

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

9.

TA 168/2009

Writ Petition No.9690/2009

Sub/Clk Mangi Lal

.....Petitioner

Versus

Union of India & Ors

.....Respondents

For petitioner: Mr. K.Ramesh, Advocate

For respondents: Mr.R.Balasubramanian and JS Yadav, Advocate

CORAM:

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

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

ORDER

18.02.2013

This writ petition has been filed by the petitioner seeking directions to quash the BEG records release order dated 28.5.2008 as well as the DPC for the petitioner, being contrary to Army Headquarters policy letters of 10.10.1997 and 11.9.2008. He seeks do-novo DPC, and if promoted in such DPC, he be given consequential benefits.

2. The petitioner was enrolled on 21.6.1997 as a Sepoy. Over the next 30 years of service, till his retirement on 30.06.2009, he has served with utmost sincerity and dedication to the satisfaction of his superiors. Based on his profile, he was promoted in due turn to Naik, Hav, Nb Sub and Sub. The DPC from Sub to Sub Maj rank was held in 2007 and 2008, however, he was not empanelled due to wrong methodology adopted by the DPC. Army Headquarters letter of

10.10.1997 clearly states that for DPC the batch of that particular calendar year only should be considered. The petitioner belong to the 2002 batch. However, for this DPC, the respondents clubbed the batches of 2002, 2003, 2004 and 2005 and by doing so, they have seriously jeopardised his chances of selection, since the zone of consideration was unduly enlarged making his selection very difficult. He realised this fact only when he reported to BEG, Kirkee on 18.06.2009.

3. The main contention of the petitioner is that, in accordance with the Army Headquarters letter of 11.09.2008, a batch for conduct of DPC for promotion, implies a calendar year from 1st January to 31st December of that year and since the petitioner belonged to 2002 batch of Subedars, rightly only that batch should have been considered for promotion by the DPC, and his batch should not have been clubbed with the subsequent batches of 2003, 2004 and 2005 as was done in the case of the petitioner. The same anomaly continued to prevail even in the subsequent DPC held in December 2008, when his batch was considered with the subsequent three batches, thereby making his selection very difficult. It was argued that such practice was being adopted only by the records of BEG Kirkee, unlike in other record office in the country.

4. During verbal arguments, learned counsel for the petitioner gave us a tabulated version of the actual and recommended methodology for inclusion of batches in DPC which is extracted below:

DPC 2007

Vacancies = 46 Total candidates = 92			
Actual		Recommended methodology	
Fresh 2001 Batch	30	Fresh 2001 Batch	30
Fresh 2002 Batch	41	Fresh 2002 Batch	41
Fresh 2003 Batch	49	--	
Review cases	30	Review cases	30
Total	150	Total	101

DPC 2008

Vacancies = 31 Total candidates = 92			
Actual		Recommended methodology	
Fresh 2004 Batch	49	Fresh 2004 Batch	49
Fresh 2005 Batch	60	--	
Review cases	75	Review cases	75
Total	184	Total	124

5. Learned counsel for the petitioner went on to argue that the policy letter of 10.10.1997 stipulates that as a guideline, only double the number of candidates vis-a-vis vacancies, should be considered by the DPC. He drew our attention to Para 7 of the policy letter of 10.10.1997, which is extracted below:-

"7. Consideration of Service of inclusion in the DPC.

Respective Corps will decide the seniority/batch of Risaldars/Subedars to be considered for qualifying the criteria laid down in Para 8 of this letter. As a guide line double the number of candidates vis-a-vis vacancies or a complete batch whichever is more may be considered for the DPC."

6. He further argued that in accordance with para 14 of the same policy letter all Subedars are to be given a maximum of three considerations by the DPC, therefore, all such review cases should also be included in the number of candidates being considered by the DPC. Accordingly, by including additional fresh batches, the total candidates both in the DPC of 2007 and 2008, have seriously breached the guidelines of considering only double the number of candidates vis-a-vis the vacancies. The DPC of 2007 had 46 vacancies implying that 92 candidates should be considered, whereas the DPC considered 150 candidates and should not have considered the 2003 batch thereby bringing down the number of candidates to 101, which, in any case, exceeded the stipulated 92 candidates. Similarly, for the 2008 batch, for 31 vacancies, while 62 candidates should have been considered, a total of 184 candidates were considered, thereby seriously breaching the guidelines of only 'double' the number of vacancies, being considered. By doing so, the respondents have severely curtailed his chances of selection for promotion.

7. A counter affidavit has been filed by the respondents wherein they have clarified that the perception of the petitioner was contrary to the policy being followed by Army Headquarters. The petitioner was promoted to Sub on 01.11.2002 and for the purposes of promotion to the rank of Sub Maj, he would be considered as part of 2002 batch. A DPC is held every year to select meritorious Subedars for promotion on competitive merit to the rank of Sub Maj in accordance with the Army Headquarters policy letter of 10.10.1997. Para 7 of the policy letter referred to by the petitioner, clearly stipulates that the number of candidates to be included in the DPC should be double the number of vacancies or a complete batch, whichever, is more. In the case of petitioner, for the DPC held in 2007, three fresh batches viz 2001, 2002 and 2003 were considered in accordance with the same policy letter. Learned counsel for the respondents further argue that in accordance with the Army Headquarters policy letter of 10.10.1997 and 11.09.2008, it clearly stipulates that the candidates to be considered had to be minimum double the number of vacancies or a complete batch, whichever, is more. Furthermore, a batch has been defined in the policy letter of 11.09.2008 as "all Subedars promoted in a calendar year from 1st January to 31st December will be regarded as a 'Batch'". Para 3 of the policy letter of 11.09.2008 which defines a batch is extracted below:-

"All Subs promoted in a calendar year from 01 Jan to 31 Dec of a year will be regarded as a batch."

8. Accordingly, it was argued that to double the number of vacancies, the candidates have to be from fresh batches and cannot include the review cases since the review cases did not constitute a batch in the definition as given in the Army Headquarters policy. It was also clarified that his policy was being implemented uniformly for all persons below officer rank in the entire Army since 1997 and it was incorrect to say that this policy was being adopted only by BEG Record, Kirkee.

9. Counsel for respondents further argued that para 7 of the policy of 10.10.1997 clearly states that the number of candidates to be considered, will be double the number of vacancies or a complete batch, whichever is more. The DPC of 2007 and 2008 have gone by this policy and has not deviated whatsoever,

10. Counsel for the petitioner drew our attention to Army Headquarters letter of 29.03.2004 showing the calculation of vacancies for number 3 and 4 selection board for officers. Respondents argued that the selection process for officers, being a separate and different category, are governed by a different set of guidelines and the same calculation for officers cannot be imposed for persons below officer rank.

11. We have heard learned counsels at length and perused the record. The moot question is whether the number of candidates to be considered should be strictly double the number of vacancies or whether the candidates can exceed this number i.e. is the number of candidates sacrosanct or whether rules permit flexibility in deciding the number of candidates vis-a-vis vacancies? A plain reading of the policy shows that the number of candidates to be considered should be double the number of vacancies or a complete batch, whichever is more, thereby clarifying that total number of vacancies is not an absolute or sacrosanct figure and it can be exceeded to include the complete batch. As verbally explained by the respondents, this was done so as to ensure that Subedars do not proceed on retirement without at least one look in the DPC. The DPC is normally held when a person is about to retire as a Subedar and approval for Sub Maj would grant the candidate further service of 4 years. Therefore, it was necessary on the part of the authorities to ensure that all subedars get an opportunity to be considered in the DPC. This policy of considering an entire batch in the DPC has been formulated in the year 1997 for the entire Army and is a time tested policy which has been uniformly applied.

12. Accordingly, it appears that the DPC was done in accordance with the policy stipulated by Army Headquarters and has not erred in the calculation of number of candidates for selection by the DPC.

Accordingly we do not find any merit in the petition. Same is dismissed. No order as to cost.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
18th February 2013
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