

Form No. 4 **Court No 1**
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

O.A. No. 155 of 2020

Ex Sub Subhas Chandra
 By Legal Practitioner for the Applicant

Applicant

Versus

Union of India & Others
 By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>04.08.2022</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></p> <p>Order pronounced.</p> <p>O.A. No. 155 of 2020 is dismissed.</p> <p>For order, see our judgment passed on separate sheets.</p> <p>Misc. Applications, pending if any, shall be treated as disposed of accordingly.</p> <p style="text-align: center;">(Vice Admiral Abhay Raghunath Karve) Member (A)</p> <p style="text-align: center;">(Justice Umesh Chandra Srivastava) Member (J)</p> <p>rathore</p>

COURT No.1**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****ORIGINAL APPLICATION No. 155 of 2020**

Thursday, this the 04th day of August, 2022

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

No JC-700556W Ex Sub Subhas Chandra, S/o Late Mool Chandra, R/o House No 3/188, Dibiyapur, Vill-Amrahut, P.)- Khujaphool, Distt-Kanpur Dehat, Pin-209125, (UP).

..... Applicant

Learned counsel for the : **Shri KP Datta**, Advocate
Applicant

Versus

1. Union of India, through Secretary, Min of Defence, New Delhi-110011.
2. The Chief of Army Staff, COAS Sectt, IHQ of MoD (Army), South Block, New Delhi-110001.
3. Officer in Charge, AMC Records, Lucknow, PIN-226001 (UP).
4. Commanding Officer, Military Hospital, Doda, C/o 56 APO.
5. CDA (Pension), Drsauptadi Ghat, Allahabad (UP).
6. PAO (OR) AMC, Lucknow-226002 (UP).

.....Respondents

Learned counsel for the : **Shri Asheesh Agnihotri**, Advocate
Respondents. Central Govt. Counsel

ORDER (Oral)

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

- (a) *To issue/pass an order or direction to set aside/quash the letter No703000A/LC/NE/Gen dated 24.12.2019 passed by respondent No 3, for rejecting applicants appeal against temporary supersession and delay promotion to the rank of Nb Subedar on 10.10.2014 instead of 01.06.2014, subsequently adversely affected his career progression due to delay promotion to the rank of Subedar on 07.02.2017, and denied his further promotion to the rank of Sub Major which is annexed as Annexure No A-1 to this Original Application.*
- (b) *To issue/pass an order or direction to respondents concerned to quash/set aside the ACR for the years 2013, subsequently follows reassessment.*
- (b) *To issue/pass an order or direction to Records AMC, Lucknow to grant his notional seniority w.e.f. 01.06.2014 to the rank of Nb Subedar, accordingly seniority of promotion to the rank of Subedar, and consider to grant his further promotion to the rank of Sub Major with all consequential benefits and arrears, after fixation of correct band pay while in active service.*
- (d) *To issue/pass an order or direction to Records AMC, Lucknow to grant him the genuine scope to reinstate in active service, and consider for further promotion to the rank of Sub Major with seniority till the age of 54 years, based on Corps seniority, same to this batch mates during the same periods of service.*
- (e) *To issue/pass any other order or direction as this Hon'ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant.*
- (f) *To allow this original application with costs.*

2. The undisputed facts of the case are that the applicant was enrolled in Army Medical Corps (AMC) on 14.04.1989 and during course of his service he was promoted to the rank of Subedar and was discharged from service on completion of

terms of engagement under Rule 13 (3) I (i) (a) of Army Rules, 1954 w.e.f. 01.05.2019 (FN).

3. The applicant was screened for promotion to the rank of Naib Subedar against the vacancy of 01.06.2014 on his own turn as per Corps seniority, however he was found ineligible for promotion to the rank of Naib Subedar due to lack of Annual Confidential Report (ACR) grading criteria, hence he was temporarily superseded for promotion to the rank of Naib Subedar up to 01.10.2014 due to lack of ACR grading criteria. This was conveyed to the applicant vide letter dated 04.04.2014. His ACR for the year 2014 was initiated and received by the Records and he was again re-considered for promotion to the rank of Naib Subedar against vacancy of 01.10.2014. He was found eligible for promotion to the rank of Naib Subedar as since he earned Above Average grading he was promoted to the rank of Naib Subedar w.e.f. 10.10.2014 with seniority w.e.f. 01.10.2014 and subsequently promoted to the rank of Subedar w.e.f. 01.02.2017. Later, he was granted two years service extension from 19.04.2017 to 18.04.2019 and he was discharged from service after completion of terms of engagement. The grievance of the applicant is that he ought to be promoted to the rank of Naib Subedar w.e.f. 01.06.2014 instead of 01.10.2014 and subsequent promotions thereafter keeping in view of his

seniority for promotion to the rank of Naib Subedar w.e.f. 01.06.2014.

4. The averments made by learned counsel for the applicant are that the applicant was enrolled in AMC on 19.04.1989 and during the course of his service he served in different parts of the country. He further averred that on completion of prescribed courses in different levels, he was promoted to the rank of Hav on his own turn but there was a temporary supersession and delay in his promotion to the rank of Naib Subedar by more than three months which resulted in his delayed promotion to the rank of Subedar. Arguments advanced by learned counsel for the applicant is that the applicant was not promoted to the rank of Naib Subedar on 01.06.2014 unjustly and arbitrarily without any valid reasons. His other version is that Records AMC did not take initiative to communicate the deficiency of ACR grading to his unit i.e. 423 Field Hospital. In para 4.5 of O.A. it was submitted that the applicant was posted out during July 2013 without initiation of ACR which caused deficiency in number of ACRs at the time when he was due to be considered for promotion to the rank of Naib Subedar. In para 4.7 of O.A. it was submitted that there was inordinate delay on the part of AMC Records Lucknow to review ACR grading of the applicant which resulted in his delayed promotion to the rank of Naib Subedar and

thus, promotion to the rank of Subedar was also delayed by three months and subsequent promotion to the rank of Sub Maj. Applicant's learned counsel further submitted that appeal dated 22.05.2019 submitted by the applicant was turned down in mechanical manner without application of mind which needs to be adjudicated and therefore the applicant deserves promotion to the rank of Naib Subedar w.e.f. 01.06.2014.

5. Per contra, learned counsel for the respondents contended that the applicant was considered for promotion to the rank of Naib Subedar in his own turn with his batch matches as per corps seniority against the vacancy of 01.06.2014 but was superseded by his eligible and qualified juniors as he did not fulfil the ACR grading criteria at the time of promotion as per policy letter dated 10.10.1997. On the point of advance CR as contended by the applicant, respondents' learned counsel submitted that there is a provision of initiation of early confidential report upto 60 days in advance (i.e. 02 Aug) prior to due date of initiation of ACR due to vacation of appointment either by IO or the ratee but in the instant case since the ratee was posted out on 10.07.2014, his early confidential report was not due and hence could not be initiated. He further submitted that there is no provision for initiation of advance ACR. He pleaded for dismissal of O.A.

6. Heard Shri KP Datta, learned counsel for the applicant and Shri Asheesh Agnihotri, learned counsel for the respondents and perused the record.

7. The facts necessary for adjudication of the present controversy are enumerated in succeeding paragraphs.

8. Applicant was enrolled in the Army Medical Corps on 14.04.1989 and during the course of his service he was promoted to the rank of Havildar. His next promotion to the rank of Naib Subedar was due on 01.06.2014 based on preceding five CRs in the rank of Havildar/Naik. We have perused the records produced by the respondents, as per which following five CRs were considered for his promotion to the rank:-

Year	ACR grading given by			Final grading	Recommendation (R)/Non recommendation (NR) for promotion by		ACR initiated in the rank	Unit in which ACR initiated
	IO	RO	SRO		IO	RO		
2008	8 (Above Average)	7 (Above Average)	-	7 (Above Average)	R	R	Nk	MH Fatehgarh
2009	7 (Above Average)	7 (above Average)	-	7 (Above Average)	R	R	Nk	MH Fatehgarh
2010	8 (Above Average)	8 (Above Average)	-	8 (Above Average)	R	R	Nk	MH Fatehgarh
2011	Non Initiation Report							
2012	6 (High Average)	6 (High Average)	-	6 (High Average)	R	R	Hav	MH Doda
2013	7 (Above Average)	7 (Above Average)	-	7 (Above Average)	R	R	Hav	MH Doda

9. Based on policy letter dated 10.10.1997, the following is the criteria for promotion to the rank of Nb Sub:-

(i) Only last five reports will be considered out of which minimum three reports must be in the rank of Havildar and in case of shortfall rest may be in the rank of Naik.

(ii) At least three out of last five reports should be 'Above Average' with a minimum of two in the rank of Havildar and remaining should be not less than 'High Average'.

10. Thus, from the aforesaid it is abundantly clear that the applicant was required to possess two CR entries of 'Above Average' gradings in rank of Havildar to enable him to get next rank but since the applicant was having only one 'Above Average' entry in the rank of Havildar, he was not eligible to be considered for promotion to the next rank on 01.06.2014 which he is claiming. Later, on being earned Above Average CR in the rank of Havildar, he became eligible for promotion to the next rank and thus he was promoted to the rank of Naib Subedar w.e.f. 10.10.2014 with seniority as on 01.10.2014.

11. Having given our anxious consideration and keeping in view the policy in vogue, since the applicant was lacking the minimum entries in the relevant Annual Confidential Reports required for promotion to the next rank, we are of the considered view that the respondents have rightly not

considered the applicant for promotion to the rank of Nb Sub on 01.06.2014.

12. In view of the above, the O.A. is **dismissed** being devoid of merit.

13. No order as to costs.

14. Miscellaneous application(s), pending if any, stand disposed of.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

Dated: 04.08.2022
rathore

(Justice Umesh Chandra Srivastava)
Member (J)