

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI
18.

O.A. No. 556 of 2010

Nb Sub (Retd.) Satya Pal

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Mr. A.K. Trivedi with Mr. Rohit Pratap, Advocates.

For respondents: Mr. Ajai Bhalla, Advocate.

CORAM:

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

HON'BLE LT. GEN. Z.U. SHAH, MEMBER.

ORDER
31.01.2012

Petitioner vide this petition has prayed to quash and set aside the impugned orders of the respondents dated 01.06.2009 and 18.09.2008 and direct the respondents to promote the petitioner to the post of Subedar with all consequential benefits of extension of service and arrears of pay salary and seniority and enhanced pension of the rank of Subedar and consideration to the Honorary Rank of Captain etc.

Petitioner was enrolled in the Indian Army on 24.05.1980 as Sepoy in Artillery Centre, Nasik Road. With the passage of time, he rose to the rank of Naib Subedar and was discharged from service on 31.05.2008. He was also due for promotion to the rank of Sub but there was only one vacancy and against that vacancy, one Sub Kushal Singh was working and due for retirement on 31.03.2008. However Sub Kushal Singh was discharged on 31.05.2008 but he got a stay order in the writ petition filed by him before the Hon'ble Delhi High Court and he continued in service. Ultimately, stay order was vacated on 14.05.2008 and he was discharged from service on

31.05.2008. Therefore, petitioner submits that denial of promotion to the petitioner when he was already in service is arbitrary, he should have been promoted against the vacancy of Sub Kushal Singh which was available on 15.05.2008 when stay order was vacated on 14.05.2008 by the Hon'ble Delhi High Court.

Petitioner filed representation and respondents replied him vide their communication dated 01.06.2009. In their reply, respondents have pointed out that a vacancy against discharge of LMC case in respect of JC-298413F Sub (OFC) Kushal Singh was supposed to be created w.e.f 31.03.2008 which did not materialize. Later Sub Kushal Singh was ordered to be discharged from service w.e.f 31.05.2008 and consequent to that a vacancy in the COs pool occurred only w.e.f 01.06.2008, therefore, petitioner could not be promoted as he was proceeded on pension on 31.05.2008 after completion of terms of engagement.

Reply has been filed by the respondents and they have taken the same position as has been stated while disposing his representation. It is pointed out that petitioner could not be promoted because of the fact that there was no vacancy available and vacancy of Sub Kushal Singh could not be filled up because of stay order passed by the Hon'ble Delhi High Court.

Learned counsel for the petitioner has submitted that when the stay order was vacated on 14.05.2008 and petitioner was very much in service at that time, he was eligible for promotion to the post of Sub. He further submitted that once the stay order was vacated on 14.05.2008, the effect of the same will be that Sub Kushal Singh was not entitled to get any benefit from the stay order. Consequently, petitioner was entitled for promotion to the rank of Sub as he was very much in service at that time. Respondents could

have promoted the petitioner against the vacancy and if that had happened then petitioner would have got promotion to the rank of Sub and consequently extension of service and other service benefits.

Learned counsel for the respondents submitted that copy of vacation of stay order was available late and then procedural formalities took place and in that, time was consumed. Ultimately, Sub Kushal Singh was discharged on 31.05.2008 and on the same date, petitioner also stood superannuated.

We have bestowed our best of consideration and gone through the record. The stay order passed by the Hon'ble Delhi High Court staying the discharge of Sub Kushal Singh was vacated on 14.05.2008. Consequently, one vacancy of Sub arose on 15.05.2008 with the respondents. Once the respondents have received information that the stay order has been vacated then that would mean that from 15.05.2008 vacancy of Sub was available with them and if that vacancy was available on 15.05.2008, then naturally petitioner, being the senior most and next in line, should have been promoted. As a result, he would have got extension of service and other consequential service benefits. It is unfortunate that the authorities acted in a very slow manner and allowed Sub Kushal Singh to continue upto 31.05.2008 whereas Sub Kushal Singh should have been discharged w.e.f 15.05.2008 when the stay order was vacated. Therefore, petitioner cannot be punished for the slow moving machinery of the State. The vacancy was available with the respondents on 15.05.2008 and petitioner was very much in service at that time.

In view of above, we set aside the impugned orders dated 01.06.2009 and 18.09.2008 and direct the respondents to consider the case of the petitioner for promotion to the rank of Sub and grant him all consequential

benefits. Since he has already retired on 31.05.2008 and cannot be reinstated, he may be granted notional promotion and all benefits may be given to him in accordance with law. In these circumstances, we allow the petition. No order as to costs.

A.K. MATHUR
(Chairperson)

Z.U. SHAH
(Member)

New Delhi
January 31, 2012
mk