

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**ORIGINAL APPLICATION No. 291 of 2017**

Monday, this the 08th day of August, 2022

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

Ex-Havildar Ram Chandra (Army No-14564360W), S/o Shri Dev Muni, Permanent Resident of Village-Zamin Beruki, Post-Chakara, P.S.-Haldharpur, District-Mau, Pin-221705, (UP).

Learned counsel for: **Shri Virat Anand Singh**, Advocate
the Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi.
2. Chief of the Army Staff, Integrated Headquarter of the Ministry of Defence (Army), South Block, New Delhi-110011.
3. Directorate General, Electronic Mechanical & Engineers (EME) Personal, IHQ of MoD (Army), DHQ, PO-New Delhi-110105.
4. Officer-in-Charge Records Electronic Mechanical & Engineers (EME), Secunderabad.
5. Commanding Officer, 215 Field Workshop, C/o 56 APO.

.....Respondents

Learned counsel for the : **Shri Bipin Kumar Singh**, 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:-

(i) Issue/pass an order or direction of appropriate nature to the respondents to cancel/quash the discharge order dated 28.02.2010 being per se illegal, arbitrary and capricious in nature.

(ii) Issue/pass an order or direction of appropriate nature to the respondents to cancel/quash the decision of Chief of the Army Staff order dated 28.07.2016 being improper and without perusal of the relevant document.

(iii) Issue/pass an order or direction of appropriate nature to the respondents to cancel/quash all the directions of DGEME Pers letter dated 13.10.2016 and subsequently decision of OIC Records letter dated 19.08.2016 being per se illegal.

(iv) Issue/pass an order or direction to the respondents to promote the applicant to the rank of Naib Subedar for which he possesses all qualitative requirements, age criteria and has successfully completed the promotion cadre to the rank of Naib Subedar. He may be given all service and monetary consequences.

(v) Issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.

(vi) Allow this application with costs.

2. The salient facts in nutshell are that the applicant was enrolled in the Army on 04.02.1984 and discharged from service on 28.02.2010 (AN) on fulfilling the conditions of his enrolment under Rule 13 (3) III (i) of Army Rules, 1954. During the course of his service he was promoted to the rank of Havildar w.e.f. 03.07.2003 with an ante date seniority of 01.06.2003.

3. While in service he underwent promotion cadre from Havildar to Naib Subedar and qualified. However, since

strength in the trade of Auto Technical ('B' Vehicle) was surplus, the applicant could not be promoted till his date of discharge even though he qualified the promotion cadre. Being aggrieved by denial of promotion to the rank of Naib Subedar, applicant filed O.A. No. 64 of 2010 before this Tribunal for quashing his discharge order dated 01.02.2010 which was disposed of vide order dated 01.10.2015 directing applicant to prefer statutory appeal within two weeks with a further direction to respondents to decide statutory appeal within a period of three months by a speaking and reasoned order. Accordingly, applicant preferred appeal dated 05.10.2015 which was rejected by Chief of the Army Staff vide order dated 28.07.2016; hence this O.A. has been filed.

4. Learned counsel for the applicant submitted that the applicant was enrolled in the Army on 04.02.1984 and during the course of his service he was promoted to the rank of Naik and Havildar on his own turn. He further submitted that the applicant qualified the promotion cadre from Havildar to Naib Subedar for the period 27.07.2009 to 24.10.2009 but even then he was not promoted to the next higher rank. His further submission is that the applicant was the only person who could be considered for promotion to the next rank as his batchmates had crossed the upper age limit for promotion to next rank. He further submitted that after retirement of Radha Krishnan Unni J in the month of January 2010 he became senior most person to be promoted to the rank of Naib

Subedar on 01.02.2010, however the respondents discharged him from service on 28.02.2010 on the ground that since the vacancy in the Auto Technical 'B' Vehicle, to which the applicant belonged to, was surplus, no promotion in the above trade could be granted after the applicant qualified the promotion cadre.

5. Learned counsel for the applicant further submitted that OIC Record was fully aware of the wastage rate, and if there was no vacancy in the month of February, 2010, then why he was made to undergo promotion cadre during the year 2009. It was further submitted that the Record Office was aware about surplus in Auto Technical 'B' trade, therefore, applicant's DPC should not have been held in the year 2009 which made him eligible for promotion to the next higher rank. Learned counsel for the applicant further submitted that his statutory petition dated 05.10.2015 was decided by Chief of the Army Staff based on improper comments of OIC Records without perusal of documents which is arbitrary and non application of mind. He pleaded to quash his discharge order dated 28.01.2010, order dated 28.07.2016 passed by Chief of the Army Staff, order dated 13.10.2016 passed by DG EME (Pers) and decision of OIC Records dated 19.08.2016 and promote the applicant to the post of Naib Subedar with all consequential benefits.

6. On the other hand, learned counsel for the respondents submitted that the applicant was detailed to undergo

promotion cadre course (CCHNS) scheduled to be conducted at 1 EME Centre, Secunderabad from 27.07.2009 to 24.10.2009 for promotion from Havildar to Naib Suibedar. However, since strength in the trade of Auto Technical ('B' Vehicle) was surplus, the applicant could not be promoted even though he had qualified in CCHNS. In this regard details of seniority list of personnel who could not be promoted during the period 26.01.2010 to 28.02.2010 were supplied to the applicant vide letter dated 19.03.2010. He further submitted that at the time when the applicant came up for promotion as per his seniority along with his batchmates, there was no vacancy for promotion to the rank of Naib Subedar. He further submitted that the applicant would have further been considered for promotion in the subsequent months if he was in service but he was discharged from service w.e.f. 28.02.2010 (AN) on fulfilling the terms and conditions of his service as laid down in Govt of India, MoD (Army) letter dated 03.09.1998 and 21.09.1998. It was further submitted that no promotion was issued against the vacancy of Sub Radhakrishnan Unni J who retired on 31.01.2010 as the trade already held surplus. It was further submitted that during the applicant's discharge drill (03.02.2010 to 28.02.2010) at EME Depot Battalion it was further clarified that applicant could not be promoted to the higher rank due to non availability of vacancy.

7. Learned counsel for the respondents further submitted that applicant's statutory appeal was duly examined by COAS in light of available vacancies in his trade but it was rejected on the ground that there was no vacancy of Naib Subedar in the trade of Auto Tech 'B' Vehicles till his retirement i.e. 28.02.2010 and hence he was discharged from service on completion of his terms of engagement. He pleaded for dismissal of O.A.

8. Heard Shri Virat Anand Singh, learned counsel for the applicant and Shri Bipin Kumar Singh, learned counsel for the respondents and perused the record.

9. Applicant was enrolled in the Army in the trade of Auto Tech ('B' Vehicles) on 04.02.1984. During the course of his service he was promoted to the rank of Havildar on 03.07.2003 with ante date seniority from 01.06.2003. He was detailed for promotion cadre from 27.07.2009 to 24.10.2009 which he successfully completed and became eligible for promotion to the rank of Naib Subedar. However, since strength in the trade of Auto Tech ('B' Vehicle) was surplus, he could not be promoted even though he had qualified for next higher rank. Further, at the time when the applicant came up for promotion as per his seniority along with his batchmates, there was no vacancy for promotion to the rank of Naib Subedar.

10. We have observed that the applicant would have been considered for promotion in the subsequent months had he

been in service, however since he was discharged from service w.e.f. 28.02.2010 on fulfilling the terms and conditions of his service, he could not be promoted. After discharge from service on a direction being made by this Tribunal, applicant submitted a statutory complaint dated 05.10.2015 which after examination was rejected by Chief of the Army Staff vide order dated 28.07.2016. The aforesaid rejection order being crystal clear is excerpted below:-

"1. No. 1564360W Ex. Hav/Auto Tech (B Veh) Ram Chandra EME has submitted a Statutory complaint dated 05 Oct 2015 against bon grant of promotion to the rank of Naib Subedar. The main points of the complaint are:-

(a) The Ex. NCO avers that his non grant of promotion to the rank of Naib Subedar is due to the abject, arbitrary and illegal approach of the higher authorities in the instant case. He states that he deserved the promotion which was entitled to him and he also met all the Qualitative Requirements.

(b) The Ex. NCO states that he was enrolled in the Army in the Corps of EME on 04Feb 1984. He was promoted to the rank of Naik on 26 Mar 1988 and subsequently to the rank of Havildar on 03 Jul 2003 with ante date of seniority on 01 Jun 2003. As NCO, he could not be promoted to the rank of Naib Subedar and he has been superannuated on 29 Feb 2010. Giving details of the case he states that he was detailed on promotion cadre Havildar to Naib Subedar from 27 Jul 2009 to 24 Oct 2009 which he passed successfully. This course was conducted at EME Centre in which 23 Havildars had participated. He further states that promotion for the trade of Auto tech (B Veh) in EME is dependent on the wastage rate i.e. based on vacancy caused by the seniors on retirement /promotion.

(c) He avers that as on 26 Jan 2010 he was the only individual in the Seniority List who could have been promoted to Naib Subedar as all other individuals in the list had crossed the authorized age for promotion to Naib Subedar. He also avers that Sub Auto Tech (B Veh) Radha Krishnan Unni J was discharged from service on superannuation on 31 Jan 2010 and he was to be promoted to the rank of Naib Subedar on 01 Fen 2010. He gives the details of the wastage rate and the promotions carried out in his trade and rank since 31 Oct 2009 which is as per table below:-

Ser No	Month	Wastage Rates	Nos	Promotions to rank of Nb Sub	Nos
(i)	Oct 09	Sub Suresh Singh	03	Hav. Niranjan Singh	03
(ii)		Sub Devi Dutt		Hav Shushant Kunar	
(III)		Sub Ram Swan		Hav M K Yadav	
(iv)	Nov 09 Dec 09	Sub B N Pandey	Nil		Nil
(v)		Sub Desh Raj	02	Hav.	
(vi)	Jan 10	Sub Radha Krishan Unni J	01	No promotion issued through the	

(d) The Ex. NCO avers that EME Records followed the wastage rate and promotions strictly as per seniority cum merit basis. However, he states that in his case discrimination was done due to bias and motivated approach. He states that he has all requisite qualitative requirements including proper ACRs and he had done the promotion cadre also. As per service conditions and terms he was entitled for promotion. He states that by not getting the promotion he has been denied future promotions to the ranks of Sub & Sub Maj as well.

2. The NCO has requested for the following:-

(a) The Discharge Order dated 28Feb 2010 issued be cancelled/quashed being arbitrary and illegal in nature.

(b) He be promoted to the rank of Nb Sub.

3. I have perused the Statutory Complaint submitted by the NCO and analyzed the same in conjunction with relevant rules, policy letters, recommendations of the intermediary authorizes and viewed it against the redress sought. Considering the facts and circumstances of the case the following has emerged.

(a) The NCO successfully passed the requisite promotion cadre Havildar to Naib Subedar conducted with effect from 27 July 2009 to 24 October. However, passing of the promotion cadre par-se does not guarantee the promotion of an individual as other criteria for promotion viz Annual Confidential Reports, Medical/Discipline criteria and availability of vacancy for promotion for that particular trade/rank is also to be examined prior to the issuance of promotion.

(b) The NCO was not promoted on retirement of Subedar Radha Krishan Unni J on 31 Jan 2010 due to the fact that post the review of manpower carried out in January 2010 by EME Records, for JCOs in Auto Tech (b Veh) trade were found surplus. Accordingly, no promotion was issued on 01 February 2010 so as to liquidate the surplus as per the promotion policy in vogue.

(c) The averment of the NCO that he was made to retire illegally on 28February 2010 due to based approach of EME Records is incorrect, as the NCO was discharged from service on 28February (A/N) on completion of his terms of engagement (26 years of service in the rank of Havildar) as per policy in vogue.

4. The NCO could not be promoted to the rank of Nb Sub due to lack of vacancy as per the extant policy, applied universally to all similarly placed individuals. Hence, no injustice can be deemed to have been done to the NCO on this account.

5. I, thereof, direct that the Statutory Complaint of the NCO be rejected.

6. The NCO has informed accordingly."

11. After statutory representation being rejected vide order dated 28.07.2016 applicant preferred legal notice dated 18.08.2016 which was replied by EME Records vide letter dated 06.10.2016 annexing therewith annexure R-6 which relates to vacancy position of JCOs of Auto Tech 'B' Vehicles which is as under:-

As on 01 Dec 2009			Month wise wastage	Total Vac	Already promoted	Being promoted	Res	Bal
Auth	Held	Sur Def	-	-	-	-	-	-
201	201	- -						
			Jan 10	02	-	02	-	-
			Feb 10	01	-	-	-	01
			Total	03		02	-	01

12. Additionally, we have also perused letter dated 10.01.2013 in which month wise details of authorised/holding strength of JCOs of Auto Tech 'B' Vehicles has been mentioned which for convenience sake is reproduced as under:-

Month	Auth	Held	Defi	Surplus
Jan 2010	202	206	-	04
Feb 2010	202	205	-	03
Mar 2010	202	205	-	03
Apr 2010	202	200	02	-

13. From the record it transpires that holding state of JCOs in all categories is generally reviewed by Record Office at the end of year. If it is found surplus, it is liquidated in subsequent months. From the aforesaid table we observe that in February 2010 authorisation of Auto Tech 'B' Vehicles JCOs was 202 whereas 205 JCOs were existing making 03 JCOs surplus. These three vacancies were liquidated in subsequent months to cope-up with the situation and that was the reason the applicant was not promoted in the month of Feb 2010 as there were three JCOs surplus in his category.

14. Indian Army is functioning on rank structure basis and promotions are issued based on number of vacancies available. In the result, an inference may be drawn that had the applicant been in service on the date of occurrence of vacancy as per his turn/seniority, he would certainly have been promoted being

qualified for such promotion but the facts on record clearly establish that during the month of February 2010 no vacancy was available, rather there were 03 vacancies surplus, applicant could not be promoted and he was discharged from service on completing his terms of engagement.

15. During the course of hearing learned counsel for the applicant has cited two case laws in support of his claim for promotion to the rank of Naib Subedar. We have gone through both the case laws and we find as under:-

(a) O.A. No 473 of 2010 decided on 18.03.2016, Hav BP Mishra - In this case the O.A. was allowed on the ground that applicant was not detailed to undergo promotion cadre while he was posted in Army Headquarters.

(b) O.A. No. 50 of 2013 decided on 12.08.2016, Ex Hav SK Parida-In this case the O.A. was allowed on the ground that applicant's CR was delayed to reach Record Office.

16. Applicant was considered for promotion to the rank of Naib Subedar w.e.f. 01.02.2010 by Departmental Promotion Committee (DPC) based on the anticipated vacancies drawn on the available wastage data held with EME Records. However, final promotion on the date of implementation was required to be confirmed on the basis of actual vacancies existing as on date of promotion, which being none he was not promoted. Hence, submission of the applicant that he had cleared the DPC even then he was not promoted has no substance. In this regard it may be submitted that merely holding DPC and

considering name of applicant as a case for promotion does not automatic entitle him for promotion as an absolute right. In the month of January 2010 we find that four JCOs were surplus in the Corps strength. Since there was surplus strength of Four JCOs, there was no question of further promotion till liquidation of the surplus personnel (para 11 above) as per policy in vogue. As per aforesaid table, vacancies occurred in the month of April 2010 after liquidation of surplus JCOs and by that time the applicant had already retired from service. Applicant's contention that he was the senior most person to be promoted to the higher post is factually correct provided there existed a vacancy for promotion to the rank of Naib Subedar. We also find that since none of the persons junior to the applicant was promoted till date of his retirement, there seems no malafide intention on the part of the respondents. In this case the applicant was not promoted to the higher rank only due to non availability of vacancy of Naib Subedar rank and the circumstances led to discharge him from service without promotion.

17. In view of the above, O.A. is devoid of merit and deserves to be dismissed. It is accordingly, **dismissed**.

18. No order as to costs.

19. Miscellaneous applications, pending if any, stand disposed of.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 08.08.2022

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