

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 100 of 2021**Friday, this the 13th day of January, 2023**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Atul Kumar Jain, Member (A)Sukhdev Singh (Ex Hav No. 4461102Y)
S/o Shri Dilbag Singh
R/o Village Post - Bhorchhi Rajputan,
Tehsil – Baba Bakala, District – Amritsar, Punjab – 143111.**.... Applicant**Ld. Counsel for the Applicant: **Shri Ashok Kumar**, Advocate
(Not Present)

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of Army Staff, Integrated Headquarter of Ministry of Defence, New Delhi.
3. Commanding Officer/Incharge Record Officer, 4 Sikh Light Infantry PIN – 912304, C/o 56 APO.
4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad (UP).

... RespondentsLd. Counsel for the Respondents : **Shri Yogesh Kesarwani**,
Central Govt Counsel**ORDER**

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

- “(i) This Hon'ble Court may graciously be pleased to direct the respondents to quash the impugned order dated

19.9.2017 (Annexure No. A-7) passed by the respondent no. 3.

- (ii) This Hon'ble Court may graciously be pleased to direct the respondents to give the benefit of promotion to the applicant on the post of Naib Subedar, consequential promotion/increment, service benefits including arrears of salary etc. w.e.f. 15.1.2000, in accordance with service rules.
- (iii) This Hon'ble Court may further be pleased to pass such other and/or further order as deem fit, proper and necessary in the circumstances of this case.
- (iv) Award costs to the applicant."

2. Brief facts of the case are that applicant was enrolled in the Army on 03.10.1980. The applicant was promoted to the rank of Havildar w.e.f. 01.01.1993. The applicant passed promotion cadre from Havildar to Naib Subedar on 08.01.2000. In the panels of promotion held in 2000, applicant was not considered for promotion due to lack of requisite ACR criteria. Applicant was awarded punishment of 'Severe Reprimand' on 24.12.2001 and before this, applicant had already incurred one red ink entry under Section 63 on 25.08.1999, thus he again became ineligible for promotion to the rank of Naib Subedar due to discipline criteria. Prior to completion of five years from the date of award of first red ink entry to become eligible for promotion, applicant sustained injury in his right knee and was downgraded to low medical category S1H1A3(Permanent) P1E1 w.e.f. 01.12.2002 for two years, therefore, applicant again became ineligible for promotion to the rank of Naib Subedar on medical grounds. The Re-categorisation Medical Board of the applicant was

due for review on 01.12.2004 but prior to his review, applicant completed his terms of engagement in the rank of Havildar and therefore, he was discharged from service on 01.11.2004 (FN) as per discharge order issued by the Record. Being aggrieved by non grant of promotion to the rank of Naib Subedar, the applicant has filed the present Original Application.

3. Learned counsel for the applicant pleaded that applicant was enrolled in the Army on 03.10.1980. The applicant was promoted to the rank of Havildar w.e.f. 01.01.1993. The applicant came in promotion zone for the post of Naib Subedr due w.e.f. 01.01.2000 but the respondents have not considered the applicant for promotion from the year 2000 to 2004. The applicant completed his service tenure in the rank of Havildar and was discharged from service on 30.10.2004 (AN). The respondents have not promoted to the applicant for the reasons of red ink entries. The applicant came to know about disqualification for promotion to the post of Naib Subedar due to ACR criteria of the year 2000. This fact came in the knowledge of the applicant in the year 2015 and thereafter, applicant sent his application on 28.11.2016 to Record Office to cancel wrong red ink entries so that he could be promoted on the post of Naib Subedar which was rejected by the respondents vide order dated 22.12.2016 stating that officer awarded red ink entry is not available and review of the punishment can only be proceeded within a period of two years from the date of award of punishment.

4. Learned counsel for the applicant further pleaded that applicant sent an appeal on 04.03.2017 to promote applicant on the post of Naib Subedar which was rejected by the respondents vide order dated 16.03.2017 stating that ACR record of the applicant is no longer available as the same has been destroyed as per policy on the subject. The applicant sent a legal notice to the respondents on 10.07.2017 to consider promotion before the year 2000 which was illegally rejected vide reply dated 19.09.2017. He pleaded that applicant was under promotion zone before the year 2000 therefore, as per well settled law of the department, his ACRs of past 5 years should only be considered and thus, applicant having required ACRs grading of 'Above Average' is eligible for promotion to the post of Naib Subedar. Accordingly, applicant should be promoted to the post of Naib Subedar w.e.f. 15.01.2000, on his due date and grant subsequent promotions/increment to the applicant.

5. On the other hand, Ld. Counsel for the respondents submitted that applicant was promoted to the rank of substantive Havildar w.e.f. 01.09.1993. The applicant passed promotion cadre from Havildar to Naib Subedar on 08.01.2000. In the panel of promotion from Havildar to Naib Subedar held on 15.01.2000, applicant was not considered for promotion due to lack of requisite ACR criteria. In subsequent promotion panel also he was not considered for promotion for the same reason of ACR criteria. In August, 2001, applicant committed offence under Army Act, Section 63 and was awarded punishment of 'Severe Reprimand' on 24.12.2001. The applicant had already

incurred one red ink entry under Section 63 on 25.08.1999 prior to present red ink entry of 24.12.2001, thus he again became ineligible for promotion to the rank of Naib Subedar due to discipline criteria.

6. Learned counsel for the respondents further submitted that under the provisions of para 3(a) of Army Headquarters letter dated 10.11.1997, “***an individual should not have more than three red ink entries during the entire service and not more than one red ink entry in last five years service for promotion to the rank of Naib Subedar (GD)***”. Since, the applicant earned two red ink entries in the last five years he was not considered for promotion being ineligible. Further, prior to completion of five years from the date of award of first red ink entry to become eligible for promotion, applicant sustained injury IDK (Right) Knee and was downgraded to low medical category S1H1A3(Permanent) P1E1 w.e.f. 01.12.2002 for two years at 166 Military Hospital, therefore, applicant again became ineligible for promotion to the rank of Naib Subedar on medical grounds. The Re-categorisation Medical Board of the applicant was due for review on 01.12.2004 but prior to his review, applicant has completed his terms of engagement in the rank of Havildar and therefore, he was discharged from service on 01.11.2004 (FN) as per discharge order issued by the Record.

7. Learned counsel for the respondents further submitted that promotion in the Army is governed under ACR, discipline and medical criteria. Since the applicant did not fulfil the eligibility conditions of promotion to the rank of Naib Subedar, he became ineligible due to

lack of ACR, discipline (red ink entry) and medical category. The appeal/legal notice sent by the applicant for non grant of promotion to the rank of Naib Subedar dated 04.03.2017 and 10.07.2017 have been replied by the Records vide letters dated 27.03.2017 and 19.09.2017 stating the reasons for ineligibility due to lack of ACR, discipline and medical category. He pleaded that Original Application filed by the applicant is devoid of merits and should be dismissed.

8. We have heard learned counsel for the respondents and perused the material placed on record.

9. We have perused the record and we observe that applicant passed promotion cadre from Havildar to Naib Subedar on 08.01.2000 and thereafter, he became eligible for consideration in the promotion panel for promotion to the rank of Naib Subedar. The name of the applicant was first time included for consideration in the panel of promotion board from Havildar to Naib Subedar which held on 15.01.2000 but applicant was not considered for further promotion due to lack of requisite ACR criteria and thus, he superseded. In subsequent promotion panel, his name was included but he was not considered for promotion for the same reason of lacking required ACR criteria. Hence, his batch-mates who were meeting the eligibility conditions for promotion were promoted to the post of Naib Subedar and applicant due to lack of ACR criteria superseded with his juniors. Thereafter, on 24.12.2001, applicant was awarded punishment of 'Severe Reprimand' and as per Army Headquarters policy dated 10.11.1997, applicant having more than one red ink entry in the last

five years (last red ink entry punishment was awarded on 25.08.1999), became ineligible due to award of punishment of red ink entry (discipline criteria). Thereafter, applicant was in low medical category A3 (Permanent) w.e.f. 01.12.2002 for two years and his re-categorisation medical board was due for review on 01.12.2004 but prior to his review, applicant completed his terms of engagement in the rank of Havildar and was discharged from service on 01.11.2004 (FN) as per Army Rules and policy on the subject. Thus, applicant could not be promoted to the rank of Naib Subedar for not fulfilling the eligibility conditions for promotions due to lack of ACR, discipline and medical category as required by the promotion policy.

10. In view of above, we find that there is no illegality, bias or prejudice neither in consideration of ACRs of last five years nor in award of punishments for the offences committed by him which imposed restriction on higher promotion. The applicant was lacking mandatory ACR grading criteria, awarded punishments of red ink entries within a period of five years and downgraded to low medical category A3 (Permanent) and was not considered for promotion to the post of Naib Subedar due to lack of ACR, discipline and medical category during the period under consideration. Hence, his prayer for grant of promotion to the rank of Naib Subedar has rightly been rejected by the respondents as per promotion policy and rules and regulations on the subject.

11. The Original Application is devoid of merit, deserves to be dismissed and is accordingly **dismissed**.

12. No order as to costs.

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

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: January, 2023
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