

**COURT NO.1**  
(Ser No 24)

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

**Original Application No. 776 of 2020**

Friday, this the 03<sup>rd</sup> day of February, 2023

**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Atul Kumar Jain, Member (A)**

JC-274465Y Subedar (OFC) Bhupendra Singh of 201 SATA Battery, PIN-926201, C/o 56 APO, son of Shri Shiv Karan Singh, resident of 201 SATA Battery, PIN-926201, C/o 56 APO.

.....Applicant

Ld. Counsel for  
the Applicant :

None for the applicant

**Versus**

1. Union of India, through the Secretary, Ministry of Defence, South block, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarter of the Ministry of Defence (Army), South Block, New Delhi-110011.
3. Commanding Officer, 201 SATA Battery, PIN-926201, C/o 56 APO.
4. Officer-in-Charge Records, Topkhana Abhilekh, Artillery Records, PIN-908802, C/o 56 APO.
5. JC-264815M Subedar Major Mukhtiar Singh, 201 SATA Battery, PIN-926201, C/o 56 APO.
6. Lt Col Rajendra (IC-59424M), Instructor Class B, TAC Wing School of Artillery, Devlali (Maharashtra), PIN-908004, C/o 56 APO.

.....Respondents

Ld. Counsel for  
the Respondents

: **Dr. Shailendra Sharma Atal,**  
Central Govt Counsel

## **ORDER (Oral)**

1. The present application is filed under Section 14 of the Armed Forces Tribunal Act, 2007 being aggrieved with denial of promotion to the rank of Sub Maj. The applicant has sought following reliefs:-

- (a) Issue/pass an order or direction to the respondents to quash/set-aside the Tentative Charge-Sheet dated 31 May 2016 (Annexure No A-1 (ii) for the offence under Army Act 39 (a).
- (b) Issue/pass an order or direction to the respondents to quash/set-aside the second Tentative Charge Sheet dated 15 October 2016 (Annexure No A-1 (iv) for the same offence under Section 39 (a) of the Army Act by the then Commanding Officer, respondent No 6.
- (c) Issue/pass an order or direction to the respondents to quash/set-aside the Army Rule 22 which was held on 18 October 2016 (Annexure No A-1 (v) by the then Commanding Officer, respondent No 6.
- (d) Issue/pass an order or direction to the respondents to quash/set-aside the charge sheet dated (Annexure No A-1 (vi) under Section 39 (a) of the Army Act by the then Commanding Officer, respondent No 6.
- (e) Issue/pass an order or direction to the respondents to quash/set aside the Part II Order No 0/0246/001/2016 belatedly published on 20 Aug 2017 (Annexure No A-1 (i) by which the applicant was arbitrarily and illegally awarded 'Severe Reprimand' for the offence under Army Act Section 39 (a) w.e.f. 28.11.2016.
- (f) Issue/pass an order or direction to the respondents to quash/set aside the Annual Confidential Report (ACRs) for the period 2015-2016 and 2016-2017 after summoning the records.
- (g) Issue/pass an order or direction of appropriate nature to the respondents to consider promotion of the applicant from the rank of Subedar to Subedar Major w.e.f. 01 Nov 2018 along with his colleagues.
- (h) Issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.
- (j) Allow this application with costs.

2. Brief facts of the case are that the applicant while serving with 201 SATA Battery escaped from the unit without authority of leave on 13.04.2016. Accordingly, apprehension roll dated

14.04.2016 was issued. He rejoined voluntarily on 09.05.2016 after absence of leave for 27 days. On rejoining, tentative charge sheet dated 31.05.2016 was issued and summary of evidence was recorded by Maj Amit Singh on 30.06.2016, a copy of which was provided to the applicant vide letter dated 26.07.2016. A final charge sheet was made on 21.11.2016 which was provided to the applicant on 21.11.2016 and he was awarded 'Severe Reprimand' on 28.11.2016, and Part II Order to this effect was published on 20.08.2017, which came in his way for grant of promotion to the rank of Subedar Major. This O.A. has been filed to quash tentative charge sheet dated 31.05.2016, 15.10.2016, order dated 18.10.2018 and Part II Order dated 20.08.2017 and grant him Subedar Major rank alongwith his colleagues.

3. Learned counsel for the applicant submitted that while the applicant was posted in J&K at Counter Insurgency Operations during March-April 2016 he was in need of leave for shifting of his family from rented accommodation to Agra as the house owner was continuously threatening his family. It was further submitted that when the applicant applied for leave, he was denied the same stating that it may be granted after exercise. It was further submitted that the applicant had taken house loan for construction of house and this fact was known to his Commanding Officer also but even then he was not granted leave which he was in dire need.

4. Learned counsel for the applicant further submitted that due to misguiding of Commanding Officer by Subedar Major Mukhtiar Singh (respondent No. 5), he was subjected to harassment and mental torture. It was further submitted that the applicant was trapped between his duty and domestic problems so he took bold step by leaving his unit on 13.04.2016 and rejoined duty after settling his family to new place of residence. On rejoining, he was charge sheeted on two occasions and punishment 'severe reprimand' was inflicted which led to downgradation of his annual confidential reports for the year 2015-2016 and 2016-2017 and therefore, he could not be promoted to the next rank of Subedar Major along with his colleagues.

5. Learned counsel for the applicant further submitted that the unit authorities were well aware about his pressing domestic problems but even then they turned down his request for grant of leave forcing him to leave the unit without leave for the sake of his family who was in distress and was being harassed by the house owner. It was further submitted that due to the above punishment of 'severe reprimand' he suffered irreparable loss and injury which adversely affected his ACRs for the years 2016 and 2017 which led to his non consideration of promotion from Subedar to Subedar Major along with his colleagues and loss of his further extension of service. He pleaded for quashing of tentative charge sheets, ACRs for the year 2016 and 2017,

discharge order and grant of promotion to the rank of Subedar Major alongwith his colleagues.

6. On the other hand, learned counsel for the respondents submitted that on 22.03.2016 applicant approached respondent No. 5 for grant of leave in the first week of April for shifting his family and to get a loan from bank, but as the applicant had recently rejoined from leave and unit was proceeding for annual practice camp, he could not be sent on leave as there was a requirement of sending a Junior Commissioned Officer at forward post. It was further submitted that on 28.03.2016 applicant again requested for leave but he was suggested to plan his leave after termination of annual practice camp due to shortage of manpower.

7. Learned counsel for the respondents further submitted that when the applicant became absent without leave (AWL) w.e.f. 13.04.2016, apprehension roll dated 17.04.2016 was forwarded to all concerned but when he rejoined duty voluntarily on 09.05.2016, apprehension roll was cancelled vide letter dated 09.05.2016 and intimation was given to all concerned.

8. Learned counsel for the respondents further submitted that prior to Rajouri Day the applicant was interviewed by the Commanding Officer and during the course of interview the applicant did not convey anything about his problem. It was further submitted that the applicant left the unit without sanctioned leave and rejoined voluntarily after 27 days for which he was charge sheeted and awarded 'Severe Reprimand'.

9. Further submission of learned counsel for the respondents is that due to bad disciplinary record and 'severe reprimand' inflicted upon the applicant, his annual confidential reports for the years 2016 and 2017 were downgraded and adverse remarks were communicated to the applicant by IO and RO and confidential reports forwarded to Artillery Records which were found technically valid. He pleaded for dismissal of O.A. stating that since the applicant was punished under Section 39 (a) of the Army Act, 1950, no prejudice was done to him with regard to his non consideration of promotion to the next rank of Subedar Major.

10. Heard Dr. Shailendra Sharma Atal, learned counsel for the respondents.

11. The undisputed facts of the parties are that while serving with 201 SATA Battery, the applicant proceeded without sanctioned leave w.e.f. 13.04.2016 and he rejoined voluntarily on 09.05.2016 after a gap of 27 days. On rejoining, he was charge sheeted and summary of evidence was recorded on 30.06.2016 by Major Amit Singh on 26.10.2016. He was awarded 'severe reprimand' for an offence under Section 39 (a) of the Army Act, 1950. The award of 'severe reprimand' adversely affected his ACRs for the period 2015-2016 and 2016-2017 which resulted in his non consideration of promotion from Subedar to Subedar Major along with his colleagues and further extension of service by two years.

12. Admittedly, the applicant moved from his unit without sanctioned leave and voluntarily rejoined duty on 09.05.2016 after an absence of 27 days. Accordingly, he was awarded 'severe reprimand' which became an obstacle for his non consideration for promotion to the rank of Subedar Major and extension of service by two years.

13. Perusal of Tentative Charge Sheet dated 31.05.2016 issued by Brigade Commander, 25 Artillery Brigade clearly specifies that the applicant absented without leave for a period of 27 days for which he was punished with 'severe reprimand' which made him disqualified for further promotion and extension of service by two years.

14. During the course of recording summary of evidence, in compliance of Rule E-23 (3) of Army Rules, 1954, applicant recorded his statement at Para 63, extract of which is reproduced as under:-

*"63. On 13<sup>th</sup> April 2016, I proceeded for Rajouri Day programme from where I went to home on my own. On 13<sup>th</sup> April 2016 when I was in train I received a call from Junior Commission-264815M Subedar Major Mukhtiar Singh. He told me to rejoin back to unit and he will try getting approval of 05-06 days of leave from the Commanding Officer to which I replied that what's the use now why not earlier when I had requested so many times. I also spoke to the Troop Commander, he said to rejoin back, but since the house owner was pressurizing hard I denied falling back to unit. On receiving the message from junior Commission-264815M Subedar Major Mukhtiar Singh, I spoke to the Commanding Officer. Commanding Officer told me to fall back to unit, to which I replied that it is already too late, and I cannot fall back. I also told the Commanding Officer that I know that my next promotion and Annual Confidential Report is due, but my family holds priority over my profession and as the problem is genuine I can't fall back."*

15. Thus, the aforesaid statement recorded by the applicant makes it clear that he proceeded to his home without sanctioned leave on 13.04.2016 and rejoined duty on 09.05.2016 which being a punishable offence, he was awarded

'severe reprimand' under Section 39 (a) of the Army Act, 1950 and therefore, he could not be promoted to the rank of Subedar Major. The Army authorities keeping in view his service profile, dealt leniently by awarding 'severe reprimand' i.e. a lesser punishment.

16. In view of the above, O.A. is liable to dismissed on merit.

It is accordingly, **dismissed** on merit.

17. No order as to costs.

18. Miscellaneous application(s), if any, stand disposed off.

(Vice Admiral Atul Kumar Jain)  
Member (A)

(Justice Umesh Chandra Srivastava)  
Member (J)

Dated: 03.02.2023

*rathore*