

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

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OA 2087 of 2012

Randhir Singh	Petitioner(s)
Vs		
Union of India and others	Respondent(s)

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For the Petitioner (s) :	Mr RS Panghal, Advocate
For the Respondent(s) :	Mr. Suveer Sheokand, CGC.

**Coram: Justice Prakash Krishna, Judicial Member.
Air Marshal (Retd) SC Mukul, Administrative
Member.**

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**ORDER
27.01.2014**

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1. By this petition the petitioner prays for the following reliefs:

1. "Direction to the respondents to quash order dated 10th May, 2012 issued by respondents as attached to Annexure A-3.
2. Direct to the respondents to release the promotion of the applicant w.e.f. 31 Jan 2011 and consequential benefits arising therefrom along with interest @ 18% p.a.
3. Or any other appropriate order or direction which this Hon'ble Bench may deem fit and proper under the circumstances of this application."

2. The brief facts of the case are that the petitioner joined the Army on 11th March, 1981 and after rendering 30 years of service, retired as a Subedar on superannuation on 31st January, 2011.

3. The grievance of the petitioner is that he was deprived of consideration for promotion to the next higher rank of Subedar Major. He represented to respondents No. 3 for being considered for promotion and before consideration of his representation he was retired on 31st Jan 2011 while the vacancy was created on the next day of his retirement. The petitioner was not given chance as per policy of

AG's Branch. The contention of the petitioner is that junior to him as well as senior have been promoted and when his turn came, the respondents denied the same there being no vacancy.

4. The respondents in their written statement bring out that petitioner was enrolled in the Corps of EME on 11th March, 1981 and discharged from service w.e.f. 31 Jan 2011 on completion of his terms and conditions under Item I(i)(a) of Table annexed to Rule 13(3) of Army Rules, 1954. During his service, he was granted the following promotions:-

(a) Paid Acting Havildar	– 07 Jul 1986
with ante-date seniority w.e.f. 23 April 1986	
(b) Substantive Havildar	-01 Aug 1991
(c) Naib Subedar	-01 Jun 1998
(d) Subedar	-01 Feb 2003

With regard to grant of promotion to the rank of Subedar Major, he had come up in seniority along with batch mates for consideration for selection/promotion of Sub Maj during DPC -2010 against the vacancies occurring during 2011. He was at Serial No. 4 in seniority in the selected panel of SKT category in the DPC-2010 for promotion to the rank of Sub Major. The first two vacancies occurred on 1st Jan 2011 during the year 2011 were given to the two senior most Subedars SKT whose names were reflected at Serial No.1 and 2 in the selected panel of his category and they were promoted w.e.f. 1st Jan 2011. The Third vacancy was occurring on 01 Feb 2011 and the third senior most Subedar SKT whose name is reflected at Serial No.3 in the selected panel of his category was promoted w.e.f. 1st Feb.2011. Since the petitioner was placed in fourth position , he was not promoted for the third vacancy occurred on 1st February 2011 and by the time the next vacancy had occurred, the petitioner was retired from service w.e.f. 31st Jan 2011 on attaining 52 years of age before completion of his normal terms of engagement i.e. 30 years of service. Hence he was not rightly promoted to the rank of Sub Major.

5. We have heard the learned counsel for the parties and have gone through the record of the case.

6. The extract of the policy on the subject circulated vide AG's Branch letter No. B/33513/AG PS-2(c) dated 6th May, 2002 is as under:

“Departmental Promotion Committee

6. *Application of Full ACR Criteria for DPC//PB*

(a)X...XXX...XX...XX

(b)X...XX...XXX...XXX

7. Explanation of Double the Number of Vacancies or a Complete Batch for DPC of Sub Major.

(a) *Where the guideline double the number of candidates vis-à-vis vacancies or a complete batch whichever is more may be considered for the DPC includes only a part of a batch, the complete batch will be considered by the DPC*

(b) *In the corps/regiment, where DPC is held on a centralized roster basis (i.e. not on unit basis) the corps/regiment will themselves decide the size of the batch suited to the corps/regiment. The size of the batch may be such as to give adequate opportunity to merit and at the same time avoid large scale supersession. The size of a batch once decided will be uniformly applied to subsequent DPCs for promotion to Sub Maj/Ris Maj. If a corps/regt finds it expedient to change the size of the batch, the same may be altered by a DPC in which the Col of the Regt must preside, after sufficient prior information to affected units on the reasons for change. The change in the size of batch may be brought into effect from the second subsequent DPC onwards. For example change in size of batch may be brought about by a DPC selecting a panel for 2003, for the panel 2005 onwards.*

(c) *The provision ‘double the number of candidates vis-à-vis vacancies whichever is more’ will apply to Sub/Ris who are not superannuating before occurrence of first foreseeable vacancy. The DPC will, however, place on the panel such eligible but superannuating Sub/Ris of the batch/batches who have an OAP equal or more than*

the out off point of the panel selected. If an unforeseen vacancy arises, senior most serving and eligible Sub/Ris on the panel will fill that vacancy.

8xx...xxxx...xxxx...xxxx...xxx

9.xx...xx...xx.....xx.....xx...xx.”

7. As per the above policy, the individuals are considered for promotion strictly as per their seniority. We find that the petitioner came up in the seniority list along with his batch mates for consideration of selection/promotion to the rank of Sub Major during DPC 2010 against the vacancies occurring in the year 2011 and stood at No.4 in that seniority list.

8. The first two vacancies occurred during the year 2011 on 1.1.2011 and accordingly the two senior most Subedars of SKT trade in the selected panel list of SKT Category were promoted to the rank of Sub Major w.e.f. 1.1.2011. The third vacancy was created on 1.2.2011. However, the petitioner who was born on 12.1.1959 retired w.e.f. 31st January, 2011 on attaining the age of 52 years on 12.1.2011 on completion of term of engagement. There is no provision to consider the petitioner in earlier batches of DPC.

9. Coming to the question whether as on 1.2.2011 the petitioner was 52 years of age or not, we may seek assistance from some provisions of General Clauses Act, including Sections 3(21), 3(35) and 3 (66). According to Section 3(21), the financial year shall mean the year commencing on the first day of April, while according to Section 3(b), ‘month’ shall mean a month reckoned according to British Calendar. Then, according to Section 3(66), year shall mean a year reckoned according to British Calendar.

10. If these three provisions are simply read, they lead to irresistible conclusion that with the midnight of last date of the month, or the financial year, or the year, it comes to an end, and with the next second, after midnight, he next month or year or financial year commences. To illustrate according to British Calendar, if we were to reckon year 2010, it commences on the first of January, and obviously ends on the midnight of December, 2010, and on the next second of the midnight, the year is 2011, as on the next second, it is 1st January

00 hour, 00 minute and 01 second. Year 2010 does not continue to exist till any time on 1st of January. The same way, the financial year within the meaning of Section 3(21), would come to an end on the midnight of 31st of March of that relevant year, as with the next second of midnight, the financial year would change to the next financial year. Accordingly, the number of years, for the purpose of determining age of the individual is also required to be reckoned, and since the petitioner was born on 12.1.1959 and by the way, 52nd year ends with the midnight of 11th of January, 2011, and as per policy the petitioner retired at the end of the month on 31.1.2011.

11. In that view of the matter, when the other incumbent retired obviously in the afternoon of 31st Jan 2011, deeming to have been in service till the midnight of 31st Jan 2011, the vacancy obviously occurred on 1st February. And when the vacancy occurred on 1st February, 2011, the petitioner was clearly “**over 52 years of age**”, and was rightly denied the promotion, as a right.

12. Accordingly, so far as non-promotion of the petitioner on the ground of his having become ‘**over 52 years of age**’ is concerned, interference therein is declined.

13. The petition is accordingly dismissed.

(Justice Prakash Krishna)

(Air Marshal (Retd) SC Mukul)

27.01.2014

raghav

Whether the judgment for reference is to be put on internet? Yes