

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

OA 2138/2019  
with  
MA 3014/2019

Nb Sub Anil Kumar Joshi ..... Applicant  
Versus  
Union of India & Ors. .... Respondents

For Applicant : Ms. Archana Ramesh, Advocate  
For Respondents : Mr. Prabodh Kumar, Sr. CGSC

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

ORDER

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant seeks quashing of the impugned order dated 04.09.2018 (Annexure A-1) whereby his representation for grant of ante date seniority on his promotion to the cadre of Nb Sub retrospectively w.e.f. 04.12.2016 at par with his batchmates has been rejected and he is only being granted seniority w.e.f. 10.09.2017.

2. Facts in brief indicate that the applicant was enrolled in the Army Education Corps on 22.03.2003 as a Havildar Instructor. The applicant physically assumed the next higher rank of Nb Sub w.e.f. 01.03.2018 with ante date

seniority, i.e., 10.09.2017. It is the case of the applicant that he was detailed to participate in the Advance Data Processing (Fundamental) Course which was to be held from 26.09.2016 to 03.12.2026. His batchmates who qualified and cleared the course were promoted to the rank of Nb Sub w.e.f. 04.12.2016. However, the name of the applicant was withheld and he was not permitted to participate in the course as a Court of Inquiry (CoI) was initiated against him because of which he was not detailed for the said course. Subsequently, the CoI initiated against him was closed and accordingly, he was permitted to undertake Advance Data Processing (Fundamental) Course from 03.07.2017 and having cleared the said course, he has been granted promotion to the rank of Nb Sub w.e.f. 10.09.2017. *Inter alia*, contending that even though the applicant was detailed to participate in the course from 26.09.2016 to 03.12.2016 but he was prevented from participating in the course on account of his involvement in a CoI. It is stated that when the applicant was not detailed for the course, he invoked the jurisdiction of this Tribunal in the year 2016 by filing OA No.1163/2016 and when he was detailed for the course in the year 2017, the OA was disposed of as having been rendered infructuous vide order

dated 03.10.2017 (Annexure A-4). As the applicant was detailed for the next course which was commencing from 03.07.2017 to 09.09.2017, the OA had become infructuous.

3. Now, the grievance of the applicant is that he could not undertake the Advance Data Processing (Fundamental) Course Serial No.11 for which he was initially detailed from 26.09.2016 to 03.12.2016 because of the pendency of the CoI initiated against him and the ante date seniority denied. However, once the entire proceedings were closed and no disciplinary action was taken against him, based on his completion of course between 03.07.2017 to 09.09.2017, he should have been granted ante date seniority at par with his batchmates w.e.f. 04.12.2016. When his request for the same was rejected by the impugned order dated 04.09.2018 on the ground that the promotion can be granted only from the date of passing of the course in question, the applicant has invoked the jurisdiction of this Tribunal and learned counsel for the applicant placed reliance on a judgement of the Hon'ble Delhi High Court in the case of *Nb Sub (Clerk) Mahipal Singh Vs. Union of India and Others* (Civil Writ Petition No.5352/1999) decided on 03.04.2002 (Mil LJ 2002 Delhi 30) to say that once

the employee was prevented from appearing in the cadre course for reasons which were beyond his control and subsequently after his exoneration in the cause which prevented him from appearing in the cadre course was removed and he passed the cadre course, retrospective promotion at par with his batchmates should be granted. Pointing out that the Hon'ble Delhi High Court under similar circumstances in the case of a dismissed employee whose dismissal was set aside has granted retrospective seniority at par with the batchmates after he had passed the cadre course on his re-instatement, prays for the same relief.

4. That apart, there being a delay of about 08 months and 15 days in filing of this application, a miscellaneous application for condonation of delay under Section 22(2) of the Armed Forces Tribunal Act, 2007, has been filed vide MA No.3014/2019.

5. The respondents have refuted the aforesaid contentions and it is their case that for promotion to the higher rank of Nb Sub certain rules and policies have been laid down. According to the respondents, promotion is advancement in the rank, it is subject to availability of vacancy and fulfillment of the qualitative requirements prescribed under the promotion policy. According to the respondents, the AEC ROI 01/2007 and

revised AEC ROI 017/2014, a Havildar Instructor to be eligible for promotion to the next higher rank of Nb Sub is mandatorily required to pass the ADP (Fundamental) Course, i.e., Advance Data Processing (Fundamental) Course. This is a mandatory requirement and in accordance to the promotion policy, the ADP (Fundamental) Course is a mandatory requirement and only those candidates who pass this course are entitled for promotion. As per this policy, the course has been included in the syllabus of the Technical Training of the Havildar Instructors and only such Havildar Instructors who have qualified in the aforesaid mandatory course are entitled to be considered for promotion to the rank of Nb Sub.

6. It is the case of the respondents that initially, the applicant was detailed to participate in the aforesaid course which was to commence in the Army Education Corps Training College and Centre, Pachmarhi (MP) w.e.f. 26.09.2016 to 03.12.2016. The applicant was detailed to participate in the course but in accordance with the policy, a person who is facing a Court of Inquiry (CoI) or disciplinary proceedings cannot be detailed for the course. Respondents have referred to various communications in this regard in Para 3 of their counter affidavit to say that when the applicant was detailed for the

course, it was informed that a CoI pertaining to the applicant was in progress with respect to the following three allegations levelled against him:

(a) Court of Inquiry for investigating into allegations of alleged misbehavior on 31 Dec 2015 with Smt Kusum Joshi wife of the applicant convened by Stn HQ, Chandimandir vide their letter No 3019/5/MrsKusum/A dated 12 Apr 2016.

(b) Court of Inquiry for investigation of LPG leakage on 08 Apr 2016 in married accommodation of the applicant convened by HQ 37 Inf Bde vide their letter No 3106/2/A (i) dated 09 Apr 2016.

(c) Court of Inquiry for alleged allegations of ill-treatment, harassment etc as per compliant by the applicant against commanding officer and Adjutant of 6 DOGRA convened by HQ 9 Inf Div vide their letter No 4225/1/Anil/A2 dated 25 May 2016 and amendment issued vide their letter No 4410/Bd/A3 dated 26 May 2016.

7. Challenging this action of the respondents in not detailing him for the course, the applicant filed OA No.1163/2016 and when the HQ 9 Inf Division on 13.02.2017 informed this

Tribunal that after completion of the CoI, the disciplinary proceedings initiated against the applicant were closed by the Competent Authority and he has been detailed for the next course to commence from 03.07.2017 to 09.09.2017, the OA was disposed of as having been rendered infructuous. However, after the disciplinary proceedings against the applicant were closed, he was immediately detailed to undergo Course No.12 which was to be conducted w.e.f. 02.01.2017 to 11.03.2017 vide communication dated 21.11.2016 but the applicant did not report or attend the said course. Thereafter, the applicant was again detailed for the same ADP (F) Course Serial No.13 which was to be held from 27.03.2017 to 03.06.2017 vide communication of the Records Office dated 13.02.2017 and again the applicant did not report for the said course and it was only when he was detailed for the Course No.48 between 03.07.2017 to 09.09.2017 that he participated in the course and cleared it successfully on 09.09.2017. According to the respondents, passing of the course is a mandatory requirement and promotion is granted only w.e.f. the date the employee clears the mandatory course. In this case, the applicant's batchmates were detailed for the course which was held from 26.09.2016

to 03.12.2016 but on account of the applicant's involvement in the CoI, the applicant was not permitted to attend the course in accordance to the promotion policy. This course was the Course No.11, thereafter, for Course No.12 and Course No.13, even though he was detailed, he did not participate and as he has been granted seniority and promotion w.e.f. date he cleared the course on 09.09.2017, i.e., 10.09.2017, there is no illegality committed. It is the case of the respondents that the judgement rendered in the case of *Nb Sub (Clerk) Mahipal Singh* (supra) by the Hon'ble Delhi High Court will not apply as that was a case when the employee was dismissed from service because of which he could not appear in the course but in the case of the applicant even if the applicant was prevented from participating in the course in the first occasion, i.e., from 26.09.2016 to 03.12.2016, after his CoI and disciplinary proceedings were closed by the Competent Authority, the applicant was granted two more opportunities to undertake the course but for reasons best-known to him, he did not participate in the course. It was only in the third occasion that the applicant participated in the course and cleared the same and, therefore, on these factors the case of the applicant is distinguishable from the law laid down in the case of *Nb Sub (Clerk) Mahipal Singh*

(supra) decided by the Hon'ble Delhi High Court in as much as there the employee immediately on re-instatement passed the course on the very first occasion. Therefore, the Hon'ble Delhi High Court in that peculiar facts and circumstances gave him the benefit of promotion. However, in the present case, apart from the fact that the applicant is only entitled for promotion from the date he passes the mandatory course, the applicant on two occasions did not undertake the course and having failed to undertake the course, cannot now compare his case with the batchmates.

8. Having heard learned counsel for the parties, the only issue for consideration before this Tribunal is as to whether the applicant is entitled to retrospective seniority at par with his batchmates. Admittedly, when the first training course, i.e., Serial No.11 was to be conducted from 26.09.2016 to 03.12.2016 in accordance to the policy applicable for detailing a person for the course, the applicant was ineligible on account of him facing a departmental proceedings and CoI on account of the three allegations levelled against him as detailed hereinabove. However, once he was cleared of the departmental disciplinary proceedings, he was offered two chances to undertake the course, i.e., Course Serial No.12

w.e.f. 02.01.2017 to 11.03.2017 and Course Serial No.13 w.e.f. 27.03.2017 to 03.06.2017 but for reasons which remained unexplained, the applicant did not participate in the course. He cleared in the course, i.e., Course Serial No.48 held between 03.07.2017 to 09.09.2017, passed the course on 09.09.2017 and even though he was promoted subsequently but he was granted seniority w.e.f. 10.09.2017, i.e., the very next day of passing of the course.

9. From the records it is clear that for earning a promotion to the rank of Nb Sub, a Havildar Instructor is mandatorily required to pass Advance Data Processing (Fundamental) Course and an employee is entitled to promotion only with effect from the date he passes the course. In this case, the applicant passed the course on 09.09.2017 and he was granted promotion w.e.f. 10.09.2017. The applicant's batchmates cleared the course, i.e., Course Serial No.11 conducted from 26.09.2016 to 03.12.2016 and they were granted seniority accordingly. Even if the applicant was prevented from participating in this course, on two other occasions after his exoneration in the departmental proceedings, he was given opportunity to participate in the course, i.e., Course Serial No.12 and Course Serial No.13 but the applicant did not participate in these

courses and, therefore, he cannot claim parity with his seniors based on the law laid down by the Hon'ble Delhi High Court in the case of *Nb Sub (Clerk) Mahipal Singh* (supra). Had the applicant immediately after his exoneration appeared in the next course, i.e., Course Serial No.12 and cleared it, there would have been some justification in the applicant claiming retrospective promotion but the applicant did not clear the course even though offered on two occasions and having not succeeded in these two occasions on account of his own default in not undertaking the course cannot now claim retrospectively seniority having refused to participate in the mandatory course required for earning promotion. This aspect differentiates the case of the applicant from that case of *Nb Sub (Clerk) Mahipal Singh* (supra) decided by the Hon'ble Delhi High Court.

10. Accordingly, in the facts and circumstances of the case and finding the respondents to have granted seniority to the applicant immediately with effect from the date he cleared the mandatory course and also finding him to have deliberately for reasons which remained undisclosed did not participate in the cadre course which was held on the two occasions after his exoneration from the departmental proceedings, cannot now claim promotion at par with his batchmates. Therefore, in the

facts and circumstances of the case, we find no reason to interfere into the matter.

11. Accordingly, the OA stands dismissed both on the ground of merit and delay.

12. MA 3014/2019 and OA 2138/2019 stand disposed of.

13. No order as to costs.

14. Pending miscellaneous application(s), if any, stands closed.

Pronounced in open Court on this 7<sup>th</sup> day of April, 2026.

**[JUSTICE RAJENDRA MENON]  
CHAIRPERSON**

**[REAR ADMIRAL DHIREN VIG]  
MEMBER (A)**

**Neha**