

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 267 of 2017**Friday, this the 7th day of January, 2022**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)JC 662863 F Sub/SKT Dinesh Chandra
S/o Shri Kalika Prasad
Posted at R.S.D. PO – Alambagh, Lucknow, C/o 56 APO
.... **Applicant**Ld. Counsel for the Applicant : **Shri Virat Anand Singh**, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence (Army), DHQ PO, New Delhi – 110011.
2. The Chief of the Army Staff, IHQ of MoD (Army), Sena Bhawan, New Delhi.
3. Officer Incharge, The Records, ASC (South), Bangalore-7.
4. Officer Incharge, AG Branch, AHQ Integrated HQ of MoD, New Delhi -01.

... **Respondents**Ld. Counsel for the Respondents : **Dr. Chet Narayan Singh**,
Central Govt Counsel**ORDER (Oral)**

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) Issue/pass an order or direction of appropriate nature to the respondents to restore applicant seniority with his batch mates and he be promoted to the rank of Sub Maj retrospectively and be allowed to serve further till his term of engagement.

- (b) Issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.
- (c) Allow this application with costs of Rs. 50,000/-."

2. Supplementary counter affidavit filed by the respondents is taken on record.

3. Brief facts of the case are that the applicant was enrolled in the Army on 25.07.1987 and was discharged from service on 31.07.2017 on completion of terms of engagement under Rule 13 (3) I (i) (a) of Army Rules, 1954 in the rank of Subedar after rendering 30 years of service. The applicant could not pass his promotion cadre from Sepoy to Naik in due time and later passed promotion cadre of Naik on 30.01.1990 and therefore, superseded in promotion to the rank of Naik and lost his seniority alongwith his batch mates. The applicant was also superseded in promotion due to loss of his seniority in his next higher promotions. The applicant filed OA 201/2017 before this Tribunal which was disposed off with direction to the respondents to decide the petition of the applicant. The petition of the applicant was examined by COAS and was rejected being devoid of merit. Being aggrieved, the applicant has filed the present Original Application to grant promotion to the rank of Subedar Major.

4. Learned counsel for the applicant submitted that applicant was enrolled in the Army on 25.07.1987. The applicant could not be promoted alongwith his batch mates for the rank of Havildar w.e.f. 01.01.1993 due to lack of an ACR criteria as informed by ASC Records. The applicant submitted a Non Statutory complaint dated

12.06.2001 to set aside the ACR for 1991 and accordingly, as per directions of Army Commander, Southern Command, remark of RO in ACR for the year 1991 was expunged vide order dated 30.04.2002 but the Records committed mistake in showing two dates of seniority of the applicant in comparison to his batch mates for promotion to the rank of Havildar, i.e. 01.01.1993 and 01.03.1993 vide ASC Records letter dated 30.12.2016. The applicant was never communicated/intimated the correct date of seniority. The applicant was in surprise when he met one of his junior viz JC-643279P Sub/Maj Vikraman PS and learnt that he has been promoted to the rank of Sub Maj on 01.10.2016. Thereafter, applicant made efforts to rectify his seniority. The applicant sent an application under RTI seeking certain information but no cogent reply was received by the applicant. Thereafter, applicant submitted statutory complaint dated 20.02.2017 but no decision arrived. The applicant on present post of Subedar shall retire on 30.06.2017 whereas the next vacancy for the post of Sub Maj exists on 31.07.2017. Thereafter, applicant filed OA No. 201/2017 before this Tribunal which was disposed of with directions to the respondents to decide complaint of the applicant. The COAS arbitrarily rejected the petition without passing any cogent order vide letter dated 22.07.2017.

5. Learned counsel for the applicant further submitted that applicant by no fault of his own is infringement of his fundamental right which is violation of Article 14 of the Constitution of India. The Hon'ble Supreme Court has held that every management must

provide real opportunity for promoting employees to move upward. The applicant not being considered for promotion is an infringement of fundamental right as held by Constitutional Bench of the Hon'ble Delhi High Court in **Ajit Singh and others vs. State of Punjab**, 1999(7) SCC 209 and in **Tilak Raj Singh vs. Union of India and others**, Mil Li 2009 Del 40. He pleaded for consideration of promotion of the applicant to the rank of Sub Maj.

6. On the other hand, Ld. Counsel for the respondents submitted that applicant was enrolled in the Army on 25.07.1987 and was discharged from service on 31.07.2017 on completion of terms of engagement under Rule 13 (3) I (i) (a) of Army Rules, 1954 after rendering 30 years of service. The applicant could not pass his promotion cadre from Sepoy to Naik in due time and passed promotion cadre of Naik on 30.01.1990 and therefore, superseded in promotion to the rank of Naik. The applicant being superseded in promotion to the rank of Naik cannot claim seniority of next higher rank of Havildar alongwith his batch mates. The applicant initially came up for consideration for promotion to the rank of Havildar w.e.f. 01.03.1993 alongwith his batch mates of Naik seniority but superseded due to not meeting ACR criteria being graded 'Average' in ACR for the year 1991 and 1992. As per promotion policy of IHQ of MoD (Army) dated 18.01.1993 and dated 28.02.1987, three reports in the rank of Naik were mandatory, out of which two reports should be 'High Average' and no report should be low than 'Average'. In the case of applicant, his three ACRs w.e.f. 1990 to 1992 were

considered for promotion during the year 1993 but applicant could not make the grade and was superseded due to 'Average' grading in the ACRs for the year 1994 considering the ACR for the year 1991 to 1993 but he could not make the grade and was superseded in the rank of Havildar due to 'Average' grading in the ACR for the year 1991 and 1992.

7. Learned counsel for the respondents further submitted that with regards to comparison of the applicant with JC-642379P Sub/Maj Vikraman PS as pointed out by the applicant in the O.A., it is submitted that seniority in respect of all personnel are fixed strictly in accordance with IHQ of MOD (Army) letter dated 06.02.1960 and letter dated 02.04.1960. The comparative state of promotional aspects in respect of the applicant and Sub/Maj Vikraman PS are as under :-

Events	JC-662863F Sub/SKT Dinesh Chandra	JC-643279P Sub Maj SKT Vikraman PO
Date of birth	20.03.1966	20.05.1966
Date of Enrolment	25.07.1987	16.01.1988
Passing promotion cadre for the rank of Naik	30.01.1990	20.06.1989
Seniority of Naik	30.01.1990	16.01.1990
Passing promotion cadre of Havildar	03.11.1992	30.11.1992
Seniority of Havildar	01.03.1993	16.01.1993
Passing promotion cadre of Nb/Sub	28.02.2004	29.08.2003
Seniority of Nb/Sub	01.09.2004	01.05.2004
Passing of JLPT	06.12.2005	05.12.2006
Seniority of Subedar	01.05.2010	01.12.2009
Subedar Major	-	01.10.2016

It is evident that Sub Maj Vikraman PS was enrolled in the Army on 16.01.1988 and is junior to the applicant in enrolment but passed promotion cadre for Naik on 20.06.1989 prior to the applicant and

accordingly got seniority for Naik on 16.01.1990 on availability of vacancy and became senior to the applicant in the rank of Naik and therefore, he was promoted to the rank of Havildar, Naib Subedar, Subedar and Subedar Major prior to the applicant as per his seniority.

8. Learned counsel for the respondents further submitted that applicant submitted a Non Statutory complaint dated 12.06.2001 against supersession of promotion in the rank of Havildar due to lack of ACR criteria and sought relief to set aside ACR for the year 1991. The GOC-in-C, Southern Command after examining Non Statutory complaint of the applicant directed for expunction of endorsement of RO's remarks in ACR for the year 1991 vide order dated 20.04.2002 Accordingly, applicant's seniority in the rank of Havildar was re-fixed alongwith his batch mates of Naik w.e.f. 01.03.1993. The applicant sought clarification vide his unit letter dated 09.12.2016 which was suitably replied vide ASC Records letter dated 30.12.2016 that his seniority in the rank of Havildar has been fixed w.e.f. 01.03.1993 correctly and there was no discrepancy in fixation of his seniority in the rank of Havildar. The applicant submitted an application dated 12.12.2016 under RTI seeking seniority list and clarification on fixation of his seniority which was suitably replied vide ASC Records vide letter dated 11.01.2017. The applicant submitted a Statutory complaint dated 20.02.2017 to re-fix his seniority of Naik/Havildar alongwith enrolled batch mates. During the pendency of this complaint, the applicant had filed OA No. 201 of 2017 before this Tribunal which was disposed of vide order dated 31.05.2017 with

direction to the respondents to decide complaint of the applicant dated 20.02.2017 by a speaking and reasoned order within four months. Accordingly, Statutory complaint of the applicant was examined by the Chief of the Army Staff which was rejected vide order dated 17.07.2017 being devoid of merit.

9. Ld. Counsel for the respondents further submitted that no injustice has been done to the applicant for grant of promotion/seniority. The contention of the applicant that his seniority has not been fixed correctly and he has not been considered for promotion to the rank of Sub Maj due to his wrong fixation of seniority alongwith his batch mates is incorrect as the applicant was superseded in the promotion of Naik and in his all subsequent promotions as clarified in para 7 above. Hence, allegations made by the applicant are baseless and incorrect and he pleaded for dismissal of O.A.

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

11. We have perused the records and we find that applicant could not pass promotion cadre for the rank of Naik and was superseded in the promotion to the rank of Naik alongwith his batch mates and became junior. The applicant once became junior in promotion to the rank of Naik alongwith his batch mates, superseded in his all subsequent promotions from Havildar to Subedar which is evident from the comparison statement of promotion/seniority as given in para 7 above. There is no illegality, bias or prejudice neither in ACR

gradings for the year 1991 and 1992 nor in fixation of seniority/promotion to the rank of Naik. The applicant could not pass promotion cadre in time for promotion to the rank of Naik and was lacking mandatory ACR grading criteria for promotion to the rank of Havildar as per extant policy, hence no injustice has been done to the applicant in comparison to his batch mates for promotion to the rank of Naik, Havildar and next higher promotions.

12. We find that applicant was not fulfilling eligibility criteria required for promotion to the rank of Naik and therefore, he was superseded for promotion and lost his seniority alongwith his batch mates. Hence, his prayer for grant of promotion to the rank of Sub Maj after restoring his seniority from Naik to Subedar rank with his batch mates has rightly been rejected by the respondents as per rules and regulations on the subject.

13. In view of the above, we do not find any irregularity or illegality or violation of Article 14 of the constitution of India neither in fixation of seniority nor in consideration for promotion to the rank of Sub Maj. Hence, the O.A. is devoid of merit and deserves to be dismissed. It is accordingly **dismissed**.

14. No order as to costs.

15. Pending Misc. Application(s), if any, stand disposed off.

(Vice Admiral Abhay Raghunath Karve) **(Justice Umesh Chandra Srivastava)**

Member (A)

Member (J)

Dated: January, 2022

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