

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No 388 of 2022**Tuesday, this the 17<sup>th</sup> day of January, 2023**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Maj. Gen. Sanjay Singh, Member (A)**

JC-697357-P Subedar (Lab Tech) Mohd Tariq Siddiqui (Retd)  
 S/o Mohd (Late) Wajid Ali Siddiqui  
 R/o House No. 169/84-A, First Floor Khayali Ganj, Behind Kaiser  
 Bagh Kotwali, Masjid Wali Gali, Lucknow (UP) – 226018  
 ..... Applicant

Ld. Counsel for the Applicant: **Shri Shailendra Kumar Singh &**  
**Shri Mahendra Kumar Singh, Advocate**

Versus

1. Union of India, through Secretary, Ministry of Defence, New Delhi-110011.
2. Chief of the Army Staff, IHQ of MoD (Army), New Delhi-110011.
3. DGMS (Army), AG's Branch, IHQ of MoD (Army), New Delhi – 110011.
4. HQ Southern Command, PIN : 908541, C/o 56 APO.
5. Commandant, MH Meerut, PIN : 900468, C/o 56 APO.
6. Commandant, AFMC, Wanowrie, Pune (Mah) – 411040.
7. OIC Records, AMC Records, PIN : 900450, C/o 56 APO.
8. O/o PCDA (P) (Army), Draupadighat, Allahabad (UP) – 211014.

..... Respondents

Ld. Counsel for the Respondents : **Ms. Appoli Srivastava,**  
 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 for the following reliefs:-

- “A. To quash and set aside the directions of COAS dated 03 Dec 2017 (Annexure A-1 of instant OA & Impugned Order) wherein applicant’s Statutory Complaint dated 19 Feb 2016 has been rejected as devoid of merits.
- B. To issue/pass an order or directions of appropriate nature to the respondents to grant regular promotion of Subedar Major to the applicant wef the due date and notional extension of service upto 31 May 2020 with all consequential benefits.
- C. Any other relief as considered proper by the Hon’ble Tribunal be awarded in favour of the applicant.”

2. The factual matrix on record is that applicant was enrolled in the Army (AMC) on 22.05.1986 and he was promoted to the rank of Subedar w.e.f. 07.05.2011 with seniority w.e.f. 01.04.2011. On completion of extended service limit in the rank of Subedar, applicant was discharged from service on 31.05.2016 after rendering 30 years and 10 days of service. The applicant was screened for promotion to the rank of Subedar Major by Departmental Promotion Committee (DPC) for the year 2014 against the vacancy for the year 2015 as per Govt. policy letters but could not come in the selected merit list for promotion to the rank of Subedar Major. Thereafter, applicant was screened for promotion to the rank of Subedar Major by DPC for the year 2015 against the vacancy for the year 2016 but could not come in the selected merit list for promotion to the rank of Subedar Major, hence he was not granted promotion to the rank of Subedar Major. Thereafter, applicant submitted a statutory complaint dated 19.02.2016 to the Chief of the Army Staff for expunction of ACR for the period from 01.06.2014 to 31.05.2015 being inconsistent with past

profile of the applicant which was examined in detail and was rejected by the COAS vide order dated 03.12.2017 being devoid of merit. The applicant being aggrieved filed present Original Application for grant of promotion to the rank of Subedar Major.

3. Learned counsel for the applicant submitted that the applicant was enrolled in the Army (AMC) on 22.05.1986. The applicant while posted with MH Meerut, sent an application to Army commander, Southern Command Pune for retention of Govt. accommodation which was allotted to him in Pune while posted with AFMC, Pune so that his daughter can complete her Class XII in peaceful manner, this resulted that Commandant MH Meerut was displeased with improper channel of correspondence of applicant made with Army Commander and showed displeasure and this resulted down gradation of his ACRs for the year 2015 and 2016 in comparison to his past ACRs in which the applicant was graded as Outstanding in most of the periods/years. The applicant was also issued a Show Cause Notice on this issue.

4. Learned counsel for the applicant further submitted that in Dec. 2015, result of DPC 2015 was notified where applicant was not considered for promotion to the post of Subedar Major. On scrutiny, it came to know that his ACR for the period from 01.06.2014 to 31.05.2015 was low and accordingly, he did not come in merit in DPC 2015 for promotion to the rank of Subedar Major. The applicant preferred Statutory Complaint dated 19.02.2016 praying for expungment of relevant entry in CR for the year 2014-15 being inconsistent with his past profile. The applicant was discharged from

service on 31.05.2016 after rendering more than 30 years of service in the rank of Subedar, however, no disposal of his statutory complaint dated 19.02.2016 was communicated to the applicant prior to his discharge from service. The applicant was granted Honorary rank of Subedar Major on 15.08.2016 post retirement. Here, it is important to high light that authority dealing promotions did not find applicant eligible for regular promotion to the rank of Subedar Major while being in service where his trade expertise and experience could have been utilized for next four years but found him eligible for Honorary Subedar Major after his retirement. This aspect needs attention for proper adjudication of instant case and to meet end of justice. MH Meerut, vide letter dated 17.01.2018 communicated direction of COAS dated 03.12.2017 rejecting statutory complaint of the applicant being devoid of merits after retirement of the applicant.

5. Learned counsel for the applicant placed reliance on the judgment of the Hon'ble Supreme Court in **Associated Cement Companies Ltd. Vs. PN Sharma**, AIR 1965 SC 1595 in which the Hon'ble Court has observed that "**Administrative Authorities or Bodies are mandated to act fairly and objectively and in many cases to comply with Principles of Natural justices**". Thus, he pleaded that directions of Chief of the Army Staff dated 03.12.2017 be set aside and applicant be granted regular promotion to the rank of Subedar Major from its due date with all consequential benefits.

6. In reply, learned counsel for the respondents submitted that applicant was enrolled in the Army (AMC) on 22.05.1986 and he was promoted to the rank of Subedar w.e.f. 07.05.2011 with seniority

w.e.f. 01.04.2011. On completion of extended service limit in the rank of Subedar, applicant was discharged from service on 31.05.2016 after rendering 30 years and 10 days of service under Rule 13 (3) I (1) (a) of Army Rules, 1954. The applicant was screened for promotion to the rank of Subedar Major by Departmental Promotion Committee (DPC) for the year 2014 (1<sup>st</sup> look) held at AMC Record Office from 22.09.2014 to 24.09.2014 against the vacancy for the year 2015 based on Over All Performance (OAP) selection system, considering Annual Confidential Report (ACR) profile of the applicant for five years in the rank of Junior Commissioned Officer (JCO), attendance of courses, honours & awards in entire service, service in Field Area/High Altitude Area/Operations (during last 15 years) award of punishment if any are given minus marks and depending on the availability of vacancies for the year 2015 in terms of IHQ of MoD (Army) letters dated 10.10.1997. On scrutiny of the board proceedings of DPC for the year 2014 against the vacancy of 2015, it was found that selected candidate had scored 93.10 points whereas the applicant had scored only 85.68 points, hence, the applicant could not come in the selected merit list for promotion to the rank of Subedar Major.

7. Learned counsel for the respondents further submitted that It is evident from the board proceedings of DPC for the year 2014 that there was only one vacancy in the year 2015. The applicant was considered and given due weightage of ACRs for the last five years, field service during last 15 years, courses and honours and awards but he did not come in the merit. The ACRs for the year 2015 & 2016

of High Average gradings were technically correct as graded by the IO and RO based on overall performance of the applicant during the period and nothing is biased. Thereafter, applicant was screened for promotion to the rank of Subedar Major by Departmental Promotion Committee (DPC) for the year 2015 (2<sup>nd</sup> look) held at AMC Record Office w.e.f. 27.07.2015 to 29.07.2015 against the vacancy for the year 2016 based on overall performance (OAP) selection system considering ACR profile of the applicant for five years in the rank of JCO, courses, honours & awards, service in Field Area/High Altitude Area/Operations (during last 15 years) and depending on the availability of vacancies for the year 2016 in terms of IHQ of MoD (Army) policy letters. On scrutiny of the board proceedings of DPC for the year 2015 against the vacancy of 2016, it is found that last selected candidate had scored 89.94 points whereas the applicant had scored only 79.98 points, hence, the applicant could not come in the selected merit list for promotion to the rank of Subedar Major.

8. Learned counsel for the respondents further submitted that in the instant case, applicant was awarded punishment of 'Severe Reprimand and 14 days pay fine' on 25.02.2006 under Section 63 of Army Act in the rank of Havildar and therefore, in terms of para 6 (b) of Appendix 'C' (DPC – Subedar Majors) of IHQ of MoD (Army) letter dated 10.10.1997, penalty of minus three points is applicable while allotting points for considering of higher promotion and thus, penalty of 'minus three points' was incorporated in the Board Proceedings of both DPCs for the year 2015 & 2016. Para 6 (b) of Appendix 'C' is quoted below :-

“6 (b) For other ‘Red Ink’ entries any time in entire service a candidate will be penalised as under :-

- (i) Red Ink Entry as Hav - 3 points
- (ii) Red Ink Entry as Nk - 2 points
- (iii) Red Ink Entry as Sep - 1 point”

9. Learned counsel for the respondents further submitted that applicant submitted a statutory complaint dated 19.02.2016 to the Chief of the Army Staff for expunction of ACR for the period from 01.06.2014 to 31.05.2015 being inconsistent with past profile of the applicant which was examined in detail by the competent authority and was rejected by the COAS vide order dated 03.12.2017 being devoid of merit.

10. Learned counsel for the respondents further submitted that promotion to the rank of Subedar Major is based on Over All Performance (OAP) selection system and “merely qualifying for consideration by DPC does not entitle a Subedar for promotion to the rank of Subedar Major as selection is based on seniority-cum-merit depending upon the vacancies available”. Since the applicant was low in merit in both the chances in comparison to selected candidates, he could not come in the merit list and was not selected for promotion to the post of Subedar Major as per rules and promotion policy. Learned counsel for the respondents pleaded for dismissal of O.A being devoid of merits.

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

12. The applicant was screened for promotion to the rank of Subedar Major by the DPCs against the vacancies of 2015 and 2016

and based on Over All Performance (OAP) selection system, considering Annual Confidential Report (ACR) profile of the applicant for five years in the rank of Junior Commissioned Officer (JCO), attendance of courses, honours & awards in entire service, service in Field Area/High Altitude Area/Operations (during last 15 years) award of punishment if any are given minus marks and depending on the availability of vacancies for the year 2015 & 2016, applicant did not come up in merit list prepared by DPC in both years due to scoring of less points in comparison to selected candidates in terms of IHQ of MoD (Army) letters dated 10.10.1997.

13. Considering that applicant scored less points in comparison to other Subedars who were included in the list of DPCs for the year 2015 and 2016, the applicant could not come in the selected merit list for promotion to the rank of Subedar Major due to low merit and accordingly, he was not selected for promotion to the rank of Subedar Major as per promotion policy and not otherwise, as alleged by the applicant on the point of improper correspondence with Army Commander, Pune and displeasure shown by Commandant MH Meerut.

14. As far as minus points of red ink entry awarded in 2006 is concerned, this point is clarified by the respondents in their counter affidavit that applicant was awarded punishment of 'Severe Reprimand and 14 days pay fine' on 25.02.2006 under Section 63 of Army Act in the rank of Havildar and therefore, in terms of para 6 (b) of Appendix 'C' of IHQ of MoD (Army) letter dated 10.10.1997, penalty of minus three points is applicable while allotting points for

consideration of promotion to the post of Subedar Major and thus, penalty of 'minus three points' was incorporated in the Board Proceedings of both DPCs for the year 2015 & 2016 as per policy dated 10.10.1997.

15. In view of IHQ of MoD (Army) promotion policy dated 10.10.1997, we hold that the claim of applicant for grant of promotion to the rank of Subedar Major has rightly been rejected by the respondents as per rules which needs no interference. Resultantly, O.A. is **dismissed**.

16. No order as to costs.

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

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

Dated: January, 2023  
SB

**(Justice Umesh Chandra Srivastava)**  
**Member (J)**