

**ARMED FORCES TRIBUNAL CHANDIGARH REGIONAL BENCH
AT CHANDIMANDIR**

TA No. 240 of 2010
(arising out of CWP No.8285 of 2009)

Ashok Kumar	...	Applicant
Vs		
Union of India and others	...	Respondents

ORDER

....06.2010

Coram : Justice Ghanshyam Prasad, Judicial Member.

Lt Gen N S Brar (Retd), Administrative Member.

For the Petitioner(s) : Mr. P. K. Sharma, Advocate

For the respondent(s) : Dr. Amarpreet Sandhu, SPC
for Sh. Ram Chander, SPC

Lt. Gen. N.S.Brar (Retd.)

This application is taken up under Section 14 of the Armed Forces Tribunal Act 2007.

The case of the petitioner, Ashok Kumar, is that he was enrolled in the Army on 22.01.1983. He passed the promotion cadre course on 01.11.1987 and was eligible for promotion to Havildar. The Government accorded sanction on 19.09.1985 for direct recruitment of havildars to the extent of 25 percent. The direct recruitment havildars were recruited from 23.03.1987 to 12.01.1988. The seniority of these havildars should have been reckoned on the date of completion of technical training course of 56 weeks and 4 weeks of midterm leave ie 60 weeks after enrolment. Such a havildar if enrolled on 23.03.1987 would take seniority from 22.05.1988

whereas the petitioner was qualified to be promoted from the time of passing the promotion test on 01.11.1987. This was not done thereby depriving the petitioner seniority and promotion on due date. Statutory complaint submitted on 25.04.2008 was rejected vide order dated 22.05.2009 (Annexure R7). Hence the petition.

Learned counsel for the petitioner stated that the petitioner passed the promotion cadre Naik to Havildar and became eligible for promotion on 01.11.1987. Based on Government of India sanction, instructions were issued for direct recruitment of havildars up to 25 percent of the vacancies in recruiting year April March 1985. Referring to the policy for direct recruitment laid down vide AOC Records Instructions dated 19.09.1985 (Annexure P1), it was contended that the seniority of directly recruited havildars was to reckon after completion of basic training, technical training and passing Class III which is 60 weeks. Therefore any havildar recruited directly before 60 weeks prior to 01.11.1987, the date on which the petitioner qualified for promotion, could not be granted seniority over him. Having granted such havildars seniority in the rank of havildar it had a roll on effect on the seniority of the petitioner as Naib Subedar and Subedar which resulted in truncated period of service, further promotion and consequential benefits.

Learned counsel for the respondents contested the claim of the petitioner by stating that the petitioner was promoted as Naik on 01.05.1986 and his seniority as naik and for promotion to haviladr was fixed on the same date ie 01.05.1986. He attended and passed

promotion cadre for promotion to havildar on 24.10.1987. This is one of the conditions for promotion which makes a naik eligible for promotion. It does not affect his seniority for promotion as a naik. Besides other conditions, promotion is linked to occurrence of vacancies which are filled as per seniority of eligible naiks. In the case of the petitioner vacancy for promotion to havildar occurred on 01.04.1989 and he was duly promoted. On the other hand directly recruited havildars who had completed their basic and technical training prior to 01.04.1989 were promoted havildars as per laid down policy and their seniority was fixed as on their date of promotion. In such cases they were promoted before the petitioner and were naturally placed ahead of the petitioner in seniority. The policy for fixing the seniority is clearly laid down vide Para 9 of IHQ MoD Letter No 73179/XI/Org2(MP)(c) dated 27.04.1984 (Annexure R5). They were also promoted as naib subedars based on their seniority of promotion as havildars. The petitioner was promoted as naib subedar on 01.04.2005 as per his seniority and there has been no supersession.

Heard the learned counsels for the parties and perused the records.

The thrust of the petitioners claim lies in his passing the promotion cadre which is claimed as the date for promotion and seniority over the directly recruited havildars. The fact however is that he was a naik on the date of passing the promotion cadre. Passing the cadre only made him eligible for promotion which was dependent

on vacancies. He was promoted on 01.04.1989 when vacancy occurred. The directly recruited havildars who completed their training prior to this date were appointed as havildars with seniority as on such dates. The inter se seniority between regular promotes and directly recruited and appointed havildars takes effect in the rank of havildar. Passing the promotion cadre does not decide seniority. Promotion as havildar decides inter se seniority and subsequent promotion and seniority as naib subedar. We do not find any irregularity in fixing the seniority of the petitioner.

In the facts and circumstances of the case the petition is dismissed.

There shall be no order as to costs.

[Justice Ghanshyam Prasad]

[Lt Gen N. S. Brar (Retd)]

June 10, 2010
RS