

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

Original Application No. 54 of 2018

Wednesday, this the 22nd day of February, 2023

Hon'ble Mr. Justice Ravindra Nath Kakkar, Member (J)
Hon'ble Vice Admiral Atul Kumar Jain, Member (A)

Ex Naib Subedar Hari Murat Singh (JC - 541854X), Son of Shri Indra Dev Singh Yadav, Resident of Village – Basuhari, Post Office – Deoria, District – Gazipur (U.P.).

..... Applicant

By Legal Practitioner – **Wg Cdr SN Dwivedi (Retd), Advocate**
for the applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence, South Block, New Delhi – 110001.
3. Officer Incharge Records, Kumaon Regimental Centre Ranikhet.
4. No 4172450 Havildar (Now retired Subedar) Satbir Singh C/O Kumaon Regimental Centre, Ranikhet.

..... Respondents

By Legal Practitioner – **Shri Shailendra Sharma Atal**
for the respondents **Central Govt Counsel.**

ORDER (ORAL)

“Per Hon’ble Mr Justice Ravindra Nath Kakkar, Member (J)”

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 of appropriate nature to the respondents for consideration the case of the applicant to the rank of Subedar and other ranks as per the seniority roster of Kumaon Regiment along with the personnel of his seniority.

(b) Issue / pass an order or direction to quash / set aside the Kumaon Records letter No A2/201/16/RA-3/2017 dated 03.11.2017 (Annexure No A-1) being the end product of non - application of mind.

(c) To issue / pass an order or direction to give him all entitled service and monetary consequences.

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

(e) Allow this application with costs.

2. Brief facts of the case are that applicant was enrolled in the Army on 21.04.1979. He was promoted to the rank of Hav on 12.01.1996. He successfully completed the Promotion Cadre Course for promotion to the rank of Naib Subedar on 31.08.2002. Applicant was discharged from service on 30.04.2003 in the rank of Hav. He was denied promotion to the rank of Nb Sub as he was awarded 14 days Rigorous Imprisonment on 06.03.1094. He

preferred statutory complaint which was rejected. Then he filed petition which was allowed and applicant was notionally promoted to the rank of Nb Sub. Now the applicant has filed instant O.A. with the request to grant him promotion to the rank of Sub.

3. Learned counsel for the applicant submitted that applicant was promoted to the rank of Hav on 12.01.1996. He successfully completed Promotion Cadre Court on 31.08.2002. Applicant was awarded punishment of 14 days Rigorous Imprisonment (RI) on 06.03.1984 under Section 36 (d) of the Army Act when he was Sepoy. He was illegally denied promotion to the rank of Nb Sub wef 01.03.2003. He submitted statutory complaint dated 30.04.2003 against denial of promotion which was rejected. applicant was discharged from service on 30.04.2003 without promotion to the rank of Nb Sub after completion of 24 years and 10 days of service.

4. Learned counsel for the applicant further submitted that applicant was denied promotion to the rank of Nb Sub due to punishment awarded earlier on 06.03.1984 by summary trial. Applicant filed application which was allowed vide order dated 07.12.2015 by this Tribunal and applicant was notionally promoted to the rank of Nb Sub wef 01.03.2003 with other consequential service benefits. Applicant was not promoted to the rank of Sub for

the reason that he had not earned ACR in the rank of Nb Sub. Applicant cannot be blamed for not earning ACR in the rank of Nb sub as he was out of service. Further applicant was promoted to the rank of Nk and Hav with the same punishment then why he was not promoted to the rank of Nb Sub. After passing order by this Tribunal to promote applicant with all consequential benefits, applicant was notionally promoted to the rank of Nb Sub but respondents have denied him promotion to the rank of Sub and Sub Maj. Learned counsel for the applicant pleaded that respondents be directed to promote the applicant to the rank of Sub and Sub Maj and Hony Lt along with his batch mates.

5. On the other hand, learned counsel for the respondents submitted that applicant was awarded 14 days RI under Army Act Section 36(d) on 05.03.1984 when he was a Sep. The individuals tried under Army Act Section 36 are ***neither eligible for promotion nor grant of extension of service***. Applicant was posted to new raising unit on 09.11.1987 where he was inadvertently promoted upto the rank of Hav due to misinterpretation of rule position. He also passed Hav to Nb Sub Promotion Cadre Course and became eligible for promotion to the rank of Nb Sub. This fact was noticed by record office and applicant was discharged from service as a Hav on 30.04.2003.

Being aggrieved, applicant submitted petition which was allowed vide order dated 07.12.2015 directing that **“Respondents shall consider the petitioner for promotion to the post of Nb Sub from 01.03.2003 with revision of pay, salary and perks (entire consequential benefits within six months).** The petitioner was notionally promoted to the rank of Nb Sub with effect from 01.03.2003. Since the applicant has been notionally promoted to the rank of Nb Sub and he has been granted pensionary benefits for notional promotion, nothing survives in the matter. Further there are some ACR criteria for promotion to the rank of Sub and Sub Maj which one has to complete before promotion. He was not fulfilling those criteria's, hence he was not promoted to the rank of Sub and Sub Maj. He pleaded that instant O.A. has no substance and is liable to be dismissed.

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

7. It is not disputed that applicant was enrolled on 21.04.1979. He was posted in new raising unit in 20 KUMAON on 09.11.1987 where he was illegally promoted to the rank of Nk and Hav. While he was about to be considered for further promotion to the rank of Nb Sub, an anomaly came to light with regard to 14 days Rigorous Imprisonment on 05.03.1984 when he was Sepoy. As per Army

Act Section 36 (d) individuals tried under this Act are neither eligible for promotion nor for grant of extension of service. Applicant was granted notional promotion to the rank of Nb Sub on the order passed by the Tribunal. The applicant had not rendered physical service, hence his eligibility/suitability cannot be assessed for further promotion. As per promotion policy, one should have rendered service in previous rank prior to the promotion in next higher rank. Hence, prayer of the applicant for grant of subsequent promotions is not covered by the existing promotion policy. At least two annual reports assessing various aspects related to ground duties are mandatory for grant of promotion to the next rank of Sub . The ACR of the applicant could not be initiated as the applicant did not serve under any authority in the rank of Nb Sub. Junior Leadership Proficiency test is also mandatory for promotion to the rank of Sub. Grant of honorary commission is totally based on merit and service profiles of a JCO. Since the applicant was not in active service and the aforesaid qualitative requirements could not be fulfilled, he was found ineligible for promotion to the rank of Sub and Sub Maj and thereafter Hony Lt. We find that the instant case is totally different to that of the case law referred by the applicant and therefore, the case relied upon by the applicant is of no help.

8. We also notice that in pursuance to order of this Tribunal dated 07.12.2015 passed in T.A. No 396 of 2010, respondents reconsidered the applicant's case and notionally promoted him to the post of Nb Sub for the purpose of pensionary benefits only as directed in the order. It is nowhere provided in the order that in the event of applicant being notionally promoted to the post of Nb Sub, he would be entitled to continue into service and to get promotion to the post of Sub, Sub Maj and Hony Lt/ Capt. It has been specifically mentioned in the order that applicant's promotion to the post of Nb Sub shall be notional for purpose of pensionary benefits, status and perks etc only. Taking a note of the order passed by this Tribunal, we find that applicant's promotion to the post of Nb Sub is purely a notional promotion for the pensionary benefits only and it does not give any right to him to remain into service and to claim promotion to the post of Sub, Sub Maj and Hony Lt/Capt and to get salary and other perks of this post. Applicant's claim being based on imagination surmises and conjunctures and presumption is not maintainable and is liable to be dismissed as such.

9. We further note that all reliefs flowing from a cause of action can be claimed in one O.A., no separate O.A. could be filed for relief(s) flowing from the same cause of action.

10. In view of the above, applicant is not entitled for promotion to the rank of Sub, and thereafter Sub Maj and Hony Lt which are granted on attaining certain qualitative requirements which applicant did not possess being notionally promoted to the rank of Nb Sub.

11. In view of the above, O.A. deserves to be dismissed. It is accordingly, **dismissed**.

12. No order as to costs.

13. Pending miscellaneous applications, if any, shall stand disposed off.

(Vide Admiral Atul Kumar Jain)
Member (A)

(Justice Ravindra Nath Kakkar)
Member (J)

Dated : 22 February 2023
UKT/-