

**ARMED FORCES TRIBUNAL  
REGIONAL BENCH  
JABALPUR**

**CORAM :**

**HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON  
HON'BLE LT GEN GOPAL R, MEMBER (A)**

**OA 114/2018**

**No 6935072K, Havildar SHT Balbir Singh,  
S/o Shri Bhagwan Singh,  
R/o Q. No. 76/6, Mandir Line  
CMM Jabalpur,  
District Jabalpur (M.P.).**

**.....Applicant**

**Versus**

- 1. Union of India,**  
Through the Secretary,  
MoD, GoI, New Delhi.
- 2. COAS,**  
IHQ of MoD (Army),  
DHQ PO, New Delhi.
- 3. The OIC Records,**  
Army Ordnance Corps  
C/o 56 APO.

**.....Respondents**

**For Applicant** : Mr. KC Ghildiyal, Sr. Advocate with Mr HC Singh  
and Mr Pradeep Dwivedi, Advocates.

**For Respondents** : Mrs Kanak Gaharwar, CGSC.

## **ORDER**

### **Brief Facts of the Case**

1. The applicant had been enrolled in Army Ordnance Corps (AOC) as a Store Handling & General Duties (SHGD) on 08.10.1993 and had been remustered as a Store Handling Technician (SHT) on 10.10.1998. In due course of time, the applicant had been promoted to Naik on 23.03.2003 and as a Havildar on 01.08.2014.
2. The applicant claims that though he had been detailed to attend promotion cadre Serial No 157 scheduled from 04.11.2002 to 07.12.2002 at AOC Centre, Secunderabad, for promotion to the rank of Naik, as the Unit to which he was posted at that time, informed during the Roll Call that the course had been cancelled. The next promotion cadre though scheduled from 09.12.2002 to 11.01.2003, was cancelled due to OPERATION PARAKRAM. Finally the applicant attended promotion cadre Serial No 167 conducted between 25.01.2003 to 13.03.2003 and on qualifying on the same, was promoted as a Naik with effect from 23.03.2003. Due to this delayed promotion, the applicant had become junior to 94 personnel who had attended and qualified in promotion cadre serial 157 and had been promoted and assigned seniority from 08.12.2002. As the delayed promotion was due to no fault of the individual, the claim is for restoration of seniority with effect from 08.12.2002 instead of 23.03.2003 and as a consequence, assign seniority for promotion as a Havildar with effect from 01.01.2014 instead of 01.08.2014.

**Brief Arguments by the Counsel for the Applicant**

3. On the issue of promotion cadre to Naik, attendance/non attendance and qualification, the Counsel averred the following:-

(a) **First Instance.** Had been detailed to attend promotion cadre which was to start with effect from 01.07.2002 to 10.08.2002 but had been postponed/cancelled due to OP PARAKRAM. A request had been made to detail the applicant in the subsequent cadres. (Annexure A/2 ).

(b) **Second Instance.** Vide Record AOC letter No 31223/SN-156 &157/02-03/AR/CA-3 dated 03.12.2002, it emerges that the applicant had been nominated for the promotion cadre scheduled from 04.11.2002 to 07.12.2002. As the individual was informed regarding cancellation of the cadre, the applicant did not proceed to attend the cadre.

(c) **Third Instance.** The applicant was nominated for promotion cadre serial No 167 with effect from 25.01.2003 to 13.03.2003 and qualified on the same.

(d) **Fourth Instance.** For reasons not known, the applicant had been again detailed for the promotion cadre serial 174 vide AOC Records, letter No. 31223/SN-170 - 174/2002-03/CA-3 dated 29.03.2003 and the status of individual as already qualified was intimated vide letter dated 30 .04.2003 (Annexure A/5).

4. The juniors of the applicant had been promoted as Naiks with effect from 08.12.2002 on qualifying in promotion cadre serial No 157. The applicant was promoted as Naik with effect from only 23.03.2003. The

promotion of the applicant had been delayed without any fault on the part of the individual including in the date of promotion as a Havildar. Hence case had been taken up with competent authorities, repeatedly, to grant ante dated seniority to the applicant with effect from 08.12.2002.

5. The AOC Records vide their letter No 31224/NH/Gen/CA-2 dated 27.05.2016 (Annexure A/1) stated that the individual though detailed to attend promotion cadre serial No 157, did not attend the same. When the individual qualified in promotion cadre serial No 167, (25.01.2003 to 13.03.2003) the applicant had been promoted on 23.03.2003 and no provision exists for granting ante dated seniority from a date in which the applicant had not acquired mandatory qualifications. The issue had been taken up in a number of occasions with AOC Records intimating that the individual had never submitted his unwillingness to undergo promotion cadre as well as he had been informed regarding cancellation of promotion cadre serial No 157, a fact admitted by the Unit in its repeated letters to AOC Records. Hence the applicant could not be punished for no fault on his part. The delayed promotion had its cascading effect on the promotion of the applicant to Havildar, as his juniors/batchmates were promoted as Havildar with effect from 01.01.2014, whereas the applicant was promoted only on 01.08.2014, thereby affecting his chances of getting promoted as a JCO.

6. Feeling aggrieved on the stance of AOC Records that retrospective seniority cannot be granted, despite the applicant was not at fault for the delay in promotion, the OA has been filed with the following prayers:-

(a) To quash order dated 27.05.2016 (Annexure A/1) passed by Respondent No 3.



(b) To grant retrospective seniority to the applicant in the rank of Naik with effect from 08.12.2002 and Havildar with effect from 01.01.2014 and grant him all consequential benefits accordingly including future promotions.

(c) Any other appropriate order or direction which the Tribunal may deem just and proper in the nature and circumstances of the case including cost of litigation.

### **Brief Arguments by the Counsel for the Respondents**

7. The applicant though detailed to attend promotion cadre Serial 157 (04.11.2002 - 07.12.2002) vide Record AOC letter No 31223/SN-156 & 157/02-03/CA-3 dated 25.10.2002, failed to do so. Hence AOC Records vide letter dated 03.12.2002 (Annexure R/1) had asked the Unit(s) to *“intimate the reason as to why they were not relieved to attend the cadre course in time. You are again requested to forward unwillingness certificate/medical unfit certificate by 10 Dec 2002. Individual will be re-detailed only on receipt of the same”*. No reply had been received from the applicant/unit on this count. Course Serial 159 (09.12.2002-11.01.2003) in which the applicant had been detailed had been cancelled due to OP PARAKRAM.

8. The allegation by the Applicant that he had been informed about cancellation of promotion cadre course serial 157 is a patently incorrect and is an unsubstantiated statement. On passing the promotion cadre Serial 167 (25.01.2003 - 13.03.2013) the applicant had been promoted to Naik with effect from 23.03.2013. As a result, the applicant got superseded by 94 persons of

his batch who had qualified in promotion cadre course serial 157. As per para 13 (a) of AOC Record Office Instruction Serial No M/03/2001 dated 26.12.2001, qualifying promotion cadre is a mandatory requirement for promotion to Naik. Hence the prayer of the applicant that he should be assigned seniority as a Naik with effect from 08.12.2002., ie., on a date when mandatory requirement had not been met by him is untenable and illogical. The applicant had been correctly promoted as a Havildar with effect from 01.08.2014 as per his seniority in the rank of Naik. The claim that as a Havildar, seniority should be reassigned with effect from 01.01.2014 i.e., when his batchmates were promoted, also does not stand to logic, as his batchmates had superseded him when they were promoted as Naik with effect from 08.12.2002.

9. The Counsel also submitted that there had been inconsistency/dichotomy in the statements of the applicant regarding the reasons for his absence from Course Serial 157. Initially the averment was that the Unit had informed him about the cancellation of the course and later on the reason being advanced was that the concerned unit did not relieve him that also seems to be based on the contents of AOC Records letter dated 03.12.2002 addressed to multiple units (Annexure R/1). This itself proved the initial claim of course being cancelled, as averred by the applicant as hollow. Further, the claim that the applicant was not relieved by the Unit does not stand scrutiny in the absence of any legal/documental support as also due to the fact that the claim was being raised after a lapse of 13 years, perfectly knowing that all promotion cadre correspondence would have been destroyed after expiry of the retention period. Suffice to state that no Unit can stop any personnel from attending career progression courses especially after getting the detailment letter. The concerned Unit can do it only after permission from

OIC, Records. In the *ibid* case, no such case had been taken up by the Applicant's parent unit.

10. Hence, the OA is an afterthought, is an attempt to attract sympathy of the Tribunal and is devoid of merit and may be dismissed.

### **Consideration**

11. After having heard both the parties and perused the documents placed on record, the key and critical issues which need to be answered are two fold, namely:-

(a) Circumstances due to which the applicant did not attend promotion cadre serial 157 and the onus for the same.

(b) Legality/Tenability of assigning seniority for promotion with effect from a particular date, when the concerned personnel had not acquired the mandatory qualifications for the same.

12. Tracing back the turn of events as related to promotion cadre serial 157 we observe the following:-

(a) The individual had reported to 205 Field Workshop Company EME on 22.10.2002.

(b) The promotion cadre serial 157 was to be run at AOC Centre with effect from (04.11.2002 - 07.12.2002) vide Record AOC letter No 31223/SN-156 & 157/02-03/CA-3 dated 25.10.2002.



- (c) In addition to the applicant, one more person from the same unit N6935068 L/Nk SHGD Satish Kumar had been detailed to attend promotion cadre serial 157.
- (d) The promotion cadre serial 157 was conducted as scheduled and the applicant as well as L/Nk Satish Kumar did not attend the same and reasons for absence/non-relief from various units including 205 Field Workshop Company EME, had been queried by AOC Records vide letter No 31223/SN-156-157/02-03/AR/CA- dated 03.12.2002.
- (e) The 205 Field Workshop Compay EME in their correspondence with AOC Records had taken the stance that promotion cadre serial 157 had been cancelled due to OP PARAKRAM, but had failed to place on record or prove that, this claim of cancellation was based on any instructions from Competent Authorities. Furthermore, the unit was silent on the aspect whether they had received or not the detailment letter from Record AOC vide communication No 31223/SN-156 &157/02-03/CA-3 dated 25.10.2002.
- (f) In view of the above, at the present juncture, it can only be assumed the detailment letter dated 25.10.2002 had not been received by 205 Field Workshop Company EME or a decision had been taken by the unit not to relieve the individuals for the promotion cadre/ take a stance that the promotion cadre had been cancelled.
- (g) However that it may be, in such circumstances of organisational miscommunication/error, the assumption should go in favour of the applicant.



13. Coming to the second issue of legality of assigning seniority from a date in which mandatory qualification in terms of passing promotion cadre was not there in respect of the applicant, we as a matter of judicial discretion hold that the applicant cannot be held responsible for the organisational miscommunication/error and is entitled for ante dated seniority.

14. Hence the OA is allowed in the following manner:-

(a) In the rank of Naik, the applicant be granted notional seniority from 08.12.2002 and in the rank of Havildar notional seniority from 01.01.2014 with no effect on pay and allowances.

(b) As the OA has been preferred with a delay of 15 years, the present order of reassigning seniority will not form the basis of seeking further promotions to JCO Rank, including notional promotion, if already retired, for financial benefits. which in any case, is dependent on age profile, discipline and CR profile, vacancy position, qualification on promotion cadre.

15. The order to be implemented within three months. No order as to costs.

Pronounced in Open Court on 08<sup>th</sup> August 2023.

**(LT GEN GOPAL R)**  
MEMBER (A)

**(JUSTICE RAJENDRA MENON)**  
CHAIRPERSON