

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI
04.

O.A. No. 479 of 2011
With M.A. No. 436 of 2011

Sepoy Yogesh Chand

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Sh. K. Ramesh, Advocate.
For respondents: Sh. J.S. Yadav, Advocate.

CORAM:

HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.
HON'BLE LT. GEN. Z.U. SHAH, MEMBER.

ORDER
30.11.2011

M.A. No. 436 of 2011

For the reasons stated in the application, the delay in filing the petition is condoned.

The application is disposed of.

O.A. No. 479 of 2011

Issue Notices.

Sh. J.S. Yadav, learned counsel for the respondents accepts notice. He prays for and is granted four weeks' time to file a reply. Rejoinder thereto, if any, be filed within two weeks thereafter.

Put up after six weeks.

List on 18th January 2012.

A.K. MATHUR
(Chairperson)

Z.U. SHAH
(Member)

New Delhi
November 30, 2011

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

11, 12, 13 & 17.

O.A. No. 477 of 2011

With

O.A. No. 478 of 2011

O.A. No. 479 of 2011

O.A. No. 480 of 2011

Hav. Shri Krishan

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner:

Mr. K. Ramesh, Advocate.

For respondents:

Mr. R. Balasubramanian, ASG & Ms. Deepakshi Jain,
Advocate(In O.A. No. 477 of 2011).

Ms. Sangeeta Tomar, Advocate (In O.A. No. 478 of
2011).

Mr. J.S. Yadav, Advocate (In O.A. No. 479 of 2011).

Ms. Shilpa Singh, Advocate (In O.A. No. 480 of 2011).

CORAM:

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

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

ORDER

13.07.2012

1. All these four cases involve similar question of law and therefore they are being disposed of by a common order. It may be mentioned at the outset that these four persons are not resident of Delhi and no cause of action has arisen within the territorial jurisdiction of this Tribunal. Though the Petitioners have mentioned in their affidavits that they were present in Delhi whereas the two of them were posted in Rajasthan, U.P. and the remaining two were in Jammu & Kashmir. In ordinary course of action respective Benches of the Armed Forces Tribunal has territorial jurisdiction to entertain these petitions. However, since we have heard the matter and it was brought to our notice at the end of the arguments, therefore, we do not want to send them to the

respective Benches of the Tribunal and retain these cases for disposal at the Principal Bench.

2. All these Petitioners were recruited in the Indian Army in their various Units but they volunteered to serve 252 Para Air Defence Battery. Army Air Defence Records lays down a policy on tenure and promotion of PBOR posted to 252 Para as Bty. The Govt. of India, Ministry of Defence letter dated 17th August 2005 and corrigendum dated 25th November 2005 at Agra and raised this Regiment to be completed by 30th June 2006 and a total of 140 PBOR (5 JCOs and 135 Ors) were authorised to 252 Para AD Bty. This was permanently stationed at Agra. Modalities for provisioning of manpower, their tenure, turnover, promotion, type of ACR and for promotion was laid down by this policy letter. The first and the foremost thing was that tenure of serving in this Unit will be 3 to 5 years. However, the persons who are unsuitable and undesirable may be reverted at the outset on the recommendations of the OC. 25% manpower will be turned over at the end of third year. Turnover will be completed in four years i.e. between 2009-13 in a phased manner. Thereafter, manpower will be turned over at 20% rate. OC Para AD Bty is empowered to recommend premature reversion of any person not found suitable even before formal completion of tenure to ensure that only elite troops are part of the Unit. Tenure of 3-5 years will only be a guideline. They have laid down promotion and probation policy also. Now all these four Petitioners who were selected in pursuance of this policy and they were inducted in this elite Regiment and remained there from 7th February 2006 to 25th June 2009. Thereafter they were sent to this Para Regiment and after that they were sent back to their respective Regiment by different orders. All

these Petitioners have challenged their repatriation to their original Unit on the ground that their performance in their ACR were very good despite that they were shortlisted to the 25% manpower to be turned over at the end of third year. Learned counsel for the Petitioners has submitted that their ACRs may be called and examined and if they are suitable then they should not have been sent back to their parent Units.

3. A reply has been filed by the Respondents and the Respondents have pointed out in their reply that the persons have no right to continue in this Unit as the tenure of the Unit itself is 3 to 5 years and they have completed three years and so far as 25% repatriation is concerned the performance of these four Petitioners have dipped and, therefore, they have been sent back however their ACRs are good. In that connection they have produced before us the recommendation of a Committee consisting of 6 persons headed by Captain Anuj Chand Shrivastava. Against each of the candidate the remarks have been given by the Officers and those remarks only point out to the little dip in their performance. Since it is a very elite Regiment and the perfection and suitability is paramount, therefore, once they have found a little dip in their performance though their ACRs were good, therefore, they were repatriated against 25% quota to be sent back to their parent Unit. Learned counsel for the Petitioners insisted that their ACRs may be perused. We have called for the ACRs and perused the same. But for the reason that the ACR is good but the Committee which assessed their performance found little dip in their performance which necessitated the repatriation of these candidates against 25% quota. There is no question of any malafide in the matter and since it is an elite institution and we have to go by the assessment of the Committee

consisting of 6 Officers who are associated with this Para Unit and their assessment is that their performance has dipped looking to the requirement of the elite Regiment, we cannot substitute our findings on that. The repatriation of these Petitioners does not reflect on their ACRs. They might be very good Officers but the fact is that someone has to be phased out against 25% quota and because of their little dip in their performance looking to the strong requirement of this elite institution they have been phased out. This does not in any way affect their service career.

4. Consequently, we do not find any merit in these petitions and they are dismissed with no order as to costs.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
July 13, 2012
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