

**RESERVED****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 302 of 2017**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-835284-P Naib Subedar Devendra Prasad, S/o Shri (Late) Prameswar Prasad, R/o (Permanent) House No N/77/1, West Colony, Post-New Bongaigaon, Distt-Bongaigaon (Assam)-783381 and is presently posted at No 730 Field Post Office, PIN:900730, C/o 56 APO, Meerut (UP).

Learned counsel for the: **Shri Shailendra Kumar Singh**, Advocate Applicant

Versus

1. Union of India, through the Secretary to Government of India, Ministry of Defence, South Block, Raisina Hills, New Delhi-110011.
2. Chief of Army Staff, Integrated Headquarters of Ministry of Defence (Army), South Block-III, New Delhi-110011.
3. Quarter Master General, IHQ of MoD (Quarter Master General Branch), 3<sup>rd</sup> Floor, 'A' Wing, Sena Bhawan, New Delhi-110011.
4. Additional Directorate General of Army Postal Service, PIN-908700, C/o 56 APO.
5. OIC Records, Army Postal Service Records, PIN-900746, C/o 56 APO.
6. Officer Commanding, No 9 Inf Div Postal Unit, PIN-902209, C/o 56 APO.

.....Respondents

Learned counsel for the : **Dr. Shailendra Sharma Atal**, Advocate Respondents.  
Central Govt. Counsel

## **ORDER**

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

*(i) To summon the respondent No 3 letter dated 03 May 2017 and set aside the same wherein applicant's deferment his repatriation for a period of six months with effect from 30.09.2017 has been denied as it suffers from the vice of arbitrariness.*

*(ii) To issue/pass an order or direction of an appropriate nature to the respondents to allow the applicant to complete his tenure of 03 years of service in the JCO rank up to 11 Apr 2018 in Army Postal Service.*

*(iii) To impose exemplary cost on respondent No 6 for dishonoring Hon'ble AFT (PB) New Delhi order dated 21.12.2016 and Hon'ble AFT (RB) Kolkata order dated 02.05.2017 and giving more weightage to QMG Branch letter dated 15 May 2017 over such judicial orders.*

*(iv) Any other relief as considered deemed fit and proper by the Hon'ble Tribunal.*

2. Brief facts of the case are that the applicant had voluntarily joined Army Postal Service (APS) on 02.04.2004 on deputation as a Warrant Officer on a short term engagement from department of posts as per Postal Manual-1937. During the course of his service he was promoted to the rank of Naib Subedar. As per Govt of India MoD letter dated 19.03.1985 initial term for deputationist is 18 months. The criteria and condition for retention of deputationists beyond 18 months is laid down in letter dated 21.09.2016 (SOP for screening of deputationists of APS Corps). As per Army Headquarters letter dated 22.09.2016 (Annexure-7) a Board of Officers (BOO) was constituted on 26.09.2016 to conduct Screening Board in respect of deputationists. In compliance of the recommendations of BOO

APS Record Office issued repatriation order No 36/2016 in which applicant's name figured at serial number 29 of the list and he was to be repatriated w.e.f. 31.12.2016. Thereafter, in order to facilitate seamless functioning of APS and to provide lead time for implementation of recommendation of BOO, IHQ of MoD (Army) issued letter dated 26.12.2016 mentioning therein fresh repatriation schedule of the persons who were not meeting various eligibility criteria and therefore, a consolidated fresh repatriation order No 38/2016 was issued in which applicant's name figured at serial number 288. As per fresh repatriation schedule the applicant was to be struck of strength (SOS) of the Army w.e.f. 30.09.2017. As per policy if a junior commissioned officer of Army Postal Service completes three years in the rank he, on repatriation to parent department, is provided inspector rank post. Since the applicant was promoted to the rank of Naib Subedar w.e.f. 11.04.2015 he would have completed three years on 11.04.2018 but since his repatriation order was issued to be SOS from the Army on 30.09.2017 before completion of three years in the rank of JCO he preferred representation dated 07.03.2017 (Annexure A-6) to the competent authority for deferment of his repatriation order to enable him to complete three years in the rank which he was holding but the same was rejected vide order dated 15.05.2017 (Annexure A-1). Thereafter, applicant preferred various representations on the subject which were returned unactioned in light of QMG Branch

letter dated 15.05.2017. Applicant had filed this O.A. while he was serving in APS for deferment of his repatriation till completion of three years in the rank which he was holding but during pendency of this petition he has been repatriated in the department from where he came to APS.

3. Learned counsel for the applicant submitted that the applicant, being on deputation to APS, was promoted to the rank of Naib Subedar on 11.04.2015 and he would have completed three years in the rank on 11.04.2018. His submission is that to enable him to assume inspector rank after repatriation in his parent department he ought to be permitted to complete three years in present rank. He further submitted that if he is repatriated to his parent department before completion of three years in the rank he would be losing certain benefits in his parent department as held in para 87 to 89 of Postal and Telegraph Manual Volume

4. Learned counsel for the applicant further submitted that since the Hon'ble AFT, PB New Delhi has passed interim order dated 21.12.2016 in O.A. No 1655 of 2016, **Nb Sub Munavar Soofie Syed vs UOI & Ors**, in which relief was granted to the applicant to complete three years tenure in the rank, therefore applicant deserves to be granted relief. He further submitted that a similarly situated Naib Subedar was allowed interim relief by AFT RB Kolkata vide order dated 02.05.2017 in O.A. No 44 of 2017, **Nb Sub Munavar Soofie Syed vs UOI & Ors**, therefore

applicant be permitted to serve till April 2018 to make him eligible to hold inspector rank post after repatriation in his parent department. The applicant once again submitted his representation dated 12.06.2017 in light of order dated 21.12.2016 but 9 Inf Div Postal Unit returned his application vide letter dated 23.06.2017 quoting reference of QMG Branch letter dated 15.05.2017

4. Learned counsel for the applicant further submitted that the applicant was diagnosed to be suffering from 'Primary Hypertension' and his present medical category is P2 (Permt) for two years and his next re-categorization medical board was due on 09.01.2019. He further submitted that after medication his blood pressure became in acceptable limits as may be seen from his sick diary (Annexure A-11), therefore he is likely to be placed in SHAPE-I medical category in the next review medical board to be held on 09.02.2019.

5. Learned counsel for the applicant has also emphatically relied upon the Hon'ble Apex Court judgment rendered in the case of **Veerendra Kumar Dubey vs COAS**, (JT 2015) 9 SC 394 wherein it was pointed out that the importance of the truism that termination of the individual's service is an extreme step which ought to be taken if the facts of the case so demands. He pleaded that respondents be directed to issue reversion order of the applicant to APS to enable him to complete three years service in the JCO rank.

6. On the other hand, learned counsel for the respondents submitted that the applicant had voluntarily joined in Army Postal Service Corps on 02.04.2004 as a deputationist from Department of Posts as per Postal Manual War-1937 (Annexure R-1) and his term of engagement was 18 months. He further submitted that terms of engagement was revised vide GOI, MoD letter dated 19.03.1985 (Annexure R-2) as per which he was enrolled in the Army Postal Service Corps under Army Act for field service on short term engagement i.e. 18 months/so long his services may be required subject to being in acceptable medical category i.e. SHAPE-I. It was further submitted that since the applicant and other deputationists were placed in low medical category a case was taken up by Director of Accounts (Postal), Nagpur for taking approval from competent authority for their further retention in APS. On receipt of aforesaid request, Adjutant General's Branch IHQ of MoD (Army) vide letter dated 21.09.2016 issued SOP for screening of deputationists of APS Corps (Annexure R-6) which laid down certain criteria and conditions for retention of deputationists beyond 18 months. He further submitted that based on this SOP a Board of Officers was constituted on 26.09.2016 which gave its report and based on this report IHQ of MoD (Army) issued directions to ensure compliance of BOO. Accordingly, discharge order dated 31.12.2016 of the applicant was issued for his repatriation to his parent department on 30.09.2017 being placed in low medical category.

7. Learned counsel for the respondents further submitted that the applicant was promoted to the rank of Naib Subedar on 11.04.2015 by relaxation given by Department of Posts to its employees serving in Army Postal Service for promotion in Army only. He further submitted that Department of posts grants certain concessions to its employees serving in Army Postal Service based on para 8 of Postal Manual (War) India-1937 as per which *'an official may be given promotion to higher appointment in the Army Postal Service, but such promotion does not entitle him to a corresponding promotion in the parent cadre'*. It was further submitted that as per para 87 of Postal Manual, a postal employee who gets promoted in the Army, on repatriation is put below the approved list of Postal Department which shows that it is an incentive given to the personnel serving in the Army Postal Service by Department of Posts and is purely an internal policy of Department of Posts. This has not been ratified by Ministry of Defence or the Adjutant General's Branch. In support of his contention learned counsel for the respondents has relied upon order dated 03.02.2012 passed by the Hon'ble AFT, PB, New Delhi in O.A. No 280 of 2011, **WO Jitendra Kumar vs UOI & Ors**. He pleaded for dismissal of O.A.

9. Heard Shri Shailendra Kumar Singh, learned counsel for the applicant and Dr. Shailendra Sharma Atal, learned counsel for the respondents and perused the material placed on record.

10. The applicant was inducted in Army Postal Service Corps on 02.04.2004 as deputationist from Department of Posts and his initial duration was of 18 months. Terms and conditions for APS personnel are laid down in Clause 237 (a) which for convenience is reproduced as under:-

*"237. Those who have completed their initial period of engagement will be transferred to their parent department in the following order:-*

*Personnel who have outlived their usefulness and whose retention is not considered necessary in the interest of service will be re-transferred irrespective of the manpower position. Officer Commanding units will be competent to order such retransfer after obtaining approval of concerned Superior Postal Officer through proper channel."*

11. Further, Govt of India, Min of Defence vide letter dated 19.03.1985 has laid down following terms and conditions of service of Posts and Telegraph department personnel as under:-

- "1. x x x x x*
- 2. The duration of engagement will be 18 months and so long thereafter as their services may be required.*
- 3. x x x x*
- 4. Medical/Physical Standards-They should be in medical category 'A' and meet physical standards as prescribed from time to time.*
- 5. Discipline-They will be governed by the Army Act and other orders applicable to Army personnel, during their service in the Army Postal Service.*
- 6. x x x x"*

12. He was retained in Army Postal Service Corps so long as his services were required as per Govt of India letter dated 19.03.1985. The applicant was appointed as Warrant Officer of non-regular cadre (deputationist) upto the age of 54 years as per MoD letter dated 26.04.1999. Thus, from the aforesaid it is clear that Warrant Officers are appointed and are not enrolled and the

applicant's services cannot be treated at par with enrolled persons of the Indian Army.

13. During the course of his service he was promoted to the rank of Naib Subedar w.e.f. 11.04.2015. While in service he suffered from 'Primary Hypertension' w.e.f. 06.02.2016 and he was placed in permanent low medical category P2 (Permt) w.e.f. 09.01.2017. We find that prior to issue of final repatriation order dated 31.12.2016 two repatriation orders were issued on 14.12.2016 and 19.12.2016 and they were cancelled on administrative grounds. Perusal of para 3 of letter dated 31.12.2016 clearly shows that low medical category personnel were to be repatriated to their parent unit and since the applicant was in P2 (Permt) medical category his repatriation order was issued. For convenience sake, para 3 of order dated 31.12.2016 is reproduced as under:-

*"3. OsC/Cos are requested to ensure that in case the med cat of any affected pers is upgraded, the same may be intimated to this office by FAX/AWAN/NIC MAIL, as individuals who are upgraded to med cat SHAPE-I (acceptable med cat) during Rel Med Bd (RMB) may be retained in APS. Their repatriation order is required to be cancelled by this office. X x x x x*

14. It is noticed that the applicant's repatriation order was correctly issued as he was in low medical category and his medical category was not upgraded to SHAPE-I when he was repatriated to his parent department. We further notice that applicant's claim that his reversion prior to completion of three years in JCO rank will affect his promotional avenues in his parent department is not sustainable as para 8 of Postal Manual (War)

India-1937 clearly lays down that an official may be given promotion to higher appointment in the Army Postal Service, but such promotion does not entitle him to a corresponding promotion in the parent cadre.

15. Learned counsel for the applicant has relied upon case of Naib Subedar Munavar Soofie Syed. We have perused order dated 21.12.2016 passed by AFT, PB, New Delhi in O.A. No 1655 of 2016, **Nb Sub Munavar Soofie Syed**, which for convenience sake is reproduced as under:-

*"1. Issue notice to the respondents.*

*2. Notice is accepted to Mr. Harish V Shankar Advocate, learned counsel representing the respondents. Learned counsel for the petitioner confined his prayer only to the question of his being permitted by the respondents to serve till 02.05.2017 which in turn would enable him to be considered for promotion in his parent department (Post and Telegraph).*

*3. Learned counsel for the respondents has raised question of maintainability of the petition itself. Let the reply to the petition be filed within a period of two weeks with advance copy to the petitioner, who may file the response thereto within two weeks thereafter.*

*4. List the matter on 23.01.2017. In the meanwhile respondents shall not take any precipitate action so as to relieve the petitioner, till next date.*

*5. Order dasti."*

16. The said petitioner had also filed O.A. No 44 of 2017 before AFT, RB, Kolkata for same cause of action in which an interim relief was granted on 03.03.2017 directing the respondents not to repatriate the applicant till 02.05.2017. For convenience sake order passed on 02.05.2017 is reproduced as under:-

*"1. X x x x*

*2. The learned counsel for the respondents has submitted that the parawise comment has been received and , hence he may be granted further one week time to file counter.*

*3. Mr Datta, learned counsel for the applicant submits that since the applicant has challenged the order of repatriation*

*bearing No 38/2016 dated 31.12.2016 issued by APS Record to his parent department, a further interim order may be passed staying the said order of repatriation. The said prayer has been opposed by the learned counsel for the respondents contending that since the applicant was found to be not medically fit to be retained in the service in APS, the interim order may not be granted. More so, according to the learned counsel, if such an interim order is passed it may amount to granting the final relief which is availing on disposal of O.A.*

*4. We have considered the submissions advanced by the learned counsel for the parties.*

*5. Based on the submissions advanced by the learned counsel for the applicant that in the event the applicant is repatriated to his parent department before completion of tenure of three years in the rank of Nb Subedar in APS, he will lose certain benefits, we passed an interim order on 03.03.2017 directing the respondents not to release the applicant from APS service till today, i.e., 2.5.2017 on which date, according to the applicant himself, three years period would be completed.*

*6. The prayer made by the applicant for further interim order to stay the order of repatriation cannot be allowed as the said prayer, if granted today, would amount to granting final relief available to the applicant, as has been prayed for in the O.A. On the other hand, in the event the said relief claimed in the OA is granted this Tribunal can pass the order for taking the applicant back in APS service. That apart, whether the applicant can be retained in APS service despite the medical opinion is to be heard and decided at the time of final hearing.*

*7. In view of the above, the further interim prayer made today cannot be granted and, hence, rejected.*

*8. It is now open to the respondents to release the applicant from APS service with effect from tomorrow, i.e., 3.5.2017. Such release of the applicant, however, shall be subject to the outcome of the O.A.*

*9, 10, 11 and 12. X x x x x"*

17. The Hon'ble AFT, PB, New Delhi in the case of Nb Sub Munavar Soofie had stayed repatriation order vide order dated 21.12.2016. The applicant had challenged order dated 14.12.2016 which was finally superseded vide order dated 31.12.2016. Applicant filed contempt petition No 1 of 2017 with respect to order dated 21.12.2016 inreg O.A. No. 1655 of 2016. The case was heard on 24.03.2017 and interim order was vacated and O.A. was declared infructuous.

18. From the aforesaid, we find that the present O.A. was filed after the interim order was vacated and O.A. was dismissed, therefore reliance made by learned counsel for the applicant has no force.

19. Since the applicant has already been repatriated back to his parent department during the pendency of this O.A., therefore, there is no question of extension of service and applicability of the relevant policy and applicability of cited case laws in O.A. as well as in rejoinder affidavit.

20. In our view the applicant has been repatriated to his parent department solely on the ground of his low medical category as reflected in Para 3 of repatriation order dated 31.12.2016.

21. In view of the above, O.A. is **dismissed**.

22. No order as to costs.

23. Pending application (s), if any, stands disposed of.

**(Vice Admiral Abhay Raghunath Karve)**  
**Member (A)**

Dated: 10.08.2022

*rathore*

**(Justice Umesh Chandra Srivastava)**  
**Member (J)**