

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW**

**Court No. 1**

**M.A. No 779 of 2022 Inre O.A. No 271 of 2021**

Wednesday, this the 10<sup>th</sup> day of August, 2022

**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)  
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

JC-699521L Nb Sub (Nur Tech) Kaushlendra Pratap Singh, Son of Late VP Singh, Resident of Village- Chandpur Harvansh, Post- Dabhasemar , Police Station- Poora Kalander, Tehsil- Sadar, District- Ayodhya, Presently posted with Base Hospital Lucknow.

..... Applicant

Ld. Counsel for : **Shri Vinay Pandey, Advocate**  
the applicant.

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi.
2. Chief of the Army Staff, IHQ of MoD (Army), Sena Bhawan, South Block, New Delhi.
3. The Director General, Armed Forces Medical Services, 108E, Church Road, North Block, Rakabganj, New Delhi – 110001.
4. The OIC, AMC Records, Lucknow Cantt, C/o 56 APO.
5. Commanding Officer/ Commandant, Base Hospital, Lucknow Cantt, Lucknow -02.

..... Respondents

Ld. Counsel for : **Dr. Shailendra Sharma Atal,**  
the Respondents. **Central Govt Counsel**

**ORDER**

**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)**

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

- “(a) Issue/ pass an order or direction of appropriate nature to direct the respondents to allow the applicant to join his service in next higher rank of Subedar as announced by the AMC Records Office letter dated 01.03.2021 (Annexure No 1).
- (b) Issue/ pass any other order or direction directing the respondent to grant the applicant’s original seniority in seniority list after giving the effectiveness of letter dated 01.03.2021.
- (c) Issue/ pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.
- (d) Allow this application with costs.

2. Applicant also filed M.A. No 779 of 2022 for early hearing of Original Application which was allowed vide order dated 08.08.2022.

3. The factual matrix on record is that the applicant was enrolled in the Indian Army on 29.03.2001 as Sepoy, Nursing Assistant. He was promoted to the rank of Naib Subedar (Nb Sub) on 02.08.2013. He was approved for promotion to the rank of Subedar (Sub) with effect from 01.03.2021 vide Army Medical Corp (AMC) Records letter dated 01.03.2021 but he was not promoted. The applicant wrote various letters for promotion but he was not promoted to the rank of Sub. The applicant being aggrieved by denial of promotion to the rank of Subedar has filed present Original Application.

4. Learned counsel for the applicant submitted that applicant was enrolled in the Army as Sepoy Nursing Assistant. He successfully completed General Nursing and Midwifery Course (GNM) and was promoted to the rank of Nb Sub on 02.08.2013. He was awarded with General Officer Commanding in Chief Commendation Card on the occasion of Army Day 2021. Applicant passed promotion cadre course in his trade necessary for the promotion to the rank of Subedar and he was also fulfilling ACR and medical criteria for promotion to the rank of Sub. He was also approved for promotion to the rank of Sub vide AMC Records letter dated 01.03.2021 but he was not promoted. Due to inaction on part of respondents the applicant

is suffering irreparable loss. Learned counsel for the applicant pleaded that direction be given to respondents to promote the applicant as Sub.

5. On the other hand, learned counsel for the respondents submitted that applicant was promoted to the rank of Nb Sub on 02.08.2013. Applicant was awarded "Severe Reprimand" on 08.11.2016 under Section 63 and 39 (a) of Army Act, 1950 while serving with Military Hospital Kasauli. He was placed in low medical category P2 (P) for the disability (a) "AXIAL SOPNDYLOARTHRITIS" and (b) "PRIMARY HYPERTENSION" from 29.05.2019 to 29.05.2021 from 23.06.2020 to 23.06.2022 respectively and was placed in low medical category A3 from 14.01.2021 to 30.06.2021 for the disability (c) "EARLY OSTEOARTHRITIS (RT) KNEE JOINT".

6. Learned counsel for the respondents further submitted that promotion to the rank of Sub was subject to fulfilling promotional qualification and availability of vacancy as applicable to Sub Nursing Technician as per policy in vogue. As per Integrated Headquarters of MoD policy letter dated 10.10.1997, applicant was screened for promotion to the rank of Sub in his own turn in which he was recommended to be promoted on 01.03.2021 but he was not meeting medical

criteria. The applicant was placed in low Medical category A3 for the disability "EARLY OSTEOARTHRITIS (RT) KNEE JOINT" for the period from 14.01.2021 to 30.06.2021 whereas as per medical criteria for promoted to the rank of Sub, ***"Medical category of applicant should be SHAPE-1. In case, in low medical category SHAPE-2 (Temporary/ permanent) except due to psychological, self inflicted injury and obesity and in SHAPE-3 (Temporary/ permanent) as a case of battle casualty can be promoted"***. Since applicant was in medical category SHAPE 3, he was not promoted to the rank of Sub. Unit of the applicant was informed by AMC Record vide letter dated 27.05.2021 that applicant was superseded for promotion due to low medical category. The applicant was again screened for promotion to the rank of Sub and he was recommended for promotion against the vacancy of 01.08.2021 subject to being in acceptable medical category on review and disciplinary criteria. The applicant was upgraded to medical category A-1 by re-categorisation board dated 30.06.2021 held at 160 Military Hospital. In the meantime applicant was awarded "Severe Reprimand" under Section 39 (b) of Army Act 1950 at Base Hospital Lucknow due to over staying of leave granted to him from 02.12.2020 to 02.01.2021. As per paragraph 4 (a) of ADG (PS) policy letter dated 10.10.1997, a JCO who has been

awarded red ink entry for offence under Section 39 (b) of Army Act 1950 will not be eligible for further promotion for a period of next three years from the date of award of recordable red ink entry, hence, applicant was not promoted to the rank of Sub on second occasion. Learned counsel for the respondents pleaded that instant O.A. has no substance and is liable to be dismissed being devoid of merits.

7. We have heard learned counsel for the parties and have perused the material on record.

8. The question before us to decide is 'whether applicant being in low medical category and awarded 'severe reprimand' is eligible for promotion to the rank of Sub'?

9. We find that applicant was promoted to the rank of Naib Sub w.e.f. 02.08.2013. His promotion order for promotion to the rank of Sub was issued vide AMC Records letter dated 01.03.2021 but at that time he was placed in low medical category A3 (Temporary) for the disability "EARLY OSTEOARTHRITIS (RT) KNEE JOINT", hence he was not promoted to the rank of Sub. He was again considered for promotion to the rank of Sub on 01.08.2021 but he was awarded 'Severe Reprimand' for over staying of leave, hence he was not promoted to the rank of Sub second time also. He was not

meeting prescribed criteria for promotion hence, he was not promoted to the rank of Sub in spite of letter of promotion issued by the Record Office twice.

10. Resultantly, in view of AMC policy letters on the subject, we hold that the claim of applicant for grant of promotion to the rank of Sub has rightly been rejected by the respondents as per rules which need no interference. Resultantly, O.A. is **dismissed**.

11. No order as to costs.

12. Pending Misc. Application(s), if any, shall stand disposed of.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)  
**Member (A)** **Member (J)**

Dated: 10 August, 2022

Ukt/-