

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, MUMBAI**

**Original Application No 9 of 2016**

Monday, this the 22<sup>nd</sup> day of August, 2022

**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**

**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

No. 194852-Y Ag CHAA, Saumendra K Sahoo  
Vikramaditya Kamov Flight/INS Hansa  
Dabolim, Goa-403801

..... 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 DPS/DOP), Integrated Headquarters, MOD (Navy), DHQ Post, New Delhi – 110011.
3. The Flg Officer Commanding-in-Chief (Rep by SO(P), Headquarters, Western Naval Command Ballard Pier, Near Tiger Gate, Naval Dockyard, Mumbai – 400001.
4. The Commodore Bureau of Sailors, INS Tanaji, Sion-Trombay Road, Mankhurd.

..... Respondents

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

**ORDER (Oral)**

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 Oct 2015 and 03 Nov 2015 (Annexure A-22 & 23) and direct the concerned respondents to correct the date of his promotions to Ag AA4 and upward ranks as per the

provision of Appendix IX of the original NI 2/96. In fact these impugned orders of the respondents are considered discriminatory in view of the ruling of Hon'ble Tribunal in the case of Harendra Singh vs. Union of India & Others in OA No. 11 of 2011. This impugned amendment r/w the impugned orders (annexure A-22 to A-24 r/w/Appendix XV) have created an artificial classification by applying different set of rules in matter of promotion within the same cadre and similarly situated personnel i.e. 10 + 2 AA entry sailors only on the basis of their dates of joining service.

- (b) To direct the respondent to set right dates of promotion in Ag AA 4<sup>th</sup> class upward in respect of applicant and all other similarly situated personnel as per then existing 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 31.07.2004 as a 10 + 2 Artificer Apprentice entry with basic date 02.08.2004. After 130 weeks basic and professional training he was promoted by his CO to AA 5<sup>th</sup> class in term of existing NI 2/96 and Navy Order 21/07 in his cadre and his all subsequent promotions of Ag AA 4 and confirm AA 4 were also effected in term of Appendix IX of NI 2/96. CABS vide order dated 14.07.2008 directed to COs/OsIC of all Ships/Establishments that promotion to AA 5<sup>th</sup> class in respect of 10 + 2 AA classes AA-115 and AA-116 to be treated as provisional till completion of 4 years from the date of enrolment, however, they will continue to hold their ranks as they

have been already promoted by their COs and their subsequent promotions will be governed as per the existing NI 2/96 and due to this reason, all AA 5<sup>th</sup> class sailors of AA-115 & AA-116 classes were not allowed to appear for AA 4<sup>th</sup> class Confirmation Board. However on implementation of Corrigenda 02/2010 on 17.08.2010, necessary letter was forwarded to the Commanding Officer of INS Dega vide Bureau letter dated 03.12.2010 that all petitioners' promotions have been amended as per revised Appendix XV to NI 2/96. Applicant pleaded that his promotions to Ag AA 4 and upward ranks be corrected as per the provisions of Appendix ix 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 sailor on 31.07.2004. After 130 weeks basic and professional training he was promoted by his CO to AA 5<sup>th</sup> class in term of existing NI 2/96 and Navy Order 21/07 in his cadre. 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 the applicant was promoted to AA 5<sup>th</sup> class by his CO w.e.f. 29.01.2007 and his all subsequent promotions of Ag AA 4 and confirm AA 4 were also effected in term of Appendix IX of NI 2/96.

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 5<sup>th</sup> 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. On completion of initial training at INS Shivaji and NIAT, INS Garuda, the applicant was transferred to INAS 339 for job training and he was promoted there to AA 5<sup>th</sup> class w.e.f. 29.01.2007. Bureau of Sailors notified to all concerned Ships/Establishments regarding reduction in training period in respect of 10 + 2 AA entry sailors to 130 weeks and directed to CO INAS 315 that all AA-115 class sailors will be promoted to AA 5<sup>th</sup> class rank w.e.f. 31.07.2006. On completion of 1 year as AA 5<sup>th</sup> class, applicant was further promoted by CO INAS 339 to Ag AA 4<sup>th</sup>

class w.e.f. 14.10.2007. CABS vide order dated 14.07.2008 directed to COs/OsIC of all Ships/Establishments that promotion to AA 5<sup>th</sup> class in respect of 10 + 2 AA classes AA-115 and AA-116 to be treated as provisional till completion of 4 years from the date of enrolment, however, they will continue to hold their ranks as they have been already promoted by their COs and their subsequent promotions will be governed as per the existing NI 2/96 and due to this reason, all AA 5<sup>th</sup> class sailors of AA-115 & AA-116 classes were not allowed to appear for AA 4<sup>th</sup> class Confirmation Board.

5. Learned counsel for the applicant further submitted that CABS, in response to many representations from AA-115 & AA-116 class sailors, issued another policy letter illegally vide letter dated 31.10.2008 reiterating the same terms and conditions for promotions of 10 + 2 AA sailors of AA-115 and AA-116 classes. One of 10 + 2 entry sailors of AA-115 class put up his representation against the decision of CABS which was turned down by CABS, however, he further represented to the Chief of the Naval Staff which was also turned down stating that Govt. of India, Ministry of Defence is in process of amending NI 2/96. CABS vide policy dated 31.10.2008 directed that all concerned COs to notify confirmation to the rank of AA 5<sup>th</sup> class after 4 years from the date of initial training by raising genform to this effect. Accordingly, Gx. No. 0802384/S dated 18.12.2008 was issued by CO INAS 339 in respect of the applicant. Accordingly, promotion to the rank of Ag AA 4<sup>th</sup> class was changed vide Gx dated 26.06.2009 from 14.10.2007 to 17.04.2009. The

applicant was confirmed to the rank of AA 4<sup>th</sup> class w.e.f. 17.04.2010 after 1 year from the amended date of Ag AA 4<sup>th</sup> class based on CABS policy dated 31.10.2008. As per CABS, NI 2/96 was required to be amended regarding promotion to rank of AA 5<sup>th</sup> class only, however, the Govt. of India, Ministry of Defence created a new Appendix XV for governing all promotions in respect of 10+2 AA entry sailors vide MOD UO No. dated 17.08.2010. Prior to issue of this Appendix, applicant was already due for promotion to the rank of AA3 under the provisions of existing NI 2/96 and Navy Order 21/2007 and there is no mention that it can be applied retrospectively, however, CABS applied it arbitrarily retrospectively without any authority of law which is not only disadvantageous to all 10+2 AA entry sailors in comparison to the then existing NI 2/96 and NO 21/07 applicable at the time of enrolment. Moreover provision of this Appendix cannot be applied to the applicant as the same is disadvantageous to him. Thus it is contrary to fundamental rule of the Constitution of India. The applicant appeared and qualified for AA 3 NAMEB which he could have passed earlier if allowed to appear. His all promotions were treated provisional based on the impugned policy letters which were issued by CABS/IHQ of MoD (Navy) without any authority of law. The applicant was further promoted to rank of AA3 w.e.f. 17.04.2011 based on the same impugned policy.

6. 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 promotions 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.

7. Learned counsel for the applicant further submitted that applicant was promoted to Ag CHAA w.e.f. 01.06.2015 vide INAS 339 Gx No. 1500705/S dated 05.06.2015 under the impugned provision of the Appendix XV. The applicant 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) through proper channel to the competent authority which was replied by CABS vide letter dated 08.10.2015 that AA-115 class sailors seniority has been protected based on AFT (RB), Mumbai order dated 17.06.2013 and the same is not applicable to the applicant. 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 AA 4 and upward ranks be corrected as per the provisions of Appendix IX 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).

8. Learned counsel for the respondents submitted that applicant was enrolled in the Navy on 31.07.2004 as a 10+2 AA entry with Basic date 02.08.2004. The applicant's promotion details are as per Corrigenda 02/2010 of Appendix XV to NI 2/S/96 to the rank of AA5 w.e.f. 02.08.2008, Ag AA 4 w.e.f. 17.04.2009, AA4 w.e.f. 17.04.2010 and AA3 w.e.f. 17.04.2011. 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 5<sup>th</sup> class provisionally. However on implementation of Corrigenda 02/2010 on 17.08.2010, necessary letter was forwarded to the Commanding Officer of INS Dega vide Bureau letter dated 03.12.2010 that all petitioners' promotions have been amended as per revised Appendix XV to NI 2/96.

9. Learned counsel for the respondents further submitted that applicant was incorrectly promoted by CO INAS 339 as AA 5 w.e.f. 29.01.2007 on completion of 130 weeks. The Bureau vide its letter dated 02.05.2006 had intimated that the sailors were to be promoted as AA 5<sup>th</sup> class after completion of 130 weeks from date of commencement of training i.e. a sailor of batch 01/2004 (AA-115) basic date of 02.02.2004 is to be promoted as Art 5<sup>th</sup> class w.e.f. 02.08.2006. All the promotion prospects of Artificer are being governed by either NI 2/96 or by revised NI for Artificer 10+2 as per Appendix IX and Corrigendum 02/2010 to NI 2/S/96. The Indian Navy implemented education qualification (10+2) for Artificer Apprentice from 1<sup>st</sup> batch of 2004 and the applicant joined as AA in 2<sup>nd</sup> batch of 2004. The promotion history of the applicant to AA 5<sup>th</sup> class is w.e.f. 02.02.2007, Acting AA 4<sup>th</sup> class w.e.f. 02.02.2008, AA 4<sup>th</sup> class w.e.f. 17.10.2008 and AA 3<sup>rd</sup> class w.e.f. 17.04.2011, therefore, it can be seen that after change in training pattern for both cases the time taken for promotion to the rank of Artificer 3<sup>rd</sup> class is 7 years from the basic date, therefore, no injustice has been done to the applicant while granting promotions.

10. Learned counsel for the respondents further submitted that applicant's grievance that he could have passed earlier AA3 NAMEB and that all his promotions were treated provisional based on impugned policy letter is incorrect. Even, if the applicant would have appeared and qualified for NAMEB AA 3 earlier, he was due for promotion to the rank of AA 3 on 17.04.2011, i.e. Basic date + 7 years. The applicant belongs to AA-116 Batch and therefore, AFT (RB) Mumbai order dated 17.06.2013 in the case of **Harendra Singh** (supra) is not applicable to applicant as it is applicable to AA-115 batch only. 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 IX 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.

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

12. We observe that as per advertisement dated 20.06.2003, educational qualification was changed from minimum 10<sup>th</sup> 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 5<sup>th</sup> class after completion of 2 ½ 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.

13. 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 AA4 on 02.02.2008 (as against 17.04.2009), and to AA4 on 17.10.2008 (as against 17.04.2010). Finally promotion to AA3 is on the same date i.e. 17.04.2011. 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)	AA 5	02 Aug 08	07 Feb 07	Basic Prof. Course	Basic Date + 2½ yrs
(b)	AG AA 4	17 Apr 09 (02.08.08 + 01 yr – 3.50 months)	02 Feb 08	Initial Swim Test Certificate	01 yr
(c)	AA 4	17 Apr 10	17 Oct 08	AA 4 Confirm Board AA 4 Competency Certificate	01 yr as Ag. AA 4 <sup>th</sup> class
(d)	AA 3	17 Apr 11	17 Apr 11	AA 3 Board PO(L) Course	2 ½ yrs from Confirmed AA 4 <sup>th</sup> class

14. 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 AA5 on 02.08.2008. But the applicant underwent only 130 weeks of training and hence his date of promotion to AA5 should have been depicted as 23.02.2007 instead of 02.08.2008 in column two. Thus column two of table depicted by

the respondents in counter affidavit is derived from incorrect computation of dates.

15. The applicant has prayed to regulate his promotions to Ag AA 4<sup>th</sup> 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	AA5 w.e.f. 23.02.2007 on completion of 130 weeks training
2	Ag AA4 w.e.f. 14.10.2007 (01 year as AA5 minus 3.5 months seniority gained during initial training)
3	AA4 w.e.f. 14.10.2007 (for AA4 confirmation 01 year as Ag AA4 w.e.f. the same date)
4	AA3 date of promotion should have been 14.10.2009 (02 years as AA4 including acting time)

16. 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.

17. 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-116 Batch, enrolled under 10+2 entry Artificer Apprentice in 2004 as per advertisement published in June 2003.

18. 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.

19. No order as to costs.

20. 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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