

COURT NO. 1  
ARMED FORCES TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

75.

OA 1111/2020

Hav (N Asst) Sanjay Kumar	.....	Applicant
Versus		
Union of India & Ors.	.....	Respondents

For Applicant	:	Mr. Manoj Kr Gupta, Advocate
For Respondents	:	Mr. Rajeev Kumar, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON  
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER  
04.01.2024

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act 2007, the applicant has filed this application and the reliefs claimed in Para 8 read as under:

- (a) To direct the Respondents to fix ante-date Seniority of the Applicant in the rank of Hav from 01 Apr 2014 along with batch mates, for which he is entitled as he missed the Cadre in Nov 2013 due to fault on the part of Respondents; and
- (b) To direct the Respondents to consider him for promotion to the next higher rank of JCO Cadre of Nb Sub along with batch-mates which is probably scheduled from 13 Sep 2020 (or any other date as per vacancy), after fixation of Applicant ante-date

seniority as HAV from 01 Apr 2014 instead of 10 Nov 2014.

- (c) To direct the Respondents not to promote any of his batch-mates or juniors to the rank of Nb-Sub (JCO) till Applicant anti-date seniority has not been fixed correctly from 01 Apr 2014 which make him eligible for next promotion to Nb-Sub alongwith his batch mates.
- (d) Pass an order for incurring costs/expenditures in any form on account of this application are to be borne solely by the respondents, which would act as a deterrent because due to lapses on the part of Respondents knowingly created class between the classes which is against the Article 14 of the Constitution.
- (e) Any other suitable order as deemed fit based on the merit of the case may kindly be passed.

2. The applicant joined the service of Army on 18.09.2000 and was promoted as a Naik on 01.10.2009. Thereafter, he was posted in 15 Sikh LI Arunachal Pradesh, a field posting in the year 2012. It is the case of the applicant that he missed the ICC cadre course due to a communication gap between the Unit and the Record Office. The AMC Record circulated a letter to the unit concerned to detail eligible NCOs to join the intermediate cadre course on various occasions, particularly on 07.08.2014.

However, when the applicant was not informed about it, he put a request for his detailement in the course during November 2013. Similarly on more than four occasions, such defaults happened as is detailed by the applicant in the pleading and it is the specific case of the applicant in Paras 4.1, 4.2 and 4.3 of the application which are reproduced herein below, that no communication from the concerned Record Office was received by the unit and the applicant was never communicated about his detailment for the course:

*"4.1 That the applicants enrolled in Indian Army on 18 Sep 2000 as a Sepoy and presently serving in the rank of Hav. He was deprived with the opportunity of undergoing Intermediate Cadre Course for the promotion to the rank of Nk to Hav, along with his batch-mates during the period of Nov 2013, when he was serving in a high altitude area of Arunachal Pradesh/15 Sikh LI. As per the version of AMC Records, he was detailed for said Cadre Course conducted during Nov 2013, 29 Jan 2014 and 09 Apr 2014 but individual not reported to training institute for any of these courses and finally successfully undergone the course from 09 Sep 2014 to 10 Nov 2014 and accordingly promoted wef 10 Nov 2014.*

*4.2 That as per the version of Unit Auth ie, 15 Sikh LI (R-4) they never received letter for detailing him for Hav Cadre Course conducted in Nov 2013, hence individual miss the chances of promotion to the rank of Hav alongwith batch mates in Apr 2014 and finally promoted in Nov 2014 which came as big blow to him by losing seniority of more than 07 months. Consequently, he was not detailed for Senior Cadre Course (SCC) for the promotion to the rank of Nb Sub/JCO, conducted in Sep 2019 along with batch mates and told by the Record/R-3 that he will be considered according to his own turns as per Corps seniority. Signal message No. T-2/114/2/COY/2019 dated 20 Aug 2019, seeking reason for not detailing him in SCC is produced as Annexure A2.*

*4.3 That Commanding Officer 15<sup>th</sup> Bn the Sikh Light Infantry (Arunachal Pradesh) vide DO letter dated 30 Aug*

*2014, produced as Annexure-A3, inform the Chief Record Officer that name of the individual had come up for promotion cadre Nk to Hav during Nov 2013 however, this unit and individual was not been informed about the same. Due to which individual could not undergo for promotion cadre and was superseded during the month of Apr 2014'. His CO requested the Record to detail him for Cadre scheduled from 07 Aug 2014.*

The applicant specifically relies upon a communication made by the Commanding Officer of his unit i.e. 15 Battalion the Sikh Infantry on 30.08.2014 (Annexure A3) wherein in Paragraphs 2 and 3 the Commanding Officer made the following averments:

*"2 I am writing this DO with regard to supersession of No 15411207A Nk (NA) Sanjay Kumar of this unit. It is intimated that name of indl had come up for promotion cadre Nk to Hav during Nov 2013 however this unit and indl was not been informed about the same. Due to which indl could not undergo for promotion cadre and was superseded during the month of Apr 2014.*

*3. Indl is presently serving in my bn and downgraded to low med cat P3 (T-24) due to PIVD L4L5 Indl is very demoralized because his batchmates have been promoted to the rk of Hav (NA). If Indl/unit would have been informed during the month of Oct-Nov 2013 for promotion cadre detailment then he could have attended as at that time indl was in med cat Shape-1. It is also intimated that ICC is likely to be run at 420 Fd Hosp wef 09 Sep 14 vide your letter No 330045C/1CC/SEP-NOV-ICC 14 dt 07 Aug 14 downloaded from internet. Name of the Indl not found in the list of attendees. Hence please intimate the present status of the case and inform whether the indl is considered to attend the said cadre at 420 Fd Hosp.*

According to the applicant, he could not get promotion to the rank of Havildar along with his batchmates from April 2014 because he was not detailed for the ICC Cadre course in November 2013 due to the fault of the respondents and he now claims that as he has subsequently cleared the cadre course and

promoted to the post of Havildar, he should be granted ante-dated seniority from 01.04.2014 along with his batchmates as he missed the ICC cadre course in November 2013 because of the fault on the part of the respondents.

3. The respondents have filed a counter affidavit and in response to the averments made by the applicant they only say that the applicant did not report to the training centre i.e. 420 Field Hospital to undergo intermediate cadre course on four occasions i.e. from 20.11.2013 to 21.01.2014, 29.01.2014 to 01.04.2014, 09.04.2014 to 10.06.2014 and 01.07.2014 to 01.09.2014. Further, in specific reply to the averments made by the applicant from Para 4.1 to 4.3 the respondents make a general statement on reply to para 4.3 of the applicants assertions wherein averments have been made by the applicant by referring to Annexure A3 letter communicated by the Commanding Officer, the respondents made a one-line statement that the averments in Para 4.3 need no comments.

4. Having heard the learned counsel for the parties and considered the pleadings available on record, we find that the applicant has been denied promotion to the rank of Havildar at par with his batchmates with effect from 01.04.2014 only because he did not attend the cadre course which was held on four occasions as detailed herein above. According to the applicant, the reason for not attending the course was that neither

he nor his unit was informed about the cadre course and in the absence of proper communication, the applicant was deprived of his right to appear in the cadre course and seek promotion along with his batchmates. In response thereto, the respondents have made a general statement and there is no specific reply to the assertion made by the Commanding Officer of the unit on 30.08.2014. A perusal of the communication made by the Commanding Officer clearly indicates that with reference to communications made by the applicant about his supersession, the Commanding Officer intimated that the name of the individual i.e. the applicant had come up for promotion during November 2013. However, the unit viz. 15 Battalion the Sikh Light Infantry and the individual were never informed about the same, due to which the individual could not undergo the promotion cadre course and was superseded during the month of April 2014. Again in Para 3 the Commanding Officer of the unit clearly stated that the applicant was in Shape 1 when the cadre course was held and subsequently he had been downgraded after the said period. That being so, we are of the considered view that there is nothing on record to disbelieve the statement made by the Commanding Officer in his communication at Annexure A3 dated 30.08.2014. The respondents except for making a general statement that the applicant did not attend the cadre course on four occasions have not specifically rebutted the contentions of the applicant made in Para 4.1 to 4.3, the communication of the




Commanding Officer at Annexure A3 dated 30.08.2014 so also the communication at Annexure A5 dated 04.09.2014 wherein also similar assertions have been made by the Adjutant to the Record Office. Therefore, from the aforesaid it is clear that the applicant was denied consideration for promotion along with his batchmates in April 2014 on no fault on his part, but on account of non-communication with regard to the cadre course both to the unit and the applicant concerned and the applicant cannot be put to loss because of the inaction or negligence on the part of the respondents in communicating the conduct of cadre course to the applicant or his unit. Even though the respondents in a general manner have tried to indicate that the communication was made it was incumbent upon the respondents to specifically point out before this Tribunal that the unit and the applicant were communicated the fact with regard to his not attending the cadre course on four occasions as detailed herein above except for making a general statement and not rebutting the contentions of the applicant particularly the averments made in Para 4.5 in specific terms. On the other hand, the respondents have tried to wriggle out of the situation by making general statements and unspecified submissions.

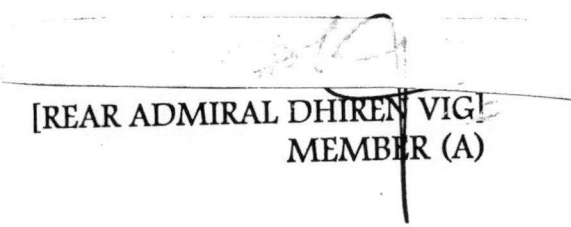
5. In our considered view and in the facts and circumstances of the case, especially in the backdrop of the specific evidence available on record, particularly Annexure A3 dated 30.08.2014 and Annexure A5 dated 04.09.2014, we see no reason to deny

the rightful claim of the applicant. Accordingly, we allow the application directing the respondents to grant ante-dated seniority to the applicant in the rank of Havildar with effect from 01.04.2014 at par with his batchmates, however, subject to verification of the condition that the applicant was in a suitable medical category when he had to undergo the cadre course. However, we make it clear that the applicant will be entitled to only ante-dated seniority at par with his batchmates and he would be entitled to all monetary benefits only from the date he physically promoted to the rank of Havildar. The respondents shall comply with this direction within three months from the date of receipt of a copy of this order.

6. With the aforesaid, the application stands allowed and disposed of.

7. No order as to costs.

  
[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

  
[REAR ADMIRAL DHIREN VIGI]  
MEMBER (A)

Vide our detailed order of even date, we have allowed the main OA No.1111/2020. Faced with this situation, learned counsel for the respondents makes an oral prayer for grant of



leave for impugning the order to the Hon'ble Supreme Court in terms of Section 31(1) of the Armed Forces Tribunal Act, 2007.

After hearing learned counsel for the applicant and going through our order, in our considered view, there appears to be no point of law much less any point of law of general public importance involved in the order, therefore prayer for grant of leave to appeal stands dismissed.

\_\_\_\_\_  
[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

\_\_\_\_\_  
[REAR ADMIRAL DHIREN VIG]  
MEMBER (A)

Jyoti