

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A.No.114 of 2014

Thursday, the 11th day of December 2014

THE HONOURABLE JUSTICE V. PERIYA KARUPPIAH
(MEMBER - JUDICIAL)

AND

THE HONOURABLE LT GEN K. SURENDRA NATH
(MEMBER – ADMINISTRATIVE)

Rank-Naib Subedar,
Name-Prem Kumar Ray
Service No.JC-331596-L
S/o Mr. Meghan Ray,
aged about 42 years
Quarter No.G/5,
Defence Civilian Colony
Meghadripeta,
Visakhapatnam-530 014.

... Applicant

By Legal Practitioners:
M/s. M.K. Sikdar & S.Biju

vs.

1. Union of India,
Rep. by The Secretary
Government of India, MOD
South Block, New Delhi-110 011.

2. The Adjutant General
AG's Branch (MP-3), IHQ of MOD (Army)
DHQ Post, New Delhi-110 011.

3. The Engineer-in-Chief
E-in-C's Branch
IHQ of MOD (Army)
DHQ Post, New Delhi-110 011.

4. The Commandant
BEG Records & Centre
Pin-900 477, C/o 56 APO

5. The Director General
Naval Project
Post Naval Base,
Visakhapatnam-530 014.

... Respondents

By Col S.K. Varshney,
Addl. Legal Officer (Army)

ORDER

(Order of the Tribunal made by
Hon'ble Justice V. Periya Karuppiyah, Member (Judicial))

1. The applicant filed this application for a direction to call for records in respect of the impugned order No.75571/5/029/CA5, dated 24.06.2014 passed by the 4th respondent and to quash the same as to the applicant and also to protect the original seniority of the applicant on merger of the cadre SKT in the Army before posting/transferring the applicant as per directions of Hon'ble AFT, Principal Bench and AFT Kolkata Regional Bench with regard to protection of seniority with consequential benefits.

2. The factual matrix of the case of the applicant is as follows:

The applicant would submit that he was enrolled as a Sapper in Bengal Engineering Group of the Corps of Engineers on 28.02.1992 and subsequently promoted to the rank of Naik on 01.09.1996, that he

qualified in Military Engineering Service Conversion Course and permanently seconded to MES in February 1997 in the rank of Naik, that he was promoted to the rank of Havildar in March 2005 with seniority of 01.08.1999 and Naib Subedar on 25.11.2008 with seniority of 23.08.2008, that he was superseded by his juniors due to change of policies and further he would be placed below the seniority list than his juniors and that if the impugned orders are implemented and his SK-I trade is merged with SKT trade, that would become discriminatory. The applicant submits that there were many vacancies in MES, but he was not promoted in time. The service personnel junior to him in the Corps of Engineers who did not opt for MES in the rank of Naik were promoted to the rank of Havildar much earlier than the applicant, i.e., before 01.08.1999. The applicant submits that in the ordinary course, he was due to be promoted to the rank of Subedar in the year 2011/2012, however by order dated 5.1.2009, his promotion to the rank of Subedar was virtually stopped. The applicant submits that the Naik and Havildar of the MES are designated as Store Keeper Grade II (SK-II) but not the rank of Naib Subedar of MES. The merger of Naib Subedar (SK-I), Subedar (BS-II) and Subedar Major (BS-I) is not in the interest of service.

3. The AFT Kolkota Regional Bench in **O.A.No.74 of 2011**, dated 22.02.2013 in **[Sub (BS) S.K. Shaw & Ors. vs. UOI & Ors]** granted

relief to the applicants by holding that the original seniority of the similarly placed applicants on repatriation to the merged cadre of SKT in the Army shall be protected. The Hon'ble AFT Principal Bench in **O.A.No.191 of 2011 [Hav Partap Chander Sahu v. UOI & Anr]** was also pleased to pass a similar order in favour of similarly placed applicants wherein it was held that when the applicants are repatriated from MES to their parent units, they should also be promoted in case they are eligible for promotion and if not, they may be given an opportunity to acquire that qualification so as to get their promotion. The prayer of the applicant in this case is that despite the judgments of AFT Kolkata Regional Bench and the Hon'ble AFT Principal Bench, the applicant's promotion has not been protected. Therefore, the applicant requests that this application may be allowed.

4. The respondents filed reply-statement which would be as follows:

The facts regarding the applicant's enrolment on 28.02.1992 as SKT in Bengal Engineer Group Roorkee, his option for transfer to MES Militarised Cadre and his transfer to ex MES Militarised Cadre as Store Keeper from 6.1.1997 in the rank of Naik and the promotion to the rank of Havildar from 29.3.2005 and to the rank of Naib Subedar from 25.11.2008 are not disputed by the respondents. The respondents are also admitting the judgments of the AFT Kolkata Regional Bench and

the Hon'ble Principal Bench of AFT, New Delhi regarding protection of seniority/promotion to the similarly placed applicants. The Hon'ble Tribunals had upheld the policy of merger issued by IHQ of MoD (Army) vide letter dated 05.01.2009. Subsequently, SK/BS cat personnel of Ex-MES militarized cadre have been merged with SKsT category. The following action have been completed regarding merger of both the categories, i.e., SK/BS of ex-militarized cadre and SKsT and compliance report had already been filed in the Hon'ble AFT, Principal Bench, New Delhi and AFT Kolkatta Regional Bench:

- (a) Erstwhile SK/BS category personnel have to be repatriated to the parent category, i.e., SKsT and transferred to their parent Groups of Corps of Engineers.
- (b) Seniority rolls for promotion of the merged SKsT category personnel has been revised and JCOs/OR of erstwhile SK/BS category are placed in the seniority roll as per seniority of their batchmates of the SKsT category.
- (c) Promotions and postings are being managed based on the combined vacancies and combined seniority roll of the merged category of SKsT.
- (d) JCOs/OR of erstwhile SK/BS category who are not qualified for next promotion, whereas their batchmates of SKT category have

already been promoted and thus become senior to them are nominated for various cadre courses to offer them opportunity to achieve the qualification for the next promotion.

(e) Naiks of erstwhile SK/BS category have been promoted to the rank of Havildar without subjecting them to any promotion test as per judgment of AFT Kolkata Regional Bench.

5. On promotion to higher ranks and assuming the appointment of SK-I, BS-II, BS-I in MES organization, no major different duties exist except the supervision responsibilities. The applicant volunteered for transfer to MES Mil Cadre as SK (Store Keeper) and therefore nominated for conversion course in 1996. He has voluntarily opted for transfer to SK/BS of MES militarized cadre. Moreover, SKsT of Corps of Engineer are eligible for transfer to JE cadre of MES after passing diploma course for the same and fulfil other QRs. Hence, the contention of the applicant that he was deprived from better career progression by not allowing him to undergo diploma course is totally incorrect. The seniority roll of SKsT category after merging of SK/BS of Ex-MES militarized cadre has been circulated to the environment through Army intranet and placed at website of Bengal Engineer Group, Records, Roorkee. Further, no provisions exist to issue warning before issue of posting as the applicant has already completed his tenure with the present unit. The respondents submit that the

processes of merging of SK/BS Cadre with SKsT of Combat Engineers were ongoing since October 2011. Therefore, the claim of the applicant that posting order passed by Records Bengal Engineer Group, Roorkee was issued without a notice is not correct. The respondents further submits that the judgments of Hon'ble Tribunals have been implemented and accordingly posting order of the applicant has rightly been issued to 52 Engineer Regiment vide Records Bengal Engineer Group, Roorkee letter No.75571/5/29/CA-5, dated 24.06.2014 in which his original seniority with his batchmates have been protected. For the above reasons, the respondents request that this application may be dismissed as devoid of any merit.

6. We heard the arguments advanced on either side. We have also perused the pleadings of both parties.

7. On a careful perusal of the reply-statement filed by the respondents, we find in paragraph-14 at pages 8 and 9 the following averments, which read as follows:

" However after merging with SKT category, seniority of the applicant has also been re-fixed wef 01 February 2011 along with his batchmates. Therefore, in the adjustment of seniority as per orders of Hon'ble Tribunals, petitioners' seniority has been refixed wef 01 February 2011 in the rank of Naib Subedar

on merger of both the cadres. Comparison statement between applicant and his contemporary/senior is shown as under:-

<i>Sl. No.</i>	<i>JC No. Rank & Name</i>	<i>Date of Enrolment</i>	<i>Date of Promotion to Naik</i>	<i>Havildar Batchmate seniority/original seniority</i>	<i>Naib Subedar Batchmate seniority/original seniority</i>	<i>Remarks</i>
(a)	JC-339451P Nb Sub/SKT Dinesh Singh Rawat (Now Subedar wef 02 Aug 2014)	01021991	30061995	27061998	01012011	Senior to applicant after merger of trade wef 03 October 2011
(b)	JC-331596L Nb Sub/ex SK-BS Prem Kumar Ray	28021992	01091996	<u>01122000</u> <u>01081999</u>	<u>01022011</u> <u>23082008</u>	Applicant tfr to MES Cadre Wef 06 January 1997 and Junior to Ser No.(a).Promoted to Nb sub wef 25 Nov 2008.
(c)	JC-339508Y Nb Sub/SKT Mahadev Shukla	05051990	01041998	01122000	01042011	Promoted to Nb Sub wef 01 April 2011. Junior to applicant

8. On the foot of those two judgments, the Hon'ble Principal Bench has in unequivocal terms directed the respondents to fix seniority of the affected persons and till then an interim order has been passed in favour of the applicants therein as made in O.A.Nos.272 to 280 of 2014. The gist of the order runs as follows:

“ Undisputedly, the orders referred above passed by the Principal Bench and Calcutta Bench have been accepted by the respondents and they are implementing the orders. More than two years have passed to the order passed by the Principal Bench but the petitioners have not been given benefit of the final orders of the Tribunal. Calcutta Bench of the Tribunal also passed the order on 22.02.2013 after considering the Principal Bench’s judgment and further made it clear that if any one junior to the applicant or applicants have been promoted to the next higher grade then the applicants be also considered for such promotion notionally to that grade or grades without any pay and allowances. Even after making the position further clear petitioners have not been promoted and in their parent department their juniors are working on higher posts. In such circumstances we are of considered opinion that the petitioners cannot be shunted out to the place where their juniors are working as senior and it is not material that the petitioners may not be directly under the junior person to him.

8. Therefore, the order of *status quo* passed by the coordinate Bench will be of no use if in spite of the order of *status quo* the petitioners are to work where their juniors are working as senior.

9. We are of considered opinion that the respondents could have completed the process of promotion either actually or notionally

in the light of the judgment of the Calcutta Bench of the Tribunal but in more than two years from judgment of the Principal Bench and in more than one year from judgment of the Calcutta Bench has not completed the process and, therefore, this controversy has arisen which was avoidable. Be it as it may be, even during continuation of this interim order of *status quo* and pendency of these OAs the respondents can complete the process of promotion and may implement the directions given above referred two judgments which may make these petitions infructuous. Since the respondents even after accepting the judgment of the Tribunal did not complete the process of promotion and intending to transfer the petitioners from one place to another, it is appropriate that such shifting be stayed and, therefore, the respondents shall maintain *status quo* as it exists today. "

9. We find that the respondents herein have followed the said directions issued in the aforesaid judgments and fixed the seniority of the applicant also, as seen from the statement made by the respondents protecting the seniority of the applicant along with the batch mates in the reply-statement extracted above.

10. No rejoinder has been filed by the applicant despite the case being posted for final hearing. Therefore, we presume the claim made by the applicant has been fulfilled and the claim has become infructuous

and an adjudication on the pleadings of the applicant becomes unnecessary. Therefore, the application deserves dismissal and accordingly, the application is dismissed as infructuous. No costs.

Sd/
LT GEN K. SURENDRA NATH
MEMBER (ADMINISTRATIVE)

Sd/
JUSTICE V.PERIYA KARUPPIAH
MEMBER (JUDICIAL)

11.12.2014
(True copy)

Member (J) – Index : Yes/No
Member (A) – Index : Yes/No

Internet : Yes/No
Internet : Yes/No

VS

To:

1. The Secretary
Government of India, MOD
South Block, New Delhi-110 011.
2. The Adjutant General
AG's Branch (MP-3)
IHQ of MOD (Army)
DHQ Post, New Delhi 110 011.
3. The Engineer-in-Chief
E-in-C's Branch
IHQ of MOD (Army)
DHQ Post, New Delhi-110 011.
4. The Commandant
BEG Records & Centre
Pin-900 477, C/o 56 APO
5. The Director General Naval Project
Post Naval Base
Visakhapatnam-530 014.
6. M/s. M.K. Sikdar & S.Biju
Counsel for applicant.
7. OIC, Legal Cell,
ATNK & K Area, Chennai.
8. Library, AFT, Chennai.

HON'BLE MR.JUSTICE V. PERIYA KARUPPIAH
MEMBER (JUDICIAL)
AND
HON'BLE LT GEN K. SURENDRA NATH
MEMBER (ADMINISTRATIVE)

O.A.No.114 of 2014

Dt:11.12.2014