

**ARMED FORCES TRIBUNAL, CHANDIGARH REGIONAL BENCH
AT CHANDIMANDIR**

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OA 164 of 2011

Jagir Singh **Petitioner**
Vs
Union of India and others **Respondent(s)**

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For the Petitioner : Mr. Rajeev Anand, Advocate.
For the Respondent(s) : Mr. Gurpreet Singh, Sr. PC.

Coram: Justice Vinod Kumar Ahuja, Judicial Member.
Lt Gen (Retd) NS Brar, Administrative Member.

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ORDER
25.02.2014

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1. This is an application filed by the petitioner under Section 14 of the Armed Forces Tribunal Act, 2007, hereinafter referred to as said 'Act', for setting aside the order dated 15.06.2009 (Annexure A6) and for direction to the respondents to promote the petitioner to the rank of Havildar along with all consequential financial and pensionary benefits.

2. Briefly stated the facts of the case are that the petitioner was enrolled in the Indian Army on 19.09.1985 as Gunner (General Duty) and served the Indian Army for a period of 19 years 4 months and 12 days. The petitioner alleged that while on annual leave in the year 2000 he met with an accident, sustained injuries and was admitted for treatment in the Military Hospital, Amritsar. It was alleged that due to the injuries sustained by the petitioner in December, 2000 he was initially placed in temporary low medical category and was granted Low Medical Category 'A2 (Permanent)' in the Medical Board held on 25.06.2003. It was alleged that he learnt about a communication dated 07.07.2004 issued by the Records Office referring to the discharge of all Permanent Low Medical Category Personnel including the petitioner to be struck off strength with effect from 31.12.2004.

3. The petitioner was given a show cause notice dated 30.07.2004 as to why he should not be discharged being in Permanent Low Medical Category, which he replied. he was thereafter discharged.

4. The petitioner alleged that he was serving in the rank of Lance Havildar, a non-commissioned officer. In the month of September, 2004 while he was still in the service of the respondent-department a meeting of

Unit Promotion Board was held in the Unit of the petitioner for considering promotions to the rank of Havildar from the rank of Lance Havildar. The petitioner alleged that as per the eligibility criteria and seniority he was in promotion zone and was fulfilling all qualitative requirements for promotion. However, he was not considered by the department though the juniors to the petitioner were promoted. He approached the Battery Commander and was told that a decision had been taken to promote the other non-commissioned officers of the Unit who will serve the Unit for a considerable period of time and even if the applicant is promoted, he will not earn the service pension to the next higher rank as at least 10 months active service in the rank is required in order to earn service pension in that rank which the petitioner was not satisfying. The petitioner had about four months service left at that time.

5. He further alleged that he learnt that other personnel who were to be discharged due to permanent low medical category have been promoted and allowed to serve further for rendering the required ten months service in order to earn service pension on the promoted rank. Thus, he alleged that his case was not considered for promotion and for extension to complete 10 months on the promoted rank so as to earn service pension to the rank of Havildar.

6. The petitioner was discharged from the Army with effect from 01.02.2005 being in low medical category lower than SHAPE-1. He alleged that he never gave any unwillingness to serve. He received a letter dated 19.03.2005 giving reasons for denial from promotion and it was admitted by the Commanding Officer that he was qualified for further promotion but stated that even if the petitioner was promoted on 08.09.2004 he could not have earned service pension on the promoted rank i.e. Havildar as only four months service of the petitioner was left while to earn service pension at least 10 months service on a particular rank is required in consonance with Para 1287 of the Artillery Records Instructions, 2000.

7. It was, therefore, pleaded by the petitioner that the right of applicant-petitioner to be considered for promotion cannot be denied since he was not able to fulfill the requirement of 10 months to earn pension in the higher rank. He also alleged that some persons were promoted by amending their date of discharge who have not rendered 10 months service on the

promoted rank. The petitioner had accordingly prayed for promotion to the higher rank and all consequential benefits.

8. In detailed reply filed by the respondents they have not denied that the petitioner was entitled to be considered for promotion. However, consequent to legal notice dated 20.04.2005, the case of the petitioner was examined and he was granted notional promotion to Havildar w.e.f 01.09.2004 without pay and allowances as he had not actually served in that rank. It was further admitted that the petitioner had filed a writ petition in the High Court of Delhi for grant of promotion to the rank of Havildar and reinstatement into service. The following order was passed by the Court:-

“The case of the petitioner would be examined to verify whether petitioner is identically situated to other persons who are in Low Medical Category and were given liberty to serve for ten months in the rank only to facilitate their retirement and pensionary benefits (Annexure P3 dated 24.01.2005) and if the petitioner is found to be identically situated the same benefits would be extended to the petitioner. If the petitioner’s case rests on different footing, the petitioner will be duly informed of the same with reasons. The decision will be taken by the respondents within three months from today. Petition stands disposed off.”

9. It was further pleaded that the case of the petitioner was examined in the light of the above directions and a speaking order was passed on 15.06.2009 (Annexure R3) wherein it was stated that promotions are based on the seniority and criteria and are carried out within the unit. It was certified that no similarly situated person in the petitioner’s unit was given liberty to serve for ten months.

10. We have heard the learned counsel for the parties and have gone through the record of the case.

11. From the above pleadings of the parties it is clear that the petitioner was due for promotion and was to be considered for promotion but was not considered since it was felt by the respondents that he would not have been entitled to pensionary benefits of the higher post since he had only four months service at his disposal.

12. Once the petitioner was eligible to be considered for promotion to the post of Havildar his case could not have been not considered on the

plea that he would not have completed 10 months service to earn pension. The earning of service pension is a benefit to the employee on promotion but he may or may not be entitled to the pensionary benefits of higher post due to less service at his disposal but his case for promotion cannot be rejected or not considered simply on the ground that he would not have served the necessary period of 10 months to earn pension in the higher rank. However, once legal notice was received, it was directed that he be notionally promoted to the rank of Havildar and was deemed to have retired in that rank. Thus in so far as promotion to the rank of Havildar was concerned, he had been promoted.

13. The forceful argument of the learned counsel for the petitioner was that if he had been promoted while in service, he too would have been allowed to complete 10 months service like others and as he had been notionally promoted it should be deemed that he had served in that rank for 10 months before being discharged. Here we may note that the Hon'ble Delhi High Court had directed to consider this very aspect of similarly situated persons being allowed to serve for ten months. The relevant part of the speaking order in compliance with these directions reads as under

"6. AND WHEREAS, as per existing policy, promotions are made as per the seniority, subject to availability of vacancy and meeting the requisite promotion criteria, such as passing promotion cadre, discipline, medical standard and Annual Confidential Reports grading etc. It is stated that your promotion was controlled by your unit i.e. 95 Field Regiment as per seniority maintained by them. Since, you were due for discharge from service being placed in low medical category and surplus to the sanctioned strength with effect from 21 Jan 2005 (afternoon), your name was not considered by the unit promotion board held on 08 Sep 2004 for promotion to the rank of Havildar. As per para 133 of Pension Regulations for the Army 1961 (Part-1), service pension is assessed on the basis of the rank actually held by an indl regardless of whether it is held in a substantive or paid acting capacity and the lowest group for which he is paid during the last ten months of his service qualifying for pension. Apropos the facts mentioned here-in-before, your case was examined in detail and it is certified that no other personnel who were in low medical category were given liberty to serve for ten months in their present rank in the unit.

7. AND WHEREAS, Legal Notice dated 20 Apr 2005 served by you through your Advocate for grant of promotion to the rank of Havildar and re-instatement into service has been examined by the competent authority at Army Headquarters/Ministry of Defence and directed to grant notional promotion in the rank of Havildar without pay and allowances as you had not physically performed the duty vide Army Headquarters letter No. A/10150/Legal/PC-LN-186/GS/Arty-7C dated 27 Oct 2005. Accordingly 95 Field Regiment published Part II order for grant of promotion to the rank of Hav with effect from 01 Sep 2004 notionally vide Part II order No.0/95 Fd/0597/001/2005 dated 06 Dec 2005."

The order shows that the petitioner's promotion was unit based and that no person in his unit was allowed to serve for 10 months. In other words no

similarly situated person was given this liberty. Then we also note that the petitioner was discharged w.e.f 01.02.2005. The Records letter allowing some individuals from other units to complete 10 months service does not list any person from the petitioners unit. We also note that this letter is dated 24.01.2005 ie after the petitioner had been discharged, thus, no comparison can even otherwise be made with the serving individuals allowed to serve for 10 months when the petitioner had already retired.

14. As the petitioner was discharged in accordance with the rules and has been discharged as a Havildar for all purposes, we find no grounds to consider him as deemed to have completed 10 months service in that rank. He cannot also be reinstated in service once he is out of service since 2004. The petitioner is entitled to all applicable benefits in the rank of Havildar for the service rendered in that rank as per rules.

15. In view of the above discussion, we find no merit in the petition and the same is accordingly dismissed.

(Justice Vinod Kumar Ahuja)

(Lt Gen (Retd) NS Brar)

25.02.2014

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Whether the judgment for reference is to be put on Internet? Yes/ No