

**IN THE ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH
NEW DELHI**

TA No.471 of 2009
(WP (C)8149/09)

LEM H.S.Bind

...Petitioner

Versus

Union of India & others

...Respondents

For the Petitioner : Mr. K.Ramesh, Advocate

For the Respondents: Mr.R.Balasubramanian, ASG with
Mr.J.S.Yadav, Advocate

C O R A M:

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

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

JUDGMENT
(1.8.2012)

BY CHAIRPERSON:

1. Petitioner by this petition has prayed that orders may be issued to the Respondent to promote the petitioner to the rank of Petty Officer Engineering Mechanic as officially approved vide letter dated 15.12.2006 with an ante dated seniority and inherent

consequential benefits of service, pay and allowances and subsequent service pension in the rank of Petty Officer Engineering Mechanic w.e.f. 1.2.2009.

2. The petitioner was enrolled as a Sailor in the Navy on 18.1.1993. He was promoted to the rank of Leading Engineering Mechanic. The petitioner was intimated of his promotion to the rank of Petty Officer Engineering Mechanic on 15.12.2006 with the ante date seniority of 1.7.2006. However, he could not avail such promotion as he did not have two years of residual service which was the criteria in vogue as per IHQ MOD (Navy) letter dated 11.4.2005. Since petitioner did not have two years residual service, therefore, he did not avail this promotion and declined the same by communication dated 30.7.2007. But the policy dated - 11.4.2005 was subsequently amended on 17.5.2007 which was not known to the Petitioner. According to the revised policy, the two years embargo was set aside. The petitioner came to know about this when persons

junior to him were promoted and these persons also did not have the requisite two years residual service, then he woke up and took up the case of his promotion before his Commanding Officer. The Commanding Officer vide its letter dated 28.11.2007 recommended the matter to the higher authorities for promotion of the petitioner as the embargo of the residual service of two years has already been removed. But that was not accepted and petitioner was not promoted to the post of the Petty Officer Engineering Mechanic. Hence, the petitioner filed the present petition in the Hon'ble Delhi High Court which was transferred to this Tribunal on its formation.

3. A reply has been filed by the respondent and they have taken the position that since the petitioner himself has declined to avail the promotion, therefore, he could not be promoted. It is pointed out that as per the policy of 2005 all LME sailors are to have two years residual service as on date of issue

of promotion order for promotion to Ag. POME in order to avail full period of two years for award of BWKC/ICE/GT competency certificate. Sailors are to sign for residual service, if required, subject to requirement of service prior to issue of promotion orders. The petitioner was issued promotion order on 15.12.2006 and was retired on 31.1.2008 and hence having only 1 year and two months of residual service, rightly the unit did not promote the sailor and the promotion order was returned to the Bureau. Further, the sailor had given unwillingness for further service on 8.8.2006. The petitioner could have served for a maximum of 17 years in LME which was till 31.1.2010 and if so, he could have been promoted to the rank of Ag. POME with all consequential benefits but he chose not to serve further by giving his unwillingness for further service on 8.8.2006. It is also admitted that the revised policy was issued on 17.5.2007 and the petitioner's promotion order was issued on 15.12.2006. The

petitioner gave his unwillingness therefore, he could not avail the subsequent amended policy. An additional affidavit was also filed wherein is stated that since he was retiring on 31.1.2008, and the policy was changed on 30.7.2007. It was also pointed out that when Respondent knew very well that the embargo of residual service has been removed from 17.5.2007, the Indian Navy could have been fair enough to inform him about the change in policy and promote him but that was not done.

4. We heard learned counsel for the parties and perused the record. It is admitted that the promotion order was issued on 15.12.1996 and the promotion order respondent clearly mentioned that concerned Commanding Officer shall ensure that sailor has two years residual service in accordance with the policy dated 11.4.2005. It is also mentioned that in case the petitioner doesn't has 2 years residual service then ascertain whether he is

interested in re-engagement and that also should be sent in a proforma. It is also stated that policy of two years residual service is under review. When petitioner came to know on 20.11.2007 about promotion of some persons who also did not have two years residual service he woke up and immediately moved his Commandant for reconsideration of his promotion. The Commandant on 28.11.2007 requested the authorities that since the petitioner did not have requisite two years of service and therefore, sailor forward his unwillingness for further re-engagement and subsequently the policy pertaining to promotion of LMEs to POMEs got revised on 17.5.2007 which no longer stipulates mandatory residual service of 02 years, the sailor has requested for re-consideration of his promotion to the rank of Ag. POME w.e.f.1.7.2006, but that request was turn down. The fact of the matter is that change of policy perhaps was not intimated to the petitioner and even

Commanding Officer of the Respondent also was not aware of it and it is only subsequently that he himself came to know of it. The policy has been changed vide order dated 17.5.2007 and petitioner informed the respondent of unwillingness to avail the promotion, as he did not have two years residual service, on 30.7.2007 and this was forwarded by the Commanding Officer. Had the Commanding Officer known about the change in policy then perhaps he would have informed the petitioner that since the policy in question has already been modified in May and two years of residual service is no more an embargo, the petitioner would certainly not have refused to avail his promotion on 30.7.2007. It appears to be a bonafide mistake somewhere. When petitioner was offered an order of promotion dated 15.12.2006, in that it is clearly mentioned that 'the policy regarding residual service is under review at IHQ/MOD (Navy)'. Therefore, it is not that Commanding Officer was not aware that the present

policy is likely to undergo a change and infact it did undergo a change on the 17.5.2007 and petitioner has declined to avail this promotion as he was only short of the required two years residual service as on 30.7.2007. Had the Commanding Officer known about the change of policy, which was under contemplation, that the embargo of two years have been scrapped then he would have informed the petitioner and petitioner would not have declined his promotion. But because of the lack of communication at the hand of the respondents, the petitioner under bonafide impression did not feel persuaded to avail the promotion as he felt that he did not have two years residual service. Therefore, the mistake is with the respondents and not with the petitioner. The petitioner was honest enough to have informed respondents by not availing the promotion because of the fact that he lacked two years of service, therefore, he is not availing the promotion, but it was an equal responsibility of the

respondents to have correctly apprised the petitioner that embargo of two years is no more there. Therefore, it is a very hard case and the petitioner, who was ignorant of the change in the policy was totally misled. The employer has the responsibility to inform changes which have been brought about in the rules from time to time. But in the present case, it appears that neither the petitioner was made known of the change of policy nor the Commanding Officer. Had this fact been known to the Commanding Officer and if he had apprised the petitioner, petitioner would not have been foolish enough to forgo the promotion. Therefore, this was the mistake on the part of the respondents in not properly informing the petitioner as well as the Commanding Officer. It is also contended that since petitioner did not avail promotion and he was not willing to serve further and for promotion one has to undergo and obtain Boiler Room Watchkeeping certificate. If the mistake had not been committed

by the Respondents and he would have been apprised, then he would not have forgone the promotion and he would have certainly undergone the training Boiler Room Watchkeeping certificate which is required under the rules. Therefore, it is not a mistake on the part of the petitioner and it is a mistake on the part of the respondents by not correctly apprising the petitioner of the amendment which has been brought about much before the petitioner's returned his promotion on 30.7.2007 whereas the embargo of two years residual service was already removed on 17.5.2007. Therefore, it is a hard case where petitioner has been denied the promotion on account of total lack of ignorance on the part of the respondent and the Commanding Officer not to have apprised the petitioner, which has resulted in the unfortunate loss of promotion to the petitioner.

5. Learned Counsel has invited our attention to the decision of the Hon'ble Bombay High Court where it

has been held that the possession of a Boiler Room Watchkeeping Certificate of ICE Competency Certificate is a must. There is no dispute on this aspect and this certificate is certainly necessary but infact of the present case, the mistake is on the part of the respondents, therefore, he cannot be denied the benefit of promotion on account of this decision of the Hon'ble High Court.

6. Therefore, in view of above, the petitioner is entitled to benefit of the mistake committed by the respondents and petitioner will be deemed to have been promoted and the training which is required to undergo is dispensed with under the special circumstances of this case because of the fact that the mistake is on the part of the respondents not to inform the petitioner of the policy decision so much so that even Commanding Officer was unaware of that criteria of two years have been done away with. Therefore, we direct that petitioner be promoted to Petty Officer Engineering Mechanic and all the

benefits coming from that promotion may be given to him. Since he has already retired and discharged from service he cannot be given benefit of reinstatement, but he is given the benefit of promotion as per the order dated-15.12.2007 and monetary benefits arising out of this promotion.

7. The petition is allowed. No order as to costs.

[Justice A.K. Mathur]
Chairperson

[Lt. Genl. SS Dhillon]
Member (A)

New Delhi
1st August, 2012