

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 203 of 2021**Monday, this the 6th day of February, 2023**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Atul Kumar Jain, Member (A)No. 13988542A Hav (Amb Asst) Rambalee
S/o Shri Chet Ram
R/o T-8-5/6, Hope Road,
Lucknow Cantt, Topkhana Bajar, Pin Code – 226002, U.P.**.... Applicant**Ld. Counsel for the Applicant : **Shri K.P. Datta**, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence (Army), New Delhi-110011.
2. The Chief of Army Staff, IHQ of MoD (Army), Sena Bhawan, New Delhi.
3. Officer-in-Charge Records, AMC Centre & College, PIN 900450, C/o 56 APO.
4. Commanding Officer, 1 Military Training Battalion, AMC Centre & College, Lucknow-2, U.P.

... RespondentsLd. Counsel for the Respondents : **Shri Arvind Kumar Pandey**,
Central Govt Counsel**ORDER**

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

- “(A) To issue/pass an order or direction to set-aside/quash AMC Records rejection letter No. 356006/Prom/Amb Asst/2019 dated 18 Jan 2019.

- (B) To issue/pass an order or direction to re-instate the applicant in Army service wef 30 April 2020 and grant him seniority and promotion to the rank of regular Nb Subedar (Amb Asst) wef 01 January, 2019, subsequently Subedar and Sub Major as per the seniority with all consequential benefits and pay & allowances alongwith arrears and interest @ 18% p.a. from the date of promotion wef 01 January, 2019.
- (C) 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.
- (D) To allow this original application with costs.”

2. Brief facts of the case are that the applicant was enrolled in the Army on 25.04.1994. The applicant was promoted to the rank of Naik on 21.05.2011 and Havildar on 01.02.2016. The applicant passed Senior Cadre Course (SCC) for promotion to the rank of Nb Sub. The name of the applicant was considered for promotion to the rank of Naib Subedar against the vacancy of 01.01.2019 as per Corps seniority in his own turn alongwith his batch-mates but he crossed upper age limit of 44 years on 01.01.2019, hence, applicant was discharged from service on 30.04.2020 without granting further promotion to the rank of Naib Subedar. Being aggrieved, the applicant has filed the present Original Application to grant promotion to the rank of Naib Subedar and its consequential benefits.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Army on 25.04.1994. The applicant attended promotion cadre course from 15.05.2018 to 16.07.2018 and passed

the same. Thereafter, AMC Records issued warning order for retirement being SOS w.e.f. 01.05.2020. The AMC Records issued a list dated 17.12.2018 for applicant's supersession of promotion to the rank of Nb Sub mentioning his name at ser No. (u) stating reasons that "*Permt superseded upto DOR due to crossed the upper age limit of 44 years*". Thereafter, another list dated 24.12.2018 was issued by the Records in which applicant's name was not found and only one name of Hav Kondayya Kuna was mentioned granting promotion to the rank of Naib Subedar and all other individuals mentioned in the list were superseded from promotion.

4. Learned counsel for the applicant further submitted that applicant being aggrieved with denial of promotion to the rank of Naib Subedar, sent a representation dated 27.12.2018 to respondent No. 3 but the same was rejected vide order dated 18.01.2019 mentioning that "*.... due to indl crossed the upper age limit of 44 years before occurrence of vacancy intimated vide this officer letter No. 356006-J/Seps/Nb Sub (AA) PF-01/19 dated 17.12.2018*". He further submitted that supersession/deferment of promotion to the rank of Nb Sub was sent to the applicant vide list dated 17.12.2018, however, as on 31.12.2018, applicant's age was 43 years, 11 months and 30 days, i.e. below 44 years, therefore, rejection of applicant's promotion solely on crossing of upper age limit is illegal and without application of mind. He pleaded that rejection order dated 18.01.2019, solely on crossing of upper age limit, is illegal and arbitrary which should be

quashed and applicant should be promoted to the rank of regular Naib Subedar with all consequential benefits.

5. On the other hand, Ld. Counsel for the respondents submitted that applicant was promoted to the rank of Naik on 21.05.2011 and Havildar on 01.02.2016 and will retire from service in the present rank on 30.04.2020. The applicant passed SCC for promotion to the rank of Naib Subedar on 16.07.2018. The applicant was considered for promotion to the rank of Naib Subedar against the vacancy of 01.01.2019 as per Corps seniority in his own turn alongwith his batch-mates vide Promotion Form dated 13.12.2018. However, applicant was found ineligible as he had completed 44 years of age as on 31.12.2018 and on 01.01.2019, applicant crossed upper age limit of 44 years for promotion to the rank of Naib Subedar (Ambulance Assistant), i.e. before occurrence of vacancy in terms of para 398 of ROI No. 12/2014 and para 2 (a) & (b) of Govt. of India, Ministry of Defence letter dated 04.05.1999. Hence, he has been permanently superseded for promotion to the rank of Nb Sub upto the date of retirement as on 01.05.2020 on completion of 24 years of colour service and 2 years of extension of service limit in the present rank.

6. Learned counsel for the respondents further submitted that as per para 398 of AMC ROI No. 12/2014 and para 2 (a) & (b) of Govt. of India, Ministry of Defence letter dated 04.05.1999, service limit for retirement of Havildar has been increased to 26 years which is laid down for promotion to JCO rank in para 149 of the Regulations for the

Army, 1987. Revised age limit and service limit of a Havildar is as under :-

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|---|---|
| (a) Clerks and SKT | - 46 years of age and
26 years of service. |
| (b) Other Categories including
Ambulance Assistant | - 44 years of age and
26 years of service. |

7. Learned counsel for the respondents further submitted that in accordance with para 389 of AMC ROI No. 12/2014, the terms of engagement of service in the rank of Havildar is "on completion of 24 years of service with colours extendable by 02 years by screening or 49 years of age, whichever is earlier. Hence, it is evident from the above that applicant was found ineligible as he had completed 44 years of age on 31.12.2018 and crossed upper age limit of 44 years on 01.01.2019, therefore, applicant permanently superseded for promotion to the rank of Naib Subedar upto the date of retirement and no injustice has been done to the applicant. He pleaded for dismissal of O.A.

8. We have heard learned counsel for both sides and perused the material placed on record.

9. From perusal of AMC Records letter dated 17.12.2018, we observe that a list of total Nos. of 49 Havildars of Ambulance Assistant trade is given in which name of the applicant is mentioned at serial No. 1(u) and all 49 Havildars who are either senior or junior to the applicant have been permanently superseded/deferred for

promotion to the rank of Naib Subedar. Hence, it is evident from the letter dated 17.12.2018 that not only the applicant but all 49 Havildars have been superseded for promotion to the rank of Naib Subedar upto the date of retirement due to crossing of the upper age limit of 44 years, as per AMC ROI No. 10/2014 and Govt. of India, Ministry of Defence letter dated 04.05.1999.

10. We find that though applicant was fulfilling all the eligibility criteria for promotion to the rank of Naib Subedar having passed SCC and his name was considered for promotion to the rank of Naib Subedar against the vacancy of 01.01.2019 as per seniority in his own turn alongwith his batch-mates vide Promotion Form dated 13.12.2018, however, applicant was found ineligible for further promotion as he had completed 44 years of age as on 31.12.2018 and crossed upper age limit of 44 years for promotion to the rank of Naib Subedar (Ambulance Assistant), on 01.01.2019, i.e. before occurrence of vacancy in terms of para 398 of ROI No. 12/2014 and para 2 (a) & (b) of Govt. of India, Ministry of Defence letter dated 04.05.1999. Hence, applicant has been permanently superseded for promotion to the rank of Nb Sub upto the date of retirement as on 01.05.2020 on completion of 24 years of colour service and 2 years of extension of service limit in the present rank of Havildar.

11. In view of the above, we do not find any irregularity or illegality in discharging the applicant from service in the rank of Havildar without granting promotion to the rank of Naib Subedar being crossed

upper age limit of 44 years, as per promotion policy. Therefore, applicant's prayer for grant of promotion to the rank of Naib Subedar has rightly been rejected by the respondents as per rules and promotion policy. The Original Application deserves to be dismissed and is accordingly **dismissed**.

12. No order as to costs.

13. Pending Misc. Applications, if any, shall stand disposed off.

(Vice Admiral Atul Kumar Jain)
Member (A)

Dated: 6th February, 2023
SB

(Justice Umesh Chandra Srivastava)
Member (J)