

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

**O.A. No. 271 of 2019**

**Hav. Abhijit Das**

By Legal Practitioner for the Applicant

Applicant

**Versus**

**Union of India & Others**

By Legal Practitioner for Respondents

Respondents

<b>Notes of the Registry</b>	<b>Orders of the Tribunal</b>
	<p><b><u>14.01.2022</u></b> <b><u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u></b> <b><u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></b></p> <p>1. Heard Shri Rajeev Narayan Pandey, Ld. Counsel for the applicant and Ms. Appoli Srivastava, Ld. Counsel for the respondents.</p> <p>2. The factual matrix on record is that the applicant was enrolled in the Army on 12.04.2007. On 09.03.2015, when applicant was posted to 5 DOGRA, sustained severe injury on wrist of his left hand during game parade while playing football. The injury sustained by the applicant was considered as attributable to military service. The applicant was downgraded to low medical category S1H1A3(T-24)P1E1. The applicant was due for promotion to the rank of Havildar as per his seniority on 01.07.2015, however, he was not promoted being in low medical category but his juniors were promoted and applicant was superseded. The applicant was promoted to the next higher rank and his seniority was fixed w.e.f. 01.09.2015. On 25.08.2017, applicant requested to the respondents to grant original seniority for promotion w.e.f. 01.07.2015 without effecting the pay and allowances but the same was rejected by respondent No. 3 vide order dated 09.11.2017. Being aggrieved, the applicant has filed the present Original Application to grant him notional promotion and seniority in the rank of Havildar w.e.f. 01.07.2015.</p> <p>3. Learned counsel for the applicant submitted that applicant was enrolled in the Army on 12.04.2007. On 09.03.2015, when applicant was posted to 5 DOGRA, sustained severe injury on wrist of his left hand during game parade while playing football which was diagnosed as "UNDISPLACED FRACTURE DISTAL RADIUS (LEFT)" and "UNDISPLACED FRACTURE STYLOID PROCESS ULNA (LEFT)" by medical authorities. The injury sustained by the applicant was considered as attributable to military service. The applicant was downgraded to low medical category S1H1A3(T-24)P1E1. The applicant was due for promotion to the rank of Havildar as per his seniority on 01.07.2015, however, he was not promoted being in low medical category but his juniors were promoted and applicant was superseded.</p>

4. Learned counsel for the applicant further submitted that on 15.07.2015, applicant's medical category was reviewed and he was upgraded from A3 (T-24) to A2 (T-24) vide medical board proceedings dated 08.07.2015. On 26.08.2015, a promotion board was held for promoting the candidates to next higher rank but applicant was not considered by the promotion board due to low medical category. On 04.09.2015, again promotion board was held and applicant was promoted to the next higher rank and his seniority was fixed w.e.f. 01.09.2015. The promotion board fixed the seniority of the applicant in illegal and arbitrary manner against the provisions of para 3 of Promotion Criteria – JCOs/NCOs dated 06.05.2002 issued by IHQ of MoD (Army), New Delhi. On 25.08.2017, applicant requested to the respondents to grant original seniority for promotion without effecting the pay and allowances but the same was rejected by respondent No. 3 vide order dated 09.11.2017 on the ground that no policy is existing for restoration of seniority in the Army. The applicant lost his seniority w.e.f. 01.07.2015 for promotion for no fault of his as the applicant has sustained injury during bonafide duty which was attributable to military service. Therefore, he pleaded for grant of notional promotion to the applicant without effecting pay and allowances w.e.f. 01.07.2015.

5. Learned counsel for the respondents submitted that applicant while serving with 5 DOGRA sustained injuries on 09.03.2015 while playing organized game (Football) during game parade at unit location. He was downgraded to low medical category A3 (T-24) by the medical board for his disabilities "UNDISPLACED FRACTURE DISTAL RADIUS (LEFT)" and "UNDISPLACED FRACTURE STYLOID PROCESS ULNA (LEFT)" w.e.f. 22.04.2015. The applicant was due for promotion on 01.07.2015 but he could not be promoted to the next rank of Havildar as he was not in acceptable medical category in accordance with para 3 of Appendix 'A' to Regimental Promotion Rule 1998 and IHQ of MoD (Army) letter dated 10.10.1997. Thereafter, applicant was upgraded to A-2 (T-24) w.e.f 15.07.2015 by medical board. There was no vacancy between 02.07.2015 to 31.08.2015 and the next vacancy was created on 01.09.2015. Accordingly, the applicant was promoted to the next higher rank of Havildar w.e.f. 01.09.2015.

6. Learned counsel for the respondents submitted that applicant approached Dogra Records vide his personal application dated 25.08.2017 for restoration of original seniority which was suitably replied by Records vide letter dated 09.11.2017 stating that restoration of seniority w.e.f 01.07.2015 is contrary to existing policy. In the circumstances mentioned above, relief sought by the applicant cannot be granted to him under existing promotion policy, rules and regulation on the subject and therefore, Original Application is liable to be dismissed being devoid of merit.

7. We have heard learned counsel for the parties and have perused the material on record.

8. We observe that applicant had sustained injuries on 09.03.2015 while playing organized game (Football) during game parade at unit location and his injury was considered as attributable to military service. The applicant was due for promotion on 01.07.2015 but he could not be promoted to the next rank of Havildar as he was not in acceptable medical category. The applicant was upgraded to A-2 (T-24) w.e.f 15.07.2015 by review medical board and was promoted to the rank of Havildar w.e.f. 01.09.2015. In the light of the unfair circumstances presented as a fait accompli to the applicant it is highly unjust on the part of the respondents for not promoting him notionally on due date. Even otherwise as per para 3(a) of IHQ of MoD (Army) letter No. B/33513/AG/PS-2(c) dated 06.05.2002, a JCO/NCO who has been approved for promotion but not promoted for not being in acceptable medical category at the time of physical promotion, will not lose seniority when subsequently promoted. He will be granted original seniority notionally without effect on pay and allowances. We, therefore, consider that the date of notional promotion of the applicant be deemed to be on his rightfully due date i.e. w.e.f. 01.07.2015 as per his seniority.

9. In the result, the Original Application is allowed. The impugned order passed by the respondents is set aside. The respondents are directed to grant notional promotion in the rank of Havildar from due date i.e. w.e.f. 01.07.2015, the date on which juniors were promoted fixing his seniority in the rank of Havildar w.e.f 01.07.2015. The applicant shall not be entitled to pay and allowances for the period of notional promotion from 01.07.2015 to 31.08.2015. However, he shall be entitled to pay and allowances in the said rank from the date on which he was actually promoted. The respondents are directed to comply with the order within four months from the date of production of a certified copy of this order.

10. No order as to costs.

11. Pending Misc. Application(s), if any, shall be treated to have been disposed off.

**(Vice Admiral Abhay Raghunath Karve)**  
Member (A)

**(Justice Umesh Chandra Srivastava)**  
Member (J)

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