

**Court No. 1**

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**

**Original Application No. 151 of 2020**

Monday, this the 16<sup>th</sup> day of January, 2023

**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Maj. Gen. Sanjay Singh, Member (A)**

Rajesh Kumar (No. 13990636W Hav/AA)  
S/o Anil Kumar Singh  
Permanent resident of Village – Manjhaul,  
Post office – Manjhaul, District – Begusarai (Bihar)  
Presently posted at 406 Field Hospital,  
PIN – 903406, C/o 56 APO.

**.... Applicant**

Ld. Counsel for the Applicant : **Shri Yashpal Singh**, Advocate

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, New Delhi.
2. Director General of Medical Services (Army), Integrated Headquarters of Ministry of Defence, Adjutant General's Branch, 'L' Block, New Delhi.
3. Officer-in-charge, Army Medical Corps Records, PIN 900450, C/o 56 APO.
4. Commanding Officer, 406 Field Hospital, PIN – 903406, C/o 56 APO.

**... Respondents**

Ld. Counsel for the Respondents : **Shri Rajiv Pandey**,  
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:-

- “(a) Issue/pass an order setting aside supersession of the applicant as intimated vide letter dated 02.01.2020, and directing the respondents to consider and grant him promotion in the rank of Naib Subedar with effect from 01.01.2020, i.e. the date on which his batch mates and juniors have been given promotion in the said rank, with all consequential service benefits.
- (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 original Application with cost.”

2. Brief facts of the case are that the applicant was enrolled in the Indian Army (AMC) on 23.02.1985. He was promoted to the rank of Havildar on 25.04.2017. The applicant passed Senior Cadre Course (SCC) on 07.01.2019 and became eligible for promotion. The applicant was screened for promotion to the rank of Naib Subedar (Ambulance Assistant) as per Corps seniority alongwith his batch-mates against the vacancy of 01.01.2020, however, applicant was found ineligible as he had completed 44 years of age as on 31.12.2019 and applicant crossed upper age limit of 44 years for promotion to the rank of Naib Subedar, i.e. before occurrence of vacancy. Age of 44 years is the maximum age limit for promotion to the rank of Naib Subedar in Ambulance Assistant trade in terms of para 398 of AMC ROI No. 12/2014 and IHQ of MoD (Army) letter dated 04.05.1999, thus, he permanently superseded for promotion to the rank of Naib Subedar and was discharged from service in the rank of Havildar on 28.02.2021 as per rules and policy on the subject. 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 23.02.1995. The applicant was promoted to the rank of Havildar on 25.04.2017. The applicant successfully completed Senior Cadre Course (SCC) which was conducted at AMC Centre from 06.11.2018 to 07.01.2019. On successful completion of SCC, the applicant became eligible for consideration for promotion in the next rank of Naib Subedar w.e.f. 07.01.2019. The batch mates of the applicant namely, Hav Pawar Bala Saheb Dasharath, Hav Md. Mannan Khan, Hav Avadh Suresh Trimbak, Hav Anuj Kumar Singh and Hav Dharmendra Kumar were promoted in the rank of Naib Subedar on 01.11.2019 whereas Hav Nand Kishore was promoted on 01.12.2019 but applicant was denied promotion in the rank of Naib Subedar. Thereafter, on 01.01.2020, more than hundred persons who were batch mates and juniors to the applicant were given promotion in the rank of Naib Subedar but the applicant was denied the same.

4. Learned counsel for the applicant further submitted that on 02.01.2020, applicant was intimated by AMC Records vide letter dated 23.12.2019 that he has been superseded for promotion in the rank of Naib Subedar alleging that he became overage as on 01.01.2020. Hence, denial of promotion to the applicant in the rank of Naib Subedar is illegal, arbitrary, unjust and unfair exercise of power by the respondents as per para 13 of IHQ of MoD (Army) policy letter dated 10.10.1997 read with Para 149(c) of the Defence Service Regulations (Army), in which maximum age limit for promotion in the rank of Naib Subedar is 44 years. The said policy also provides for

relaxation in age criteria in exceptional cases for which procedure is laid down in Army Headquarters letter dated 8/14.09.1962. The applicant has an outstanding service career and was fulfilling the required criteria for promotion after completion of SCC on 07.01.2019, i.e. about one year prior to completion of the maximum age limited of 44 years as on 01.01.2020 but he was kept on waiting without any justification whereas his batch mates and juniors got promotion before 01.01.2020 and also as on 01.01.2020.

5. Learned counsel for the applicant placed reliance on the judgment of the Armed Forces Tribunal (RB), Jabalpur in O.A. No. 124 of 2016, **Hav Rajendra Singh vs. Union of India and Others**, decided on 18.04.2017 in which the Tribunal has granted relaxation in age and directed to the respondents to consider promotion to the rank of Naib Subedar. Accordingly, applicant should also be granted age relaxation and to be promoted to the rank of Naib Subedar. Thus, he pleaded that under the relevant rules and on the basis of the principles of natural justice and order passed by the AFT (RB), Jabalpur in **Hav Rajendra Singh** (supra), the applicant is entitled for promotion in the rank of Naib Subedar from the date his juniors have been promoted.

6. Learned counsel for the respondents submitted that as per para 398 of Army Medical Corps Records Office Instruction (AMC ROI) No. 12/2014 and Para 2 (a) & (b) of Government of India, Ministry of Defence letter No. F14(3)/98/D(AG) dated 04.05.1999, the service limit for retirement of Havildar has now been increased to 26 years,

the age and service limits laid down for promotion to JCOs rank in paragraph 149 of the Regulation for the Army 1987 are consequently revised as under :-

- (a) Clerks and SKT - 46 years of age & 26 years of service.
- (b) Other categories - 44 years of age & 26 years of service. including Ambulance Asst.

7. Learned counsel for the respondents further submitted that applicant was enrolled in the Indian Army (AMC) on 23.02.1985. He was promoted to the rank of Havildar on 25.04.2017. The applicant passed Senior Cadre Course (SCC) on 07.01.2019 and became eligible for promotion. The applicant was screened for promotion to the rank of Naib Subedar (Ambulance Assistant) as per Corps seniority in his own turn alongwith his batch-mates against the vacancy of 01.01.2020 vide Promotion Form dated 28.11.2019. However, applicant was found ineligible as he had completed 44 years of age as on 31.12.2019 and on 01.01.2020, applicant crossed upper age limit of 44 years for promotion to the rank of Naib Subedar (Ambulance Assistant), i.e. before occurrence of vacancy. This is the maximum age limit for promotion to the rank of Naib Subedar in Ambulance Assistant trade in terms of para 398 of AMC ROI No. 12/2014 and IHQ of MoD (Army) letter dated 04.05.1999. Thus, he permanently superseded for promotion to the rank of Naib Subedar upto the date of retirement from service which was communicated to the applicant vide AMC Records letter dated 23.12.2019. Thus, no injustice has been done to the applicant and he was discharged from

service in the rank of Havildar on 28.02.2021 as per rules and policy on the subject. He pleaded for dismissal of O.A. being devoid of merits and lacking substance.

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

9. It is pertinent to mention here that judgment relied upon by the applicant in Para 5 above is not relevant in this case being based on different facts and circumstances and therefore, applicant cannot be given the benefit of aforesaid judgment to grant age relaxation for promotion to the rank of Naib Subedar as in the case of **Hav Rajendra Singh** (supra), applicant was awarded 'Outstanding' and 'Above Average' gradings in all four ACRs and he was short of one ACR in the rank of Havildar as last five ACRs were to be considered for promotion. He earned only one ACR in the rank of Havildar on 30.09.2014 and next ACR was due on 01.10.2016 and before that applicant was going to complete 44 years of age on 02.06.2016. Thus, by the time he earned his second ACR in the rank of Havildar he will become ineligible for promotion due to the age criteria. There was no red ink entry in the entire service of the applicant. Therefore, taking into consideration of his overall profile having Outstanding and Above Average ACRs and bright service career having no punishment/red ink entry, mandatory requirement of one ACR in the rank of Havildar (Fifth ACR) was expunged under the provisions of Army Order 1/2002/MP and IHQ of MoD (Army) letter dated 10.10.1997 as one time measure and age relaxation was granted by

the Tribunal for consideration of his promotion to the rank of Naib Subedar.

Therefore, in the instant case, we observe that applicant is not short of any ACR while considering his case for promotion but he crossed upper age limit of 44 years on the date of consideration of his promotion, hence, applicant became ineligible for promotion on the ground of overage and not lack of ACR in the rank of Havildar.

10. During the course of hearing, original record of the applicant was produced by the Legal Cell and was perused by the Bench wherein it was found that applicant was imprisoned in military custody for committing an offence under Section 63 of the Army Act, 1950. Though, this punishment is not a bar while considering his promotion to the rank of Naib Subedar but it is a bar while considering his case for age relaxation as per promotion policy as age relaxation may be granted only in exceptional case who is having excellent and unblemished service record.

11. In the instant case, we find that applicant was screened for promotion to the rank of Naib Subedar as per his seniority alongwith his batch-mates against the vacancy as on 01.01.2020 but he was found ineligible as he had completed 44 years of age on 31.12.2019 and thus, after crossing upper age limit, applicant permanently superseded for promotion to the rank of Naib Subedar as per promotion policy, whereas his batch-mates and juniors who were meeting the eligibility criteria of ACR, discipline, medical and age limit for promotion, were promoted as per Corps seniority. Hence, there is

no illegality, bias or prejudice in consideration/selection process for promotion by the respondents. The applicant crossed upper age limit of 44 years and became ineligible for further promotion to the rank of Naib Subedar till his date of retirement as per promotion policy.

12. In view of the above, we do not find any irregularity or illegality in granting promotion to the applicant to the rank of Naib Subedar. The applicant crossed upper age limit of 44 years and hence, his prayer for grant of promotion to the rank of Naib Subedar relaxing age criteria beyond the rules/policy on the subject, 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.

**(Maj. Gen. Sanjay Singh)**

Member (A)

Dated: January, 2023

SB

**(Justice Umesh Chandra Srivastava)**

Member (J)