

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 127 of 2017**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)Ex Subedar Clerk Jham Prasad Yadav (No. JC-193990-P)
S/o Late Shri Yamuna Yadav
R/o Village – Turkwalla, PO – Naika Chhaptra Kasia
District – Kushi Nagar (UP)**.... Applicant**Ld. Counsel for the Applicant: **Shri Veer Raghav Chaubey**, Advocate

Versus

1. Union of India, Ministry of Defence, through Chief of the Army Staff, Army Headquarters, New Delhi.
2. Director General of Medical Services (Army), Adjutant General's Branch, Army Headquarters, New Delhi.
3. Commandant, A.M.C. Centre & School, Lucknow.
4. Officer Incharge, Records, A.M.C. Records, Lucknow.
5. D.D.M.S. HQ Delhi Area, Delhi Cantt, Delhi.

... RespondentsLd. Counsel for the Respondents : **Dr. Shailendra Sharma Atal**,
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 Tribunal may kindly be pleased to direct the opposite parties to quash the impugned order dated 05.12.2016 passed by the opposite party no. 2 which is

received by the applicant on 02.02.2017 before the Hon'ble Tribunal at the time of hearing of the Execution application No. 19 of 2017 contained in Annexure No. 1.

- (ii) This Hon'ble Tribunal may kindly be pleased to direct the respondents to quash the AMC Records, Lucknow letter intimating the supersession of the applicant for the purposes of promotion.
- (iii) This Hon'ble Tribunal may kindly be pleased to direct the respondents to quash the arbitrary rejection letter of the D.G.M.S. Army HQ, New Delhi arbitrarily rejecting the non-statutory complaint of the applicant.
- (iv) This Hon'ble Tribunal may kindly be pleased to direct the respondents to quash the remarks and gradings of the reviewing officer in the A.C.Rs. of the applicant for the year 1991 and 1992.
- (v) This Hon'ble Tribunal may kindly be pleased to direct the respondents to review the promotion of the applicant ignoring the remarks and gradings of the R.O. Brig (now Major General) S.G. Niyogi in the A.C.R. of the applicant for the year 1991 and 1992 at the same time upholding the remarks and gradings of the initiating officer in the A.C.R. for the year 1991 and 1992 and promote the petitioner to the rank of Subedar Major from retrospective date that is from 01.05.2013 notionally with all the consequential benefits.
- (vi) Pass any other order or direction which this Hon'ble Tribunal may deem fit and proper under the circumstances of the case.
- (vii) To award the cost of the O.A. in favour of the applicant."

2. Brief facts of the case are that applicant was enrolled in the Army on 08.10.1965 and was promoted to the rank of Subedar on 01.02.1990. He was discharged from service on 30.10.1993 on

completion of service limit under the provision of Rule 13 (3) I (i) (a) of the Army Rules, 1954 after rendering 28 years and 23 days of service. The applicant was considered for promotion to the rank of Subedar Major (Clerk) against the vacancy of 01.05.1993 and was screened for promotion to the rank of Subedar Major alongwith his batchmates vide promotion form dated 07.04.1993 but due to lack of 'Above Average' report, applicant got superseded from his juniors and was not promoted to the rank of Subedar Major. Being aggrieved by non grant of promotion, the applicant has filed the present Original Application.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Army on 08.10.1965. The applicant was promoted to the rank of Nb Sub on 04.02.1989 and Subedar on 03.02.1990. The applicant was eligible for further promotion to the rank of Subedar Major w.e.f. 01.05.1993, however he has been denied his legitimate promotion to the rank of Subedar Major arbitrarily and retired from service w.e.f. 01.11.1993 otherwise, if applicant was promoted to the rank of Subedar Major, he could serve for a period of 4 years till 31.10.1997. AMC Records has promoted Subedar Clerk Lala Ram and Sub Bharat Singh to the rank of Subedar Major w.e.f. 01.05.1993 who are much juniors to the applicant, such action of the respondents is discriminatory and violative of Articles 14 and 16 of the Constitution of India.

4. Learned counsel for the applicant further submitted that applicant submitted a Non Statutory complaint on 22.04.1993 for

setting aside remarks and grading of R.O. Brig (now Major General) S.G. Niyogi from the ACR for the year 1991 and 1992 who graded 'High Average' as Brig S.G. Niyogi was not competent as Reviewing Officer (RO) to endorse his remarks on the ACRs as the applicant had not served physically for 75 days under him. The DGMS has also arbitrarily rejected the Non statutory complaint of the applicant vide order dated 26.07.1993 without proper consideration. The applicant has earned above average ACR upto and for the year 1990 and acquired other qualification to make him eligible for promotion to the rank of Subedar Major. Therefore, High Average report of 5 points graded by Brig (now Major General) S.G. Niyogi be set aside being biased as applicant has served together with Brig D. Ghosh for a period of more than 75 days as laid down in Army Order 5/1990 and he was the only competent and legal eligible officer to endorse his remarks as RO in the ACR for the year 1991. Since, Brig (now Major General) S.G. Niyogi was posted out from 08.04.1992, he was not competent to endorse his remarks as RO and award grading in the ACR for the year 1992, therefore, ACR for the year 1992 deserves to be set aside. He pleaded that after setting aside High Average grading of RO in the ACRs of 1991 and 1992, applicant will be qualified and eligible for promotion to the rank of Sub Maj and accordingly, he should be promoted to the rank of Sub Major w.e.f. 01.05.1993.

5. On the other hand, Ld. Counsel for the respondents submitted that applicant was enrolled in the Army on 08.10.1965 and was

promoted to the rank of Subedar on 01.02.1990 and substantive rank was allotted w.e.f. 01.12.1990. He was discharged from service on 30.10.1993 on completion of service limit under the provision of Rule 13 (3) I (i) (a) of the Army Rules, 1954 after rendering 28 years and 23 days of service. The applicant was considered for promotion to the rank of Subedar Major (Clerk) against the vacancy of 01.05.1993 and was screened for promotion to the rank of Subedar Major alongwith his batchmates vide promotion form dated 07.04.1993. The ACR gradings earned by the applicant in his last five ACRs from 1988 to 1992 are as under :-

Ser No.	Year	Rank	Grading
1.	1992	Subedar	High Average
2.	1991	Subedar	High Average
3.	1990	Subedar	Above Average
4.	1989	Naib Subedar	High Average
5.	1988	Havildar	Above Average

6. Learned counsel for the respondents further submitted that ACR/grading criteria for promotion to the rank of Subedar Major as per IHQ of MoD letter dated 18.12.1985 is that, "A Subedar must have earned three 'Above Average' report out of last five reports rendered upon him and the other two must be at least 'High Average'. Since, the applicant had earned three 'High Average' and two 'Above Average' reports and accordingly, he did not fulfil the ACR grading criteria as per policy letter dated 18.12.1985, hence, applicant was superseded by his eligible and qualified juniors in the seniority panel for promotion to the rank of Subedar Major. The matter regarding supersession was intimated to his unit vide AMC Records letter dated

12.04.1993. Accordingly, applicant was discharged from service w.e.f. 01.11.1993 in the rank of Subedar.

7. Learned counsel for the respondents further submitted that applicant submitted a non statutory complaint dated 22.04.1993 for setting aside the remarks and gradings in ACRs for the year 1991 and 1992 which was examined in the light of policies on the subject and was rejected by DGMS vide order dated 15.07.1993. The allegation made by the applicant that his juniors were promoted is rejected as they were found eligible for promotion to the rank of Subedar Major fulfilling all eligibility conditions for promotion, hence, applicant was superseded by his eligible and qualified juniors in the seniority panel due to ACR grading criteria. The ACRs for the year 1991 and 1992 reviewed by Brig (now Major General) S.C. Niyogi were technically corrected as accepted by the Record Office because in terms of para 17 of Army Order 5/90, applicant and RO must have served together for a minimum period of 75 days and this period is not physical service but total service under RO. Hence, allegation made by the applicant that Brig (now Major General) S.C. Niyogi was not competent to review his ACRs as RO is rejected.

8. Learned counsel for the respondents further submitted that applicant has been superseded in promotion to the post of Subedar Major due to lack of ACR grading criteria (Above Average report). Hence, applicant was not promoted to the rank of Subedar Major and discharged from service in the rank of Subedar as per policy in vogue

and no injustice has been done to him. He pleaded for dismissal of Original Application.

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

10. We have perused the record and we find that in ACR grading for the last five years which were taken into consideration for promotion to the rank of Subedar Major, applicant was graded with 'High Average' in the ACRs of 1989, 1991 & 1992 and 'Above Average' in the year 1988 and 1990. Hence, against the requirement of three Above Average reports out of five which were taken into consideration for promotion to the rank of Subedar Major, applicant got only two ACRs of 'Above Average' grading, hence, applicant was superseded due to lack of ACR grading criteria and thus, he was not promoted to the rank of Subedar Major and he was discharged from service on 30.10.1993 in the rank of Subedar as per rules/policy on the subject.

11. As far as first allegation for review of ACRs by Brig (now Major General) S.C. Niyogi is concerned, it is clarified that he was competent to review the ACRs as 75 days period under RO is not physical presence of both rate and RO but it is total presence in terms of para 17 of Army Order 5/90. With regard to second allegation that his juniors were promoted, so, applicant was superseded by his eligible and qualified juniors in the seniority panel due to lack of Above Average ACR and thus, both the juniors who were fulfilling all eligibility conditions for promotion were promoted to the rank of

Subedar Major as per promotion order issued by the Record Office and applicant superseded.

12. In view of above, we find that there is no illegality, bias or prejudice neither in ACR gradings nor in DPC proceeding and applicant superseded for promotion due to mandatory requirement of three 'Above Average' ACRs while considering his promotion to the post of Subedar Major. The applicant was lacking mandatory ACR grading criteria as per extant policy which is applied universally to all similarly placed individuals, hence, no injustice has been done to the applicant as alleged by the applicant that RO has downgraded his ACRs and juniors have been promoted. The only reason for non consideration for promotion by the DPC is lack of 'Above Average' report and therefore, applicant was discharged from service on 30.10.1993 in the rank of Subedar as per rules. Hence, his prayer for grant of promotion to the rank of Subedar Major has rightly been rejected by the respondents as per promotion policy and rules and regulations on the subject.

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

14. No order as to costs.

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

(Vice Admiral Atul Kumar Jain) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: January, 2023

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