

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

O. A. No. 62 of 2011

Corporal Ramesh Yadav

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Mr. Ashok Yadav, Advocate with Petitioner

For respondents: Ms. Barkha Babbar, Advocate

CORAM:

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

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

JUDGMENT

16.03.2012

S.S. Dhillon, Member

1. The petitioner is aggrieved at the non implementation of his promotion to the rank of Sergeant, in spite of the fact that he has passed his Sergeant Promotion Examination. Petitioner seeks promotion to the rank of Sergeant with all consequential benefits, including arrears.

2. The petitioner joined the Indian Air Force on 14.07.1992 and has been continually serving with the Air Force. Over a period of time, he attained the rank of Corporal due to his dedicated and loyal service. Petitioner was due for his next promotion i.e. to the rank of Sergeant for which he had to appear in the requisite promotion examination. Unfortunately, he could not succeed in the examination within the stipulated three chances provided by the then existing policy. However, on 21.10.2005, the promotion policy was revised from the existing "TEB & GEB" to "REB (C)". The intimation of this change of policy was done vide Air HQ signal of 13.10.2005 which reads as under;

“Extension of exemption for partially passed candidates of all old Non JITT candidates who have partially passed in any part as per old pattern of Airmen Promotion Exam can appear in the remaining part of exam during Jan-Jun 06 cycle for last and final chance”

3. This signal gave new hope to the petitioner and he applied through the proper channel for appearing in the said examination in the Jan-June 2006 cycle, which he successfully passed securing good marks. Subsequently, he was shocked to learn that his promotion examination results have been cancelled by the Air Force on an anomaly pointed out by Air Force Record Office that he has availed an additional chance i.e. a fourth chance, for the examination. Petitioner approached all the concerned authorities to resolve the issue, however he was unsuccessful in obtaining redressal and has eventually filed the present petition.

4. Respondents filed a reply in which they have contested the facts as intimated by the petitioner. Learned counsel for the respondents stated that reclassification and promotion examination for Airmen in the Indian Air Force was guided by the Air Force Order 21/2001 which was relevant in the case of the petitioner. Vide Para 11 of that policy, it clearly stipulates that all Airmen can avail a maximum of three chances for both Part I and Part II together or separately. In the case of petitioner, he has appeared for the Sergeant Promotion Examination Part I in February, 2001 which he had passed. However, for the Sergeant Promotion Examination Part II, he appeared thrice i.e. April 2003 to September 2003, October 2003 to March 2004 and October 2004 to March 2005 and has failed in all three attempts. Therefore, having availed three mandatory chances, he was not eligible for any additional

chance. The signal of 13.10.2005 that has been referred to is to be read in conjunction with Para 11 of Air Force Order 21/2001 and nowhere in the signal is it mentioned that the candidates are entitled to a fourth chance. In addition Para 85 of the said Air Force Instructions 21/2001 clearly stipulates that *“it is the personal responsibility of the airmen to keep record of all chances availed of by them for various examinations so that they do not apply for appearing for any examination after exhausting all permissible chances. If at any stage it is discovered that an examinee has managed to pass an examination by availing of an additional chance fraudulently, not only his result will be cancelled forthwith but will be liable for disciplinary action also.”*

5. It was further argued by the respondents that Regional Examination Board of the Air Force at Kanpur issued guidelines on the new pattern of Airmen Promotion Examination for the Jan-June 2006 cycle vide their letter of 22 Nov 2005. This letter specifically states at para 4 that the number of chances that could be availed for passing the examination are three. Para 4 is as extracted below :-

4. Number of chances Permitted : all airmen are eligible to avail maximum of three chances for passing any examination in one go. Test of knowledge and test of skill are to be cleared in the same cycle. Failure in any one of the test will be treated as chance availed. All candidates appeared in old system for Part I Conducted by TEBs and Part II conducted by GEB and cleared partially without exhausting there chances, separately, for Part I and Part II, are eligible to undertake the examination in the current cycle. The exemption is permitted for the Jan-Jun 06 cycle only (Refer Air HQ/19509/ED(TS&T) dated 22 Jul 05 for exemption).

6. Counsel for the respondents stated that no policy letter of Air Head Quarters or any other Air Force unit permitted a fourth chance for appearing in the Sergeant Promotion Examination, to the contrary it was argued that the onus of keeping track on the number of chances availed by Air Force personnel rested on the individual as given at para 85 of Air Force Instructions 21/2001, which has already been extracted above. Therefore, in these circumstances, with no increase of number of chances having been given in any instruction, it would be improper for the petitioner to construe that because of the change in the policy he is now entitled to three additional chances.

7. Respondents reiterated that the petitioner while appearing for the Sergeant Promotion Examination Part II during Jan-Jun 2006 cycle for the fourth time, endorsed it as attempt no. ONE. Therefore, not only did he avail a fourth chance which was not permitted, but he entered this fourth chance as his No. 1 chance. Accordingly, respondents stated that there was no provision by which he can be given a fourth attempt for passing this examination.

8. Learned counsel for the petitioner cited a judgment of Hon'ble Delhi High Court given in the case of **"Sgt. A.K. Solanki Vs. Union of India and Ors"** dated 26.07.2007 citing that in that particular case, Hon'ble Delhi High Court had permitted the fourth chance to Sgt. A.K. Solanki and that the present petitioner is also covered by the same facts and circumstances of the case. Respondents pointed out that a mere reading of the judgment of **"Sgt. A.K. Solanki Vs. Union of India and Ors (Supra)"** distinguishes the facts with regard to Sgt. A.K. Solanki and the present petitioner and, therefore, this judgment would not come to the assistance of the petitioner. Petitioner also

referred to the judgment O.A. 354 of 2010 in the matter of M A Imam decided by a coordinating bench of the AFT wherein the facts are similar to the present case of the petitioner. It appears that Para 85 of Air Force Instructions 21/2001 which also places responsibility on the airmen to keep record of the chances availed by them has not been brought to the notice of the Bench. While responsibility for maintaining record of number of chances availed rests on Air Head Quarter also, it does not absolve the petitioner of his responsibility as given at Para 85 of Air Force Instructions. Furthermore to refer to his fourth chance as 'Chance Number One" is a clear misrepresentation of facts and such judgment will not come to his advantage.

9. In view of the above facts, we do not find any ground to interfere in this matter. Accordingly, the petition is dismissed. No order as to costs.

**A.K. MATHUR
(Chairperson)**

**S.S. DHILLON
(Member)**

**New Delhi
March 16, 2012**
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