

**FORM NO – 21**  
**(See Rule 102 (1))**

**ARMED FORCES TRIBUNAL, KOLKATA BENCH**

**APPLICATION NO : TA 44 OF 2010 (WP 22743(w)/2007)**

**THIS 12th DAY OF July, 2013**

**CORAM : Hon'ble Mr. Justice Raghunath Ray, Member (Judicial)**  
**Hon'ble Lt. Gen. K.P.D. Samanta, Member (Administrative)**

Ex-SGT Debasish Saha (Service No.699253-K, Trade  
Air Frame Fitter), Son of Shri Radharaman Saha, residing  
At Holding No.70, Panchabati, Post Office: Natagarh  
Sodepur, Police Station – Ghola, Dist. 24 Parganas (North)  
Pin Code – 700 113

..... Petitioner

-VS-

1. Union of India through the Secretary,  
Ministry of Defence, South Block, New Delhi-110 011
2. Chief of Air Staff, Air Head Quarter, Vayu Bhawan, New  
Delhi – 110011
3. Air Officer Commanding (AOC) Air Force Record Office  
(AFRO), New Delhi – 110 011
4. Commanding Officer (CO), No.4, West Bengal (Tech), Air  
Sqn, NCC, Jadavpur University Campus, Kolkata-700 032

..... Respondents

For the petitioner : Mr. Subhash Chandra Basu, Advocate

For the respondents: Mr. D.K.Mukherjee, Advocate

## O R D E R

Per Lt. Gen. K.P.D, Samanta, MEMBER (A) :

This petition was originally filed as a writ petition (No. W.P. 22743 (W) of 2007) before the Hon'ble Calcutta High Court, which subsequently, has been transferred to this Tribunal under operation of Section 34 of AFT Act 2007. After transfer to this Tribunal, the same has been renumbered as TA 44/2010 and has come up before us for hearing.

2. We have heard Mr Subhash Chandra Basu, learned advocate for the applicant and Mr. D.K. Mukherjee, learned advocate on behalf of the respondents.

3. Having heard the learned counsel for both sides and having gone through the pleadings and annexures and other documents placed on record, it transpires that the grievance raised by the applicant in this Writ Petition is two-fold – first, his discharge book has been tampered with to his detriment out of alleged vindictiveness because he filed certain complaint against his Commanding Officer; secondly, he has been denied promotion wrongly by the respondents by not granting him the benefit of two years ante-dated seniority being a Diploma Holder Fitter.

4. The applicant, a Diploma Holder in Mechanical Engineering, was appointed in the Indian Air Force as a direct recruit on 5-3-1987 as Airframe Fitter. During the course of his service, he served at different places to the entire satisfaction of his superior authorities. He has stated that he is also a good sportsman and participated in different sports events organized by the Air Force.

5. In the year 1994, he got married. At that point of time he was posted at Pathankot. Subsequently, in March 1997 he was posted at Ambala Cantt. In March 1999, after

completion of his tenure at that place, he applied for his posting either to Kolkata or Barrackpore on the ground of his parents' illness and further, that his wife was also working as a Staff Nurse at Kolkata in a Government Hospital. Therefore, as per the policy of the Government of India dated 12-6-1997, directing posting of Husband and Wife at the same station, he was eligible for such posting. However, his prayer was not acceded to immediately. Ultimately, he was posted at Kalaikunda in the year 2000. In May 2000, while posted at Kalaikunda, he suffered some ear problems due to prolonged exposure to large noise of supersonic fighter planes and accordingly he was treated for such hearing impairment in Command Hospital, Kolkata. He was found to have been suffering from "Sensory Neural Hearing Loss". The applicant, therefore, made a prayer for his internal posting at Kolkata on medical ground, but he was instead transferred to Assam.

6. Since he was a sportsman, he wanted to participate in a Table Tennis Competition in the Eastern Air Command for which his name was also recommended by the Station Sports Officer on 5-6-2004. However, he was not allowed to move out to participate in the said tournament held at Barrackpore. Being aggrieved, the applicant made a petition on 28-6-2004 for Redressal of Grievance (ROG) against his Sqn Ldr for harassment and for not allowing him to participate in the said sports event. However, according to the applicant, he was pressurized to withdraw such ROG, but the applicant was not inclined to withdraw the same for which he was reprimanded by way of inflicting punishment. The applicant, however, continued to insist for disposal of his ROG for which he was given an interview with CPSO. According to the applicant, the said CPSO was not at all interested to hear his grievance and on the other hand, he was sent to Psychiatrist Ward of

151 Base Hospital, Guwahati for treatment. In 1995 when the new Commanding Officer joined, the applicant submitted a fresh ROG for redressal of his grievance (annexure P18 dt. 14.6.06). Ultimately he received a reply to the ibid ROG vide letter dated 21.6.06 (annexure-P19). In the counter affidavit the respondents have clarified that his participation in the Table Tennis tournament was not considered appropriate since it was found that he was not a National level player. Be that as it may, the applicant ultimately retired from service on 1-4-2007 on completion of his terms and conditions of employment and is in receipt of pension.

7. However, the main grievance of the applicant is that in the discharge book which was issued to him, against Column "Character and General Behaviour", it was initially written as "exemplary" but the word "exemplary" was panned through and it was substituted by the word "indifferent". Similarly, against the column "Trade Proficiency", it was originally written "exceptional", but the word 'exceptional' was struck off subsequently substituted by the word 'satisfactory'. According to the applicant, since he filed ROG against his Commanding Officer, this change was done at his behest by the concerned official of the Record Office and because of such deletion and/ or substitution; he faced much humiliation and dishonour.

8. From the reply affidavit of the respondents we find that in para 4 (XII) at page 5 it is stated as follows:

"On his representation on 28 Jun 2007, and allegation that the entries in the documents issued to him have been tampered by Wg Cdr R Kumar, CO of No 4 Bengal (Technical) Air Sqn NCC. It was verified from the Record Office that as per the records held at the AFRO the alleged entries in the discharge book are "Exemplary" and "Exceptional" with regard to Character and general behavior during service and Trade Proficiency respectively. However, a further direction was passed to the Commanding Officer of 4 Bengal (T) Air Sqn NCC to issue with a fresh discharge book consisting twenty pages only with Commanding

Officer signature finishing on the twentieth page. **Accordingly he was issued with a fresh discharge book on 01 Apr 08 by the then Commanding Officer of 4 Bengal (T) Air Sqn NCC, rectifying the previous errors”.**

9. During the course of hearing Mr Basu, learned counsel for the applicant has admitted that a fresh discharge book with necessary correction has been issued to him. His contention, however, is that this was not an inadvertent error, as contended by the respondents but it was an intentional act on the part of the concerned officer to harass and dishonor him.

10. Mr Mukherjee, learned counsel has, however, disputed such allegation and submitted that when the error was pointed out it was enquired into and thereafter necessary corrected copy was issued.

11. We find from the copy of the discharge certificate annexed to the application from pages 84 to 96 (Annexure P-27) that at page 94, indeed a tampering has been made by scoring out the word “exemplary” and substituting it as “indifferent” and the word ‘exceptional’ has been penned through. This was dated 31<sup>st</sup> March, 2007 and was signed by Commanding Officer R. Kumar. There is of course, no authentication of the corrections that were made. However, we find from the next page which is a Xerox copy of “Information to the DSS & Airmen’s Board” that this was issued by the same Wing Commander R. Kumar on 2-4-2007 and against Column 3 i.e. “Character and General Behaviour “ it was recorded as ‘Exemplary’ and his “Trade Ability” was certified as “Excellent”. In our considered opinion, only two days after the discharge book was issued on 31-3-2007, this certificate was issued and signed by the same authority. Therefore, it gives rises to reasonable doubt if the corrections that were made on 31.3.07 have been made by the signatory himself without any authentication or was done by some

other person with some ulterior motive. It is true that due to such remarks in the Service Certificate, the applicant may have faced some humiliation and dishonor for which he may have a genuine grievance. Such service certificates are generally issued by Record Office and it is presumed that the above corrections may have been made only in that office by some officials without proper authority. We, therefore, direct that the respondent authorities, especially respondent NO. 3 should cause an enquiry and take appropriate corrective steps to avoid any such lapses in future.

12. The other part of the grievance of the applicant is that in the year 2004 when he was working as Sergeant on promotion, he came to know that diploma holders in the trade of Radar Fitter and Elect. Fitter enrolled between 1971 and 1976, as direct entry, were granted two years ante-dated seniority. According to the applicant, he was also directly recruited as Airframe Fitter having diploma, but he was not given such benefit for which he could not be promoted earlier.

13. We find that a reply was given to ROG petition of the applicant on 21.8.06 (annexure-P19) in which it was clearly mentioned that the above benefits were given only in respect of two trades by a circular dated 10 December 1971. According to a subsequent circular dt. 3.9.03, the benefit of two years antedated seniority for promotion purpose will be applicable to those, whose trade was Radar Fitter and Electrical Fitter and who were enrolled during the aforesaid period under the "Direct Entry Diploma Scheme". Therefore, this benefit cannot be granted to the applicant because he was enrolled much later in 1987 and his trade was Airman Fitter. It is further clarified that the applicant's promotion as Gr. III came up in 2004-5 but he could not be considered as he did not pass

JPE Part II examination. He was also considered for higher ranks subsequently in 2005-06 and 2006-07 but he could not make it in accordance with his merit position in panel.

14. The learned advocate for the applicant has contended that this is a clear case of hostile discrimination. According to him, the benefit should be given to all Fitters irrespective of their trades because a sub classification cannot be made within the same class violating Art, 14 of the Constitution.

15. We are, however, not inclined to accept the contention of the Id. adv. for the applicant. Only because nomenclature of two posts is similar, that does not mean they are to be treated to be same in all respects. Equivalence of posts depends upon various factors including job contents, nature of duty and responsibility shouldered etc. It is always within the competence of the employer to decide to grant certain benefits in order to attract suitable candidates in a particular trade. Moreover, the applicant does not fulfill the conditions for such benefit. Firstly, he was not a direct Diploma entrant; he was in fact a Matric entrant. Secondly, he was not enrolled within the specified period between 1971-76. As a matter of fact, he was enrolled in 1987 i.e. more than a decade after the currency of the scheme had ceased. Therefore, he cannot be allowed any benefit from that scheme. Such being the position, question of discrimination does not appear. It is not the case of the applicant that any of his batch-mates was given such benefit while he had been denied the same.

16. Considering the matter from all angles, we do not find any merit in this application which is liable to be dismissed.

17. In the result, the transferred application stands dismissed subject, however, to the observation made in para 11 above. There will no order as to costs.

18. Let a plain copy of the order duly countersigned by the Tribunal Officer be furnished to both sides.

(LT. GEN. K.P.D.SAMANTA)  
ADMINISTRATIVE MEMBER

(JUSTICE RAGHUNATH RAY)  
JUDICIAL MEMBER