

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 86 of 2017**Wednesday, this the 19th day of January, 2022**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)Awadhesh Yadav (JC-698808W Sub (AA))
S/o Shri Bhagelu Yadav
R/o Vill & Post – Korwan, Distt – Deoria-27420 (UP)**.... Applicant**Ld. Counsel for the Applicant : **Shri Arun Kumar**, Advocate

Versus

1. Union of India, through the Chief of Army Staff, IHQ of MoD (Army), DHQ PO, New Delhi – 110011.
2. Commanding Officer 431 Field Hospital, PIN – 903431, C/o 56 APO.
3. Commandant Military Hospital Shillong, PIN-900332, C/o 99 APO.
4. Officer-in-Charge, AMC Records, PIN-900450, C/o 56 APO.

... RespondentsLd. Counsel for the Respondents : **Shri G.S. Sikarwar**,
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 an appropriate order or directions of a suitable nature quashing the impugned order passed by the opp. Party no. 1 dated 29.12.2016 as well as impugned order passed vide AMC Records/respondent no. 4, letter no. 356006J/AA/Sups/12 dated 17.09.2012 read with signal

no. A-8017 dated 20.09.2012, by which it was intimated that the applicant was temporarily superseded for promotion to the rank of Nb Sub (AA) for one month till 30.09.2012 due to allegedly not fulfilling of ACR grading criteria and letter no. JC-698808W/AY/CALC/PROM/14 dated 06.01.2015 by which it was intimated that the COAS has directed that statutory complaint submitted by JC-698808W Nb Sub Amb Asst) Awadhesh Yadav of 431 Field Hospital, by rejected without disclosing any reasons for doing so and not even giving a copy of the order stating to have been passed by the COAS, and granting the said promotion to the rank of Nb Sub (AA) from 01.10.2012, (instead of 01.09.2012) and to the rank of Sub (AA) from 01.03.2014 (instead of 01.01.2014) i.e. after making him junior to his erstwhile about 25 years by one month for Nb Sub (AA) and two months for Sub (AA) and to the rank of Sub Maj from due date of the junior after making due promotion.

- (b) Issue an appropriate order or direction of a suitable nature commanding the respondent to reckon the date of seniority of the applicant's promotion to the rank of Nb Sub (AA) from 01.09.2012 and to the rank of Sub (AA) from 01.01.2014, and also to the rank of Sub Maj and extend the two years service of applicant, thus correct his place in the relevant seniority roll appropriately about his erstwhile about 25 juniors who have erroneously been made senior to the applicant by one month for Nb Sub and two months for Sub specifically as in the case of his erstwhile immediate junior Janardan Singh (JC-698749P) who was promoted to the rank of Nb sub (AA) from 01.09.2012 and to the rank of Sub (AA) from 01.01.2014 and also sub Major from due date and to grant all consequential benefits.

- (c) Issue any other suitable order or direction which this Hon'ble Tribunal may deem just and proper in the facts and circumstances of the case.
- (d) Costs of the application may be awarded in favour of the applicant.”

2. Brief facts of the case are that applicant was enrolled in the Army on 29.12.1986 and was discharged from service on 31.12.2016 (AN) under Rule 13 (3) (i) (a) of Army Rules, 1954 after rendering 30 years and 02 days of service. The applicant was considered for promotion to the rank of Naib Subedar against the vacancy as on 01.09.2012 on his own turn as per seniority but was found ineligible due to non fulfilling ACR grading criteria in terms of IHQ of MoD (Army) letter dated 10.10.1997. While considering his promotion, his last five years ACRs from the year 2006 to 2011 were taken into consideration and out of these five ACRs, the applicant had earned three 'High Average' reports for the year from 2006 to 2008, one 'Above Average' report for the year 2010 and one 'Outstanding' report for the year 2011. The applicant had earned NIR for the year 2009, hence, his ACR for the immediate preceding year i.e. for the year 2006 was taken into consideration for the promotion. However, he was not fulfilling minimum mandatory requirement of three "Above Average' grading in last five ACRs and became ineligible for promotion to the rank of Naib Subedar against the vacancy as on 01.09.2012. Hence, he was temporarily superseded for promotion to the rank of Naib Subedar upto 30.09.2012 due to non fulfilling of ACR grading criteria. In this regard, applicant was communicated by AMC

Records vide letter dated 17.09.2012. The applicant was promoted to the rank of Subedar w.e.f. 01.01.2014 as per his seniority and was discharged from service after completion of 30 years of service. The applicant submitted a statutory complaint dated 30.10.2013 to the Chief of the Army Staff for his supersession in promotion to the rank of Nb Sub to his erstwhile about 25 juniors by one month. Without waiting the decision on his statutory complaint, the applicant filed OA No. 332 of 2013 before this Tribunal which was dismissed as withdrawn vide order dated 18.12.2013. During the pendency of the applicant's statutory complaint his erstwhile junior JC-69874P Nb Sub (AA) Janardan Singh was promoted to the rank of Subedar with seniority w.e.f. 01.01.2014 but the applicant was promoted to the rank of Subedar with seniority from 01.03.2014, thus, the applicant was made two months junior to his about 25 erstwhile juniors. The applicant filed another O.A. No. 69 of 2015 before this Tribunal during the pendency of his statutory complaint which was disposed off vide order dated 26.08.2016 with direction to the respondents to reconsider the grievances/statutory complaint of the applicant. The statutory complaint of the applicant was reconsidered by the COAS and was rejected vide order dated 29.12.2016. Being aggrieved, the applicant has filed the present Original Application.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Army (AMC) on 29.12.1986. The applicant was promoted to the rank of Naib Subedar on 01.10.2012 and became one month junior to his erstwhile about 25 juniors who were granted

promotion w.e.f. 01.09.2012. Had the applicant been granted the promotion from his due date i.e. 01.09.2012, he would have remained senior to these about 25 persons. The applicant was promoted to the rank of Subedar on 01.03.2014 and became junior to his erstwhile about 25 juniors who were granted promotion from 01.01.2014 but due to aforesaid lowering of seniority for promotion to Nb Sub by one month the applicant could not be promoted on due date i.e. 01.01.2014 alongwith other persons of his batch and retired on 31.12.2016 as Subedar.

4. Learned counsel for the applicant further submitted that applicant was surprised and shocked not to find his name in the list by which large number of Havildars including about 25 juniors to the applicant were granted promotion to the rank of Nb Sub w.e.f. 01.09.2012. AMC Records was requested by the unit of the applicant to intimate reasons as to how applicant's junior have been promoted to the rank of Nb Sub but his name was not included in the promotion list. AMC Records vide letter dated 17.09.2012 intimated that applicant has been temporarily superseded for promotion till 30.09.2012 due to not fulfilling of ACR grading criteria. The unit of the applicant was asked by AMC Records to initiate ACR for the year 2012 and to send the same on priority. On receipt of ACR of the applicant for the year 2012, AMC Records vide letter dated 20.10.2012 addressed to 414 Field Hospital, directed that applicant will be promoted to the rank of Nb Sub with immediate effect and thereafter, he will be despatched to his new unit being posted to 431

Field Hospital. The AMC Records published Part II Order dated 23.11.2012 showing date of promotion/seniority as 23.10.2012/01.10.2012 and clarified that applicant has become eligible for promotion w.e.f. 01.10.2012 and his seniority is fixed w.e.f. the date of eligibility as per policy on the subject.

5. Learned counsel for the applicant further submitted that applicant submitted a statutory complaint dated 30.10.2013 to the Chief of the Army Staff for his supersession in promotion to the rank of Nb Sub to his erstwhile about 25 juniors by one month and restoration of his seniority. Without waiting the decision on his statutory complaint, the applicant filed OA No. 332 of 2013 before this Tribunal which was dismissed as withdrawn vide order dated 18.12.2013. During the pendency of the applicant's statutory complaint his erstwhile junior JC-69874P Nb Sub (AA) Janardan Singh was promoted to the rank of Subedar with seniority w.e.f. 01.01.2014 but the applicant was promoted to the rank of Subedar with seniority from 01.03.2014, thus, the applicant was made two months junior to his about 25 erstwhile juniors without any fault on his part. The applicant filed another O.A. No. 69 of 2015 before this Tribunal during the pendency of his statutory complaint which was disposed off vide order dated 26.08.2016 with direction to the respondents to re-consider the grievances/statutory complaint of the applicant. The statutory complaint of the applicant was reconsidered by the COAS and was rejected vide order dated 29.12.2016.

6. Learned counsel for the applicant also submitted that applicant has always submitted his ACR form in time whenever same became due and he was never intimated any gap/shortfall or endorsement of adverse remarks, as such, the applicant was eligible for promotion to the rank of Nb Sub from 01.09.2012 and Subedar from 01.01.2014 in his own turn, hence contention of AMC Records is arbitrary and lacking transparency. The applicant suffered due to fault of AMC Records and has been deprived of his legal and genuine rightful promotion to the rank of Subedar which was due on 01.01.2014 but promoted on 01.03.2014 and thus he could not be promoted to the rank of Sub Maj due to supersession in the rank of Nb Sub for one month and in the rank of Subedar for two months as such, two years service of the applicant could not be extended and he suffered a lot of mental and physical harassment and agony due to the fault of opposite parties, hence, the applicant is taking shelter of the Hon'ble Tribunal for justice. He pleaded for fixation of applicant's seniority in the rank of Nb Sub w.e.f. 01.09.2012 and in Subedar w.e.f. 01.01.2014 and to pave the way for promotion to the rank of Sub Major alongwith his batch-mates.

7. On the other hand, Ld. Counsel for the respondents submitted that applicant was enrolled in the Army on 29.12.1986 and was discharged from service on 31.12.2016 (AN) under Rule 13 (3) (i) (a) of Army Rules, 1954 after rendering 30 years and 02 days of service. The applicant was considered for promotion to the rank of Naib Subedar against the vacancy as on 01.09.2012 on his own turn as

per seniority but was found ineligible due to non fulfilling ACR grading criteria in terms of IHQ of MoD (Army) letter dated 10.10.1997. While considering his promotion, his last five years ACRs from the year 2006 to 2011 were taken into consideration and out of these five ACRs, the applicant had earned three 'High Average' reports for the year from 2006 to 2008, one 'Above Average' report for the year 2010 and one 'Outstanding' report for the year 2011. The applicant had earned NIR for the year 2009, hence, his ACR for the immediate preceding year i.e. for the year 2006 was taken into consideration for the promotion. However, he was not fulfilling minimum mandatory requirement of three "Above Average" grading in last five ACRs and became ineligible for promotion to the rank of Naib Subedar against the vacancy as on 01.09.2012. Hence, he was temporarily superseded for promotion to the rank of Naib Subedar upto 30.09.2012 due to non fulfilling of ACR grading criteria. In this regard, applicant was communicated by AMC Records vide letter dated 17.09.2012. The applicant lost his seniority till he became eligible for promotion as per rules.

8. Ld. Counsel for the respondents further submitted that applicant submitted a statutory complaint dated 30.10.2013 to set aside orders passed by AMC Records dated 17.09.2012 and signal dated 20.09.2012 for temporarily supersession of his promotion to the rank of Naib Subedar for one month till 30.09.2012. The statutory complaint of the applicant was examined in detail and was rejected by the Chief of the Army Staff vide order dated 29.12.2014. Being

aggrieved with rejection order of COAS, the application filed OA No. 69/2015 before this Tribunal which was allowed vide order dated 26.08.2016 with direction to the competent authority to re-consider applicant's statutory complaint and to pass a reasoned and speaking order within six weeks. The statutory complaint of the applicant was reconsidered afresh by IHQ of MoD (Army) and the same was rejected being devoid of merit and substance vide order dated 29.12.2016. The decision of the COAS was communicated to the applicant vide AMC Records letter dated 30.12.2016.

9. Ld. Counsel for the respondents further submitted that no injustice has been done to the applicant for grant of promotion. The applicant was temporarily superseded for promotion to the rank of Naib Subedar for one month due to 'not fulfilling of ACR grading criteria' and lost his seniority till he became eligible for promotion as per rules and promotion policy. The applicant was promoted to the rank of Subedar w.e.f. 01.01.2014 as per his seniority and was discharged from service after completion of 30 years of service, therefore, question for extension of two years service does not arise as maximum service period in the rank of Subedar is 30 years. Hence, allegations made by the applicant against the respondents 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 in ACR gradings for the last five years which were taken into consideration for

promotion to the rank of Naib Subedar, there is no illegality, bias or prejudice neither in ACR gradings nor in DPC proceedings. The applicant was lacking mandatory ACR grading criteria as per extant policy which is applied universally to all similarly placed individuals and accordingly, he was promoted to the rank of Nb Sub , hence no injustice has been done to the applicant as alleged by the applicant. The applicant was temporarily superseded for promotion to the rank of Naib Subedar for one month due to 'not fulfilling of ACR grading criteria' and lost his seniority till he became eligible for promotion as per rules and promotion policy and thus, he became one month junior to his erstwhile about 25 juniors. The applicant was promoted to the rank of Naib Subedar w.e.f. 01.10.2012 as per his seniority and was discharged from service after completion of 30 years of service. Hence, the only reason for non consideration for promotion in DPC for the rank of Naib Subedar on due date is lack of mandatory ACR grading criteria as per extant policy and not otherwise.

12. We also find that applicant was promoted to the rank of Subedar w.e.f. 01.01.2014 as per his seniority which was fixed from the date of promotion to the rank of Nb Sub in which applicant was superseded by one month to his 25 erstwhile juniors due to not fulfilling of ACR grading criteria. Hence, the applicant was promoted to the rank of Subedar as per his seniority on due date as per rules and promotion policy. The applicant was discharged from service after completion of 30 years of service in the rank of Subedar and therefore, his further extension of two years service or consideration

