

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 303 of 2021**Monday, this the 16th day of January, 2023**“Hon’ble Mr Justice Umesh Chandra Srivastava, Member (J)”****“Hon’ble Maj Gen Sanjay Singh, Member (A)”**

No. 1494818P CHM Kishan Singh, No. 2 Training Battalion, Bengal Engineer Group & Centre, Roorkee (Uttarakhand)

..... ApplicantLd. Counsel for the Applicant : Shri Lalit Kumar, Advocate.
Shri Ashish Asthana, Advocate

Versus

1. The Union of India, Through Secretary Ministry of Defence South Block, New Delhi.
2. Director, Ceremonial and Welfare Directorate/ CW-1 Adjutant General’s Branch, Army Headquarters DHQ PO, New Delhi - 11
3. The Commandant, Bengal Engineer Group & Centre Roorkee (Uttarakhand)
4. The Commandant, RVC Centre Meerut (UP) Pin: 250001.
5. The Commanding Officer, No. 2 Training Battalion Bengal Engineer Group & Centre Roorkee (Uttarakhand)

.....RespondentsLd. Counsel for the Respondents. : **Shri Namit Sharma,**
Central Govt Counsel

ORDER

“Per Hon’ble Mr Justice Umesh Chandra Srivastava, Member (J)”

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

(i) *To direct the respondents, particularly Respondent Nos. 2 and 4, to produce the true copies of the following documents on affidavit, for their discovery and inspection by the Hon’ble Tribunal:-*

(a) *Letter dated 21st January 19 (as mentioned in Para 1 (a) of the impugned order dated 26 September 2019).*

(b) *Letter dated 13 March 19 (as mentioned in Para 1 (b) of the impugned order dated 26 September 2019).*

(c) *The applications received by Respondent No.2, from various Regimental Centers by due date, i.e. 20th March 2019, for filing the vacant post of Naib Subedar (Pipes/Drums) at RVC Centre.*

(d) *The application received by Respondent No.2, from the unnamed ‘Subedar’ whose name had been ‘shortlisted’ for his posting to RVC Centre at Meerut and the date on which such application had been received by Respondent No. 2.*

(e) *Copy of the relevant Rule / Regulation or authority under which the vacant post of Naib Subedar (Musician) at RVC Centre which was required to be filled by a suitable and qualified Havildar on promotion as per extant*

rules, was sought to be filled by way of 'shortlisting' of a Subedar for his posting to Meerut.

(f) Nominal roll of the persons belonging to the 'Pipes/drums' of the RVC Centre Meerut, as it existed on 20th July 2019 and as it exists on the present day.

(g) Names of the Havildars of 'Pipes/Drums' of various Regimental Centers with their seniority and PJ Qualification as it existed on 20th July 2019 and as it exists on the present day.

(ii) If on judicial scrutiny of the above documents it is found by the Hon'ble Tribunal that the said vacancy of Naib Subedar (Pipes/Drums) was existing with RVC Centre (Respondent No.4) as on 20th July 2019 also, and there was no other eligible Havildar with PJ Qualification, senior to the applicant in any other Regiment/Corps, then direct Respondent No.2 to transfer the applicant forthwith to RVC Centre on promotion to the rank of Naib Subedar with all consequential benefits, including seniority and the financial benefits, with retrospective effect from 20th July 2019.

(iii) On the other hand, if it is found that the said vacant post of Naib Subedar (Pipes/Drums) was filled up by someone after 20th July 2019 but the said person was junior to the applicant, then direct the respondents to revert such person to his original Regiment/Corps and transfer the applicant on promotion to the rank of Naib Subedar (Pipes/Drums) to the RVC Centre with all consequential benefits with retrospective effect from 20th July 2019.

(iv) To award the interest @ 12% p.a. on the arrears of pay and allowances that will become payable to the applicant with effect from 20th July 2019 till actual payment of the same.

(v) To award exemplary cost to the applicant as against the respondents.

(vi) To make appropriate observations against the concerned officers if it is found that someone had been illegally transferred/posted to the vacant post of Naib Sbuedar (Pipes/Drums), on extraneous considerations.

(vii) To pass any other order/orders or direction/directions which the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case and in the interest of justice.

2. The factual matrix on record is that the applicant was enrolled in the Indian Army on 26.08.1997 as Musician and promoted to the rank of Havildar (Hav) on 08.04.2017. In this Trade only one Junior Commissioned Officer (JCO) is authorised. One post of JCO was vacant on 21.08.2019. Applicant was detailed to attend JCO Cadre wef 01.04.2019 to 20.07.2019 which he successfully completed. Nb Sub Bhavan Ram Arya was to retire on 31.03.2019, but his retirement was stayed by AFT, Lucknow and he was promoted to the rank of Subedar. Applicant submitted an application for consideration of his promotion to the rank of Nb Sub which was turned down stating that Inter Arm Service Transfer (IAST) can be granted only in exceptional cases and hence his case was not processed. Being aggrieved, applicant has filed instant Original Application for grant of promotion to the rank of Nb Sub.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Indian Army on 26.08.1997 as a Musician. There are two segments, namely 'Brass Band' and 'Pines/Drums'. While Brass Band segment of Music Band is authorised two JCOs and about 50 Other Ranks, the Pipes/Drums segment is authorised only one JCO and about 25 Other Ranks. The local administration of the Bands belonging to the Regimental Centres and the AEC College and Centre, is vested with the Commandants of the respective Training Centres and the Commandant AEC College and Centre respectively is their overall controller in the matter of seniority and promotion. A person belonging to the Brass Band segment cannot be transferred to the Pines/Drums segment and vice versa. One of the mandatory condition for promotion of a person belonging to trade of Musician from rank of Hav to Nb Sub is that he should have qualified promotion Cadre Course of Hav to Nb Sub whose duration is about 15 weeks and which is conducted at Training Centres and AEC College and Centre under the command of the respective Commandants. Applicant was promoted to the rank of Hav in due course of time. He successfully completed Hav to Nb Sub Promotion Cadre Course. These music bands are maintained by various Regimental Centres under various army commands. The seniority and promotion of the members of the trade of Musicians is centrally controlled by respondent No 2, thereby

in case a member of this trade becomes eligible for promotion to the next rank and if there is no vacancy in that particular Regimental Centre, then he can be transferred to any other Regimental centre where the vacancy of that rank is available, so that the individual does not suffer in the matter of his promotion. One of mandatory condition for promotion of a Hav to the rank of Nb Sub (Musician) is that he should have qualified Hav to Nb Sub Cadre Course. The applicant successfully completed Nb Sub Cadre Course and became eligible for promotion to the rank of Nb Sub (Musician) in Pipes/Drum segment with effect from 20.07.2019. Since there was no vacancy of Nb Sub (Musician) in Pipes/Drums segment in BEG Roorkee, Respondent No 3 approached Respondent No 2 to transfer the applicant to AEC College and Centre, Pachmarhi or RVC Centre, Meerut which is permissible under the relevant rules and there was a vacancy in that trade due to retirement of previous incumbent in January 2019. On perusal of Nominal Roll of the RVC Pipe Band Personnel for the month of August/September 2019, it appears that there was no JCO in the Pine /Drums segment of the Band Platoon of RVC Centre and the applicant being the senior most Hav duly qualified could have been easily transferred from BEG & Centre to RVC Centre and he had already approached Respondent No 2 for IAST. Learned counsel for the applicant submitted that RVC Centre is not having a Band JCO in

the Pipes/Drums segment till date and the said vacancy continues to remain unfilled. The matter to be noted is that was there any vacancy of Nb Sub in Pipes/Drums segment at RVC Centre on 20.07.2019 and if there was any other Hav qualified with Nb Sub Cadre Course in Pipes/Drums segment in any other Regimental Centre who had also applied for transfer in RVC. Respondent No 2 rejected the proposal vide letter dated 26.09.2019 waited for nearly one month and rejected his application stating that a Subedar has been shortlisted for that Post which could not have been done as per Rules. The provisions of IAST for centrally controlled cadre are essentially meant to protect the seniority and promotion of the affected persons and not to extend an undue favour, based on extraneous considerations to 'post' as individual to a place of his choice which appeared to have been the case of 'shortlisting' of the mysterious Subedar for his posting to RVC Centre at Meerut against the rules. The applicant was the only eligible and qualified Hav for promotion to the rank of Nb Sub in Pipes/Drums segment in the centrally controlled category of Musicians and therefore, he could have been easily transferred from BEG to the Regiment/Corps of the said Sub which he had vacated on his posting to RVC. The case of the applicant for IAST to RVC received from Respondent No 3 was rejected by Respondent No 2 on the ground that the name of one Subedar had already been 'shortlisted' by them for

IAST to RVC and not because the application of the applicant has been received by them much after the specified date i.e. 30.03.2019. Such act of Respondent No 2 has not only effected demoralising the hardworking and sincerity of the applicant due to their illegal supersessions, but also it amount to infringement of his Fundamental Rights granted under Article 14, 16 and 21 of the Constitution of India. Learned counsel for the applicant pleaded that after scrutiny of the document, if vacancy of Nb Sub was existing with RVC Centre (Respondent No 4) on 20.07.2019, and there was no other eligible Hav senior to the applicant in any other Regiment, then directions be given to Respondent No 2 to promote the applicant to the rank of Nb Sub wef 20.07.2019.

4. On the other hand, learned counsel for the respondents submitted that applicant was enrolled in the Indian Army as musician on 26.08.1997. He was promoted to the the of Hav on 08.04.2017. Only one JCO is authorised in Pipe Band of BEG & Centre Roorkee. There are total 46 Military Bands and 26 Pipes & Drum Bands authorised on the peace establishment of various Regimental Centre of the Indian Army. The Pipe Band JCO vacancy in BEG & Centre was likely to be vacant on 31.03.2019 due to retirement of Pipe Band JCO on 31.03.2019. Discharge order of the Pipe Band JCO was received vide letter dated 13.03.2019 with due date of discharge was

31.03.2019. Accordingly, the applicant was nominated for JCO Cadre Course wef 01.04.2019 to 20.07.2019. Meanwhile, discharge of the Band JCO (Nb Sub Bhawan Ram Arya) was stayed by the Hon'ble AFT New Delhi vide order dated 27.03.2019 and the JCO was promoted to the rank of Sub with seniority from 01.10.2018. Hence the JCO vacancy in BEG & Centre Roorkee remained occupied. Applicant successfully completed his promotion Cadre with "B" Grading and part II Order was published on 26.07.2019. On 29.08.2019, the applicant submitted an application to Group Adjutant of BEG & Centre, Roorkee stating that he has fulfilled all qualifications required for promotion to the rank of Nb Sub. Learned counsel for the respondents submitted that there was a vacancy of JCO available in RVC Centre and applicant was willing for IAST. On 30.08.2019, his application was forwarded to Ceremonial & welfare Dte/ CW-1 vide letter dated 30.08.2019. CW-1 of Army Headquarters intimated vide his letter dated 26.09.2019, that there was one vacancy created in the rank of Nb Sub/ Musician in the month of Jan 2019, and subsequently an individual was already shortlisted for the IAST. Hence, the applicant's application was returned due to nonavailability of any additional vacancy in the rank of Nb Sub in Pipes & Drums Band at RVC Centre. On 28.05.2020, HQ BEG & Centre Roorkee forwarded a letter to Ceremonial & Welfare Dte/ CW-1 to intimate the present position of the case as the applicant

was becoming overage on 06.06.2020. Permission for IAST can be granted only in exceptional cases and hence, the case was not processed by CW-1 Directorate. Therefore, superannuation of the applicant in the rank of Nb Sub is just and in conformity of the rules. He pleaded for dismissal of O. A. being devoid of merits.

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

6. We find that as per document held on record the applicant was promoted to the rank of Hav on 08.04.2017. The promotion to the rank of Nb Sub Musician is centrally controlled by CW-1. Vacancy created in the rank of Nb Sub in RVC Centre was already shortlisted for the IAST as intimated vide CW-1 vide letter dated 26.09.2019. Military Band at AEC & Centre is adhoc setup where requisite manpower is provided to AEC & Centre on the attachment basis under the provisions of AG/CW-1 letter dated 25.05.1995 and letter dated 19.07.2010. The authorised strength of musicians with a Military Band is two JCO and 32 ORs while strength authorised with a Pipes & Drum Band is 01 JCO and 17 ORs. The career management and promotion upto the rank of Hav is undertaken under aggies of respective Records Offices of Regimental Centres. Due to limited vacancies of Nb Sub in Pipes & Drum Band, based on the recommendation received from regimental centres for the eligible Hav from that concerned regimental Centre,

promotion to the rank of Nb Sub is undertaken by the office of AG/CW-1. Timely forwarding names of eligible Hav for consideration for promotion to the rank of Nb Sub on occurrence of vacancy in their respective Military/Pipes & Drums Band is with the Respective Records Office of the Regimental Centre. Subsequent promotions to the rank of Nb Sub/Sub and Sub Maj is then under taken based on common seniority roll maintained by AG/CW-1. Musician Trade of Military Bands and Pipes & Drums Band cannot be interchanged at the time of promotion of a Hav to the rank of Nb Sub. The applicant for IAST was required to be received by AG/CW-1 on 20.03.2019. Application for willingness for IAST was received by AG/CW-1 on 29.08.2019 after five months from stipulated last date. Since application for IAST from the applicant was received late by AG/CW-1 and process with respect to analysing named for IAST had already began, it was legally not correct to consider name of the applicant at that belated stage. Based on details received from other Regimental Centres, process of names received for IAST had already began. Inclusion of name of applicant CHM Kishan Singh at that stage was not legally correct and sustainable. Hence, his name was not considered for promotion at that stage. As per Regulation No 149 of Regulations for the Army, 1987 age for promotions to the rank Nb Sub is 44 years and Regulation No 161 of the said Regulations deals with transfer of Other Ranks from

one Regt/Corps to another Regt/Corps which lays down that by mutual agreement between two Regiments/Corps, a person belonging to the category of Other Ranks can be transferred. The applicant became overage for promotion to the rank of Nb Sub Musician on 06.06.2020. In view of provisions of para 10 (a) of Standing Operating Procedure (SOP) on promotion of JCO (Musician) was undertaken wherein resorting to IAST for making up shortfall in the rank of Nb Sub was not agreed to due to associated demerits with IAST. Permission for IAST to Hav on promotion to Nb Sub can be granted only in exceptional cases and not as a routine. As per records held with AG/CW-1, there is no past precedence of undertaking IAST to address the shortfall in JCO vacancy in the rank of Nb Sub. In this case, a detailed analysis was done based on inputs received from various Regimental Centres, wherein resorting to IAST for making up shortfall in the rank of Nb Sub was not agreed due to adverse effect on chain promotion within the Regiment, Infringes on basic requirement of maintaining regiment affiliation and homogeneity and the sprit de- corps in the Regiment and resulting impact on performance of the band. Respondents have taken action in this case as per SOP in vogue on the subject. One Sub was shortlisted for IAST because on due date only his name was received by AG/CW-1. The applicant has no case on merits and is thus not

entitled of any relief as prayed and therefore, Original Application is liable to be dismissed.

7. Resultantly, in view of policy letters on the subject, we hold that the claim of applicant for grant of promotion to the rank of Nb Sub has rightly been rejected by the respondents as per rules which need no interference. Resultantly, O.A. is **dismissed**.

8. No order as to costs.

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

(Maj Gen Sanjay Singh)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 16 January, 2023
Ukt/-