

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT
NEW DELHI**

O. A. No. 269 of 2011

Hav (TER), Naween Chandra

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner : Mr. N. L. Bareja, Advocate with Petitioner
For respondents: Mr. Anil Gautam, Advocate

CORAM:

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

JUDGMENT
14.03.2012

1. Petitioner vide this petition has prayed that the order dated 23.05.2011 passed by respondent no.1 rejecting the case of the petitioner for promotion to the rank of Nb Sub on the sole grounds of having become over age, not due to his fault but on account of the lapses/omissions and commissions on the part of the respondents in making the petitioner to perform his duties on attachment at Army HQ, from Jan 2005 to the end of 2009, and at the same time treating him to be borne on the strength of the unit.

2. It is also prayed that directions may be given to consider the case of petitioner for promotion to the rank of Nb/Sub in accordance with his position in the overall seniority list of batch mates. It is also prayed that respondents be directed to pay compensation to the petitioner for suffering mental agony and torture.

3. Petitioner was enrolled in the Army (Core of Sigs.) on 04.12.1987. The petitioner was promoted to the rank of Nk in April 1997 and from Nk to Hav in May 2001 in accordance with the satisfactory performance. Subsequently petitioner also obtained requisite qualifications and being found eligible, on being posted, reported to 12 RAPID Signal Regiment (AREN) in May 2003. Since he had expertise in the field of computer operation he was ordered to be attached to the Directorate General of Military Intelligence vide signal records order dated 16.11.2004 w.e.f. 01.01.2005 for a period of 6 months. However, petitioner on being relieved from his unit, reported to the ADG PI on 21.01.2005 on attachment. He was internally attached to Army HQ Camp for administrative purposes but the petitioner continued to be borne on the strength of 12 RAPID Signal Regiment AREN for all practical purposes including publication of casualty returns and part-II orders but the period of his attachment continued to be extended by the Signal Records from time to time in public interest. However, after completion of 3 years, he was allowed to be posted out and he was ordered to proceed on posting to 15 Corps Engg. Signal Regt w.e.f. 10.08.2006 vide Signal Records dated 01.03.06. However, he was not relieved of his duties and continued at Army Head Quarters despite transfer orders. Petitioner also came in the zone of consideration for further promotion to the rank of Nb/Sub and he was adversely effected for

further promotion on account of his not being relieved from attachment. He submitted an application dated 12.08.09 requesting that he be relieved to proceed on posting to his new unit viz 15 CESR at the earliest so that he is not deprived of his promotion to the rank of Nb Sub along with other batch mates. If he got promoted to the rank of Nb Sub prior to 31.12.2010, he could, served for another four years in the said rank and to the rank of Sub and thereafter to the rank of Sub Major if he got so promoted. Consequent upon the submissions of the application of 12.08.2009, the ADG PI, addressed a communication to Signals Record for providing relief to the petitioner on priority, in pursuance of which L/NI (TER) Ranjith Kumar A of 2 Mtn Div. Signal Regiment was directed to be attached to ADG PI in place of the petitioner vide attachment order dated 20.08.2009. It was stated that the said attachment was for a period from 01.07.2009 to 31.12.2009. But he was moved out on 18.09.2009. However, consequent upon reporting to his units namely CESR, the petitioner had to suffer victimization on account of the indifferent attitude of the authorities in the unit. He was not allowed to proceed for attend the S-course serial number S-745 which was scheduled to be held at 3 MTR, 2 STC Madgaon (Goa) from 11.01.2010 to 06.03.2010, wherein the name the petitioner figured at serial no.7 in the letter dated 17.11.09. It is also pointed out that DPC is constituted in May and November every year to consider the eligible candidates for promotion to the rank of Nb Sub. Meanwhile the petitioner passed the Promotion Cadre Course in July 2010 and his case was sent for consideration for promotion to DPC on 18/19.11.2010 but his case was deferred for lacking one Regimental ACR. Then he again represented his case but it was not accepted and

meanwhile he became overage and then he was not considered and filed the petition which was rejected, hence, this petition is filed.

4. Notice was given to the respondents and reply was filed by the respondents. Respondents has pointed out in their reply that so far as not sending him to join S-Course is concerned, it is submitted that he failed in BPET in compliance of the guidelines as stipulated vide DG Signals (ISTT), IHQ of MoD (Army) letter dated 24.08.2009. Then he was again detailed on next course commencing from 17.05.2010 and he passed the said course. Therefore, this case was processed for consideration on 18/19.11.2010 but as per requirement that last 5 reports to be considered out of which three reports should be 'above average' with a minimum of two reports in the rank of Hav and remaining should not be less than 'High Average' and a minimum of two reports on Regimental Duty or as an Instructor in an Army School of Instructions, including Indian Military Academy, National Defence Academy, Officers Training Academy and Army Cadet College out of which at least one should be 'Above Average'. One of the Regimental ACR should have been earned in the rank of Hav.

5. In the light of aforesaid parameters, the case of petitioner was considered and it was found that petitioner lack one regimental report. The case of the petitioner was first declared 'deferred' due to non-meeting of ACR criteria in accordance with para 6 (c) of the letter dated 10.10.97 as he earned 4 x ERE ACRs for years 2006 to 2010 and one regimental ACR for the year 2010 and the ACR criteria for promotion he lacks one regimental ACR.

Therefore, he can not be promoted and meanwhile he became overage. Hence, respondents justified his non-promotion.

6. We have heard the learned counsels for parties and perused the record. Learned counsel for the petitioner submitted that petitioner was kept on attachment from 2005 to 2009 not on his request but for the requirement of the administration and now he has been sought to be not considered for promotion because he lacked one regimental report. It is submitted that normally a person can not serve on attachment for a period more than 6 months. Petitioner was kept on attachment for the benefits of the administration for almost four & half years by the sanction of same Record Office and still respondents are taking the plea that since he lack one regimental ACR therefore, he is not to be considered for promotion whereas his record which has been produced by the petitioner in his petition which has not been disputed the respondents which is outstanding and all his ACR s were of 8-9 marks. We fail to understand the justification of the respondent for not considering the petitioner for promotion because of lack of one regimental ACR

7. If respondents have taken work from petitioner for their organisational interest and kept him on attachment for four & half years then it would have been proper for the respondents to move the case for exemption/waiver of one regimental report and instead consider his ACR on ERE for the purpose of promotion as he was detained on attachment for four & half years at ADG PI because of his expertise in the computer. Therefore, he was working for the benefit of the organisation. This should not be counter productive. The

action of the respondents to deny him the promotion on account of lacking one regimental ACR is unfair and arbitrary.

8. Hence, we direct that the ACR earned by him during attachment should be treated as earned on regimental duty and his case should be considered for promotion from the date his immediately junior was promoted in the same strength of the unit and he should be given all consequential benefits. This exercise should be done within a period of 3 months. Petition is allowed. No order as to costs.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
March 14, 2012
rk