

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

**O.A NO.349 of 2010**

**IN THE MATTER OF:**

**SUB. PRATAP SINGH SHEKHAWAT .....APPLICANT**

Through: Mr. P.D.P. Deo & Ms. Monica Nagi, counsel for the applicant

**VERSUS**

**CHIEF OF ARMY STAFF AND OTHERS .....RESPONDENTS**

Through: Mr. Ajai Bhalla, counsel for the respondents

**CORAM:**

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

**JUDGMENT**

**Date: 27.04.2012**

1. O.A. No.349/2010 was filed on 28.05.2010, before this Tribunal by the applicant.
2. Vide this O.A. the applicant has sought to quash the letter of his premature discharge dated 09.11.2009 (**Annexure P-1**) and to promote him to the rank of Subedar Major from the date of first vacancy is available with ante date seniority i.e. w.e.f. 01.02.2009 with consequential relief as he has already been approved by the DPC.
3. Brief facts of the case are that the applicant was enrolled in Territorial Army on 15.12.1983. During the course of service in the year 1993 he applied for grant of direct commission as a JCO and on



recommendations of the then Commanding Officer, he was commissioned as Nb. Subedar on 01.05.1994 (**Annexure P-2**) and the Junior Commission Officer status was granted by the Hon'ble President of India under his seal and signature on 21.04.1995 (**Annexure P-3**). On 17.04.1997 the applicant was approved to the rank of Subedar w.e.f. 01.02.1997.

4. In 09.10.2007 the applicant was informed that a retention examination will be held for him, but no examination was held (**Annexure P-4**) till holding of DPC in 2008. In November, 2008 a DPC was held by Records Raj. Rifles, where the name of the applicant was considered for promotion to the rank of Sub. Major. Subsequently, a series of correspondence took place between the unit, the record office and the Commander TA Group Western Command, to hold the retention examination or condone the same.

5. On 06.11.2009 the applicant submitted an application to the Commanding Officer (**Annexure P-5**) requesting him to promote to the rank of Sub. Major. He was told by his unit i.e. 105 Inf. Battalion TA that since the applicant had not passed the retention examination, which he should have passed on or before 30.04.1998, therefore, he has to select an option either to revert back to the rank of Havildar or he will be given an opportunity to resign and if he refuses to resign then he will be discharged. It is accepted that the said letter was



contrary to the letter dated 09.10.2007, wherein the applicant was asked to be ready for a retention examination (**Annexure P-4**).

6. Vide letter dated 04.12.2009 (**Annexure P-7**) again the applicant was constrained to give reply to the letter. He again submitted an additional letter dated 09.11.2009 and 05.12.2009, in which he stated that though he had undertaken to give retention examination, the retention examination was never held by the unit. When there was no response received, on 09.12.2009 the applicant submitted the statutory complaint (**Annexure P-9**). On 14.05.2010 the applicant was summoned by the Adjutant of 105 Inf. Battalion TA on the orders of the Commanding Officer and was ordered to sign on the discharge papers. When he verbally protested, the Adjutant promised that his request will be communicated to the higher officers. On 26.05.2010 he was again summoned by the Adjutant and was informed that he shall be sent on pension on 31.05.2010. The applicant in the rank of Subedar was due to retire on 31.12.2013. On the other hand, had he been promoted to the rank of Subedar Major, he would have retired after four years.

7. Looking to the facts of the case and considering the submissions of the applicant on 31.05.2010 his discharge was stayed till further orders. On 22.12.2010 this Tribunal passed an interim order without observing anything on merits that the retention examination be held within two months, the applicant not to be disembodied till the



case is subjudice and the post of Subedar Major in the unit which was reported to be vacant, was directed to be kept vacant till the result of retention examination is declared.

8. Learned counsel for the applicant argued that the responsibility of holding or conducting the retention examination is that of the respondents. He further submitted that the individual, on his own, even if he is willing, cannot ask for the retention examination nor he can appear in the same. He contended that though in this case the applicant was informed of the non-passing of retention examination, the examination was not conducted by the respondents.

9. Learned counsel for the applicant also argued that if the retention examination is mandatory, then, it was the responsibility of the unit to confirm to hold the retention examination in due course of time. On the other hand, the applicant had undergone various army courses, which indicates higher professional competence than the retention examination. He, therefore, stated that the letter of discharge dated 09.11.2009 (**Annexure P-1**) was illegal and could not stand the scrutiny of law. He further drew our attention to the signal issued by the Records Raj. Rifles on 02.02.2009, which says "CLARIFICATION REGARDING PROMOTION RESPECTING TJ-3886H SUB PRATAP SINGH SHEKHAWAT 105 INF BN (TA) APPROVED IN DPC 2008 FOR PROMOTION TO THE RANK OF NEXT BN SUB MAJ NOT RPT (NOT) RECT TILL DT (.) JCO DUE FOR PROMOTION WEF FEB



01(01) (.)” (**Annexure R-15 Colly**). Further he also drew our attention to the TA Group HQ Western Command letter dated 16.11.2010, which gave a reference of 105 Infantry Battalion (TA) letter dated 18.01.2009, Addl. Director General of TA’s letter dated 08.02.2009 and 105 Infantry Battalion TA letter dated 12.04.2009, in which it is stated that:

“3. Of the Sr most five JCOs as at list att, **only TJ-3886M Sub Pratap Singh Shekhawat had been considered in the DPC**, however, since the JCO had not cleared the **Retention Exam**, being a direct entry JCO and the case for promotion is **withheld being subjudice** the JCO **has not been promoted**. Other JCOs are not mtg the QR.

10. Learned counsel for the applicant further stated that the issue retention examination has been adjudicated by the Hon’ble AFT, thus, the respondents conducted the retention examination. The retention examination was held consequent to the order dated 22.12.2010 and it was intimated by the respondents that the applicant has passed.

11. Learned counsel for the respondents drew our attention to the letter issued by the Army headquarters dated 16.03.2011 to state that henceforth “*the appts of permanent staff which include Bn Sub Maj and Head Clk are to be filled up by the personnel from Reg Army only*” (**Annexure R-17**). He argued that the case is pending since 2010 and



his promotion became due in 2009 further he cleared the retention examination as per the direction given earlier in the policy, therefore, this order cannot now be utilised by the respondents in a retrospective manner nor this letter dated 16.03.2011 is made effective from the retrospective date. Thus, the applicant still holds the right to the promotion since he has qualified the retention examination.

12. Learned counsel for the respondents on 31.03.2011 stated that the retention examination was held and the applicant has successfully qualified. He also stated that the applicant's statutory complaint has been rejected by the competent authority.

13. Learned counsel for the respondents drew our attention to Annexure R-2, which is letter dated 23.06.2011 from Records Raj. Rifles to 105 Bn. TA, in which it was explained that at the time of screening the names of eligible Subedars of the battalion for DPC proposed to be held in November, 2008, it was observed that Sub Pratap Singh Shekhawat was not meeting the requisite criteria for promotion due to non passing the retention exam. However, he was the only Subedar, out of 7 Subedars screened in DPC, who was meeting all the requisite criteria except the retention examination. He stated that the retention examination was mandatory for promotion to the rank of Subedar Major. He further argued that with reference to the signal of 02.02.2009 for expediting the case by the Record Office there was an inadvertent mistake in the signal at line five, whereas it



should have been "*DPC of approved SM held on 2008 and did not include the name of Sub. Pratap Singh Shekhawat being ineligible because retention examination not passed*". It was mistakenly given in the form as has been mentioned in Annexure R-15 (Colly).

14. He argued that though the applicant was eligible, he was not considered for promotion in the DPC since he was not meeting the criteria of having passed the retention examination. He also produced the original proceedings of the DPC and a letter dated 08.12.2011 in which the Records Raj. Rifles sent a letter to 105 Infantry Bn. TA Raj. Rifles.

15. He argues that this letter shows that as to what transpired in the promotion board of 2009 and it was for the reason that the applicant was not promoted since he was not meeting the requisite criteria. The letter sent to the TA Group HQ Western Command and to Army HQ was again a mistake since it was worded as if to suggest that the applicant was considered and approved subject to his passing the mandatory qualification of retention examination. In actual fact, he was not considered at all.

16. Learned counsel for the respondents further argued that now there has been a change in the policy and the appointment of Sub. Major will be manned by the personnel from the regular Army. To support his contention he drew our attention to the letter dated



16.03.2011 (Annexure R-17) from the Army headquarter to the Addl. DG (TA).

17. Having heard both the parties at length and also having examined original documents, we find that the issue is basically of the promotion of the applicant to the rank of Subedar Major w.e.f. 01.02.2009 when the existing incumbent proceeded to discharge. The names of seven senior Subedars in the battalion were considered for promotion by the DPC to be held in November, 2008. Of the seven names only that of the applicant met other QRs and was, thus, eligible, but was lacking in mandatory requirement of having passed the retention examination.

18. The retention examination should have been conducted by the respondents though the applicant was informed in October, 2007 that he should be prepared for retention examination, but no such retention examination was held. By the order of this Tribunal dated 22.12.2010 the retention examination was conducted and the applicant was declared successfully qualified. As such, he was meeting all the criteria for being considered by the DPC.

19. As such, the applicant needs to be considered as a fresh case by the DPC as per his qualification as on the date he was fully qualified. In this case, the vacancy was already existing from 01.02.2009 and, therefore, there should have been a sense of urgency



on the part of the respondents to immediately hold a special DPC in order to consider the applicant's case.

20. The respondents have now brought to our notice a policy dated 16.03.2011, which states that the appointment of Subedar Major will be tenated only from the regular Army. We do not dispute this policy, but we are of the opinion that promulgation of this policy was first done on 16.03.2011 and, therefore, does not come in the way of the applicant from being considered by a special DPC, since the vacancy was existing w.e.f. 01.02.2009.

21. We had also granted an interim stay for the applicant not to be disembodied/discharged and, thus, the applicant is eligible for consideration by a special DPC and he will be deemed to be in service.

22. In view of the foregoing, we are of the opinion that the applicant needs to be considered by holding a special DPC from the date he was fully qualified i.e. the date of qualifying the retention examination and, thus, he is entitled to consideration for promotion to the rank of Subedar Major. Should he qualify in the DPC, all consequential benefits will follow. Since the applicant would have qualified only on the day he successfully passed the retention examination, his rank will be considered from that day itself. The policy letter of 16.03.2011 issued by the Army headquarters will not



come in the way of the applicant's consideration because the case predates the promulgation of the policy.

23. We remit the case back to the respondents to hold a special DPC to consider the applicant for promotion to the rank of Subedar Major from the date he became fully qualified as a fresh case. The impugned order dated 09.11.2009 and any other order discharge/disembodiment is hereby set aside. Considering the interim prayer the applicant shall remain embodied till the respondents consider him by a special DPC, and based on its outcome the applicant shall be entitled to all benefits. This exercise should be completed within 90 days of the issue of this order. The interim orders are disposed of accordingly.

24. O.A. stands partly allowed. No orders as to costs.

**(M.L. NAIDU)**  
**(Administrative Member)**

**(MANAK MOHTA)**  
**(Judicial Member)**

**Announced in the open Court  
on this 27<sup>th</sup> day of April, 2012**