

(2020) 01 AFT CK 0042

In the Armed Forces Tribunal

Case No : Original Application No. 2113 Of 2018, Miscellaneous Application No. 2360 Of 2018

Uday Kumar

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 09-01-2020

Acts Referred:

Armed Forces Tribunal Act, 2007 — Section 31, 14

Citation : (2020) 01 AFT CK 0042

Hon'ble Judges : Sunita Gupta, J;B.B.P. Sinha, Member (A)

Bench : Division Bench

Advocate : Archana Ramesh, Satya Ranjan Swain, V.S. Kadian

Final Decision : Dismissed

Judgement

1. Vide separate order pronounced today, OA stands dismissed.

Counsel for the applicant makes an oral prayer for grant of leave to appeal under Section 31 of the Armed Forces Tribunal Act, 2007. However, she

has not been able point out any substantial question of law of general public importance involved in the order, which warrants grant of leave to appeal.

As such, prayer made by the counsel for the applicant is declined.

M.A. No. 2360 of 2018:

Vide this application, the applicant seeks condonation of the delay of 264 days in filing the O.A on the ground that he was committed in field area in

Arunachal Pradesh and now he is in Delhi for signing and filing the O.A. Reliance has been placed on the decision in Union of India and others v.

Tarsem Singh (AIR 2009 (1) AISU 371).

2. We have carefully gone through the judgment relied upon by earned counsel

for the applicant. Instead of helping the applicant, this judgment, in fact, goes against the applicant. The relevant portion of the judgment reads as follows:

To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc affecting others delay would render the claim stale and doctrine of laches/limitation will be applied. In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition. (emphasis supplied)

A bare reading of this legal position goes to show that it is only in case of continuing wrong and if it does not affect the rights of third parties, that delay can be condoned. In the instant case, the applicant is seeking quashing of promotion of Respondent No. 5 after a delay of 08 months and 19 days and for which no satisfactory explanation has been shown except that he was in field area. Therefore, we are of the view that no sufficient grounds have been assigned by the applicant for condonation of the delay in filing the O.A. Hence the application is liable to be dismissed. Even assuming for the sake of arguments, that a liberal approach is required to be taken and delay is condoned, even then it is to be seen whether the applicant has any case on merits.

O.A. No. 2113 of 2018

3. In this O.A filed under Section 14 of the Armed Forces Tribunal Act 2007, the applicant has prayed for following reliefs:

(i) Issue directions to the Respondents to quash and set aside the promotion of Hay SS Basha to the rank of Nb Sub with an ante dated seniority of 01

Oct 2017 on the ground that the vacancy was illegally usurped and the same vacancy be granted to the applicant to be promoted immediately to the

rank of Nb Sub with ante dated seniority of 01 Oct 2017 with inherent pay and allowances and to this effect quash and set aside 307 Medium

Regiment letter dated 09 Oct 2017 along with Artillery Records letter dated 05 Oct 2017; 307 Medium Regiment Routine Order Part I dated 21 Oct

2017 and Promotion Part II order of Hay SS basha to the rank of Nb Sub all of which are jointly paced as Annexure A-1 (colly).

(ii) Pass such other order and further orders or directions to the Respondents by way of adequate exemplary compensation by way of harassment,

agony and humiliation in the attendant genuine circumstances of the case, to meet the ends of justice.

4. Brief facts of the case are that the applicant was enrolled as Sepoy in the Army (Regiment of Artillery) on 28.06.1996 and was promoted to the

rank of Havildar with effect from 20.04.2012 with ante-dated seniority of 01.03.2012. In September 2016, the applicant appeared in Hay to Nb Sub

(HNS) promotion cadre along with his junior Hay S.S Basha (fifth respondent). While Hay S.S Basha cleared all tests, the applicant could not qualify

Tactics paper. This paper he passed in a subsequent attempt on 22.03.2017. In the Promotion Board held on 30.11.2016 the fifth respondent was

cleared for promotion to the rank of Naib Subedar. He was promoted to the rank of Naib Subedar against the existing vacancy on 01.10.2017. Grouse

of the applicant is that his junior Hay S.S Basha was promoted to the rank of Nb Sub on 01.10.2017 even though he being senior had cleared Tactics

paper on 22.03.2017 and was eligible for promotion to the rank of Nb Sub i.e. prior to the existing vacancy falling due on 01.10.2017. Hence this O.A.

5. Learned counsel for the applicant submitted that the applicant had cleared all exams of promotion cadre, except passing the Tactics paper on

22.09.2017. He cleared this paper on 22.03.2017 i.e. well before the due date of the existing vacancy, i.e. 01.10.2017. Hence he was eligible to be

promoted to the rank of Nb Sub on 01.10.2017 but promoting his junior i.e. Hay S.S Basha to the next rank of Nb Sub is illegal and in contravention to

para 18 of policy letter dated 10.10.1997 which lays down that all promotions will be done uniformly and no relaxation, deviation and deferment shall

be done without formal approval of ADGPS. Learned counsel for the applicant has relied upon the decision in Sub Garnit Bhai v. Union of India and

others (O.A. No. 929 of 2017) and pleaded that in this case illegal promotion was quashed and eligible candidate was promoted to the next rank. He

pleaded that the applicant be promoted to the rank of Nb Sub with effect from 01.10.2017 and illegal promotion given to Hay (now Nb Sub) S.S Basha

be quashed.

6. On the other hand, learned counsel for the respondents submitted that the applicant, who was senior to Hay (now Nb Sub) SS Basha, was not

eligible for promotion to the rank of Nb Sub at the time of holding of the Annual Unit Promotion Board (AUPB) on 30.11.2016 because of failing in

Tactics paper of his promotion cadre. He could clear this paper subsequently on 22.03.2017 i.e. after holding of AUPB. Ld. Counsel for the

respondents further submitted that as per ADGPS letter dated 13.04.1992 a clarification was issued with regard to promotion policy which clearly lays

down that if an individual clears promotion cadre after holding AUPB, he will be superseded for promotion and his promotion may be considered by

the next AUPB if he is eligible. Relying upon above clarification, the learned counsel pleaded that since the applicant was not eligible for promotion on

01.10.2017, he was not promoted to the next rank and his junior (fifth respondent) was promoted to the rank of Nb Sub against existing vacancy on

01.10.2017. He pleaded for the O.A. to be dismissed.

7. We have heard learned counsel appearing for both the parties and perused the records.

8. This is a case where the applicant being senior could not qualify in the promotion cadre course held in September 2016. He failed to qualify because

he could not pass the Tactics Paper. The Promotion Board was held on 31.11.2016, at that time the applicant was not qualified to be promoted to the

rank of Naib Subedar hence not recommended by the Board and his junior, who was meeting all the qualification requirements, was recommended for

promotion. The contention of the applicant is that he passed the Tactics Paper in

March 2016, he was senior and the vacancy of Naib Subedar was coming up on 01.10.2017, hence he should have been considered for granting promotion on that date instead of his junior. We feel that such a stand amounts to nullifying the organisational policy of conducting promotion cadre courses and conducting Promotion Boards for deciding on recommendation for promotion. If there is a criterion laid down for consideration of a Promotion Board, that criterion has to be met before the conduct of the Promotion Board. The organisational stand on this matter is clear through their policy letter. It defies logic, if one contends that he should be re-considered for promotion after the Promotion Board held for certain forecast vacancies in a given period of time is already over, on the ground that he has become fully qualified for promotion, after the conduct of Promotion Board, but before the actual date of vacancy. No organisation, which has a pyramidal structure and merit based promotion can function properly, if such concessions are given to satisfy individual requirements. An organisation has to make its policies in the larger interest of the organisation and organisational interest will always override individual interests.

9. In the light of the above facts, we have gone through the ADGPS Policy letter dated 13.04.1992 and 10.10.1997. The policy with respect to promotion criteria from Hay to Nb Sub is very clear but the doubt with regards to supersession of the individuals has been amply clarified in the letter dated 13.04.1992, the extract of which, for convenience sake, is reproduced as under:

1. Reference this HQ letter No B/335 13/AG/PS2(c) dated 11 Feb 92.
2. A doubt has been raised whether an individual who has not achieved the requisite education or map reading qualification at the time of DPC/UPB but has achieved the same prior to actual promotion can be superseded, or NOT. It is clarified that an JCO/NCOI who has not achieved the requisite education or map reading qualification at the time of DPC/UPB will be superseded for promotion and he may be considered by next DP(/sUPB if otherwise eligible.

10. Thus, in view of the clarification specifically given by the above mentioned ADGPS policy letters, we are of the considered opinion that the applicant has no case and he can only be considered for promotion in the next Promotion Board as and when it is held, depending upon vacancies. We

do not find any merit in the pleading of the learned counsel that the policy letter on promotion has been violated by the respondents by not promoting

the applicant. Additionally, the case law cited by learned counsel for the applicant is in an entirely different set of circumstances, where a

Commanding Officer had blocked a cleared promotion pending clarification. However, in this case, the applicant is not meeting the criterion for

promotion at the time of conduct of Promotion Board itself.

11. In the present case, we are of the opinion that since the applicant has cleared the promotion cadre in 2017 after his supersession in 2016 Promotion

Board, he can now be considered for promotion in the next Promotion Board as and when due. In the above circumstances, we feel that the

respondents have not done any injustice to the applicant and Hay (Nb Sub) S.S Basha was promoted to the next rank of Naib Subedar according to

the policy on the subject.

12. In view of the above, the O.A has no merit and is liable to be dismissed. It is accordingly dismissed. No order as to costs.

Pronounced in open Court on this the 9th day of January 2020