

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

OA 135/2009

Hav/Clk Khyali Singh ..... Applicant  
Versus ..... Respondents  
Union of India & Ors. ....

WITH

OA 1932/2017 WITH MA 1474/2017, OA 1990/2017  
WITH MA 1507/2017, OA 61/2015 WITH MA 75/2015,  
OA 270/2016

For Applicant : Mr. S S Pandey, Advocate  
For Respondents : Mr. Harish V Shankar, Advocate  
Mr. Anil Gautam, Sr. CGSC  
Mr. V Pattabhi Ram, Advocate for R 1-4

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON  
HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER

OA 135/2009

Being aggrieved due to fixation of seniority after merger with category of Clerk (GD) as per Army HQ Policy dated B/10035/Rationalisation/MP-3(PBOR), the applicant who is a Clerk (SD) in Indian Army has filed this OA under Section 14 of Armed Forces Tribunal Act, 2007, with following prayers:-

*(a) Quash the decision of Respondents issued vide their letter dated 05.01.2009 by giving retrospective effect to their policy of merger of two categories of Clerks i.e. Clerk (SD) and Clerk (GD) into one single category.*

*(b) Quash the formula of fixation of seniority as per Para 2(d) of policy letter dated 05.01.2009 after merger of the two categories of*

*the Clerks i.e clerk (SD) and Clerk (GD) into one by giving a common nomenclature of Clerk (SD) adopted in respect of the Naik and above, the category to which the Applicant belongs.*

*(c) Direct the Respondents to consider the Applicant for promotion based on the policy instructions and as per the availability of vacancy existed immediately before implementation of the policy dated 05.01.2009 in respect of erstwhile Clerk (SD) before 21.12.2009.*

2. The case was disposed of vide order dated 03.06.2010 by this Tribunal with following directions:-

*“15. Army HQ policy on Rationalisation of Trades dated 05/01/09 is the latest policy governing merger of trades and will prevail over earlier policies and there are no grounds for striking down the policy on grounds of malafide and being unreasonable. The judgement cited by the applicant given in the case of Ravi Kumar Sharma & Ors Vs Union of India & Ors supra does not help the contentions of the applicant as in that case there was a dispute of seniority between direct recruitments and personnel re-mustered to that trade. This is not the position in the present case.*

*16. There was no illegality in the steps taken for merger and there are no grounds for quashing the Army HQ letter dated 05/01/2009 (Annexure A-2). We do not find any strong reasons for striking down an existing practice. In cases of mergers, invariably, some persons are disadvantaged and some advantaged. This happened in the case of merger of Clerk (SD) and Clerk (GD) categories also. The applicant has submitted that this has adversely affected him. There is no substance in the submission as the batchmates of the applicant, who were in the Clerk (GD) stream, were already 2-3 years ahead of him before the merger. He is thus not entitled to any relief. Application is dismissed and earlier interim order is vacated. No costs.”*

3. The applicant being dissatisfied with the order, filed a Civil Appeal No.5580-5581/2010 before Hon'ble Supreme Court,

which was pleased to remit the case to this Tribunal an order dated 09.03.2012 which reads to the effect :-

*"Be it noted, the learned counsel though challenged constitutional validity of the policy 5th January, 2009, he has not pressed the same. As he has not pressed the same, we do not enter into the said area. Therefore, the only controversy that remains to be adjudicated is whether the judgement of the tribunal in O.A. No.191 of 2011 decided on 19th March, 2012, would cover the cases of the likes of the appellant. For the said purpose, certain facts are to be brought on record and adjudication on the factual score is necessary.*

*Resultantly, we think it appropriate to remit the matter to the tribunal to consider the same. Accordingly, the appeals are allowed, the order impugned is set aside and it is directed that the tribunal shall determine the seniority after absorption regarding the judgement pronounced in O.A. No.191 of 2011. For the sake of clarity, we reiterate that the tribunal shall not dwell upon the Justifiability of the policy dated 5th January, 2009. Needless to say, the tribunal would be required to determine the applicability of the judgement on the basis of the material brought on record or further material likely to be brought by the appellant. We grant liberty to the parties to file additional documents before the tribunal, if so advised. There shall be no order as to costs."*

4. Hon'ble Supreme Court in their aforesaid judgment have referred to order dated 19.03.2012 in the case of Pratap Chandra Sahu Vs. Union of India & Ors in OA No 191/2011 while dealing with the concept of seniority in respect of merger of two separate wings namely Military Engineering Service and Engineer Regiment wherein relevant paragraphs 11 to 14 of the said judgment in OA 191/2011 are extracted as under :-

*"11. Now coming to the next question raised by learned counsel for the petitioner that result of repatriation of as a these employees/petitioners who were working in the MES when they are*

going back to their parent cadre then it is going to create a lot of disturbance in the existing status of the parent department. It is submitted that some people while working in the MES were not promoted while the juniors to them in their parent unit were promoted. When these employees working in MES go back to their parent unit, they will be placed below to their juniors and this action will seriously affect their further right of promotion and will create great hardships to the petitioners.

12. We realise that the persons who were working in the MES when they go back to their unit, they should get their due place in that unit without affecting their seniority or promotion. It is likely that persons in their parent unit got promotion and when persons working in MES go back to their parent unity, they will be placed below to their juniors who got promotion while working in parent unity. This will be discriminatory and violation of Articles 14 and 16 of the Constitution of India. The person junior in his cadre is promoted and person who has been sent out of cadre in the public interest and when he is reverted back, he is placed below to his junior. This will cause a great hardship to him and this will be unfair to the person, therefore, we directed learned counsel for the respondents to seek instructions that when these persons are being repatriated to their parent unit, they must be given their dues and they would not be placed below to their juniors and create a discrimination in their parent cadre. In case a person who is junior is promoted, then the person who is being repatriated from MES to his parent unit should also be promoted in case he is eligible for promotion and if not then he may be given opportunity to acquire that qualification so as to get his promotion.

13. Learned counsel for the respondents after seeking instructions submitted that the authority will take proper care of the persons who are being repatriated to their parent cadre and if they are otherwise qualified then they will be considered for promotion from the date persons junior to them have been promoted. In case, they are not eligible then they will be promoted after acquiring necessary qualification and their seniority of unit will be maintained vis-a-vis their juniors. He also submitted that seniority of these people who are being repatriated will be looked into and they will be placed accordingly. In case any person junior to these persons is being promoted to a higher rank then the case of these persons will be considered vis-a-vis such junior person and if they are found suitable

*then they will be given their due promotion and their seniority will be restored.*

*14. We hope and trust that all these aspects will be examined by the Government and thereafter all the personnel who are repatriated to their parent department will be restored back to their original seniority and they will be given their due. In case, if one is required to pass a certain eligibility test for the promotion then he will be given that opportunity. This whole exercise will be undertaken and completed within a period of six months from the date of this order. It is also observed that in case these persons who are being repatriated from MES to their parent cadre are lacking regimental report then the report obtained by them while working the MES will be taken into consideration because they are working in the MES as a combatant."*

5. Consequent to directions of Hon'ble Supreme Court and during completion of pleadings at the AFT, following cases were tagged being similar in nature:-

(a) Hav/Tech Comn Trilok Singh Vs UoI & Ors – OA 1932/2017 with MA 1474/2017.

(b) CHM Arjun Singh Vs UoI & Ors – OA 1990/2017 with MA 1507/2017.

(c) Sub/SKT N Mohanan Nair Vs UoI & Ors – OA 61/2015 with MA 75/2015.

(d) Sub/SKT Meghshyam Singh Sinsinwar Vs UoI & Ors – OA 270/2016.

6. The facts in OA No 135/2009 have been dealt at length in the order of this Tribunal dated 03.06.2010 and therefore, we do not find it necessary to once again dwell into it. However, since

other cases were tagged later with this OA, it is essential to put a factual context of the same and the submissions of the applicant and the respondent in the succeeding paras.

**OA 1990/2017 CHM Arjun Singh**

7. The Applicant was enrolled in the Indian Army in Corps of EME in the trade of Telecom Mechanic (Radio) on 20.12.1992. The applicant was promoted to Naik on 01.10.2003 and Havildar on 21.05.2009 with ante date seniority w.e.f. 01.05.2009 and appointed as CHM w.e.f. 01.09.2014 vide 532 FRI Part II Order No. 0/0004/003/2015. IHQ of MoD (Army) issued a circular dated 05.01.2009 for rationalization of various trades by merging the post of various cadres and as per their policy letter, all TCM (L) and TCM (RO) trades were merged and re-designated as Tech Comn.

8. The applicant submits that due to merger of the trades of TCM (L) and TEM (RO), he not only went down in the seniority but also was not promoted while persons junior to him have been promoted ahead of him. The applicant made a representation on 17.02.2017 that after scrutiny of the seniority of promotion list, he found that the junior of the applicant as per date of enrolment and promotion to the rank of Naik was promoted

to the rank of Nb Sub. The applicant also submits that on rationalization of trades, the junior was promoted to the rank of Hav w.e.f 01.02.2009 from TCM (L) and the junior was placed higher than the applicant in the Seniority Roll and he lost out for promotion to the rank of Nb Sub which is grossly unfair.

9. The respondents submit that they fixed the seniority of personnel of TCM (L) and TCM (RO) trades on common seniority roster taking the date of substantive promotion to the last rank under the provision of Para 1059 of EME ROI and as per policy date, the substantive rank of last rank held was taken as benchmark to decide seniority. Accordingly, the persons promoted to the rank of Havildar w.e.f 01.02.2009 were placed ahead of the applicant whose date of promotion to the rank of Havildar is 01.05.2009.

**OA 1932/2017 HAV (TECH COMN) TRILOK SINGH**

10. The Applicant was enrolled in the Indian Army in Corps of EME in the trade of Technical Communication on 01.03.1993. The applicant was promoted to Naik on 28.11.2003 with ante date seniority w.e.f 01.10.2003 and Havildar on 23.05.2009 with ante date seniority w.e.f. 01.05.2009. Similar to CHM Arjun Singh, the applicant made a representation on 27.01.2016 through a DO

letter from his unit office that a junior of the applicant was promoted and given seniority ahead of the applicant.

11. The respondents submit that they fixed the seniority of personnel of TCM (L) and TCM (RO) trades on common seniority roster taking the date of substantive promotion to the last rank under the provision of Para 1059 of EME ROI and date of substantive rank of last rank held was taken as benchmark to decide seniority. Accordingly, the persons promoted to the rank of Havildar w.e.f 01.04.2009 was placed ahead of the applicant whose promotion date to the rank of Havildar is 01.05.2009.

**OA 61/2015 WITH MA 75/2015 SUB/SKT MOHANAN NAIR.**

12. The applicant was enrolled as a Sapper in Madras Engineering Group of Corps of Engineers of the Indian Army in the trade of Store Keeper Trade (SKT) on 05.01.1985. The applicant was transferred into Military Engineering Service (MES) Militarised Cadre as SK (store keeper) with effect from 02.09.1993 in the rank of Naik and promoted to the rank of Nb Sub on 23.09.2004 and rank of Subedar on 15.01.2009.

13. A policy letter 05.01.2009 was circulated by the Respondents for rationalisation of various trades by merging the posts of Mil Cadre of SK/BS of MES with Army Cadre of SKT. The

applicant was transferred to HQ Madras Engineering Group with effect from 03.10.2011 and transferred to pension establishment with effect from 01.02.2015. The applicant is aggrieved that the other person enrolled with the applicant and re-mustered in the MES in the SK/BS Trade was promoted much ahead of the applicant as a large number of vacancies available for their trade. The vacancy of the rank of Subedar and Sub Maj were available in MES whereas in the units vacancies in that rank were limited. Havildars of SK/BS trade approached the Armed Forces Tribunal Principal Bench against such merger and they were apprehensive that the Havildars of SKT trade will affect their promotional prospect as they will be placed under their juniors who were promoted as Havildar in their own trade earlier ahead of them.

14. The Respondent issued a Signal dated 06.09.2012 stating that the matter is subjudice and promotion order will be issued after receipt of instructions from Competent Authority. The Respondent vide their letter No 1606/JOC/SKT/124 dated 24.09.2012 intimated the applicant that DPC for the year 2012 was held in abeyance due to an order by AFT Kolkata on promotion and posting of SK/BS category. The Respondents intimated the applicant for supplementary DPC for Sub to Sub Maj

SKT promotion for the year 2013 and circulated promotion order No. JCO/01/CA2(SKT) of 2013 in which the name of the applicant was not there.

15. The applicant forwarded the application pertaining to DPC 2012 to the OIC MEG Group Centre and Col Comdt of Madras Sappers and requested them to promote the applicant as per the result of the original Board. The applicant requested the Respondents to consider his case for promotion to the rank of Sub Maj vide his representation dated 06.09.2012.

16. The Armed Forces Tribunal Kolkata Bench had passed the judgment dated 22.02.2013 in the bunch of OA filed in the year 2011 by vacating the stay order and reiterating the direction as passed on 19.03.2012. Subsequently, the applicant was discharged from the service in his present rank of 31.01.2015.

**OA 270/2016 SUB/SKT MEGHSHYAM SINGH SINSINWAR**

17. The applicant was enrolled in the Army (Bombay Engineer Group) on 24.02.1986 and was transferred to Madras Engineer Group (MEG) on 07.03.1993 due to surplus of SKTs in Bombay Engineer Group (BEG). The applicant had voluntarily sought transfer into MES Militarised Cadre and accordingly transferred

from MEG to BEG as Store Keeper Grade II w.e.f 10.11.1994 in the rank of Naik.

18. The applicant was promoted to the rank of Havildar w.e.f 23.12.1997 with the seniority w.e.f 10.12.1997, Naib Subedar w.e.f 31.12.2003 with seniority w.e.f 27.10.2003 and Subedar w.e.f 13.02.2006 with seniority w.e.f 12.12.2005. The applicant during his service was transferred out from BEG Kirkee to MEG on 07.03.1993, MEG to BEG Roorkee on 10.11.1994, BEG Roorkee to BEG Kirkee on 03.10.2011 and from BEG Kirkee to MEG on 01.09.2013.

19. A policy letter 05.01.2009 was circulated by the Respondents for rationalisation of various trades by merging the posts of Mil Cadre of SK/BS of MES with Army Cadre of SKT. Havildars of SK/BS trade approached the Armed Forces Tribunal Principal Bench against such merger and they are apprehensive that the Havildars of SKT trade will affect their promotional prospect as they will be placed under their juniors who were promoted as Havildar in their own trade earlier ahead of them.

20. Armed Forces Tribunal vide order dated 19.03.2012 decided the matter filed on such issue of merger of the trade and held the said policy valid with the direction to the respondents to

adjust the seniority of the applicant so that their right is not affected for promotion to the Rank of Naib Subedar to Subedar.

21. In compliance of the judgment passed by the AFT, RB, Kolkata the Respondents actively undertook to give effect to the merger of SKTs however, during the process the sheet roll of the applicant was not collected by the MEG as done in the case of other similarly placed SKTs on the ground that the applicant belonged to the BEG. The name of the applicant was also included in the supplementary DPC by BEG but despite being approved, he was not promoted to the rank of Sub Maj/SKT as accorded to other such personnel.

22. The sheet roll of the applicant was separately collected by the MEG which clearly depicted that the name of the applicant despite being fully eligible did not get included in supplementary DPC conducted by the respondents for the year 2013 for promotion of the applicant to the rank of Sub Maj/SKT. However, the personnel junior to the applicant were granted promotion to the higher rank in the said Supplementary DPC.

23. The respondents sought a willingness certificate of the applicant for acceptance of promotion to the rank of Sub Maj thrice and the applicant submitted the same. However, the

applicant was intimated by the Records MEG that the ACR of the applicant for the year 2015 was not received.

24. The applicant made a representation dated 09.12.2015 with the higher authorities requesting for approval of his promotion to the rank of Sub Maj/SKT and E-in-C Branch and to direct the Record Office MEG to look into the matter. The applicant was discharged from the service in his present rank of Subedar on 29.02.2016.

#### Consideration

25. We have heard learned counsels for both parties and perused the records placed before us by the parties in support of their claims. During the course of submissions before us, Mr. S.S Pandey, learned counsel for the applicant argued before us to substantially establish that the contents of OA 191/2011 are similar to the case placed before us and therefore, submitted that the reliefs granted to the applicants should also be on like terms in this case as well. Learned counsel on behalf of the respondents did not present any material to differ with the learned counsel for the applicant and conceded that the applicants are similarly placed as these in OA 191/2011 being aggrieved due to readjustment of the

seniority consequent to the merger ordered by Army HQ vide their letter dated 05.01.2009.

26. However, having gone through the documents on record we have come to a conclusion that while the applicants in all are aggrieved by the merger affected by policy letter dated 05.01.2009, there are significant differences in the cadre management of different arms and services of the army and, therefore, we sought certain additional documents vide our order dated 28.05.2024 to further dwell into the facts and circumstances of the cases under consideration; even though they are being heard as tagged cases.

27. In the beginning, it is pertinent to refer to certain relevant Paras of the subject policy letter dated 05.01.2009 herein which have been applied while executing the directions on merger and the same are extracted as under :

*2. Apropos, the following actions will be initiated by all concerned Directorate to implement the revised trade nomenclature:-*

*(a) Deleted Trades. Actions be taken to remuster maximum persons of such trades to other suitable trades. Cases requiring sanction of the Adjutant General in terms of Army Order 4/2008/MP will be forwarded by Line Directorates in a consolidated manner to this Branch, duly recommended by Head of Arm/Service. Where the same is not feasible, such persons will be retained in these trades till they superannuate.*

(b) Merged Trades. The changed trade nomenclature be implemented and concerned orders/instructions amended. Part II orders in respect of the affected persons will be published accordingly.

(c) XXXX                      XXXX                      XXXX

(d) Fixation of Seniority. Inter-se-fixing of seniority between merged trades in the same Arm / Service, will be done by taking the date of seniority as date of enrolment in respect of Sepoys. In respect of individuals who have received one or more promotion i.e, Naik upwards, the date of seniority will be taken as the date of promotion to the last substantive rank. In case the date of promotion to the substantive rank is same then provisions of Record Office Instructions (ROI) will apply. This one time measure will be taken alongwith merger of trades and will be monitored at the level of respective Records Offices.

(e) XXXX                      XXXX                      XXXX

(f) Promotions. Further promotion of persons re-mustered will be governed by the Qualitative Requirement (QR) of the new trade. In respect of centrally controlled categories the promotability numbers in each rank will be re-worked by Arms/Services based on new trade strength, as per ratio/percentages laid down in our letter No B/10188/MP-3 (PBOR) dated 25 Feb 2005. Promotions in respect of trades other than centrally controlled trades, will be regulated in terms of the new rank wise authorisation formed as a result of merger of trades in the WE/PE. It will be ensured by the Record Offices/ units that no surplus promotions are carried out.

(g) to (h)                      XXXX                      XXXX                      XXXX

(j) Education and Age Criteria. Due to merger of trades having different education and age criteria, revised criteria has been laid down (where applicable) in consultation with Line Directorates. The details are at Appendix C.

(k) Trade Training. Military Training Directorate/Line Directorates will take action to modify curriculum and trade training as per requirement.

<i>S. No</i>	<i>Merged Trade (new nomenclature)</i>	<i>No. of Trades Merged</i>	<i>Arm/ Service</i>	<i>Trades Merged</i>
.	<i>Clerk (Clk) Staff Duties (SD)</i>	<i>3</i>	<i>Common</i>	<i>Clk Postal, Clk General Duties (GD) &amp; Clk GD (SD)</i>
.	<i>Clerk (Clk) Inventory Management (IM)</i>	<i>3</i>	<i>Engrs/ AOC</i>	<i>Clk Store. Clk Store (Control &amp; Clk Store (Provision)</i>
.	<i>Store Keeper Technical (SKT)</i>	<i>2</i>	<i>Common</i>	<i>SKT &amp; Store Keeper (SK) Grade II</i>
.	<i>Regimental Surveyor (Svyr) (Technical)</i>	<i>4</i>	<i>Arty/ Engrs</i>	<i>Svyr Arty, Regtl Svyr, Svyr, Field and Draughtsman</i>
.	<i>Chef Mess</i>	<i>2</i>	<i>Common</i>	<i>Chef SI and Chef Mess</i>
.	<i>Draughtsman (Technical)</i>	<i>3</i>	<i>Common</i>	<i>Draftsman (Dtmn) Lithography, Dtmn Signals (Sigs) and Dtmn Mech</i>
.	<i>Artisan (Wood work)</i>	<i>4</i>	<i>Common</i>	<i>Carpenter &amp; Joiner, Carp Unit, Saw Doctor and Sawyer</i>
.	<i>Artisan (Metallurgy)</i>	<i>4</i>	<i>Common</i>	<i>Blacksmith Unit, Tinsmith Unit (U), Tin &amp; Coppersmith and Metal Smith</i>
.	<i>Painter &amp; Decorator</i>	<i>2</i>	<i>Common</i>	<i>Painter (U) and Painter &amp; Decorator</i>
<i>0.</i>	<i>Support Staff (Equipment Repairer (ER)</i>	<i>4</i>	<i>Common</i>	<i>Equipment Repairer, Saddler Unit, Upholsterer and Textile Repairer</i>
<i>1.</i>	<i>Machinist</i>	<i>2</i>	<i>Common</i>	<i>Machinist and Turner</i>
<i>2.</i>	<i>Operator Radio</i>	<i>5</i>	<i>Common</i>	<i>Operator (Opr) Radio (Arty), AFV, AFV (ICV), Opr Radio &amp; Wireless, Opr Radio (AAD)</i>
<i>3.</i>	<i>Gunner</i>	<i>4</i>	<i>Common</i>	<i>Gnr GD, Gnr AFV and Pilot Gnr, Gnr (AAD)</i>
<i>4.</i>	<i>Driver Fighting Vehicle</i>	<i>3</i>	<i>-do-</i>	<i>Dvr Armourer Fighting Vehicle (AFV) (APC), Dvr AFV and Dvr AFV (ICV)</i>

28. Consequent to an analysis of the facts and the aforesaid policy letter placed before us through the documents by the respondents, we observe that while same batch of soldiers with same date of initial seniority have joined different trades after their training in various corps specific training institutions, their promotion prospects are varied due to difference in vacancies and consequently career growth prospects within their own trade. Therefore the next promotion i.e Naik for the same batch is different for different trades for the same batch itself. Similarly, the subsequent promotion to rank of Havildar are dissimilar for various trades. Thus, the grievance of the soldiers who have been rendered junior to their own batch mates after the merger or who have been forced to work under their junior batches without having been superseded is quite justified in our opinion as their service interests for subsequent career growth have been given due consideration while implementing the subject policy as the trades which had slower rate of promotion prior to merger have suffered evident disadvantage of being rendered junior to their batch mates serving in parallel disciplines where the promotion rate has been faster due to availability of more number of vacancies.

29. At this moment, we find ourselves limited to the adjudication of this case within the contours of *OA 191/2011*, as directed by the Hon'ble Supreme Court in *Civil Appeal No 5580-5581/2010*, to the effect:

*"Be it noted, the learned counsel though challenged constitutional validity of the policy 5th January, 2009, he has not pressed the same. As he has not pressed the same, we do not enter into the said area. Therefore, the only controversy that remains to be adjudicated is whether the judgement of the tribunal in O.A. No.191 of 2011 decided on 19th March, 2012, would cover the cases of the likes of the appellant. For the said purpose, certain facts are to be brought on record and adjudication on the factual score is necessary.*

*Resultantly, we think it appropriate to remit the matter to the tribunal to consider the same. Accordingly, the appeals are allowed, the order impugned is set aside and it is directed that the tribunal shall determine the seniority after absorption regarding the judgement pronounced in O.A. No.191 of 2011.*

(emphasis supplied)

A. OA 135/2009 Hav/Clerk (SD) Khyali Singh,  
OA 1932/2017 Hav Tech Comn Trilok Singh and  
OA 1990/2017 CHM Arjun Singh

30. Noting that the OA 135/2009 Hav/Clerk (SD) Khyali Singh, OA 1932/2017 Hav Tech Comn Trilok Singh and OA 1990/2017 CHM Arjun Singh are similar in nature, with respect to the factual context, we proceed to examine the aforesaid cases in light of the observations of the Apex Court, read with OA 191/2011.

31. We have also revisited the entire aspect of the trades consequent to issue of letter dated 05.01.2009 where in 2(d) of the letter read a under :

*“Fixation of Seniority. Inter-se-fixing of seniority between merged trades in the same Arm / Service, will be done by taking the date of seniority as date of enrolment in respect of Sepoys. In respect of individuals who have received one or more promotion i.e, Naik upwards, the date of seniority will be taken as the date of promotion to the last substantive rank. In case the date of promotion to the substantive rank is same then provisions of Record Office Instructions (ROI) will apply. This one time measure will be taken alongwith merger of trades and will be monitored at the level of respective Records Offices.”*

and letter dated 15.09.2009 wherein Para 5 reads to the effect :-

*“Promotion & Fixation of Seniority*

*(a) Promotion of pers will be regulated as per existing promotion policy as stipulated vide AG/PS-2 this HQ letter No B/33513/AG/PS-2 (c) dt 10 Oct 97 as amended from time to time. Inter-se-seniority of merged trade will be fixed in accordance with Para 2 (d) of AG/MP-3 No B/10035/Rationalisation/ MP-3 (PBOR) dt 05 Jan 09. However, guidelines as stipulated in AG/PS-2 letter No 83627/AG/PS-2 (c) dt 06 Feb 60 and even No dt 02 Apr 60 will be kept in mind while fixing the seniority of merged trades.*

*(b) As regards the fixing of seniority of direct entry Hav/Clk (GD) and Clk (GD/SD), passing of CI-III of Clks (GD) trade will be considered for deciding seniority of Clks (GD/SD) amongst Havs on merged roster.”*

Having perused the entire records of re-fixation of seniority post the merger we have observed that there have been positive and negative effect on personnel of both trade almost identically and we do not subscribe to the representation of the applicant that only one trade

has stood to gain. Therefore we find resonance in the observations of this tribunal that :-

*“16. There was no illegality in the steps taken for merger and there are no grounds for quashing the Army HQ letter dated 05/01/2009 (Annexure A-2). We do not find any strong reasons for striking down an existing practice. In cases of mergers, invariably, some persons are disadvantaged and some advantaged. This happened in the case of merger of Clerk (SD) and Clerk (GD) categories also. The applicant has submitted that this has adversely affected him. There is no substance in the submission as the batchmates of the applicant, who were in the Clerk (GD) stream, were already 2-3 years ahead of him before the merger. He is thus not entitled to any relief. Application is dismissed and earlier interim order is vacated. No costs.”*

32. At this point, we find it relevant to refer to the judgement dated 22.02.2013 of Kolkata Bench of this Tribunal in batch matters with lead matter OA 76/2011 titled Hav Chintamoni Ghosal Vs UoI, wherein Kolkata Bench after considering judgement of Principal Bench in OA 191/2011, titled Hav Pratap Chandra Sahu Vs. UoI & Ors. vide Para 36 & 37 directed to the effect:

*36. In the light of our foregoing discussions and observations and taking into consideration the judgement of the Principal Bench in Hav Pratap Chandra Sahu's case (Supra), we dispose of these applications by issuing the following directions -*

*(i) The impugned order dated 05.01.2009 so far as it relates to merger of two cadres of MES Militarized cadre of BS/SK and Army cadre of SKT is not interfered with and is hereby upheld.*

*(ii) The respondents, especially respondent No. 1 to 3 are called upon to consider the issue of protection of original seniority of the applicants on repatriation to the merged cadre of SKT in the Army. In doing so, if it is found that any one junior to the*

*applicant or applicants has been promoted to the next higher grade or grades, then the applicant(s) be also considered for such promotion notionally to that grade or grades, without any pay and allowance.*

*(iii) All those applicants who are repatriated from MES, who were in SK-II grade in the MES while being repatriated to their parent engineering group in the Army Engineers shall be deemed to be qualified as Hav, and will not be required to qualify in any other training cadre or tests to attain the rank of Hav in the SKT trade. In such cases their seniority will be counted from the time of substantive Naik onwards.*

*(iv) The policy on tenure/deputation basis of sending SKTs to the MES shall be made implementable only after approval of competent authority since it involves service provided to all three services i.e. Army, Navy and Air Force.*

*(v) The respondents shall ensure that the applicants are repatriated only to their parent group.*

*(vi) Since the Principal Bench has already fixed a time frame of six months, we need not fix any time limit. It is, however, desirable that this order should be implemented as soon as possible.*

*(vii) The interim order granted earlier stands vacated.*

*37. This common order will govern all the 19 OAs, viz. OA 74/11, OA 75/11, OA 76/11, OA 77/11, OA 78/11, OA 79/11, OA 80/11, OA 81/11, OA 82/11, OA 83/11, OA 84/11, OA 85/11, OA 86/11, OA 87/11, OA 88/11, OA 89/11, OA 90/11, OA 17/12 and OA 21/11. There will be no order as to costs in either of them.*

33. On a perusal of aforesaid directions, we find that the issue in the instant three OAs, namely, OA 135/2009 Hav/Clerk (SD) Khyali Singh, OA 1932/2017 Hav Tech Comn Trilok Singh and OA 1990/2017 CHM Arjun Singh has been adequately covered

and answered, and thus, does not require any further consideration on merits, and hence, we conclude that the aforesaid cases are squarely covered by the judgement of Principal Bench of this Tribunal dated 19.03.2012 in OA 191/2011 titled Hav Pratap Chandra Sahu and the judgement dated 22.02.2013 of Kolkata Bench of this Tribunal in OA 76/2011 titled Hav Chintamani Ghosal v. UoI.

**B. OA 61/2015 Sub/SKT N Mohanan Nair & OA 270/2016 Sub/SKT Meghshyam Singh Sinsinwar**

34. As far as aforesaid two OAs are concerned, we find that both the cases pertain to individuals in the rank of Subedar, in the trade of Store Keeper Technical, of which it is the contention of the applicant that after having being approved for promotion to the rank of Subedar Major by DPC, they were not promoted due to the policy under challenge, and subsequent stay by AFT Kolkata Bench in OA 76/2011.

35. As far as these two cases are concerned, we are of the opinion that if there is any discrepancy or disadvantage with respect to the seniority of the aforesaid individuals vis-a-vis their juniors in the parallel trades on the account of merger of the trades,

the same shall be re-fixed in line with the directions of AFT Kolkata Bench in OA 76/2011, and consequential benefits to be granted.

Conclusion

36. Concluding, we dispose of the present OAs with following directions:

(i) Policy letter dated 05.01.2009 issued by Army HQ is upheld.

(ii) The respondents are called upon to consider the issue of protection of original seniority of the applicants on the merger of Clerk (SD), Clerk (SD) & Clerk (SKT) and Tech Comn (L) & Tech Comn (RO) in the Army. In doing so, if it is found that any one junior to the applicant or applicants has been promoted to the next higher grade or grades, then the applicant(s) be also considered for such promotion notionally to that grade or grades, without any pay and allowance. In such cases their seniority will be counted from the time of the last substantive ranks held prior to merger as applicable.

(ii) All such applicants shall be deemed to be qualified for such notional promotion and will not be required to qualify in any other training cadre or tests to attain the rank of promoted rank in the merged trade.

(iii) The complete exercise shall be completed in a time frame of six months from the date of pronouncement of this order.

37. Consequently, the aforesaid OAs are disposed of in terms of above directions.

38. No order as to costs.

39. Pending application(s), if any stand disposed of.

Pronounced in the open Court on this day of 2 August, 2024.

(JUSTICE RAJENDRA MENON)  
CHAIRPERSON

(LT GEN C.P MOHANTY)  
MEMBER (A)

Akc