

ARMED FORCES TRIBUNAL, REGIONAL BENCH, MUMBAI

Original Application No 18 of 2016

Monday, this the 22nd day of August, 2022

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

No. 194915-R SWA-3, Rohit Kumar
 IN Ships Maintenance Authority
 C/o Fleet Mail Office, Mumbai – 400001

..... Applicant

Ld. Counsel for the Applicant : **Mr. A.P. Singh**, Advocate

Versus

1. The Union of India (Rep. By Defence Secretary), Department of Ministry of Defence, South Block, DHQ Post, New Delhi-110011.
2. The Chief of the Naval Staff (Rep. By JDOP (Sailors), Integrated Headquarters, MOD (Navy), DHQ Post, New Delhi – 110011.
3. The Flag Officer Commanding-in-Chief, CSO (P&A)/SO (P), HQs Western Naval Command, Tiger Gate Naval Dockyard (Mumbai), Ballard Pier, Mumbai – 400023.
4. The Director, IN Ship Maintenance Authority, C/o Fleet Mail Office, Mumbai – 400001.

..... Respondents

Ld. Counsel for the Respondents : **Mr. B.K. Ashok**,
 Central Govt Counsel

ORDER

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

“(a) To set aside the impugned orders dated 08 Dec 2015, 19 Jan 2016 and 21 Jan 16 (Annexure A-17, A-18 & A-19 of this OA respectively) and direct the respondent to apply provision of Appendix VI to NI 2/96 for all promotions of

the applicant from Ag SWA 4th class and upward and even all others similarly situated 10+2 AA entry sailors.

- (b) To direct the respondent to correct all dates of promotions in respect of the applicant to the ranks Ag SWA 4th class and upward in terms of the existing Appendix VI to NI 2/96 and Navy Order 21/07.
- (c) May pass such other order or direction as deemed fit in the facts and circumstances of the instant case.
- (d) Costs of this petition may be allowed to the applicant.

2. The factual matrix on record is that the applicant was enrolled in the Navy on 02.02.2005 (Batch 01/2005) as a 10+2 AA entry with Basic date 07.02.2005. Accordingly, on completion of initial training of 130 weeks, applicant was promoted to substantive rank of SWA 5th class w.e.f. 06.08.2007 by his Oi/c as per the provision of the existing NO 21/07 and Appendix VI to NI 2/96. The applicant was further promoted as Ag. SWA 4th class, confirmed SWA 4th class and SWA 3rd class as per Corrigenda 02/2010 of Appendix XV of NI 2/S/96 which came into existence on 17.08.2010. Therefore, Corrigenda 02/2010 of Appendix XV to NI 2/96 have been made applicable to the applicant by the respondents for his all promotions from Art 5th onwards. Applicant pleaded that his promotions to Ag SWA 4 and upward ranks be corrected as per the provisions of Appendix VI of the original NI 2/96 being similarly situated person of 10+2 AA entry sailors as in the case of **Harendra Singh** (supra) but it was rejected by the respondents. Being aggrieved, the applicant has filed the present Original Application.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Indian Navy as 10 + 2 Artificer Apprentice (AA) Entry on 02.02.2005 in terms of notification published in Employment News. Earlier Navy was recruiting candidates with Matriculation qualifications in term of NI 2/96 and they were imparted basic and professional training for 4 years including sea time. The Matriculation AA entry was stopped in Jan. 2003 prior to commencing induction of 10 + 2 AA entry which commenced in June 2003 and training period was reduced from 4 years to 2 ½ years (130 weeks), however, there was no amendment to the existing NI 2/96. Accordingly, on completion of initial training of 130 weeks, applicant was promoted to substantive rank of SWA 5th class w.e.f. 06.08.2007 by his Oi/c as per the provision of the existing NO 21/07 and Appendix VI to NI 2/96 (unamended). The applicant was further promoted to Ag SWA 4th class by CO INS Cheetah in terms of the Appendix VI to NI 2/96 on completion of 1 year as SWA 5th class w.e.f. 15.03.2008.

4. Learned counsel for the applicant further submitted that first batch of 10 + 2 AA entry sailors was inducted in Jan/Feb 2004 and training commenced on 02.02.2004 and was completed on 29.07.2006. The sole aim to reduce training period by increasing academic qualification of recruits was to make the turnover of the technical force faster to fill the shortage in the Navy. However, this decision was taken at IHQ level and it has no approval of the Central Govt. of India, Ministry of Defence. The AA-115 batch AA sailors were promoted to AA 5th class on completion of 130 weeks training,

however CABS failed to issue Bureau order of promotion for want of Govt. approval. Even further promotions were also made by their respective Commanding Officers to the next higher ranks as per existing NI 2/96 and Navy Order 21/07. The Central Govt. in connivance with NHQ introduced a new Appendix XV to NI 2/96 to amend existing NI 2/96 for regulating training and promotion of 10+2 entry sailors without amending the existing provision applicable to AA cadre since 1996. Appendix XV came into existence only on 17.08.2010, however, it was made applicable retrospectively to all 10+2 AA entry sailors to their disadvantage (when it is compared to provisions of the then existing Appendix V-VIII to NI 2/96 which was in force at the time of their recruitment/enrolment). CABS directed the respective COs/Oi/cs of 10+2 AA entry sailors, including the applicant, to amend all promotion dates as per the provision of the new Appendix XV to NI 2/96. CO, INS Tarangini based on CABS letter dated 26.11.2010 amended the date of promotion to the rank of Ag SWA 4th class and SWA 4th class from 15.03.2008 to 07.08.2008 and 15.03.2008 to 07.08.2009 respectively by adjusting 4.75 months seniority in confirmed rank, vide INS Cheetah Gx No. 1000694/S dated 13.01.2011 and INS Tarangini Gx No. 1000511/S dated 22.12.2010 respectively. The applicant was promoted to SWA 3 w.e.f. 30.09.2011 in terms of new Appendix XV to NI 2/96 against the otherwise entitled date of promotion, i.e. 15.03.2010, as per Appendix VI to NI 2/96.

5. Learned counsel for the applicant placed reliance in AFT (RB), Mumbai judgment in OA No. 11/2011, **Harendra Singh vs. Union of India & Others** in which this Tribunal vide its order dated 17.06.2013 directed the respondents that NI 2/96 was in force at the time of applicant's enrolment into Naval service and any subsequent amendment to the existing NI 2/96 will not be applicable to the applicant. Based on the judgment of AFT Mumbai, respondents have implemented the order in respect of **Harendra Singh** (supra) of AA-115 and his classmates by adjusting all dates of promotion as per Appendix VII of NI 2/96. The applicant learnt that all similarly situated AA sailors of AA-115 batch are being regulated as per the then existing NI 2/96 (Appendix VII) and not by newly introduced Appendix XV to NI 2/96 vide Corrigendum 2/2010 dated 17.08.2010 which came into existence after the enrolment of applicant, hence, this amendment by Appendix XV cannot be made applicable to 10+2 Entry Artificer sailors retrospectively. In fact, it cannot be made applicable to any 10+2 AA sailors on the ground of being similarly situated personnel. CABS vide letter dated 30.03.2015 issued protection of seniority of all AA-115 batch sailors in term of Appendix VII to NI 2/96 as per order passed in the case of **Harendra Singh** (supra). Accordingly, promotion dates of all AA-115 batch sailors were corrected by their respective Ships/Establishments as per directions issued vide CABS letter dated 30.03.2015.

6. Learned counsel for the applicant further submitted that applicant being aggrieved by retrospective implementation of the

impugned Appendix XV of NI 2/96 in respect of all 10+2 AA entry sailors put up his Redressal of Grievance (ROG) dated 28.10.2015 to the competent authority which was replied by CABS vide letter dated 08.12.2015 stating that Appendix XV to NI 2/96 (approved by the Govt. of India on 17.08.2010 as corrigendum 02/2010) and in para 5 of the same letter CABS expressed that AFT (RB) Mumbai order dated 17.06.2013 is applicable for batch AA-115 only and the sailor belongs to Batch AA-117. CABS failed to deal with the main issue that similar situated sailors cannot be discriminated in the matter of promotion and seniority to higher ranks being in the same cadre. The amendment to NI 2/96 by way of adding Appendix XV to NI 2/96 discriminates among similarly situated sailors, by creating an artificial classification, and hence, the same is liable to be declared unconstitutional. He pleaded that applicant's promotions to Ag SWA 4th class and upward ranks be corrected as per the provisions of Appendix VI of the original NI 2/96 being a person similarly situated to 10+2 AA entry sailors, as in the case of **Harendra Singh** (supra).

7. Learned counsel for the respondents submitted that applicant was enrolled in the Navy on 02.02.2005 (Batch 01/2005) as a 10+2 AA entry with Basic date 07.02.2005. The applicant was promoted as SWA 5th class, Ag. SWA 4th class, confirmed SWA 4th class and SWA 3rd class as per Corrigenda 02/2010 of Appendix XV of NI 2/S/96 which came into existence on 17.08.2010. Therefore, Corrigenda 02/2010 of Appendix XV to NI 2/96 are applicable to the applicant for his all promotions from Art 5th onwards. The amendment to the

Service Regulations is the prerogative of IHQ of MoD (Navy) which is taken up with Ministry of Finance as and when the need for the same is felt. CABS order dated 02.05.2006 was issued pursuant to the directives issued by IHQ of MoD (Navy) vide RP/4206 dated 25.04.2006 which states that all 10+2 entry Artificer Apprentice be promoted to Artificer 5th class provisionally. However on implementation of Corrigenda 02/2010 on 17.08.2010, necessary letter was forwarded to the Commanding Officer of INS Tarangini vide Bureau letter dated 26.11.2010 that all petitioners' promotions have been amended as per revised Appendix XV to NI 2/96.

8. Learned counsel for the respondents further submitted that Navy did not recruit any Artificer with 10th Pass qualification between Jan 2002 till Dec 2003 as the entry level was being revised. The provision of Appendix V, VI, VII and IX are applicable to 10th pass Artificer Apprentice entry sailors whereas the applicant has joined the Navy under 10+2 pass Artificer entry scheme. Therefore, the provision of Appendix VI is not applicable to him. Appendix VI of NI 2/S/96 is applicable to Engine Room Sailors who have been recruited as per earlier entry qualifications i.e. 10th pass for AA entry. The applicant has joined the Navy in Feb. 2005 as a 10+2 AA entry sailor and Appendix XV to NI 2/S/96 is applicable only to 10+2 Artificer Apprentice entry sailors. Thus, it is evident that applicant's promotions can be governed only by appendix XV and not by any other Appendices of NI 2/S/96. All promotions of the applicant till date have

been executed correctly by competent authorities and updated correctly in his records in accordance with Appendix XV of NI 2/S/96.

9. Learned counsel for the respondents further submitted that applicant's grievance (ROG) has already been suitably addressed by HQ WNC/SO (P) vide letter dated 19.01.2006 stating that AFT (RB), Mumbai order dated 17.06.2013 in the case of **Harendra Singh** (supra) is applicable for Batch AA-115 only and not applicable to the applicant as he belongs to Batch AA-117. The newly introduced Appendix XV to NI 2/96 vide Corrigendum 2/2010 dated 17.08.2010 is applicable to 10+2 AA sailors and provisions of Appendix VI is not applicable to the applicant. Hence, no injustice has been done to the applicant with regard to his promotions. He pleaded for dismissal of O.A. being devoid of merit.

10. We have heard learned counsel for the parties and have perused the material on record.

11. We observe that as per advertisement dated 20.06.2003, educational qualification was changed from minimum 10th standard to 10+2 standard and accordingly training period as Apprentice was also reduced from 4 years to 2 ½ years and a sailor was to be promoted to the rank of Artificer 5th class after completion of 2½ years training. The applicant has not sought any direction to quash Corrigendum 2/2010 and he only seeks a direction that said Corrigendum should have no retrospective effect in respect of his service.

12. The respondents have shown a table in the reply in which the dates of promotion of the sailor under provisions of old NI 2/96

(Chapter VI) and corrigendum to NI 2/96 (Chapter XV) are clearly depicted. From the said table, it appears that if the provision of Chapter XV to NI 2/96 are made applicable to the applicant, he will not be at a disadvantage at all, rather he stands to benefit as he gets promoted to Ag SWA4 on 07.08.2008 (as against 30.09.2009), and to SWA4 on 31.03.2009 (as against 30.09.2010). Finally promotion to SWA3 is on the same date i.e. 30.09.2011. The table showing promotion dates as per old and new promotion policy is reproduced below :-

Sr.	To Rank	Promotion dt as per Appendix VI to NI 2/96	Promotion dt i.a.w. Corrigenda 02/10	Required Certificate/Course	Required Time
(a)	SWA 5	07 Feb 09	07 Aug 07	Basic Prof. Course	Basic Date + 2½ yrs
(b)	AG SWA 4	30 Sep 09 (07.02.09+01 yr – 4.25 months)	07 Aug 08	Initial Swim Test Certificate AG SWA 4 Competency Certificate	01 yr
(c)	SWA 4	30 Sep 10	31 Mar 09 (07 Aug 08 + 01 yr – 4.25 months)	SWA 4 Confirm Board SWA 4 Competency Certificate	01 yr as Ag. SWA 4 th class
(d)	SWA 3	30 Sep 11	30 Sep 11	SWA 3 Board PO(L) Course	2 ½ yrs from Confirmed SWA 4 th class

13. Nonetheless proper analysis of the above table shows some glaring errors. The second column of the table has not been computed correctly as this column has been prepared assessing the applicant underwent 4 years of basic training in which case he would have been promoted to SWA5 on 07.02.2009. But the applicant underwent only 130 weeks of training and hence his date of promotion to SWA5 should have been depicted as 06.08.2007 instead of 07.02.2009 in column two. Thus column two of table depicted by the respondents in counter affidavit is derived from incorrect computation of dates.

14. The applicant has prayed to regulate his promotions to Ag SWA 4th class and upward ranks as per the provision of Appendix VI of the original NI 2/96. He had specifically pleaded and prayed that Corrigendum 2/2010 should not be made applicable to him retrospectively. It is clear that in terms of Chapter VI of NI 02/96 and NO 21/07, the applicant ought to have been promoted as follows :-

Sr. No.	Promotions made as per Appendix VI and No 21/07 authority ship's GX
1	SWA5 w.e.f. 06.08.07 on completion of 130 weeks training
2	Ag SWA4 w.e.f. 15.03.08 (01 year as SWA5 minus 4.75 months seniority gained during initial training)
3	SWA4 w.e.f. 15.03.08 (for SWA4 confirmation 01 year as Ag SWA4 w.e.f. the same date)
4	SWA3 date of promotion should have been 15.03.10 (02 years as SWA4 including acting time)

15. In fact, he was actually promoted on these dates, but the promotions dates were reversed to his disadvantage subsequently in 2011 vide CABS letter dated 26.11.2010, after issue of Corrigendum 02/2010 and by retrospective application of Chapter XV of Ni 02/96. Thus, we find it against the principles of natural justice as terms of service cannot be amended to disadvantage retrospectively.

16. In view of above, it will be appropriate to extend benefit of judgment/order dated 17.06.2013 passed by this Tribunal in **Harendra Singh** (supra) (AA-115 batch) being similarly situated person of AA-117 Batch, enrolled under 10+2 entry Artificer Apprentice in 2005 as per advertisement published in June 2003.

17. In the result, Original Application deserves to be allowed and is accordingly **allowed**. The impugned orders passed by the

respondents are set aside. The Corrigendum 2/2010 amending NI 2/96 will not be made applicable to the applicant who was recruited as Artificer Apprentice as per advertisement dated 20.06.2003. The respondents are directed to regulate promotions of the applicant accordingly.

18. No order as to costs.

19. Pending Misc. Application(s), if any, shall stand disposed off.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: August, 2022
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