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COURT NO. 2, ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
O.A. No.533 of 2011

IN THE MATTER OF:

Nb. Sub./Clk Mahendra Ram

.....Applicant

VERSUS

Union of India & Ors.

.....Respondents

Dated: 23.04.2012

Present: Mr. Ajai Bhalla proxy for Mr. S.R. Kalkal, counsel for the applicant
Ms. Shilpa Singh, counsel for the respondents with Lt. Col. Arun Sharma.

M.A. No.176 of 2012

Heard and perused the record.

Learned proxy counsel for the applicant states that today due to the personal difficulty learned counsel for the applicant is not available. He further states that the instant application has been filed on behalf of the applicant for incorporating the outcome of the representation filed by him. A request is made that the same may be allowed.

Learned counsel for the respondents has no objection if the application is allowed and the O.A. is amended.

Considering the submission made in the application and the fact that the said amendment in the O.A. will not change the nature of the case, the same is allowed.

Applications stands disposed of.

O.A. No.533/2012

Amended O.A. be filed within four weeks with advance copy of the same to learned counsel for the respondents. Respondents are free to file counter to the amended O.A. within four weeks, thereafter, with advance copy of the same to applicant. Applicant is also free to file rejoinder to the counter, if he so wishes, before the next date.

Put up on 17.07.2012.

M.L. NAIDU
(Administrative Member)

MANAK MOHTA
(Judicial Member)

Dated: 23.04.2012
rsk

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

6.

O.A. No. 533 of 2011

Nb/Sub/Clk Mahendra Ram

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Mr. S.R. Kalkal, Advocate.

For respondents: Ms. Shilpa Singh, Advocate.

CORAM:

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

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

ORDER

12.09.2012

1. Petitioner filed an original petition and a reply was filed by the Respondents. Thereafter petition moved an amendment application and sought of petition, which was allowed and he filed amended petition on 7th July 2012. Reply to the amended petition was not filed. However, we have heard the matter on the basis of the pleadings which are common in both the petitions i.e. the original as well as amended petition and reply filed in original petition.

2. In order to dispose of this petition, short facts may be mentioned. The Petitioner was initially recruited on 24th December 1983 as Sepoy Ambulance Assistant in the Army Medical Corps (AMC). Thereafter he was re-mustered on 6th June 1987 to the post of Clerk GD in the AMC. Then the Petitioner was promoted to the post of Havildar and then Naib Subedar in 2009 and thereafter he was discharged from service in 2011 on completion of tenure of

service as a Naib Subedar. Meanwhile a lot of simmering was going on with regard to seniority of persons re-mustered in AMC and ultimately the issue was decided by the Chief of Army Staff that persons who have been re-mustered from the Ambulance Assistant and re-mustered in the AMC, they will be given seniority from the date of their enrolment, as a result of which, the order was passed in favour of the Petitioner also on 7th August 1990 and the following guidelines were given for the adjustment of the seniority in the AMC. The guidelines read as under:

“(a) Existing ROI 10/2000 be suitable amended immediate by AMC Records to bring it in consonance with relevant AO/Policies issued by MP and PS Dtes. The revision must be completed by 1st September 2009. Amendment to ROI will be implemented prospectively.

(b) Refixation of seniority on re-mustering should be applicable from the date of enrolment for all trades and not only clerks.

(c) No waiver will be given for deficiency in qualification for promotion as dispensation of qualification is not part of consequential benefits. However age relaxation may be considered and waiver granted in deserving cases. The promotion of such affected persons should be considered for immediate higher rank and not beyond.

(d) Re-instatement order in respect of Ex. JC-691970Y Ex. Sub/Clk AC Rai and No. 13958204N Ex Hav/Clerk Ater Singh be issued as per redressal granted by COAS. The authority to give reinstatement orders in case of grant of redressal by COAS on statutory complaint for retired PBOR is the OIC Records.

(e) All affected persons in the instant case will be adjusted within existing vacancies available within AMC. However, in case of shortfall, an additional 10% vacancies over and above auth str of JCO/Clk in AMC may be released and would be available upto 31st December 2010 to tide over the requirement and give relief to directly enrolled Clerks whose seniority would be disturbed due to re-fixation of seniority.

(f) The new policy (revised ROI) will be made applicable to serving persons with effect from the date of implementation.

(g) The relaxation of age and service are not to be extended to persons who have retired from service.

(h) In cases where COAS redressal has been granted to the individuals, they may need to be reinstated even in if they have retired from service.

(i) To effect promotion in addition to educational qualification, he must meet other laid down criteria like medical category etc.”

It was further mentioned that guidelines may be followed while implementing the decision of the Chief of Army Staff and granting relief to similarly affected individuals. As a result of this, the Petitioner also got a seniority from the date of his original enrolment i.e. 24th December 1993 and he was given a seniority in the cadre of Havildar with effect from 1st January 1990 but meanwhile many persons junior to him were also promoted to the post of Naib Subedar and Subedar but the Petitioner with the revised seniority by the order dated 7th August 1990 got a seniority over all those persons of the Unit who were promoted to the post of Subedar on passing the necessary requirement for the post of Subedar. Petitioner though passed necessary course for the post of Naib Subedar and he was promoted Naib Subedar in 2009. As a result of

the revised seniority, persons who were junior to him became Subedar earlier than him. Therefore the grievance of the Petitioner now by this petition is that he should also be given the post of Subedar as he has passed necessary qualification required for the post of Subedar.

3. The Petitioner has made this averment in para 4.13 in which he has said that "the applicant has also passed his promotion course required for the post of Subedar." A reply has been given by the Respondents in unamended petition which says that "in reply to this para it is submitted that in terms of Integrated Headquarters of Ministry of Defence (Army)/Director General of Military Training (MT-2) Letter No. A16820/GS/MT-2 dated 18th July 2002 passing of promotion examination i.e. Junior Leaders' Proficiency Test (JLPT) for promotion to the rank of Subedar is in addition to existing criteria, terms and condition. Hence, the applicant cannot claim promotion to the rank of Subedar on the grounds of passing Junior Leaders' Proficiency Test (JLPT)." So the issue now only remains is that when Petitioner's seniority has been restored and persons junior to him have been promoted whether Petitioner is eligible to be promoted for the post of Subedar or not. Though he alleges that he has passed the necessary qualification for the post of Subedar but in the reply given by the Respondents, it is not clear that whether he possesses all requisite qualifications for being promoted to the post of Subedar or not. It is undenied fact that meanwhile many persons junior to the Petitioner have been promoted to the post of Subedar on their passing the necessary cadre course for the post of Subedar. In case, Petitioner possesses requisite qualifications then there is no reason why promotion is being denied to him. However, we

are not sure that whether the Petitioner possesses all requisite qualifications for promotion for the post of Subedar.

4. The Respondents are directed to examine the case of the Petitioner and in case the Petitioner is found eligible for the post of Subedar and he has passed all promotion cadre course which are required for the post of Subedar, then he should be considered for promotion to the post of Subedar and he should be given all consequential benefits flowing therefrom. The authorities will first examine whether he is eligible or not and, in case, he is found eligible in all respects then he should be given promotion to the post of Subedar with all consequential benefits including reinstatement. The Petitioner has made a grievance that neither his pension nor his gratuity nor APP fund has been released to him though he has retired on 31st December 2011. The Respondents are directed to release the amount which is permissible to be released to the Petitioner forthwith.

5. The petition is disposed of with no order as to costs.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
September 12, 2012

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