

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 659 of 2021**Tuesday, this the 3rd day of January, 2023**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Atul Kumar Jain, Member (A)No. 13994365F Havildar (Ambulance Assistant)
Sudhir Kumar Rai
S/o Late Ram Kripal Rai
R/o Village : Lahuwar, Tehsil : Jamania,
District : Ghazipur - 232329**.... Applicant**Ld. Counsel for the Applicant : **Shri Rohit Kumar**, Advocate

Versus

1. Chief of the Army Staff, DHQ PO, New Delhi – 110011.
2. Commandant-cum-Chief Record Officer and Centre Army Medical Corps Centre and College, Lucknow – 226002.
3. Union of India, through the Secretary, Ministry of Defence, DHQ PO, New Delhi-110011.

... RespondentsLd. Counsel for the Respondents : **Shri Amit Jaiswal**,
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) To direct the respondent no. 1 to decide the statutory complaint of the applicant dated 09 Dec 2020 within a timeframe to be fixed by this Hon'ble Tribunal preferably two months.

- (b) To quash the Army medical Corps Record Office (Promotion Section) letter bearing no. 356005-J/Sups/Nb Sub (AA) PF-1&2/21 dated 15 Nov 2020 in as much as it relates to the name of the applicant which appears at serial no. 90 on page 6 of the said letter with all the consequential benefits to the applicant.
- (c) To direct the respondents to promote the applicant to rank of Naib Subedar with original batch seniority with all the consequential benefits to the applicant.
- (d) To summon and quash the adverse entries which is creating hurdle in promotion of the applicant to the rank of Naib Subedar.
- (e) To issue any other order or direction considered expedient and in the interest of justice and equity.
- (f) Award cost of the petition.”

2. Brief facts of the case are that the applicant was enrolled in the Army on 26.02.1996. He was promoted to the rank of Havildar on 31.07.2018. The applicant was screened for promotion to the rank of Naib Subedar as per Corps seniority on his own turn against the vacancy of 01.01.2021 vide AMC Records letter dated 29.10.2020 but he was temporarily superseded for promotion to the rank of Naib Subedar due to lack of ACR grading criteria. Thus, the applicant could not be promoted to the rank of Naib Subedar due to lack of 'Above Average' report and later on crossed upper age limit of 44 years. The applicant submitted his grievance which was suitably replied by the respondents stating reasons for supersession/denial of promotion. Being not satisfied with the reply of respondents and 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 26.02.1996. The applicant was promoted as Havildar in July 2018 and qualified 'J' cadre course in Feb. 2020 and was expecting to the next rank of Naib Subedar. AMC Records issued a letter dated 15.11.2020 wherein the name of the applicant existed at serial No. 90 for promotion and reason shown for superseding due to ACR grading criteria. If any of the reports of the applicant were downgraded or reduced then the same was compulsorily to be communicated to the applicant which was not followed by the respondents.

4. Learned counsel for the applicant placed reliance on the judgment of the Hon'ble Apex Court reported in AIR 1997 SC 3671 in re **State of UP vs. Yamuna Shankar Mishra and Another**, AIR 1979 SC 1622 in re **Gurdial Singh Fijji vs. State of Pubjab and others** and 2008 (8) SCC 725 in re **Dev Dutt vs. Union of India and others**, judgment of the Allahabad High Court reported in MANU/UP/1269/1997 in **Lt Col Mahabali Singh vs. Union of India and Others** and AFT (RB) Lucknow judgment in T.A. No. 718 of 2010 **Nb Sub CDP Yadav vs. Chief of the Army Staff and Others** being relevant. The action of the respondents was against the Army Headquarters policy letters dated 03.10.1989 and 24.01.1991 and Army Order 113/79 and SAO 1/2002/MP. The applicant being aggrieved from the denial of promotion, submitted statutory complaint on 09.12.2020 but the same has not been disposed by the

respondents. He pleaded to promote the applicant in the rank of Naib Subedar with original seniority and pay consequential benefits.

5. On the other hand, Ld. Counsel for the respondents submitted that applicant was enrolled in the Army on 26.02.1996. He was promoted to the rank of Havildar on 31.07.2018. The applicant was screened for promotion to the rank of Naib Subedar as per Corps seniority on his own turn against the vacancy of 01.01.2021 vide AMC Records letter dated 29.10.2020 but he was temporarily superseded for promotion to the rank of Naib Subedar due to lack of ACR grading criteria. On scrutiny of DPC proceedings, it was found that the applicant was lacking ACR criteria in terms of IHQ of MOD (Army) policy letter dated 10.10.1997, which specified that the individual must have a minimum of three 'Above Average' reports in last five ACRs and remaining two reports should not be less than 'High Average'. As per ACR profile of the applicant from 2015 to 2020, the applicant had earned three ACRs in the rank of Naik and two ACRs in the rank of Havildar. In the rank of Havildar applicant was graded High Average and Outstanding in the year 2019 and 2020 respectively. Since in the ACR of 2019, the applicant earned grading of High Average against the requirement of minimum 'Above Average', he was temporarily superseded due to lack of ACR grading criteria vide AMC Records order dated 29.10.2020. The unit of the applicant was also informed by AMC Records vide letter dated 15.11.2020 about supersession of the applicant. Being aggrieved, the applicant submitted statutory complaint dated 09.12.2020 for expunging any inconsistent reporting

and fresh assessment of promotion without any loss of seniority. The complaint was processed and is presently under consideration of Chief of the Army Staff vide IHQ of MoD (Army) letter dated 08.10.2021.

6. Learned counsel for the respondents further submitted that as per Para 2(b) of Govt. of India, Ministry of Defence letter dated 04.05.1999, applicant permanently superseded for promotion to the rank of Naib Subedar due to crossing upper age limit and hence, he is not eligible for promotion being over 44 years of age. Since, the applicant crossed upper age limit of 44 years of age on 20.01.2021, he became ineligible for further promotion to the rank of Naib Subedar till his date of retirement. He pleaded for dismissal of O.A.

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

8. 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 Naib Subedar in DPC proceedings, there is no illegality, bias or prejudice neither in ACR grading nor in DPC proceedings. 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 he has earned good reports throughout his service and has completed ACR criteria for promotion to the rank of Naib Subedar. The applicant was lacking 'Above Average' report, hence, the only reason for non consideration for

promotion in DPC is lack of 'Above Average' report and thereafter, 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.

9. In view of the above, we do not find any irregularity or illegality neither in ACR grading nor in DPC proceedings to grant promotion to the rank of Naib Subedar. The applicant crossed upper age limit of 44 years till his date of retirement and 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.

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

11. No order as to costs.

12. 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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