

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****ORIGINAL APPLICATION No. 346 of 2021**Friday, this the 14th day of January, 2022**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Subedar Lab Technician Ajay Kumar Upadhyay, JC-699308L, presently posted AICTS, Pune (Maharashtra), son of Sri Ramayan Upadhyay, Resident of village-Karauta, post-Chero Harkhauli, Saleempur, Barhaj, Deoria, District-Deoria.

..... Applicant

Learned counsel for the : **Mohd Umar Khan**, Advocate
Applicant

Versus

1. Union of India through its Secretary, Ministry of Defence (Army Force), South Block, New Delhi.
2. Lieutenant General, G.A.C. Delhi.
3. Director General of Armed Forces, New Delhi.
4. Maharashtra Goa Area Commandant, General Commandant Officer.
5. General Officer, General Officer Commandant, Pune (Maharashtra).

.....Respondents

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

ORDER (Oral)

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

(i) To issue a writ, order or direction in the nature of mandamus directing the respondents, especially the respondent No 5 to promote the applicant on the post of Honorary Lieutenant in the interest of justice. (Annexure No 1 to the compilation No 1 to the application).

(ii) To issue a writ, order or direction in the nature of mandamus directing the respondents, especially the respondent No. 2,3,4 and 5 to consider and decide the representation dated 23.01.2021 moved by the applicant within short stipulated period.

(iii) To issue any other writ, order or direction in favour of the applicant as this Hon'ble Tribunal may deem fit and proper under the facts and circumstances of the case.

(iv) Award the cost of Original Application in favour of the applicant from the respondents.

2. The facts of the case in brief are that the applicant was enrolled in the Army Medical Corps (AMC) on 12.07.1991 and was promoted to the rank of Subedar on 11.07.2016 with seniority for promotion w.e.f. 26.05.2016. He was discharged from service w.e.f. 31.07.2021 (AN) under Rule 13 (3) I (i) of Army Rules, 1954 after completion of 30 years and 20 days service. The applicant was eligible to be considered for the grant of Honorary Commission to the rank of Lt prior to his retirement on 31.07.2021, which he was considered but was not granted. Prior to discharge from service, the applicant had submitted an application dated 23.01.2021 for his promotion to the rank of Hony Lt which is pending. This O.A. has been filed

for issuing directions to the respondents for grant of Hony Commission in the rank of Lt.

3. We have gone through the records and contentions of both the parties on the merits of the case.

4. In this case grievance of the applicant is that he was not considered and granted Hony Commission to the rank of Lt on Independence Day-2020 (15.08.2020) and Republic Day-2021 (26.01.2021) prior to discharge from service even when he was having good record of service.

5. Honorary Commission is granted to JCOs of the Army on active list on the occasion of Republic Day and Independence Day. The entire profile and performance including medical category of a JCO are taken into consideration while making final list for grant of Hony Commission. The system of processing of recommendations for Hony Commission is computerised at Army Headquarters. There are inbuilt safeguards in the system to ensure 100 percent accuracy. It is fool proof and immune to external influences and manipulations. The profile of all JCOs are authenticated by the Officer-in-Charge Records and any amendment to the basic data is processed through the Command Headquarters to ensure accuracy. The award of Hony Commission is decided based on merit and available vacancies allotted by the Govt as

per criteria mentioned in para 177 of Regulations for the Army, 1987 (Revised Edition) as under:-

(i) JCOs who have rendered specially distinguished service, and who are serving in the Regular Army may be granted commissions as Hony officers in the rank of Capt or Lt.

(ii) Nomination for the grant of Commission as Hony officers and for promotion to Capt of JCOs holding the Commission of Hony officer with the rank of Lt will be made by the Chief of the Army Staff.

(iii) The ratio of Hony Commission for each Republic Day and Independence Day will be as under:-

(aa) Hony Capts -1 for every 4 Hony Lts.

(ab) Hony Lts -12 for every 1000 JCOs.

6. We find that master sheet containing service records, honours and awards in respect of the applicant was prepared by Army Medical Record office and was submitted on 08.02.2020 (Exhibit R-2) to HQ Southern Command for consideration of Hony Commission on the occasion of Independence Day-2020, however the applicant could not make it to merit for Hony Lt on active list on 15.08.2020. Further, recommendation form and data sheet in respect of the applicant for consideration of his Hony Commission (last

chance) on active list on the occasion of Republic Day-2021 was forwarded to HQ Southern Command on 07.09.2020 but he could not make it for Hony Lt on 26.01.2021. Since the applicant could not make it for Hony Commission on active list, he was granted Hony rank of Sub Maj (on retirement) on the occasion of Independence Day-2021 vide Gazette Notification dated 15.08.2021.

7. Learned counsel for the respondents has relied upon this Tribunal's order dated 19.02.2021, titled **Ex Sub Maj Jagdish Prasad vs UOI**, M.A. No. 145 of 2020. For convenience sake, operative portion of the aforesaid judgment is reproduced as under:-

".....we have perused the records and analysed the submissions of both the counsels and find that applicant has not been able to come in the merit as per criteria laid down in Army Headquarters letter dated 30.09.1996, hence, his prayer has no force. In view of above, original application is devoid of merit and is liable to be dismissed. It is accordingly, dismissed."

8. Thus, in the light of the above, we find that the applicant has been correctly not granted Hony Commission on Independence Day-2020 and Republic Day-2021 keeping in view the policy on the subject and relevant rule provisions. No injustice, impropriety or illegality whatsoever seems to have been done to the applicant as the respondents have acted in conformity with their policies in accordance with law.

9. After considering all the aspects in totality, we do not find any merit in the O.A.

10. Accordingly, the OA is dismissed, being devoid of merit.

11. No order as to costs.

12. Pending misc application(s), if any, shall stand disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 14th January, 2022

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