

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

18.

O.A. No. 44 of 2010

Nb. Sub K.K. Giri

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Ms. R. Archana, Advocate.

For respondents: Mr. Ankur Chhibber, Advocate.

CORAM:

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

HON'BLE LT. GEN. S.S.DHILLON, MEMBER.

ORDER

21.02.2012

Petitioner vide this petition has prayed that respondent nos. 1 to 3 be directed to quash and set aside the impugned ASC Records Letters dated 11.11.2009 and letter dated 08.01.2010 being legally unsustainable and contrary to the principles of promotion vide Army HQ Policy Letter of 1997. It is also prayed direction be issued to Respondent nos. 1 to 3 to promote the petitioner to the rank of Subedar with immediate effect with an ante dated seniority of 01.09.2009 in accordance with Army HQ Promotion Policy Letter of 1997 to meet the ends of justice.

Petitioner was enrolled in the Indian Army on 22.04.1983 and with the passage of time, he rose to the rank of Naib Subedar. He was granted extension of service for two years from 22.04.2009 to 21.04.2011. He was considered for promotion vide ASC Records letter dated 20.10.2009 and he was approved for promotion with immediate effect with an ante dated seniority from 01.09.2009. He was temporary medical category of P2 from 15.04.2009 to 30.09.2009 and from 30.09.2009 till date he is a Permanent Medical Category

of P2. It is pointed out that the Army HQ Policy Letter of 1997 categorically states that if an Army person is temporary or permanent medical category of A2 or P2, he can still be promoted as there is no embargo. But the Army authorities are taking a legally unsustainable stands that since petitioner has become a Permanent Medical Category from 30.09.2009 while on extension he has to be discharged within 6 months. This according to the petitioner was not a sustainable proposition, therefore, petitioner filed the present petition seeking aforesaid relief.

A reply has been filed by the respondents and they have pointed out that it is true petitioner was granted two years extension when he was in service but he became Permanent Medical Category of P2 w.e.f 30.09.2009. Then in ordinary course, he would have been discharged from service within six months as per the provisions vide IHQ of MoD(Army) letter dated 21.09.1998. Meanwhile, petitioner was screened for promotion to the rank of Subedar by the Departmental Promotion Committee (DPC) vide promotion order dated 20.10.2009 with ante dated seniority w.e.f 01.09.2009. It is pointed out that Para 3 of the promotion order dated 20.10.2009 clearly conveys that *"in case any of the JCO is in extended period of service their promotion will only be implemented subject to they remain in Med Cat Shape - 1. In case of Low Medical Category persons in extended period the matter may please be intimated to this office immediately."*

We have heard both the parties and gone through the record.

The promotion order dated 20.10.2009 reads as under;

"RESTD

PROMOTION ORDER NO. : 126

REGD BY SDS/POST

1302/1/SD/SUB/126/CA-1(P)

20 Oct 2009

414 ASC Bn MKtg (TA)
Pin – 900746

PROMOTION ASC (SUP) JCOs : NB SUB TO SUB/CLK (SD)

1. Promotion to the rk of subs Sub in r/o Nb Subs/Clk(SD) of your unit/fmn/est have been approved wef the dt as noted against each as per att appx. However, actual dt of promotion will reckon from the dt of assumption of higher rk.
2. The cdrs at appropriate level will ensure that the JCO(s) fulfil(s) the discp, med and ACR criteria as set out in IHQ of MoD (Army) letter No. B/33513/AG/PS(c) dt 10 Oct 97 as amended vide letter No. B33513/AG/PS2(c) (i) dt. 22 Feb 2001, at the time of wearing the badges of higher rk. In terms of policy in vogue, pay and allces of the higher rk will commence from the dt of assumption of such rk. In case the JCO (s) is away from the unit, he will be promoted on rejoining. Latest passport size coloured photograph of the JCO(s) may kindly be encl with the assumption cert if already not fwd in the rk of Nb/Sub.
3. In case any of the JCO is in extended pd of service their promotion will only be implemented subject to they remain in Med Cat SHAPE -1. In case of Low Medical Cat pers in extended pd the matter may pl be intimated to this office immediately.
3. The cdrs at appropriate level will also ensure that the JCO(s) is fulfilling discp criteria as laid down in Para 3(a) of AO 1/2001. If the JCO(s) is reported to be involved in any of the following cases, a ban on his promotion will be imposed and unit/fmn/est will inform this office of the institution and result or the discp/vigilance/cr proceedings against JCO(s) serving under them:-

- (a) Discp cases : Where normal cognizance of an offence has been Taken
- (b) Vigilance cases : Where a report from the SPE/CBI has est a prima facie case against the JCO

- (c) Cr cases : Where a person is facing prosecution by Govt in a Court of Law on a matter involving moral turpitude or lack of integrity

4. PI fwd cert regarding physical assumption of duties of higher rk imdt on assumption of higher rk as per specimen given below. Since the JCO(s) has been gtd subs promotion, there would not be a reqmt to wait for 28 days consecutive unbroken pd for rendering assumption cert. Pers occurrence regarding promotion will be notified in Corps Order Part-II by this office on receipt of physical assumption cert. In case the physical assumption cert is delayed abnormally on flimsy grnd, the same will be fwd to ASC Record (South) explaining reasons for delay.

**ASSUMPTION CERT
(PROMOTION FOR SUBs RK)**

1. Certified that JC- _____ RK _____ Name _____ has physically assumed duties of the rk of Sub on _____.
2. He is not involved in any discp. (civ or mil) or vigilance or cr cases of C of I nor any case is pending against him on the dt of effecting promotion i..e _____ in terms of AO 01/2001.
3. He is in med cat _____ (To be given in SHAPE factor) (not due to psychological cause, misconduct or self-inflicted injury).

Stn : _____ (Sig of CO/OC Unit)
Date :

5. PI also fwd willingness/unwillingness cert and med fitness cert of the JCO(s) duly countersigned by the Cos/OSC for exam the feasibility to grant him extn of age/service limit if applicable.
6. Disch order if issued in the rk of Nb/Sub shall stand revoked, suemotto on physically assumption of the rk of Sub. If the JCO(s) becomes unfit before

assuming the rk or renders his unwillingness for promotion, he will be disch as per existing terms of engagement.

7. The promotion order will be fwd under intimation to this office to the next unit in original in case the JCO(s) has been posted out.

*(K.K. Nair)
Maj
Record Offr
For OIC Records*

Copy to :-

*Dte Gen of Sups & Tpt (Q/ST-12)
QMG's Branch,
IHQ of MoD (Army)
DHQ PO, New Delhi – 110 011*

Internal

Seniority Cell/Stats Sec/Posting (sup)/Discp Sec/Hony Sec/ACR Sec/Auto Cell and o/c.

RESTD"

This order clearly stipulates that in case any of the JCO in the extended period of service, his promotion will be subject to they remain in Medical Category Shape I and in case of LMC persons in extended period, the matter may be intimated to the office immediately. This order also contains Assumption Certificate to be given by the CO that the incumbent is medically fit as well as he is not involved in any disciplinary or vigilance or criminal case nor any Court of Inquiry is pending against him. When it was intimated to the respondents that petitioner has fallen in Permanent Medical Category of P2 then cancellation signal dated 20.11.2009 was issued which reads as under;

"IN LIEU OF MSG FORM

PRECEDENCE : PRIORITY

D T G : 20 NOV 09
SECURITY CLASSIFICATION : UNCLAS
ORG NO : Q 55 26
FROM : ASC RECORDS (SOUTH)
TO : 414 ASC BN MKTG (TA)

*Cancellation of promotion Nb Sub to Sub (Clk GD/SD) () Ref our Sig Q-5523
Nov 18 (18) () Promotion Order in R/o JC-683722Y Nb Sub/CSD Kaushal
Kishori Giri Your Unit ISSUED VIDE Ser No 40(40) of Appx to Our Letter
1302/1/SD/SUB/126/CA 1 (P) OCT 20 (20) is hereby cancelled due to JCO
unfit for promotion due to Low Med Cat in Extended () Request Confirm All
Clear*

DRAFTERS NAME : MAJ K K NAIR
APPT : RECORD OFFICER
OFFICE : ASC RECORDS (SOUTH)

CASE NO : 1302/1/SD/CA-1
DATED : 20 NOV 09
SD/-
SIGNATURE OF RELEASING OFFICER
TOR_____HRS"

This signal was with regard to the promotion order of the petitioner dated 20.10.2009. When it came to the notice of the respondents that petitioner is Permanent Medical Category of P2, therefore, they cancelled this promotion order. Readings from this scheme of things, it is more than apparent that in fact petitioner could not avail his promotion as per the promotion order dated 20.10.2009 as the same was cancelled by the aforesaid signal.

In these circumstances, we are of the opinion that the respondents have correctly approached the matter. Since the petitioner is not entitled to continue in the extended period of service as he has already fallen Permanent Medical Category of P2 and as per the provisions of MoD(Army) letter dated 21.09.1998, he has to be discharged within six months and he has already been discharged accordingly.

Hence, we do not find any merit in the petition. Same is dismissed. No order as to costs.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
February 21, 2012
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