

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A. No. 98 of 2014

Tuesday, the 31st day of March, 2015

The Honourable Justice V.Periya Karuppiah
(Member-Judicial)
and
The Honourable Lt Gen K Surendra Nath
(Member-Administrative)

Hav V.Gajendran
Service No.6929628M
Son of Shri K Venugopal, aged about 46 years
No.3A, Ilango Street
Pazhumpet, Chetpet
Pothur Thaluka, District Thiruvanamallai
Tamil Nadu – 604 406

...Applicant

By Legal Practitioners:
Mr K.Ramesh and Mr.M.K.Sikdar

vs

1. Union of India
Through The Secretary, Govt.of India
Ministry of Defence, New Delhi – 110 011
2. The Chief of Army Staff
Integrated HQ., MOD (Army)
South Block, New Delhi – 110 011
3. The Directorate General Ordnance Services
Integrated HQ., MOD (Army)
South Block, New Delhi – 110 011
4. The Officer in-Charge
AOC Records, Secunderabad, Andhra Pradesh
Pin: 500 009

...Respondents

Mr.N.Ramesh, CGSC

ORDER

[Order of the Tribunal made by
Hon'ble Lt Gen K Surendra Nath, Member (Administrative)]

This application has been filed by Hav Gajendran requesting for the following reliefs : (a) to promote the applicant to the rank of Naik with seniority of 1993 and Havildar from 01.07.1998 instead of the present seniority date of 01.07.2001; and (b) to produce the records in respect of the impugned order of the 4th respondent dated 12.07.2013 and connected correspondence and quash and set aside the same and to promote him to the rank of Nb Subedar. During the preliminary hearing, the Tribunal pointed out to the counsel for the applicant that refixing of the seniority for Naik and Havildar suffers from severe laches and delays as the application has been filed more than 16 years after the change of the said policy and that any order on the subject at this belated stage would have a concomitant effect on third parties. Thereupon the counsel for the applicant had agreed to not press further for the relief of ante-date seniority of Naik / Havildar.

2. Briefly, the applicant would state that he was enrolled in the Army on 12.11.1988 in the Army Ordnance Corps and that vide Army Headquarters letter dated 23.10.1991, he was required to pass Promotion Foundation Course to the rank of Naik, as he did not

have English and Hindi in Class 12, which he passed on 22.09.1995. He was granted promotion to the rank of Naik with effect from 01.10.1995. The applicant would further state that while he was eligible for promotion to the rank of Naib Subedar on 01.05.2013, the respondents had arbitrarily promoted 8 Havildar Clerks (SD) even though they were yet to qualify in their promotion cadre and, therefore, ineligible for promotion thereby denying him promotion to the said rank. Highly aggrieved over this action of the 4th respondent, the applicant submitted an application dated 11.06.2013 to cancel the promotion of the ineligible 8 Havildar Clerks (SD) and to grant him promotion. However, the 4th respondent rejected his claim for promotion. Further, they informed him that he being overage on 26.06.2013, was ineligible for promotion. In view of the aforesaid circumstances, the applicant requests that the impugned promotion order dated 30.04.2013 issued by the 4th respondent be quashed and he be promoted in the existing vacancies with effect from 01.05.2013 as he is 6th person in the seniority roll for promotion.

3. The respondents would not dispute the fact that the applicant was enrolled in the Army on 12.11.1988 and that his date of birth, as per records, is 26.06.1967 and that the applicant was appointed as Lance Naik from 01 June 1991 and as Naik, with effect from 01.04.1996 with ante-date seniority of 01.10.1995 and that he

was promoted to the rank of Havildar with effect from 01 September 2000 in his own turn/seniority. They would also state that a promotion order was issued on 09.04.2013 which included the promotion of 5 clerks (IM) at S. Nos. 15 to 19. While issuing the promotion order, 8 clerks (SD) who were senior were declared ineligible for not passing promotion cadre and on their representation that they were not afforded opportunity to attend the promotion cadre, the promotion order was cancelled as the said clerks were already attending the promotion cadre course from 18.03.2013 to 11.05.2013. They would state that the final examination for the cadre was conducted on 27.04.2013 and results were declared on 29.04.2013. Thereafter, a fresh promotion order was issued on 30.04.2013 so that those who were senior would not be superseded by their juniors. They would further state that though the applicant was eligible for promotion, he did not come up for seniority / for promotion to the rank of Nb Subedar till 30.06.2013. However, the applicant was found ineligible for promotion with effect from 26.06.2013 as he had become overage (46 years). The Army Headquarters issued a new policy letter dated 28.03.2013 which separated vacancies for various sub-categories. The policy was to be effective from 01.07.2013. They would, however, contend that there was no adverse effect on the applicant as he was overage for promotion with effect from 26.06.2013 and thus ineligible for promotion. They would further submit that in response

to the application of the applicant dated 11.06.2013, the 4th respondent had replied suitably and apprised the applicant that he was not promoted to the rank of Nb Subedar on 01 May 2013 and 01 June 2013 as he was not within the seniority for promotion to fill the vacancies falling on those dates. They would further submit that the applicant was due to retire in the present rank, i.e., Havildar on 30.11.2014.

4. We have heard the arguments of Mr.K.Ramesh and Mr.M.K.Sikdar, learned counsel for the applicant and Mr.N.Ramesh, learned CGSC assisted by Maj Suchithra Chellappan, learned JAG Officer (Army) appearing for the respondents and perused all the documents that were placed before us.

5. Flowing from the above pleadings, the following questions emerge for consideration:

- (a) *Was the promotion order dated 30.04.2013 which included 8 Havildar Clerks (SD) who were undergoing promotion cadre, with effect from 18.03.2013 to 11.05.2013, in order?*
- (b) *Was the applicant eligible and was he in the seniority for promotion, as on 01 May 2013 after excluding the 8 otherwise senior Havildar Clerks (SD) who were attending the promotion cadre?*
- (c) *Whether the impugned order dated 12.07.2013 is liable to be quashed?*
- (d) *What relief, if any, the applicant is entitled to?*

6. As the applicant would have retired on 30.11.2014, this Tribunal had, vide its interim order of 27.11.2014, and subsequently

extended, directed that pending the outcome of the application, the applicant's discharge from service should be kept in abeyance and the applicant would continue in service.

7. The fact that the applicant was enrolled in the Army on 12.11.1988 and that his date of birth is 26.06.1967 and that he was promoted to the rank of Havildar on 01.09.2000 are not disputed by either side. Further the applicant had attended promotion cadre course for Havildar to Nb Subedar from 07.01.2013 to 09.03.2013 in which he qualified and he had all the requisite qualifications for promotion to the rank of Nb Subedar with effect from 10.03.2013. Prior to the introduction of new promotion policy vide letter dated 28.03.2014, the seniority roster for promotion to the rank of Nb Subedar was on a common roster for Clerks (IM), Clerks (SD), SKT (GS&C), SKT (Signal), SKT (Weapons), SKT (Ammunitions), SKT (Aviation), SKT (Engineering) and SKT (MT). Promotion was regulated based on fulfilling the eligibility conditions and on common seniority roster for all the above sub-trades. For promotion to the rank of Nb Subedar, the eligibility conditions include passing of promotion cadre, ACR, disciplinary and medical criteria as well as age criteria which stipulates that on the date of promotion, the candidates are not to be more than 46 years of age. In the extant case, the applicant having passed the promotion cadre and having all other requisite qualifications was eligible for promotion with effect from

10.03.2013 in accordance with common seniority roll. He was eligible for promotion to the rank of Nb Subedar upto 26.06.2013 when he would cross 46 years of age and, thereafter, he would become ineligible for promotion in accordance with the existing regulations on the subject, being overage.

8. The new policy promulgated by Army Headquarters on 28.03.2013 envisaged separation of seniority rolls on the basis of sub-trades and the primary objective of this was to provide a balanced promotional avenues for various sub-trades as the previous policy was causing surplus in certain sub-trades and huge deficiency in other trades, thereby adversely affecting technical function within the Corps. The policy was to be effective from 01.07.2013 in respect of promotions from Havildar to Nb Subedar. As the applicant was overage for promotion with effect from 26.06.2013 and, therefore, ineligible for promotion thereafter, the new policy would not have any effect on the relief asked for by the applicant. It is, therefore, not discussed any further on the said point.

9. We note that the 4th respondent issued a promotion order dated 09.04.2013 for effecting promotions to 23 Havildars to Nb Subedar on various dates starting from 01.04.2013 to 01.06.2013. This list also included 5 Havildar Clerks (SD) as given below, who were to be promoted from 01.05.2013:

Ser	Army No. Rank, Trade & Name	Naib Subedar with effect from
(a)	6930976A Hav (Now Nb Sub) Clerk (IM) Narendra Kumar PB	01 May 2013
(b)	6930992X Hav (Now Nb Sub) Clerk (IM) AP Venkata	-do-
(c)	6929889A Hav (Now Nb Sub) Clerk (IM) Shiv Chandra Jha	-do-
(d)	6929202L Hav (Now Nb Sub) Clerk (IM) Amin Khan	-do-
(e)	6929438A Hav (Now Nb Sub) Clerk (IM) K Thavsianantham	-do-

Apparently, on a representation from 8 clerks (SD), and who were senior to the above-named 5 Havildar Clerks (SD) but were lacking promotion cadre as they were not given opportunity to attend the said cadre earlier and were already undergoing the said promotion cadre which commenced on 18.03.2013 and was to run upto 11.05.2013, (to 01.05.2013) the said promotion order was cancelled, vide 4th respondent's letter dated 20.04.2013 and a revised promotion order was issued. The names of those eight senior clerks (SD) are given below:

- (a) 6930274F Hav (Now Nb Sub) Clerk (SD) Gopal Swarup Sharma
- (b) 6930291F Hav (Now Nb Sub) Clerk (SD) Rajendra Singh Yadav
- (c) 6930692W Hav (Now Nb Sub) Clerk (SD) Raj Kumar Tiwari
- (d) 6930713F Hav (Now Nb Sub) Clerk (SD) Goura Kumar Sahoo
- (e) 6930791Y Hav (Now Nb Sub) Clerk (SD) Mane Tanaji Vishnu
- (f) 6930797A Hav (Now Nb Sub) Clerk (SD) Ram Avadha Yadav
- (g) 6930801X Hav (Now Nb Sub) Clerk (SD) Hari Shyam
- (h) 6930252H Hav (Now Nb Sub) Clerk (SD) Ram Babu Singh

The counsel for the respondents would state that this was done with a view to provide opportunity to all senior Havildar Clerks who were

not afforded opportunity to attend and qualify the promotion cadre, before effecting promotions. According to the counsel for the respondents, the above-named 8 clerks who were attending the promotion cadre were within seniority for promotion as on 01.05.2013. Otherwise they would have lost their seniority promotion for no fault of theirs. The respondents would claim that the above-named 8 NCOs could not be nominated / detailed for the said promotion cadre earlier as the course capacity was reduced from 20 to 15 for training in the year 2011-12 due to organizational constraints, they could not conduct the said course earlier and, therefore, the promotion cadre was conducted from 18.03.2013 to 11.05.2013. They would also state that the final written test of NCC-63 (promotion cadre) was conducted on 27.04.2013 during the 6th week of the course instead of the 7th week so that the final results could be declared / compiled by 29.04.2013. This would enable those 8 candidates who qualify in the list to be eligible for promotion on 01.05.2013. The remaining two weeks of the duration of the course were to be utilized for carrying out balance part of the syllabus. Though the course was terminated on 11.05.2013, since the final test was conducted on 27.04.2013, the candidates were found eligible for promotion as on 01.05.2013. They would claim that they had obtained requisite sanction on file from the competent authority, i.e., Commandant, AOC Centre, Secunderabad for the above-said action.

10. Per contra, the counsel for the applicant would claim that Commandant, AOC Centre cannot be the competent authority for sanctioning such changes in the already laid down duration of course and syllabus and if any changes were to be ordered, it should have been done with the prior concurrence of the Director General Military Training, Army Headquarters who coordinates training for the entire Army. He would claim that this has been a fraud committed by the respondents to benefit a few. But for the interjection of the 8 new candidates, who were in any case ineligible for promotion on 01.05.2013, the applicant would have been promoted to fill the vacancies arising on 01.05.2013 or, for vacancies arising on 01.06.2013.

11. From the internal notings (Annexure R-II, Additional Type Set) placed before us, it is obvious to note that the final examinations were conducted on 27.04.2013 primarily, so that the individuals who passed the promotion cadre were made eligible for promotion on 01.05.2013. It appears that no sanction or approval of either the Director General, Ordnance Services, Army Headquarters, the parent Directorate controlling training at AOC Centre, Secunderabad or the approval of Director General Military Training, Army Headquarters was taken for conducting the final examination in the 6th week and to declare the results by 29.04.2013. Whereas, in accordance with existing instructions, the candidates are

deemed to have qualified only on completion of the duration of the course, i.e., on 11.05.2013. We find this highly inappropriate and objectionable. We are of the view that the Commandant, AOC Centre has grossly overstepped his authority in conducting the test at an early date and declaring the results on 29.04.2013, i.e., a full 12 days before the full training course was to end. However, as per the records available and the pleadings of the respondents, since the course continued till 11.05.2013 as per the original duration, even though the examination was conducted earlier, the candidates who attended the course could be considered to have qualified in the course on completing the laid down duration for the course, i.e., from 18.03.2013 to 11.05.2013. Therefore, we find that the publication of the results on 29.04.2013 and deeming the said candidates to have qualified on that date is improper and is liable to be cancelled. However, the candidates continued to attend the cadre till 11.05.2013, the date on which the said course had actually concluded. The promotions of the aforesaid candidates should be regulated from that date, i.e., 11.05.2013 only, if otherwise eligible and in accordance with the seniority roll.

12. The second question that arises is whether the applicant was in the seniority zone for promotion on 01.05.2013 or on 01.06.2013 in accordance with the seniority roll for promotion as claimed by the counsel for the applicant. The respondents have produced the

original seniority roll for promotion of Havildar (Clerks) before us and state that the applicant was much below in seniority for promotion as on 01.04.2013, 01.05.2013 and 01.06.2013. They would claim that even if the said 8 Havildar Clerks (SD) are not deemed to have qualified for promotion on 01.05.2013, the applicant still does not come up in seniority for promotion. To buttress their claim, they have produced the Original Seniority Roll Havildar Clerks Vol-VI for our perusal. Relevant extracts are tabulated below:

S No	Seniority as on	Applicant Seniority Stand for	Vacancies held	No of pers screened (f)+(g) +(h)	No of pers cleared			Balance (c)- (e)
					Promo -tion	Overage	Un fit	
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(j)
1	01 Apr 2013	115	41	52	41	06	05	63
2	01 May 2013	63	16	24	15	02	06	39
3	01 Jun 2013	39	14	21	14	03	04	18

From the above, it is seen that the applicant was at Sl.No.115 for promotion on 01.04.2013 when only 41 vacancies were available. Further, on 01.05.2013, he was at S.No.63 in seniority when only 16 vacancies were available. As observed earlier, even if the 8 vacancies against which candidates were promoted are available and even if that promotion was effected from 11.05.2013, i.e., date of passing promotion cadre, the applicant would not have got promoted, as on 01.06.2013, his seniority stood at S.No.39, while only 14 vacancies were available. The claim of the applicant that he would have been sixth in the seniority for promotion after removing the names of 8 Havildars (SD), being ineligible on 01.05.2013 is

absolutely incorrect and is not borne by facts emanated from the seniority roll. As stated earlier, on 26.06.2013, the applicant has become ineligible for promotion as he had crossed 46 years of age and, therefore, not eligible for promotion from the said date.

13. Therefore, we are inclined to agree with the contention of the respondents that the non-promotion of Hav V Gajendran, the applicant, to the rank of Nb Subedar was not due to any *mala fide* or bias but solely on the fact that, he had not come up in seniority for promotion against available vacancies on 01.04.2013, 01.05.2013 and 01.06.2013. He became ineligible for promotion with effect from 26.06.2013, being overage for promotion. In view of the foregoing, we find no reason to quash the impugned order dated 12.07.2013.

14. However, we are constrained to note that the conduct of the NCC-63 course (Promotion Cadre) and declaration of results prematurely without waiting for the full course to be completed has been done without proper application of mind without regard to consequences and without obtaining concurrence of the competent authority. This has given rise to avoidable accusations of impropriety, bias and fraud. We direct respondents 1 to 3 to put in place proper systems of checks and balances, so that such gross violations do not recur.

15. In fine, the OA is dismissed with the observation that the promotion of the said 8 Havildar Clerks (SD) to the rank of Nb Subedar should be regulated to take effect only from 12.05.2013, the day after qualifying in the promotion cadre. Gazette notification with regard to their promotion shall be amended within three months from the date of this order.

16. The interim order to stay the operation of discharge of the applicant with effect from 30.11.2014 is hereby vacated and the applicant would be deemed to be discharged from service from the date of signing of this order. No costs.

Sd/-

Lt Gen K Surendra Nath
Member (Administrative)

Sd/-

Justice V.Periya Karuppiah
Member (Judicial)

31.03.2015
[True copy]

Member (J) – Index : Yes/No

Internet : Yes/No

Member (A) – Index : Yes/No
ap

Internet : Yes/No

To

1. The Secretary, Govt.of India
Ministry of Defence, New Delhi – 110 011
2. The Chief of Army Staff
Integrated HQ., MOD (Army)
South Block, New Delhi – 110 011
3. The Directorate General Ordnance Services
Integrated HQ., MOD (Army)
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4. The Officer in-Charge
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Hon'ble Justice V.Periya Karuppiah
(Member-Judicial)

and

Hon'ble Lt Gen K Surendra Nath
(Member-Administrative)

O.A.No.98 of 2014

Dated :31.03.2015