

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

**T.A. No 253 of 2010**

**(arising out of CWP 16910 of 2009)**

**Mohinder Singh** ... **Applicant**

**Vs**

**Union of India and others** ... **Respondents**

**ORDER**

**26-07-2010**

**Coram : Justice Ghanshyam Prasad, Judicial Member.**

**Lt Gen H S Panag (Retd), Administrative Member.**

For the Applicant (s) : Mr. Surinder Sheoran , Advocate.

For the respondent(s) : Dr(Ms) Anjali Kukkar, CGC.

**Lt Gen H S Panag (Retd)**

1. The case has come to us on transfer from Hon'ble Punjab and Haryana High Court.

2. The petitioner, Subedar (FOS) Mohinder Singh, has prayed for quashing the impugned letter/order of Signal Records dated 06.10.2009 (Annexure P3) vide which the respondents have rejected the claim of the petitioner for grant of promotion to the rank of Subedar Major wef 01.11.2009. He has further prayed for issue of writ in nature of mandamus directing the respondents to issue the promotion order of Subedar Major wef 01/11/2009.

3. Heard the learned counsels for the petitioner and the respondents and perused the documents on record.

4. The petitioner was enrolled in the Army on 20.08.1990 and is presently serving with 33 Armoured Division Signal Regiment. Due to serious illness of his wife, the petitioner on 15 Jan 2006, requested for a last leg posting to HISSAR and also rendered the mandatory unwilling certificate for extension of two years service and also unwilling certificate for further promotion (Annexure P1). His application was forwarded to Advisory Board, Headquarters Central Command (Signals Branch) who further forwarded the same to the Records Signals. The Records Signals vide their letter dated 29.09.2006, intimated that the petitioner has been screened for two years extension in service/age by the Screening Board held on 18/19.9.06 and "deemed to be willing" in terms of Army HQ letter No B/33098/AG/PS-2 dated 13 July 1999 as his willingness/unwillingness certificate was not received by the day of the Screening Board. He was accordingly granted two years extension in service/age from 20 August 08 to 19 August 10. The Signal Records also returned the unwillingness certificate forwarded by his unit on 19 September 2009 saying that the same was received on 25 September 06 after the Screening Board was held on 18/19.9.06.

5. The petitioner as per his request was posted to 33 Armd Div Signal Regiment, HISSAR on 15 December 2006. In September 2009, the petitioner came to know that Signal Records was considering respondent No 4 who is junior to him and is from the same unit for promotion w.e.f 01 November 09 to the rank of Subedar Major. The petitioner requested his Commanding Officer for taking up his case for promotion to the rank of Subedar Major as he was senior to Respondent No 4. Signal Records vide

their Signal/order dated 06.10.09 rejected the claim of the petitioner with observations that the petitioner vide unwillingness certificate dated 15 June 2006 while requesting for last leg posting had rendered his unwillingness for further promotion thus ignoring their own letter dated 29.9.2006 under which unwillingness certificate of the petitioner was returned. The counsel for the petitioner argued that the petitioner had submitted his unwillingness both for extension and promotion vide his letter dated 15.6.06 which was forwarded by HQ Central Command to Signal Records vide their letter dated 25.7.06. Signal Records vide their letter dated 29.9.06 confirmed that the unwilling certificate has been returned. It was never intimated to the petitioner that only the unwillingness for extension of service has been ignored and the unwillingness for promotion has been accepted. Based on the rejection of his claim, the petitioner forwarded a willingness certificate to Signal Records on 24.10.09.

6. The counsel for the respondents argued that the petitioner has given his unwillingness certificate for extension and promotion while requested for last leg posting on 15.6.2006 which was processed through Advisory Board HQ Central Command. As per procedure before the Screening Board was held, the petitioner had to render unwillingness/willingness certificate. The unwillingness certificate for the extension of service was forwarded by the petitioner's unit which was received on 25 September 2006 after the screening board was held on 18-19 Sep 2006. In absence of unwillingness certificate, as per policy, the petitioner was considering as having rendered his willingness and was granted two years extension. The unwillingness for promotion certificate

for last leg posting rendered on 15.06.06 was taken note of by the DPC and according the case for promotion to the rank of Subedar Major was rejected.

7. It is clear that the petitioner rendered unwillingness certificate for extension and promotion on 15.06.06 while requesting for last leg posing to HISSAR. The same was forwarded to Signal Records by Advisory Board, HQ Central Command vide their letter dated 25.7.06. The Records Signals has mentioned another unwillingness certificate for extension forwarded vide MCTE Mhow letter No 248/A/02/Sig/ dated 19 Sep 2006 which was received by them on 25 Sep after the screening board was held on 18/19.09.06. As per Signal Records, in absence of an unwillingness certificate, willingness was presumed as per police and two years extension from 20 Aug 08 to 19 August 10 was approved by the Screening Board. The alleged unwillingness certificate received on 25 September 2006 has not been produced on record. Thus, as per documents on record it seems that the unwillingness certificate for extension and promotion forwarded vide letter dated 15.6.06 was ignored and the petitioner was granted two years extension of service. The unwillingness certificate was returned to his unit. Having granted extension of service despite unwillingness for extension certificate dated 15.6.06, it is incorrect on part of Signals Records to deny the promotion on grounds that the same letter also included unwillingness for promotion which was kept on record. Moreover, once granted extension the petitioner was eligible for all service benefits including promotion as without grant of extension the individual

would in any case have retired on 31 August 08. In case it was accepting the unwillingness certificate for promotion and ignoring the same for extension, it should have been brought to the notice of the petitioner and his unit.

Keeping in view the facts of the case, arguments of the learned counsel for both the parties and documents on record, the petition is allowed. The unwillingness for promotion rendered on 15.6.06 be ignored and if otherwise fit for promotion based on criteria and merit, he must be promoted to the rank of Subedar Major with his seniority duly protected. This order must be implemented before the JCO retires on 31 August 10 and in event of any delay beyond 31 August 10, the petitioner will be reinstated with his original seniority. The petitioner may take this order by hand to his unit and Signal Records for implementation.

**(Justice Ghanshyam Prasad)**

**(Lt Gen H S Panag (Retd))**

26-07-2010

**‘sns’**