTER OF:

Hony Lt Badan Singh Pal**APPLICANT**
Through : Mr. K. Ramesh, counsel for the applicant

Vs.

UNION OF INDIA AND OTHERS ...**RESPONDENTS**
Through: Mr. S.K. Sethi, counsel for the respondents

CORAM:

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

JUDGMENT

Date: 18.05.2012

1. The OA No.230/2011 was filed in the Armed Forces Tribunal on 30.05.2011.
2. Vide this OA the applicant has sought directions to the respondents to consider the applicant for promotion to the rank of Subedar Major immediately at par with the DPC of Sub Gumnam Chowdhury and if promoted with effect from 01.02.2008 with pay and allowances till 25.01.2011 as the applicant stands promoted to the rank of Hony Lieutenant from 26.01.2011. The applicant has further prayed that he should be granted pay and allowances of a Naib Subedar from 01.01.2004 at par with his batch mates instead of w.e.f. 03.11.2007. The applicant also seeks pay and allowances of Subedar

from 01.10.2007 at par with his batch mates instead of from 03.07.2009.

3. Brief facts of the case are that the applicant was enrolled in the Indian Army on 18.07.1981. He had passed Class X exam on 12.11.1988 which was inadvertently not published and thus was not recorded in the applicant's record. The casualty for the same was published on 24.07.1997. Therefore, the applicant was not detailed for the promotion cadre in 1997. On 01.03.1998, the applicant was promoted to the rank of Havildar. The applicant had filed a statutory complaint on 26.12.2006. During the pendency of this complaint, the applicant proceeded on retirement in the rank of Havildar on 31.07.2007. The COAS found merit in the case, reinstated the applicant and promoted him to the rank of Naib Subedar w.e.f. 03.11.2007. He was given ante dated seniority from 01.10.2004 at par with his batch mates but without pay and allowances (Annexure A-2).

4. The applicant again submitted a statutory complaint on 07.06.2008 agitating for the rank of Subedar alongwith his batch mates. He was granted favourable orders from the COAS and was promoted to the rank of Subedar w.e.f. 03.07.2009 and ante date seniority from 01.10.2007 at par with his batch mates but again without pay and allowances (Annexure A-3 colly). For the period 2009 to 2011, the applicant earned outstanding ACRs but he was not considered for the rank of Subedar Major which would have granted him additional

extension for four years service. He was, however, considered for the grant of Hony Commission and was given the rank of Hony Lieutenant on 26.01.2011. But this promotion does not grant him additional service of four years.

5. Therefore, on 18.02.2011, the applicant filed a legal notice through his counsel in which he agitated for being considered for the promotion to the rank of Sub Major.

6. Learned counsel for the applicant argued that right from the beginning, the respondents have made a mistake by inadvertently not publishing his casualty of having passed Class X exam. Though he was granted ante date seniority but he was not granted pay and allowances. This was again compounded when he was made a Subedar with ante date seniority but without pay and allowances. Now as a Subedar he has again not been considered for the rank of Subedar Major and thus the applicant is not entitled to served for four extra years of service. Learned counsel for the applicant also submitted that the respondents have partially redressed the grievance of the applicant as there was no fault of the applicant.

7. Learned counsel for the respondents stated in their reply that the applicant was superseded for promotion to the rank of Subedar Major for not meeting the ACR Criteria in terms of policy letter of 10.10.1997. In the rank of Subedar, the applicant was to superannuate

on 31.07.2011 after completing his terms of engagement in that rank. Based on the result of DPC held in December 2007, Subedar (TLR) Gumnam Chowdhury, a batch mate of the applicant but senior to him was promoted as Subedar Major w.e.f. 25.02.2008. There was only one vacancy available in this trade. The second vacancy for the rank of Subedar Major occurred in the same trade on 31.07.2011.

8. Learned counsel for the respondents argued that no Subedar junior to the applicant has been promoted to the rank of Subedar Major till 31.07.2011 in the trade/category to which the applicant belongs (Annexure R-2).

9. Having heard both the counsels at length and having examined the records placed before us, we are of this opinion that ante date seniority does not necessary imply pay and allowances of that rank. In this case, the applicant has been granted redressal because of the inadvertent mistake committed by the respondents by not publishing his casualty for having passed Class X exam at the right time. As such, the applicant had to suffer in all ranks starting from the rank of Havildar to Naib Subedar and subsequently to Subedar Major.

10. In view of the foregoing, we are unable to concede to the prayer of the applicant in terms of pay and allowances as per ante date seniority. It is a settled law of "No work, no pay". We are aware that the applicant was not at fault for this delayed promotion.

11. As regards his consideration for rank of Subedar Major when he was considered in 2008, the respondents have stated that he was lacking in ACR criteria. Learned counsel for the respondents also stated that his ACRs as JCO were taken into account which he earned in 2008, 2009, 2010 and 2011. This did not make five ACRs for consideration to the rank of Subedar Major in 2008. We also find that the promotion policy of 10.10.1997 has been adhered to by the respondents.

12. In this case the applicant had earned his first report on 01.05.2008. We have also seen his record of service and have confirmed that the ACRs as a JCO on record are from May 2008 onwards. Therefore, it is evident that he had no ACR as a JCO when the first Board was held in December 2007. Besides, he was at third number in the seniority list amongst his batch mates. There was only one vacancy in December 2007 and thus even if he had been approved, he could not have picked up his rank of Subedar Major alongwith Sub Gumnam Chowdhury.

13. Since the applicant was granted Hony rank on 26.01.2011, he was not eligible for consideration to the rank of Subedar Major since the vacancy was to arise on 31.07.2011. This was also the date on which the applicant was superannuated as a Subedar having completed his term of engagement.

14. However, we find that the applicant has suffered all through his service because of the reason that Class X result having been not published by the respondents in the correct time frame. Because of this delay, he had to represent to the COAS who reinstated him in service as a Havildar and promoted as a Nb Subedar. He had to again represent to the COAS in order to get the rank of Subedar alongwith ante date seniority. Both the ante dated seniority as Nb Subedar and Subedar were without pay and allowances. This situation did not help him when his batch was to be considered for the rank of Subedar Major. As such, we find that injustice has been perpetuated for that he needs to be compensated. We feel that an amount of Rs.25,000/- will meet the ends of justice. The order should be complied with, within a period of 90 days from the date of this order; failing which penal rate of interest at 12% will accrue on the amount from the date of order.

15. In view of the foregoing, the OA is allowed only to the extent of compensation. Rest of the prayers are disallowed. No orders as to costs.

(M.L. NAIDU)
(Administrative Member)

(MANAK MOHTA)
(Judicial Member)

Announced in the open Court
on this 18th day of May, 2012.