

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

(Court No.2)

O.A. No.461 of 2011

IN THE MATTER OF:

HAVILDAR MANOJ KUMARPETITIONER

Through: Mr. K. Ramesh, counsel for the applicant

Vs.

UNION OF INDIA AND OTHERSRESPONDENTS

Through: Mr. Anil Gautam, counsel for the respondents

CORAM:

**HON'BLE MR. JUSTICE N.P. GUPTA, JUDICIAL MEMBER
HON'BLE LT. GEN. M.L. NAIDU, ADMINISTRATIVE MEMBER**

ORDER

Date: 20.09.2012

1. The petitioner by this O.A. seeks a direction to the respondents to be promoted immediately to the rank of Naib Subedar with ante date seniority of 05.08.2010.

2. The factual averments are that the petitioner was enrolled as a Sepoy on 15.03.1994 and was promoted to the rank of Havildar on 01.07.2006. He was sent on Extra Regimental Employment (ERE) to 45 Rashtriya Rifles in Jammu & Kashmir from 08.02.2008 to 13.10.2009. During this period, Hav. Mahipal Singh and Hav. Dharmesh Singh, who were juniors, and were in the unit, qualified in the Naib Subedar Promotion Cadre on 25.09.2008 and 18.06.2009. According to the petitioner the unit did not make any effort to call the

petitioner to the unit for promotion cadre. He rejoined the parent unit on 13.10.2009, and requested to be detailed for Naib Subedar Promotion Cadre, for which the petitioner was accordingly detailed, and he qualified the same within two months on 17.11.2009, in the first attempt. According to the petitioner, just because the two persons junior to him qualified in the promotion cadre earlier, in the absence of the petitioner who was out on ERE postings, that fact of petitioner being out on ERE posting does not give the other junior persons any edge over the petitioner and the petitioner is entitled to be promoted to the rank of Naib Subedar immediately with seniority of 05.08.2010, at par with the other two persons. The petitioner relies upon the judgment of this Bench dated 19.12.2011, passed in O.A. No.221/2010 "**Hav. Chandu Chavhan Vs. Union of India & Ors.**".

3. Respondents have filed a reply and the stand taken is that the petitioner was sent on ERE posting and was struck off strength from the parent unit. Annual Promotion Board was held in the first week of November, 2009. The unit had informed 45 Rashtriya Rifles (JAT) vide letter dated 14.05.2009 (Annexure R-1) that the petitioner would come up in seniority for promotion to Naib Subedar, and that his name would be placed in Annual Unit Promotion Board, and 45 Rashtriya Rifles was requested to instruct petitioner to qualify in the cadre at the earliest, as the cadre is conducted in all Army Formations at Brigade level, and the individual can attend it anywhere, and avoid supersession, and also

enquired as to whether the petitioner has passed Havildar to Naib Subedar Promotion Cadre. 45 Rashtriya Rifles asked the parent unit with a copy to Artillery Records vide Annexure R-2 dated 30.05.2009 to provide suitable relief, in order to enable the individual to appear in the promotion cadre. Unit also requested vide Artillery Record's letter dated 11.06.2009 (Annexure R-3) to issue reversion orders in respect to the petitioner, as the petitioner had come up in seniority and would be considered in Annual Unit Promotion Board and was lacking promotion cadre. The reversion order was issued on 22.06.2009 (Annexure R-4) and asked the unit to provide suitable relief to 45 Rashtriya Rifles. Hav. Rishipal Yadav was dispatched to 45 Rashtriya Rifles on 19.08.2009 while the petitioner was dispatched on 04.10.2009 and he physically reported on duty on 13.10.2009. The cadre course had already commenced under the aegis of Headquarters 27 Mountain Artillery Brigade w.e.f. 04.10.2009 to 14.11.2009. The unit approached Headquarters 27 Mountain Artillery Brigade to allow the petitioner to attend a course and the individual (the petitioner) passed the promotion cadre in all subjects on 17.11.2009. The order of passing of the promotion cadre was published vide unit Part-II Order dated 16.02.2010. We are informed that in view of his having passed the course, during pendency of the petition, he has already been given promotion. It was pleaded that the petitioner did not take steps to have his name included and he could attend the course anywhere, and thus, the entitlement of the petitioner to claim relief was denied.

4. We have heard learned counsel for the parties and have considered the submissions. In our view, the controversy involved in the present case is squarely covered by judgment of this Bench in aforesaid *Hav. Chandu Chavhan's* case (supra) wherein also in identical circumstances, this Bench directed that as and when the next vacancy in the trade arises, the same be given to the petitioner and his seniority will be protected, so that he may not be put to any loss by giving him seniority vis-a-vis Hav. Srinivas Reddy, who had been promoted in that case, junior to the petitioner therein.

5. In the present case, since the petitioner has already been promoted, we think it appropriate to allow the petition with the directions to give him seniority at par with or as per his seniority vis-a-vis the two persons, namely, Hav. Mahipal Singh and Hav. Dharmesh Singh, who had been promoted in between.

6. The petition is, accordingly, allowed as above.

M.L. NAIDU
(Administrative Member)

N.P. GUPTA
(Judicial Member)

Dated: 20.09.2012
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