

FORM NO.4

(SEE RULE 11 (1))

**IN THE ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA
ORDER SHEET**

APPLICATION No. O.A. 95/2011

APPLICANT (S)	Mr. Prabir Kumar Das Ghosh
RESPONDENT (S)	Union of India and others
Legal Practitioner for Applicant (s)	Legal practitioner for Respondents
Mr. Supratik Basu	Mr. Anand Bhandari

<u>ORDERS OF THE TRIBUNAL</u>	
	<u>Order Serial Number:</u> 36 Dated :08.12.2016
	<p>Mr. Supratik Basu, learned counsel appears for the applicant. Mr. Anand Bhandari, learned counsel appears for the respondents. Maj Jitender Singh, OIC, Legal Cell, HQ Bengal Area, is also present.</p> <p>The applicant has filed this OA challenging the order dated 16.08.2011 passed by the General Officer, Commanding-in-Chief, Eastern Command on the Non Statutory Complaint, whereby and where under the claim of the applicant for promotion to the rank of Naib Subedar by waiving off the requirement of passing of Class-II Technical Trade Test has been rejected.</p> <p>We have heard Mr. Supratik Basu, learned counsel for the applicant and Mr. Anand Bhandari, learned counsel for the respondents.</p> <p>The learned counsel for the applicant placing reliance on the averments made in the OA has submitted that since the applicant was allowed to appear in</p>

Technical Trade Test Class I, the authority could not have denied the promotion to the rank of Nb Subedar with effect from 10.03.2007 i.e. the date when he has cleared the said test by waiving off the requirements of passing Class-II Technical Trade Test, though it is the pre-requisite for promotion in terms of Army Order No. 45/80 as revised by Army Order No. 12/2009/MT. Learned counsel submits that the action of the respondents in allowing the applicant to appear in Technical Trade Test Class-I, amounts to waiver of the requirement of passing the Technical Trade Test Class-II and, hence, the applicant is entitled to promotion to the rank of Nb Subedar with effect from 10.3.2007.

The learned counsel appearing for the respondents on the other hand, referring to the averments made in the counter affidavit filed has submitted that an incumbent, for the purpose of promotion, is required to pass both the Technical Trade Tests Class-I and Class-II. It has also been submitted that based on the misrepresentation made by the applicant, which is evident from the communication dated 19.06.2010 that he has already cleared the Class-II Test, he was allowed to appear in Class-I Test which he has cleared on 10.03.2007. The learned counsel submits that since subsequently it was found out from the records that the applicant, in fact, did not clear that Class-II Test, he was not granted the promotion to the rank of Nb Subedar based on his clearance of Class-I Test on 10.03.2007, as clearance of both Class-I and Class-II tests are mandatory. It has also been submitted by the learned counsel that during the pendency of the OA the applicant, however, has appeared and cleared the Class-II Test on 04.10.2011 and, accordingly, he has been granted the promotion to the rank of Nb Subedar with seniority from the said date i.e. 4.10.2011.

It is not in dispute that the clearance of both Class-I and

Class-II Tests, as per Army Order, is required for a purpose of promotion to the rank of Nb Subedar. The applicant in the OA has prayed for waiving of the clearance of Class-II Technical Trade Test, which itself demonstrates that the applicant did not clear the Class-II Technical Trade Test. The applicant, however, without clearing the said test appeared in the Class-I Test which he has cleared on 10.03.2007, which was allowed due to misrepresentation by the applicant, as is evident from the communication dated 19.06.2010, the relevant portion of which is reproduced below :

"The case has been examined in detail and found that though the NCO has passed tech upgradation cadre Cl-I and PCJ, the part II order pertaining to passing of Cl II has neither been accepted nor recorded in his service docu. The indl was detailed for Tech Test Cl I erroneously. The then unit of the NCO i.e. HQ 7 Inf Bde was asked to fwd any docu relevant to the NCO's passing Cl II. However no reply was recd from their end. Later on, HQ 33 Corps vide sig No 100201/COS SECTION/GEN dt 20 Apr 10 intimated that the NCO has passed Tech Trade Test Cl II vide HQ ARTRAC part II order No. 0/049/0002/2002 dt 08 Apr 2002 whereas on checking it is found that the part II order pertains to PAL 2001 of the indl and not of Tech Trade Test. In this connection our letter No SR/3390461K/T-11/ER-VI dt 03 May 2010 may please be referred"

The applicant during pendency of the OA has, however, cleared the Class-II Test on 04.10.2011. Accordingly, the applicant has been granted promotion to the rank of Nb Subedar with effect from 20.12.2011 with seniority from 04.10.2011 vide the order of ASC Records (South) dated 06.06.2012.

The requirement of clearance of both Class-II and Class-I Tests being mandatory and the applicant having cleared the Class-II Test on 04.10.2011, he is not entitled to the relief as claimed in the OA. The respondents having given him the promotion as noticed above, the applicant is not entitled to any further relief in the OA.

Accordingly, the OA stands disposed of.

The original documents shall be returned to the respondents after observance of requisite formalities.

Let a plain copy of this order, duly counter signed by the Tribunal Officer, be supplied to the parties after observance of requisite formalities.

(Lt Gen Gautam Moorthy)
Member (Administrative)

(Justice B P Katakey)
Officiating Chairperson