

Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Court No.1

T.A. No 48 of 2017 along with T.A. No 98 of 2016 (Decided)

Union of India & Others

By Legal Practitioner for the Applicants

Applicants

Versus

Laxmi Devi, W/o Late Surendra Singh Saxena

By Legal Practitioner for Respondent

Respondent

Notes of the Registry	Orders of the Tribunal
	<p><u>06.02.2023</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Atul Kumar Jain, Member (A)</u></p> <p>Suit was filed in the Court of civil Judge (Junior Division) Havali, Farrukhabad for phased promotions to the rank of Havildar (Hav) and so on.</p> <p>Shri Surendra Singh Saxena filed O.S. No 677 of 2002 before Court of Civil Judge, (Junior Division) Farrukhabad with the prayer for promotion to the rank of Havildar which was allowed vide order dated 22.08.2005. Applicants/Respondent (Union of India) preferred Misc Civil Appeal No 116 of 2006 on 26.10.2005 against the decree dated 22.08.2005 passed by Civil Judge (Junior Division), Farrukhabad which has been transferred to this Tribunal and renumbered as T.A. No 48 of 2017. The said T.A. was dismissed for want of prosecution. Now the same has been restored to its original number vide this Tribunal order dated 29.11.2018. Respondent/applicant (Shri Surendra Singh Saxena) was granted promotion by Civil Court in spite of awarding four red</p>

ink entries, which is against rule. Applicants/Respondent have made prayer to set aside judgment and decree dated 22.08.2005 passed by learned Civil Judge (J.D), Farrukhabad and dismiss the suit of the respondent/applicant on the following grounds: -

- (a) Because learned lower court had no jurisdiction to entertain and try the suit.
- (b) Because order passed by the learned lower court is bad in law.
- (c) Because finding of the learned lower court that service record of the respondent/applicant has been clean.
- (d) Because red ink entries were awarded to the respondent/applicant in the year 1996 and two red ink entries were awarded in the year 1998, hence respondent/applicant was not entitled for promotion to the rank of Havildar, Naib Subedar and Subedar.
- (e) Because finding of learned lower court that respondent/applicant was entitled for promotion to the rank of Havildar in June 1997 is incorrect.
- (f) Because finding of the learned lower court that adverse entries were not communicated to the respondent/applicant and had been forged in order to harm the respondent/applicant is incorrect.
- (g) Because findings recorded by the learned lower court

are self- contradictory.

(h) Because suit of the respondent/applicant was barred by time.

On the other hand, learned counsel for the respondent/applicant (Shri Surendra Singh Saxena) submitted that order passed by learned lower court, Farrukhabad has not been complied with by the applicant/ respondents (Union of India). He further submitted that Civil Court has jurisdiction u/s 9 CPC to try and decide the subject matter in issue. According to Page 100 and 101 of Chapter IV of Manual of Military Law, punishment of reprimand and severe reprimand are effective for one year only and no promotion can be withheld after one year. Thus, forfeiture of seniority and promotion to an individual beyond one year cannot be withheld. Learned lower court had directed to promote the respondent/applicant wef June 1997 to the rank of Havildar along with other promotions. Order of the learned lower court based on reasonable findings is not to be interfered with. Learned counsel for the respondents/ applicant (Shri Surendra Singh Saxena) pleaded that appeal filed by Union of India is devoid of merits and is liable to be rejected and judgment and decree dated 22.08.2005 passed by learned Civil Judge be confirmed and applicant be promoted to the rank of Hav.

We have heard learned counsel of both the parties and perused the documents available on record.

In the instant case, respondent/applicant (Shri Surendra Singh Saxena) preferred Original Suit No 677 of 2002 before Court of Civil Judge (Junior Division), Farrukhabad which was allowed vide judgment and order dated 22.08.2005 and order was passed to promote the respondent (Shri Surendra Singh Saxena) to the rank of Hav wef June 1997. As far as jurisdiction to decide the case by Court of Civil Judge, (Junior Division) Farrukhabad is concerned, the Hon'ble Apex Court in ***AIR 2008 Supreme Court 2553*** has held that ***“Civil Court may have a limited jurisdiction in service matters but it cannot be said to have no jurisdiction at all to entertain a suit”***. Thus, it is clear that Court of Civil Judge, (Junior Division) Farrukhabad was having jurisdiction to decide the case because at that time Armed Forces Tribunal Act 2007 was not in force.

We have gone through the order passed by Court of Civil Judge, (Junior Division) Farrukhabad. It appears that suit was allowed without proper scrutiny of promotion policy for promotion from Nk to Hav.

On perusal of documents, it transpires that respondent (Surendra Singh Saxena) was awarded following punishments:-

- (a) Awarded Severe reprimand under Army Act Section 39(b) on 15.04.1996 for overstaying of leave.
- (b) Awarded Severe Reprimand under Army Act Section 48 on 11.05.1996 for intoxication.
- (c) Awarded Severe Reprimand under Army Act Section 63 on 16.11.1996 for prejudicial to good order and military discipline.

- (d) Awarded Severe Reprimand under Army Act Section 63 on 16.11.1996 for prejudicial to good order and military discipline.
- (e) Awarded Severe Reprimand under Army Act Section 63 on 08.01.1998 for prejudicial to good order and military discipline.
- (f) Awarded Severe Reprimand under Army Act Section 63 on 18.02.1998 for prejudicial to good order and military discipline.

Army Headquarters policy letter dated 10.10.1997 deals with criteria for promotion to JCOs/NCOs. Para 3 (f) of said policy letter states that, ***“An individual will not be considered for promotion within one year of the award of red ink entry/recordable censure, as the case may be”***. Respondent (Surendra Singh Saxena) was awarded punishment of severe reprimand under Army Act Section 63 on 16.11.1996 for prejudicial to good order and military discipline, hence he cannot be promoted to the rank of Havin June 1997 without quashing promotion policy.

Further as per Para 3 of Army Order 1/2001, ***“if an individual is reported to be involved in any disciplinary cases, a ban on his promotion will be imposed”***. It further states that an individual will not be considered for promotion within one year of the award of red ink entry/recordable censure, as the case may be.

Since the applicant was not meeting the ACR criteria or the Discipline criteria for promotion to the rank of Hav, he could not be promoted to the rank of Hav without quashing promotion policy which is in existence. Accordingly, order dated 22.06.2005 passed by learned Court of Civil Judge, (Junior Division) Farrukhabad to promote the applicant as Hav is not sustainable in the eye of law.

In view of the above order dated 22.06.2005 passed by Court of Civil Judge, Farrukhabad in Original Suit No 677 of 2002, directing Surendra Singh Saxena to promote to the rank of Hav and then further promotion to the rank of Nb Sub and Sub is liable to be set aside and T.A. No 48 of 2017 filed by the applicant/respondents deserves to be allowed.

Accordingly, T.A. No 48 of 2017 is **allowed**. Order passed by Court of Civil Judge Farrukhabad dated 22.06.2005 in Original Suit No 677 of 2002 is quashed and Surendra Singh Saxena is not entitled for promotion to the rank of Hav.

No order as to cost.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

UKT/-

**Form No. 4
{See rule 11(1)}
ORDER SHEET**

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Court No. 1

**T. A. No. 98 of 2016 along with T.A. No 99 of 2016 (decided)
and T.A. No 48 of 2017**

Smt. Laxmi Devi, W/o Late Surendra Singh Saxena **Applicant**
By Legal Practitioner for the Applicant : Shri Bachchan Singh, Advocate.

Versus

**The Commanding Officer, 658 Engr
& Brigade Unit & Others** **Respondents**
By Legal Practitioner for Respondents : Shri Anurag Mishra, Advocate

Notes of the Registry	Orders of the Tribunal
	<p><u>06.02.2023</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Atul Kumar Jain, Member (A)</u></p> <p style="text-align: center;">Heard Shri Bachchan Singh, Ld. Counsel for the applicant and Shri Anurag Mishra, Ld. Counsel for the respondents.</p> <p style="text-align: center;">T.A. No 99 of 2016 was filed by the applicant for compliance of order dated 22.08.2005 passed by Court of Civil Judge (Junior Division_ was filed with the prayer to</p> <p style="text-align: center;">T.A. No 48 of 2017, Union of India Vs. Laxmi Devi, W/o Late Surendra Singh Saxena has been allowed vide order dated 06.02.2023 of this Tribunal and order dated 22.08.2005 passed by Court of Civil Judge (Junior Division) Farrukhabad granting promotion to the rank of Hav to Late Surendra Singh Saxena has been quashed, this T.A. has become infructuous.</p> <p style="text-align: center;">Accordingly, instant T.A. is dismissed being infructuous.</p> <p style="text-align: center;">(Vice Admiral Atul Kumar Jain) (Justice Umesh Chandra Srivastava) Member (A) Member (J)</p> <p style="text-align: center;"><small>Uktv-</small></p>