

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A.No.47 of 2012

Wednesday, the 24<sup>th</sup> day of July, 2013

THE HONOURABLE JUSTICE V. PERIYA KARUPPIAH  
(MEMBER - JUDICIAL)

AND

THE HONOURABLE LT GEN (RETD) ANAND MOHAN VERMA  
(MEMBER – ADMINISTRATIVE)

Niranjan Panigrahy,  
JC-580519K  
NaibSubedar Clerk,  
19 JAK RIF, JCO Line,  
Pangode Military Station,  
Pangode, Thiruvananthapuram,  
Kerala – 695006.

... Petitioner/Applicant

By Legal Practitioners:  
M/s. G. Justin, C. Bala Sundar,  
V. Ganeshmoorthy

Vs.

1. Union of India,  
Rep. by Secretary to Government,  
Ministry of Defence,  
New Delhi.
2. The Directorate General of Inf/Inf-6(Pers)  
General Staff Branch,  
Integrated HQ of MoD (Army)  
DHQ PO  
New Delhi-11.
3. Colonel of the JAK RIF and Ladakh Scouts Secretariat,  
DG OL & SM  
General Staff Branch,  
IHQ of MoD (Army),  
505, D-1 Wing, DHQ PO  
New Delhi-10105.

4. The Officer in Charge,  
OIC Records, Records JAK RIF,  
Jabalpur (MP)  
PIN – 908774.  
C/o 56 APO.
5. Balwinder Mohan,  
JC-580536K  
Subedar Clerk.
6. Narender Kumar,  
JC-580564W  
Subedar Clerk.
7. Raj Singh,  
JC-580550W  
Subedar Clerk.
8. TarsemLal,  
JC-580551Y  
Subedar Clerk.
9. Dilip Singh Thakur,  
JC-580552K  
Subedar Clerk.
10. BabuRam Kapoor,  
JC-580558A  
Subedar Clerk.
11. Yash Paul,  
JC-580594N  
Subedar Clerk.
12. Mohd Mobin,  
JC-580758Y  
Subedar Clerk.
13. Harish Chandra Sharma,  
JC-580631W  
Subedar Clerk.

14. Sikander Kumar Bhatia,  
JC-580632Y  
Subedar Clerk.
15. Mohinder Singh,  
JC-580759Y  
Subedar Clerk.
16. Kishian Chand Garg,  
JC-580710L  
Subedar Clerk.
17. Tek Bahadur Chhetri,  
JC-580735  
Subedar Clerk.
18. PS Dhadwal,  
JC-580736A  
Subedar Clerk.
19. Rajinder Kumar  
JC-580748P  
Subedar Clerk.
20. Bikkram Singh,  
JC-580749X  
Subedar Clerk.
21. Avtar Singh,  
JC-580760W  
NaibSubedar Clerk.
22. Rattan Lal Choudhary,  
JC-580762F  
Naib Subedar Clerk.
23. Manohar Singh Thakur,  
JC-580777K  
Naib Subedar Clerk.
24. Ashok Kumar Gangotia,  
JC-580778M  
Naib Subedar Clerk.

25. Chaman Lal,  
JC-580779P  
Naib Subedar Clerk.

26. Narinder Singh,  
JC-580780K  
Naib Subedar Clerk.

27. Mohd Iqbal Nawjar,  
JC-580781  
Naib Subedar Clerk.

... Respondents/Respondents

(Respondents 5 to 27 are presently serving at various units/establishments as ordered by Records JAK RIF, Jabalpur (MP), PIN-908774, C/o 56 (APO.)

By Mr. B. Shanthakumar, SPC,  
for R1 to R4

### **ORDER**

(Order of the Tribunal made by  
Hon'ble Justice V. Periya Karuppiah,  
Member(Judicial)

1. This application is filed by the applicant seeking for the relief to set aside the Order dated 16.6.2008 made in the proceedings S.No.A/100520/Prom/Inf-6(Pers) on the file of 2<sup>nd</sup> respondent and seniority list published as per the decision of 2<sup>nd</sup> respondent in proceedings No:A00520/Prom/Inf-6(Pers) dated 29.7.2008 and also to issue further directions to the respondents 1 to 4 to place the applicant above the

respondents 5 to 27 in the revised seniority list dated 29.6.2008 and promote the applicant to the next higher rank of Subedar and thus render justice.

2. The case of the applicant would be as follows :-

The applicant was enrolled in the army on 30.7.1987 as a Clerk in Group 'B'. After passing Technical Trade Test during 1988, he completed trade training and was posted to 19<sup>th</sup> Battalion, The Jammu & Kashmir Rifles. He was appointed Lance Naik Clerk with effect from 1.5.1989 by Records JAK RIF and thereafter he was promoted to the rank of Naik Clerk with effect from 21.4.1990. Subsequent promotions as per seniority maintained by Records JAK RIF were granted to the applicant. The respondents 5 to 27, who were actually junior to the applicant for more than 20 years have been made senior to the applicant by granting illegitimate notional seniority as per Integrated Headquarters of Ministry of Defence (Army) letter No.A/00520/Prom/Inf-6(Pers) dated 16.6.2008 and the said Order is challenged in this O.A. The applicant was commissioned as Junior Commissioned Officer in the rank of Naib Subedar with effect from 1.7.2007 and his next promotion is to the post of Subedar, which has to be done based on original seniority. However, the respondents 1, 2 and 4 changed the policy by issuing instructions from the Army Head Quarters. The applicant had passed TTT-III test on 26.11.1988. However, the respondents

5 to 27, who passed the test subsequent to the applicant, were shown as seniors to the applicant in the seniority list dated 29.7.2008. The revised seniority formula upset the seniority maintained for the past 20 years wherein the applicant was shown as senior to the respondents 5 to 27. This Tribunal has passed an Order on 5.3.2010, in a transferred case filed in W.P.No.6998/2009 before the High Court of Madras, which was transferred and re-numbered as T.A.No.50/2009, setting aside the Order of seniority list in favour of one Kewalnath Ram and re-fixed the seniority as against his juniors. The applicant is also similarly placed and, therefore, the applicant's seniority may be revised and refixed above the respondents 5 to 27 and the applicant may be promoted to the next higher rank to Subedar and other benefits may be given. The application may thus be allowed.

3. The objections raised by the respondents 1 to 4 in their reply would be as follows :-

The applicant JC-580519KNaibSubedar Clerk Niranjana Panigrahy of Jammu and Kashmir Rifles Regiment was enrolled in the army on 30.7.1987 and was appointed as Lance Naik Clerk with effect from 1.5.1989 and subsequently he was promoted to the rank of Naik with effect from 21.4.1990. Right from the beginning, the Jammu and Kashmir Rifle Regiment was considering the date of appointment of Lance Naik as seniority to the promotion of Naik which was not as per the policy issued vide IHQ of

MoD (Army) letter No.83627/AG/PS2 (c) dated 6.2.1960, and as per the said policy, seniority of combatant clerks for promotion to the rank of Naik was required to be considered from the date of enrolment. The said promotion continued to be followed in the Regiment till the time a JCO brought out the issue by way of filing a statutory complaint. Few of mustered Clerks filed W.P.No.18927/2006 (s) before the High Court of Madhya Pradesh at Jabalpur for fixing their seniority for promotion to the rank of Naik from the date of enrolment. The case of Subedar Clerk Ajmer Chand Katoch and other petitioners was similar in nature who had put up a statutory complaint to the Chief of Army Staff against the faulty promotion policy. Judgement was pronounced by the High Court of Madhya Pradesh in the aforesaid Writ Petition with a direction to the respondents to treat the Writ Petition as statutory appeal as per Section-26 of Army Act, 1950 to be decided by the Chief of Army Staff within a period of two months. Accordingly the Chief of Army Staff passed Order dated 16.6.2008 stating –

- (a) Jammu and Kashmir Rifle should follow the date of enrolment for fixing the seniority of Naiks with immediate effect without taking into consideration the seniority of Lance Naik; and
- (b) To identify similarly placed individuals as in the case of JC-579533K Subedar Clerk Ajmer Chand Katoch and grant them notional seniority as granted to him.

4. As per the above directions, Jammu and Kashmir Riffle had convened a board of officers to re-fix the seniority of all serving Clerks of the Regiment. After carefully examining the relevant aspects, it had re-fixed the seniority of serving Clerks including the applicant according to their date of enrolment keeping in mind the requisite qualifications for promotion to the rank of Naik Clerk, but without taking into consideration, the seniority of Lance Naik appointment. As per the re-fixed seniority of Naik, all the affected individuals were given notional seniority to the rank of Havildar/Naib Subedar and subsequently in the rank of Subedar. Due to the re-mustering as per the policy, 23 personnel as stated by the applicant have become senior to the applicant by virtue of their date of enrolment even though they were junior in promotion. No injustice has been done to the applicant. As such, the application filed by the applicant is devoid of merits and liable to be dismissed.

5. On the above pleadings, the following points were framed for consideration :-

- 1) Whether this Tribunal has got territorial jurisdiction to pass orders on the application ?
- 2) Whether the applicant is entitled for the reliefs sought for in the application ?
- 3) To what relief the applicant is entitled for ?



6. Heard Mr. V. Ganeshmoorthy, Learned Counsel for the applicant and Mr. B. Shanthakumar, Learned Senior Panel Counsel assisted by Captain Vaibhav Kumar, Learned JAG Officer appearing for respondents 1 to 4.

7. **Point No.1:** According to the submission made by the Learned Counsel for the applicant that the applicant was overlooked in the seniority as per the policy issued by the respondents and the juniors, namely respondents 5 to 27, were put above the applicant despite they were juniors to the applicant and the respondents 5 to 27 were promoted much after the applicant. Apart from that, he has relied upon a Judgement of High Court of Madhya Pradesh made in Katoch's case where the original seniority of the applicant Katoch was restored and the position of the present applicant was similar to that of Katoch.

8. However, it has been argued by the Learned Senior Panel Counsel appearing for the respondents 1 to 4 that mistake was committed and the date of enrolment should be the criteria for preparing seniority list, but it was not done by the Jammu and Kashmir Regiment in the case of the applicant.

9. We have also perused the documents. No doubt, the applicant has challenged the seniority list dated 29.7.2008 and for setting aside the said

list where his seniority was put below the ranks of respondents 5 to 27, who were admittedly juniors to the applicant for the past 20 years. At the time of filing the O.A., the applicant is said to have been serving at Pangode Military Station, Thiruvananthapuram, Kerala. The cause of action as told in the Original Application would also show that the seniority list was prepared and an order was passed to that effect by the 2<sup>nd</sup> respondent, who is having his office at New Delhi. The applicant did not state in para-2 of the application as to how this Tribunal has got territorial jurisdiction to take cognizance of this application. Rule-6 of Armed Forces Tribunal (Procedure) Rules, 2008, has to be looked into, for ascertaining territorial jurisdiction. It is extracted as below :-

***"6. Place of filing application. – (1) An application shall ordinarily be filed by the applicant with the Registrar of the Bench within whose jurisdiction-***

*(i) the applicant is posted for the time being, or was last posted or attached; or*

*(ii) where the cause of action, wholly or in part, has arisen:*

*Provided that with the leave of the Chairperson the application may be filed with the Registrar of the Principal Bench and subject to the orders under section 14 or section 15 of the*

*Act, such application shall be heard and disposed of by the Bench which has jurisdiction over the matter.*

*(2) Notwithstanding anything contained in sub-rule (1), a person who has ceased to be in service by reason of his retirement, dismissal, discharge, cashiering, release, removal, resignation or termination of service may, at his option, file an application with the Registrar of the Bench within whose jurisdiction such person is ordinarily residing at the time of filing of the application."*

10. Whether the case of the applicant was covered with the provisions of Rule-6 is the present question. As far as this case is concerned, the applicant is neither posted or was last posted or attached in any unit within the jurisdiction of this Tribunal nor any cause of action either wholly or in part has arisen within the jurisdiction of this Bench. It has been strenuously argued that a similar Judgement was passed by this Tribunal in respect of yet another person's case and, therefore, this Tribunal has a cause of action for deciding this application cannot be sustained. In the said case, it was a transferred case from High Court of Madras in W.P.No.6998/2009 which was taken on file in T.A.No.50/2009. In the said case, the applicant was serving in the Army Camp, Pallavaram, Chennai-43. Therefore, this Tribunal has got jurisdiction to entertain the said application on transfer to this Tribunal by

High Court of Madras as per Rule 6(1)(i) of Armed Forces Tribunal (Procedure) Rules, 2008. In this case, the applicant was not admittedly serving within this jurisdiction of this Tribunal. The impugned order was passed by 1<sup>st</sup> respondent at New Delhi. There was no cause of action or no part of cause of action arose within the jurisdiction of this Tribunal. Therefore, we find that this Tribunal has no territorial jurisdiction to try or enquire the application and pass orders thereon. The appropriate Tribunal would be either Armed Forces Tribunal, Regional Bench, Kochi or the Armed Forces Tribunal Benches at New Delhi. Therefore, it has become necessary for us to return the application to the applicant for being presented before the appropriate Bench to the convenience of the applicant under the provisions of Order-7 Rule-10 CPC.

11. **Point No.2:** In view of the fact that this Tribunal has no territorial jurisdiction to entertain the application, we are not inclined to answer the 2<sup>nd</sup> point framed on the merits of the case.

12. **Point No.3:** Therefore, the application presented by the applicant in O.A.No.47 of 2012 filed before this Tribunal on 5.9.2011/22.11.2011 is ordered to be returned to the applicant for being presented before the appropriate AFT, Principal Bench, or Regional Bench on the question of jurisdiction. The Registry is directed to return the application and the

applicant is entitled to take back the Original Application filed by him along with Annexures produced along with the O.A., for being presented before the appropriate AFT, Principal or Regional Bench within a period of 30 days from the date of Order of this Tribunal. The applicant is also permitted to present the application before the appropriate Principal or Regional Bench, AFT, within one month from the date of receipt of the Original Application from this Tribunal.

13. The application is accordingly disposed of with the aforesaid directions.

Sd/-  
LT GEN (Retd) ANAND MOHAN VERMA  
(MEMBER-ADMINISTRATIVE)

Sd/-  
JUSTICE V.PERIYA KARUPPIAH  
(MEMBER-JUDICIAL)

**24.7.2013**  
(True Copy)

**Member (J)** – Index : Yes / No  
**Member (A)** – Index : Yes / No

Internet : Yes / No  
Internet : Yes / No

NCS

NB: The Registry is directed, while returning the Original Application to the applicant to attach a copy of this order for being presented before the appropriate AFT Bench.

VS

To

1. Secretary to Government,  
Ministry of Defence,  
New Delhi.
2. The Directorate General of Inf/Inf-6(Pers)  
General Staff Branch,  
Integrated HQ of MoD (Army)  
DHQ PO  
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28. M/s. G. Justin, C. Bala Sundar,  
V. Ganeshmoorthy,  
Counsel for applicant.
29. Mr. B. Shanthakumar, SPC  
Counsel for R1 to R4.
30. OIC, Legal Cell (Army),  
ATNK & K Area,  
Chennai-600009.
31. Library, AFT, Chennai.



**HON'BLE MR.JUSTICE V. PERIYA KARUPPIAH  
MEMBER (JUDICIAL)  
AND  
HON'BLE LT GEN (RETD) ANAND MOHAN VERMA  
MEMBER (ADMINISTRATIVE)**

O.A.No.47 of 2012

24.07.2013