

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI
07.**

O.A. No. 74 of 2011

Havildar Deshpal Singh

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Mr. K. Ramesh, Advocate.

For respondents: Mr. Mohan Kumar, Advocate.

CORAM:

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

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

ORDER
09.01.2012

Petitioner vide this petition has prayed that respondents may be directed to grant the petitioner ante dated seniority in promotion to the rank of Naik w.e.f 01.01.1998 at par with his batch mates instead of his present seniority of 04.09.2000 and similarly for the rank of Havildar he should be granted ante dated seniority of 01.06.2002 at par with his batch mates instead of 12.09.2005 to meet the ends of justice.

Petitioner was enrolled in the Indian Army on 11.03.1991 as a Sepoy. From 08.11.1995 to 25.05.2000, he was subjected to a murder trial and thereafter he was acquitted by the trial court of the charge of murder on 25.05.2000. On his acquittal by court, he was reinstated back in service on 01.06.2000. Then petitioner passed the promotion cadre course of Naik on the first attempt and was promoted to the rank of Naik w.e.f. 04.09.2000 while his batch mates were promoted to the rank of Naik w.e.f 01.01.1998. Petitioner further passed the promotion cadre course of Havildar on 22.11.2000 whereas his batch mates had been promoted to the rank of

Havildar way back on 01.06.2000. Therefore, in this background, petitioner has prayed that since he has been acquitted by the trial court and reinstated with all back wages, his seniority to the rank of Naik and similarly for the rank of Havildar should be protected vis-a-vis his batch mates as the delay in passing the promotion cadre course was beyond his control as he was facing trial of murder charge. As soon as after his acquittal from the murder charge, he passed the promotion cadre course of Naik as well as Havildar, therefore, his seniority should be restored vis-a-vis his batch mates.

A reply has been filed by the respondents and they contested the matter. It is submitted that as soon as the petitioner passed his promotion cadre course, he was promoted and was assigned his seniority accordingly. He filed statutory complaint on 27.02.2003 against the assigning of seniority in the rank of Naik and the same was dismissed on 16.12.2003. It is also pointed out that since the petitioner has lost his seniority to the rank of Naik and also to the rank of Havildar being subjected to the charge of murder. As soon as he passed the promotion cadre course to the rank of Naik and subsequently to Havildar, he was promoted but with loss of seniority.

Learned counsel for the respondents has taken serious objection with regard to delay and non impleading the affected parties in the present petition. In this connection, learned counsel for the respondents has drawn our attention to the case of **Union of India and Others Versus Tarsem Singh (2008) 8 SCC 648** wherein their Lordships summarised the whole subject in paragraph no. 7 of the judgment and it has been pointed out that normally, a belated service related claim will be rejected on the ground of delay and latches where remedy is sought by an application to the Administrative Tribunal but one of the exceptions to the said rule is cases relating to a

continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. "If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained."

In the present case, learned counsel for the petitioner has tried to urge before us that it is not the fault of the petitioner. He is the victim of the circumstances that he was unnecessarily roped in a murder case and he had to suffer on that ground. Learned counsel has submitted that once the petitioner was acquitted of the charge of murder, his all positions had been restored. In this connection, learned counsel for the petitioner has drawn our attention to a decision given by a coordinating bench in the case of **Hav Harish Chandra Kandal Versus Union of India and Ors. OA No. 166 of 2009 dated 14.11.2011** and decision given by us in the case of **Havildar Chandu Chavhan Versus Union of India & Ors. OA No. 221 of 2010 dated 19.12.2011.**

It is true that it is a misfortune of the petitioner that he was roped in a murder case. After his acquittal, he has been promoted to the rank of Naik and Havildar after passing the necessary promotion cadre courses. But the question is that meanwhile persons of his batch already had a march over him affecting his seniority. In case other affected parties would not have been there perhaps we would have no difficulty in protecting the petitioner's seniority but the fact is that there are other persons who had been promoted

by the passage of time and their rights can be affected. In such conditions, decision given by the Hon'ble Apex Court in the case of **Union of India and Others Versus Tarsem Singh (Supra)** has to be seen.

In the present case the petitioner was reinstated after acquittal of charge of murder and he was promoted to rank of Naik after passing the promotion cadre on 04.09.2000 but he did not file any statutory or non statutory complaint nor made any representation against lowering down his seniority in 2000. He filed the statutory complaint only on 27.02.2003 which was rejected by the respondents on 16.12.2003. That means petitioner knew about loss of his seniority vis-a-vis his batch mates to the rank of Naik. Similarly, he passed the promotion cadre course for Havildar and he was promoted to the said rank on 12.09.2005. Therefore, the serious question which arises is that whether petitioner is guilty of delay or latches or not. Petitioner soon after rejection of his statutory complaint denying seniority vis-a-vis his batch mates should have filed a petition and challenge his seniority by impleading all those persons of his batch mates who had a march over him. That was not done. Likewise, when he was promoted to the rank of Havildar after passing the promotion cadre course and he was given seniority w.e.f. 12.09.2005 and his batch mates were promoted as Havildar w.e.f. 01.06.2002, he has lost his seniority and has not approached the court at that time. Moreover, necessary parties who had a march over the petitioner's seniority have not been impleaded before us.

In the case of **Hav Harish Chandra Kandal Versus Union of India and Ors. (Supra)**, the cause of action arose in 1990 and petitioner filed the petition in 2009 after a delay of 19 years. However, court has granted the relief to the petitioner and condoned the delay of 19 years as it was brought to

the notice of the court that statutory complaint of the petitioner was disposed of by the respondents only in the year 2009 but this is not the case in the present petition. In another case of **Havildar Chandu Chavhan Versus Union of India & Ors.**, we found that petitioner has been wrongly denied opportunity to promotion cadre course, therefore, we had given direction to respondents to promote the petitioner in the next available vacancy and his seniority vis-a-vis Hav Srinivasa Reddy be protected. Hence, both the decisions are distinguishable on the facts.

We uphold the objection of the learned counsel for the respondents that the petition is belated and necessary parties have not been impleaded in the present petition. Hence, we dismiss the petition on the ground of delay and laches. No order as to costs.

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

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

**New Delhi
January 09, 2012**
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