

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI
05.

T. A. No. 602 of 2009
Writ Petition (Civil) No. 2755 of 2008

Baljeet Singh

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Mr. P.D.P. Deo, Advocate with Petitioner

For respondents: Mr. Anil Gautam, Advocate.

CORAM:

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

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

ORDER
29.05.2012

1. This writ petition was filed by the petitioner before the Hon'ble Delhi High Court and it was transferred to this Tribunal after its formation.
2. Petitioner vide this petition has prayed to direct the respondents to promote him from Hav to the rank of Nb Sub with all consequential benefits. It is also prayed to quash the policy of the respondents of Inter-se transfer of vacancies amongst different trades and also quash the order dated 18.03.2008 passed by the Chief of the Army Staff intimated to the petitioner vide order dated 20.03.2008.
3. Petitioner was enrolled in the Indian Army as Sepoy on 10.07.1984 and with passage of time promoted to the rank of Naik in 1994, Hav in 1997 and Nb Sub in 2008. He duly passed the promotion cadre test for the rank of Nb Sub in 2003 but he could not be promoted for the said rank in 2006. He moved an application dated 08.08.2006 to the Commandant, CAMS, Delhi Cantt, duly recommended by his Coy. Cdr. and Commandant himself on 19.08.2006 recommended his case for promotion to the rank of Nb Sub. In his

application, petitioner mentioned that two vacancies have been given from SAC to REP Trade vide order dated 05.06.2006. One vacancy was filled vide order dated 31.07.2006 while the other vacancy has to be filled by the promotion of the petitioner because of his being senior most on completion of 23 years of dedicated service record.

4. It is alleged by the petitioner that his application was forwarded by HQ CAMS vide letter dated 23.08.2006 to the Respondent no. 4, who further replied vide his letter dated 31.08.2006 saying that two vacancies were allotted by the letter of AHQ dated 05.06.2006 and the same have been utilized as one vacancy against surplus and another one was promoted vide letter dated 31.07.2006. These utilization of vacancies by way of letter dated 31.07.2006 is absolutely discriminatory, arbitrary and illegal. There had been some other earlier inter trade transfer of vacancies in the past from SAC to accommodate some persons of REP Trade and that is why two vacancies were taken from SAC for REP Trade.

5. It is submitted that one Hav Umesh Kumar Singh, senior to the petitioner was promoted to the post of Nb Sub on 01.08.2006 and after promotion of Hav Umesh Kumar Singh, it is the petitioner only who was entitled for promotion. Petitioner came to know that in the year 2003, CAMS had floated a letter to the Dte. Gen of Military (Ops) and requested to transfer certain vacancies from SAC Trade to REP Category of Trade to help out 5 NCOs who were becoming overage that year. Accordingly to accommodate the 5 NCOs, wherein to help the junior most i.e. Hav/PWR Rajinder of CAMS, who to become overage on 30.04.2003, the effort was made to transfer the vacancies to accommodate him. It is pointed out that some vacancies were also transferred to accommodate some other people.

6. Petitioner being aggrieved sent a legal notice dated 07.12.2006 to the respondents and respondents in their reply dated 18.12.2006 to the legal notice clearly mentioned that vide Army HQ letter dated 05.06.2006, two more vacancies of SAC trade were directed to be transferred to REP Trade by 01.07.2007 out of which one vacancy has already been utilized against the promotion of Hav/LMM Basant Singh on 01.01.2006 as the individual would become overage on 12.02.2006 and remaining one vacancy has been utilized to promote Hav/PWR Umesh Kumar Singh being senior most Hav. Thereafter petitioner filed statutory complaint dated 29.03.2007, however the same has been rejected by the COAS vide his order dated 18.03.2008. Thereafter petitioner filed the present petition before the Hon'ble Delhi High Court seeking aforesaid reliefs, which has been transferred to this Tribunal after its formation.

7. A reply has been filed by the respondents and they contested the matter.

8. We have heard both the parties and gone through the record. During course of arguments, the question came before us that how these two vacancies were utilized by the respondents. There were contradictions in the stand of the respondents taken by them in their reply. Therefore, vide order dated 17.02.2012, we directed the respondents to explain the contradiction that how Hav Basant Singh was promoted w.e.f. 01.01.2006 on the basis of order dated 05.06.2006. Hav Basant Singh was likely to become overage on 12.02.2006. The following order was passed on 17.02.2012:

"There were two vacancies of Naib Subedar in the SAC Trade which were transferred to REP Trade as one time measure by the order dated 05.06.2006. Respondents have pointed out in one place of their reply that against one vacancy one Hav Umesh

Kumar Singh was promoted and another vacancy was given to Hav Basant Singh on 01.01.2006 who was likely to become overage on 12.02.2006 as pointed out by the respondents in their reply dated 18.12.2006 to the legal notice addressed on behalf of the petitioner dated 07.12.2006. But in another letter dated 31.08.2006, respondents pointed out that one vacancy was utilized on 05.06.2006 against surplus, other one as promoted vide letter dated 31.07.2006.

There are two contradictory explanations and still the picture is not clear that how Hav Basant Singh was promoted against the vacancy belonging to REP Trade. Respondents are directed to specify that how these two vacancies were utilized. Learned counsel for the respondents prays for two weeks' time.

Put up on 19.03.2012."

9. Respondents have filed their additional affidavit and tried to explain the contradictions, however they have not been able to explain that how Hav Basant Singh was promoted w.e.f. 01.01.2006 against one additional vacancy allotted vide AHQ letter dated 05.06.2006.

10. Learned counsel for the respondents submitted that Hav Basant Singh is not a party before this court. All these facts were known to the petitioner when legal notice sent on his behalf was replied by the respondents on 18.12.2006. It is further submitted that there is no averment in the petition that Hav Basant Singh has wrongly been promoted and that this has caused prejudice to the petitioner.

11. The objection raised by learned counsel for the respondents is justified. There is no such grievance raised by the petitioner against promotion of Hav Basant Singh in his petition, therefore, question whether Hav Basant Singh was promoted rightly or wrongly cannot be now adjudicated as Hav Basant Singh is not a party before us. However the illegality was writ large, in that a

person was promoted w.e.f. 01.01.2006 against a vacancy allotted vide AHQ letter dated 05.06.2006. This contradiction has not been explained by the respondents satisfactorily in their additional reply. However, we cannot in any case give relief to the petitioner against the promotion of Hav Basant Singh as he is not a party before us. But the fact remains that contradiction in respect of promotion of Hav Basant Singh w.e.f 01.01.2006 against a vacancy allotted only on 05.06.2006 is unexplainable on the part of the respondents. Had Hav Basant Singh not been promoted perhaps petitioner who was next in line after Hav Umesh Kumar Singh would have been promoted to the rank of Nb Sub as he had already passed the promotion cadre course for the said rank and he was eligible in all respects.

12. Be that as it may, no relief can be granted to the petitioner against the promotion of Hav Basant Singh. However, this serious lacunae has been brought before us and this has seriously affected the career of the petitioner. Therefore, we direct the respondents to examine the case of the petitioner for promotion to Nb Sub against one of the vacancies allotted vide AHQ letter dated 05.06.2006, and if he is found deserving in all respects then he be granted notional benefit, since he has already been promoted to the rank of Nb Sub since 01.05.2008.

13. With these observations, petition is disposed of. No order as to costs.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
May 29, 2012_{mk}