

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 758 of 2020**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)**

No. 7777501N, Ex Naik/MP Roopendra Singh  
 S/o Shri Brijendra Singh  
 R/o Village and Post – Sahara,  
 District – Mainpuri (UP)

**.... Applicant**Ld. Counsel for the Applicant : **Shri Vinay Pandey**, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, DHQ PO, New Delhi-11.
2. The Chief of the Army Staff, Army Headquarters, Sena Bhawan, New Delhi.
3. The Officer-in-Charge Records, The Corps of Military Police, PIN-900493, C/o 56 APO.
4. The Principal Controller of Defence Accounts, Draupadi Ghat, Allahabad.

**... Respondents**Ld. Counsel for the Respondents : **Shri Rajiv Pandey**,  
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, whereby the applicant has sought following reliefs:-

- “(a) Issue/pass an order or direction of appropriate nature to respondents to grant the monetary benefit of 2<sup>nd</sup> ACP and all consequential monetary benefits.

- (b) Issue/pass an order or direction of appropriate nature directing to the respondents to pay interest @ 18% per annum over the arrears accrued from year 2010.
- (c) Issue/pass an order awarding compensation of appropriate amount in favour of the applicant on account of financial hardship faced by the applicant on account of withholding of salary without any fault of the applicant.
- (d) Issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.
- (e) Allow this application with costs.”

2. Brief facts of the case are that the applicant was enrolled in the Army on 29.12.1992. The applicant was tried summarily under Section 80 of Army Act and he was awarded punishment of deprivation of the appointment of Lance Naik vide order dated 17.05.1999. The applicant was again appointed as Lance Naik on 17.05.2000 and accordingly he was granted 1<sup>st</sup> Assured Career Progression (ACP) w.e.f. 07.08.2003 and later promoted to the rank of Naik w.e.f. 01.12.2004. The applicant passed promotion cadre from Naik to Havildar. While verifying his Sheet Roll for grant of 2<sup>nd</sup> ACP, it was observed by the Record Office that applicant was awarded punishment under Army Act Section 36 (d) while serving with 2 Mountain Division Provost Unit in Active Service (OP RHINO) which debarred applicant permanently for further promotion/ACP as per Appendix 'A' to IHQ of MoD (Army) letter dated 10.10.1997. The promotion to the rank of Naik granted to the applicant could not be reverted being of substantive nature, however, under the provisions of IHQ of MoD (Army) policy letter dated 10.10.1997, the applicant became ineligible for further promotion/ACP. Accordingly, applicant

was not promoted/ granted benefit of ACP to the rank of Havildar as per policy and was discharged from service on completion of his terms of engagement in the rank of Naik on 31.12.2014 after rendering 22 years of service. Being aggrieved, the applicant has filed the present Original Application to grant promotion to the rank of Havildar/2<sup>nd</sup> ACP and pensionary benefits.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Army on 29.12.1992. The applicant was tried summarily under Section 80 of Army Act and he was awarded punishment of deprivation of the appointment of Lance Naik vide order dated 17.05.1999 for two charges, i.e. Intoxication and Leaving his post without orders from his superior officer, while posted in field area. Thereafter, applicant was promoted to the rank of Naik on 01.12.2004 and accordingly he was granted 1<sup>st</sup> ACP Naik w.e.f. 07.08.2003, despite the punishment dated 17.05.1999. After grant of 1<sup>st</sup> ACP, applicant was detailed for promotion cadre course for the rank of Havildar and passed promotion cadre on 21.06.2008. The applicant was due for 2<sup>nd</sup> ACP in the rank of Havildar in the year 2010. However, respondent No. 3 vide letter dated 25.03.2010 intimated that applicant is not meeting discipline criteria for promotion to the rank of Havildar. On being denied by promotion to the rank of Havildar, applicant preferred a statutory complaint which was rejected by respondent No. 2 without application of mind. Ultimately, applicant has been discharged from service vide discharge order dated 27.11.2013 w.e.f. 31.12.2004 in the rank of Naik.

4. Learned counsel for the applicant further submitted that applicant was given punishment in the year 1999 and subsequently promoted to the rank of Naik in 2004 and granted benefit of 1<sup>st</sup> ACP w.e.f. 07.08.2003, meaning thereby that punishment awarded under Section 80 of Army Act, 1950 has been 'washed off'. Furthermore, applicant was detailed for promotion cadre for the rank of Havildar and passed the same, thus, due to capricious and arbitrary approach of the respondents, applicant was not promoted to the rank of Havildar.

5. Learned counsel for the applicant placed reliance on the judgments of the Hon'ble Supreme Court in **State of Punjab vs. Dewan Chuni Lal**, AIR 1970 SC 2086, **Baidyanath Mahapatra vs. State of Orissa and Anr**, AIR 1989 SC 2218 and **Rajasthan State Road Transport Corporation and others vs. Babu Lal Jangir**, Civil Appeal No. 8245/2013 and pleaded that the Hon'ble Apex Court in **Pyare Mohan Lal vs. State of Jharkhand and Ors**, 2010 (10) SCC, 693 has observed that, "any adverse entry prior thereto would have no relevance and can be treated as wiped off when the case of the government employee is to be considered for further promotion'. Therefore, adverse entry awarded in past be ignored and applicant be promoted granting benefit of 2<sup>nd</sup> ACP to the rank of Havildar.

6. On the other hand, Ld. Counsel for the respondents submitted that applicant was enrolled in the Army on 29.12.1992 and discharged from service on 31.12.2014 under Rule 13 (3) III (1) on completion of terms of engagement after rendering 22 years of service. The

applicant while serving with 2 Mountain Division Provost Unit as Lance Naik was tried under Section 80 of the Army Act and was awarded punishment "Deprived of the appointment of Lance Naik" (under Army Action 48 and 36 (d)) on 17.05.1999 by the Commanding Officer of the unit for offence "Intoxication" and "Leaving his duty post without orders from his superior officer".

7. Learned counsel for the respondents further submitted that applicant was again appointed as Lance Naik on 17.05.2000 and accordingly he was granted 1<sup>st</sup> Assured Career Progression (ACP) w.e.f. 07.08.2003 and later promoted to the rank of Naik w.e.f. 01.12.2004. The applicant was detailed for promotion cadre from Naik to Havildar and passed the same vide Part II Order dated 05.08.2004. While verifying his Sheet Roll for grant of 2<sup>nd</sup> ACP, it was observed that applicant was awarded punishment under Army Act Section 36 (d) while serving with 2 Mountain Division Provost Unit in Active Service (OP RHINO) which debarred applicant permanently for further promotion/ACP as per Appendix 'A' to IHQ of MoD (Army) letter dated 10.10.1997. The promotion to the rank of Naik granted to the applicant could not be reverted being of substantive nature, however, under the provisions of IHQ of MoD (Army) policy letter dated 10.10.1997, the applicant became ineligible for further promotion/ACP in future. Accordingly, applicant was not promoted/ granted benefit of ACP to the rank of Havildar as per policy and was discharged from service on completion of his terms of engagement in

the rank of Naik. The Appendix 'A' to IHQ of MoD (Army) policy letter dated 10.10.1997 being relevant is reproduced below :-

"Appendix 'A' to Army HQ letter  
No. B/33513/AG/PS 2 (c) dated  
10 Oct 97 (Para 3(b) refers)

**OFFENCES PERMANENTLY DEBARRING FOR PROMOTION – JCOs/NCOs**

Ser No.	Section of Army Act	Offences
(a)	(b)	(c)
1.	Section 34	Offences in relation to the enemy and punishable with death.
2.	Section 35	Offence in relation to the enemy not punishable with death.
3.	Section 36 (On active service only)	Offences punishable more severely on active service.
4.	Section 37	Mutiny.
5.	Section 41 (2)	Disobedience to superior officers (On active service only).

8. Thereafter, applicant submitted a statutory complaint dated 02.12.2010 which was rejected by the Chief of the Army Staff vide letter dated 08.07.2013 being devoid of merit. The applicant also filed O.A. No. 523 of 2012 before AFT (RB), Chandigarh was dismissed in default vide order dated 06.05.2015. Thereafter, applicant filed present O.A. before this Tribunal for grant of promotion/benefit of ACP Havildar which being devoid of merit is liable to be dismissed.

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

10. It is pertinent to mention here that judgments relied upon by the applicant in Para 5 above are not relevant in this case being based on

different facts and circumstances and therefore, applicant cannot be given the benefit of aforesaid judgments.

11. We find that applicant was tried under Section 80 of the Army Act in the rank of Lance Naik and was awarded punishment "Deprived of the appointment of Lance Naik", under Army Act Section 48 and 36 (d) on 17.05.1999 by the Commanding Officer of the unit for offences "Intoxication" and "Leaving his duty post without orders from his superior officer". Thereafter, applicant was granted 1<sup>st</sup> ACP w.e.f. 07.08.2003 and later promoted to the rank of Naik w.e.f. 01.12.2004. The applicant also passed promotion cadre from Naik to Havildar but later on when matter of punishment under Section 36 (d) came to the knowledge of the authorities (Record Office), applicant's further promotion/ACP to the rank of Havildar was rejected/denied on the ground of offence committed under Army Act Section 36 (d), which debarred the applicant permanently for further promotion/ACP as per Appendix 'A' to IHQ of MoD (Army), promotion policy letter dated 10.10.1997.

12. We also find that promotion to the rank of Naik was granted to the applicant by the Record Office but could not be reverted being of substantive nature. Hence, applicant was discharged from service in the rank of Naik on completion of terms of engagement after rendering 22 years of service as per rules.

13. In view of the above, we do not find any irregularity or illegality neither in discharging the applicant from service in the rank of Naik nor in denying promotion/ACP Havildar benefit as per promotion

policy letter dated 10.10.1997. Therefore, applicant's prayer for grant of promotion to the rank of Havildar/2<sup>nd</sup> ACP benefit has rightly been rejected by the respondents as per rules and promotion policy.

14. Resultantly, Original Application deserves to be dismissed and is accordingly **dismissed**.

15. No order as to costs.

16. Pending Misc. Applications, if any, shall stand disposed off.

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

Member (A)

Dated: January, 2023

SB

**(Justice Umesh Chandra Srivastava)**

Member (J)