

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

10.

O.A. No. 428 of 2010

Nb Sub Dinan

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Mr. S.S. Pandey, Advocate.

For respondents: Mr. Mohan Kumar, Advocate.

CORAM:

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

HON'BLE LT. GEN. M.L. NAIDU, MEMBER.

ORDER

27.07.2012

1. Petitioner by this petition has prayed that the Respondents may be directed to call for records of the Screening Board held at DSC Centre in October 2008 for reemployment in DSC and they may be directed to include the marks for Potential Subedar Major (PSM) course and 'A' grading obtained by the Petitioner and accordingly grant him reemployment in the rank of Subedar in DSC with effect from 22nd December 2008 with all consequential benefits.

2. Petitioner was enrolled in Regiment of Artillery on 17th March 1980 in the rank of a Gunner and with the passage of time he reached to the position of Subedar. During the service, he passed the PSM on 14th August 2007 and he retired after completing 28 years of service on reaching his superannuation on 31st March 2008. He was also granted honorary rank of Subedar Major on the eve of Independence Day of 2008. The Petitioner was discharged from

the Regular Army Service on completion of colour service on 31st March 2008 and he was desirous of getting accommodation and, therefore, he was given reemployment in DSC after superannuation. But Petitioner was reemployed as a Naib Subedar and he joined the post of Naib Subedar on the basis of the screening done by the Respondents. The grievance of the Petitioner is that the marks obtained by him for PSM was not considered and thereby he could not come in the merit for the post of Subedar. Therefore he submits that the certificate obtained by him for PSM should have been taken into consideration by the Screening Committee and if that would have been taken into consideration then his merit would have gone up and, therefore, he prayed that he should be considered for the post of Subedar.

3. A reply was filed and the Respondents have taken the position that Petitioner's case was considered by the regular Screening Committee and as per the merit of the Petitioner and availability of the vacancies, he was offered the appointment of a Naib Subedar which he accepted and joined. It is also pointed out that a new policy was issued on 29th October 2009 which gave the benefit of PSM course but at the time when Petitioner's case was considered this policy of giving the benefit of PSM was not in existence and, therefore, his case was considered by the Respondents on the basis of the rules and regulations having bearing on the subject and on that basis Petitioner could not make to the merit and, therefore, he was offered appointment for the post of Naib Subedar which he accepted. It is pointed out that the appointment depends upon the availability of vacancies and according to the merit of the Petitioner and availability of vacancies he could only be accommodated for the post of Naib Subedar which he accepted willingly without any reservation.

So far as awarding him marks on the basis of the certificate obtained by the Petitioner of PSM course is concerned that was only introduced on 29th October 2009 and, therefore, this could not have been entertained at that point of time.

4. We have heard learned counsel for the parties and perused the record.

5. It is true that once the Petitioner has accepted the post of Naib Subedar without any reservation, now he cannot say that he should be promoted to the post of Subedar. His case was considered by the Screening Committee and the Screening Committee after consider the case offered him appointment for the post of Naib Subedar. Therefore once he has already acquiesced with the matter now he cannot say that he should have been appointed for Subedar when he does not come in the merit against the available vacancies. So far as counting the marks of PSM is considered that was only introduced on 29th October 2009 therefore Screening Committee could not have considered this when it was screening the case of Petitioner in 2008. Hence, we do not find any merit in this petition and same is dismissed with no order as to costs.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
July 27, 2012
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