

Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, MUMBAI

6. O.A. No. 85 of 2018

Jagmohan C. Pathak, EQP-3
By Legal Practitioner for the Applicant

Applicant

Versus

Union of India & Others
By Legal Practitioner for Respondents

Respondents

| Notes of the Registry | Orders of the Tribunal |
|------------------------------|--|
| | <p><u>26.08.2022</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></p> <p>Heard Mr. A.P. Singh, Ld. Counsel for the applicant and Mrs. A. Malhotra, Ld. Counsel for the respondents.</p> <p>Submission of learned counsel for the applicant is that applicant was promoted to EAP 5th class on 14.08.2006, EAP 4th class on 14.08.2007 and EAP3 as on 29.03.2009. Thereafter, respondents added Appendix XV to Navy Instructions (NI) 2/96 on the pretext of amending existing Appendix VII to NI 2/96 in respect of 10+2 Artificer Apprentice (AA) cadre entry sailors and made applicable to 10+2 AAs retrospectively without any authority of law. The applicant belongs to 10+2 AA-115 batch whose service conditions including promotion are governed by then existing Appendix VII to NI 2/96. It is violation of Appendix VII to NI 2/96 and Navy Order (NO) 21/07. Applicant put up a representation to promote him to the rank of Ag CHEAP as per his position/seniority with his course mates as on Feb./Mar. 2015 but the same has not been considered. Being aggrieved the applicant has filed the present Original Application against the impugned action of the respondents showing discrimination among the similarly situated personnel for promotion from EAP3 to CHEAP followed by further promotions to MCEAP II and MCEAP I.</p> <p>In reply, learned counsel for the respondents submitted that applicant was enrolled in the Navy as a 10+2 AA entry (01/2004 batch/AA-115 class) on 14.02.2004. He was promoted to the rank of EAP3 w.e.f. 22.09.2011. The applicant's case has been thoroughly examined in comparison with his peer group of sailors of AA 01/2004 batch in light of consequent protection of seniority of 10+2 AA entry sailors and AFT Mumbai judgment in OA No. 11/2011, Harendra Singh vs. Union of India and Others, decided on 17.06.2013. Promotion order for promotion to the rank of Ag. CHEAP was issued w.e.f. 13.05.2017 but applicant refused to be promoted seeking discrepancies in his effective date of promotion of Ag CHEAP.</p> |

Learned counsel for the respondents further submitted that Appendix XV of NI 2/96 came into force and accordingly, applicant was due for promotion to EAP4 w.e.f. 30.03.2008, however, applicant was placed in non promotable low medical category S4A4/S3A2 (T-24) w.e.f. 04.09.2009. The applicant was upgraded to promotable LMC S2A2(P) on 26.05.2011. Accordingly, applicant was correctly confirmed/promoted to EAP4 w.e.f. 30.03.2008 on 14.07.2011 as per extant regulations. Due to this, applicant's actual date got post-dated by 01 year and 05 months, keeping his effective date protected. The applicant was due for promotion to EA(P) 3 w.e.f. 30.09.2010 (2½ years from effective date of promotion to EAP4). However, the applicant could not be nominated for PO (L) course on account of LMC, which is a prerequisite for promotion to EAP3. The applicant, post qualifying PO(L) course, was promoted to EAP3 on 10.01.2012, w.e.f. 22.09.2011 (Protected seniority 29.03.2009). Accordingly, the applicant was placed in CCP roster for CHEA(P) from protected seniority as EA(P)3. The applicant as per CCP roster could have been promoted to CHEA(P) on 01.05.2015, however, on account of meeting requisite QRs, the applicant was eligible for promotion to CHEA(P) w.e.f. 13.05.2017. However, the applicant refused for promotion and took up the case for re-consideration of effective date of promotion to CHEA(P). Subsequently, competent authority approved his effective date of promotion as on 01.10.2015 in view of change in policy. Accordingly, IN 52 was issued but the applicant again refused promotion.

Having heard submissions of both sides and after perusing the records, we find that applicant's effective date of promotion to CHEA(P) w.e.f. 01.10.2015 has correctly been approved by the competent authority as agreed to by the respondents in Paras 6, 7 & 8 of their counter affidavit/reply.

In view of above, the Original Application is **disposed off** finally. The respondents are directed to promote to the applicant to the rank of CHEA(P), taking effective date of promotion w.e.f. 01.10.2015 and grant subsequent/future promotions as due to him as per seniority and promotion policy.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

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