

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 820 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. 13994607Y Hav (Amb Asst) Krishna Kant Pandey
S/o Late Sri Vikrama Pandey
R/o Village – Derwlya, PO – Shed Gaon,
Dist – Chandoli-232105 (UP)
Presently posted with 310 Field Hospital, PIN-903310, C/o 56 APO**.... Applicant**Ld. Counsel for the Applicant : **Shri K.P. Datta**, Advocate

Versus

1. Unio of India, through Secretary, Min of Defence, New Delhi – 110011.
2. The Chief of Army Staff, COAS Sectt, IHQ of MoD (Army), South Block, New Delhi – 110011.
3. Officer in Charge, AMC Records, Lucknow, Pin – 226002 (UP).
4. Commanding Officer, 310 Field Hospital, Pin - 903310, C/o 56 APO.
5. CDA (Pension), Draupadi Ghat, Allahabad (UP).
6. PAO (OR) AMC, Lucknow – 226002 (UP).

... RespondentsLd. Counsel for the Respondents : **Shri R.C. Shukla**,
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 issue/pass an order or directions to set aside/quash AMC Records temp supersession letter No. AA/NB SUB/12/2021 dated 22.10.2021 for promotion to the rank of regular Naib Subedar (Amb Asst).
- B. To issue/pass an order or directions to reinstate the applicant in Army Service w.e.f. 28 Feb 2022 and grant him seniority and promotion to the rank of regular Nb Subedar (Amb Asst) wef 01 November 2021 similar to his batchmates and juniors promoted with all consequential benefits and arrears of pay & allowances and subsequent higher promotions as per seniority.
- C. To issue/pass an order or directions to respondent to review all his ACRs considered for promotion duly obtain correcting measures as per existing policy in vogue, Hon’ble Apex Court judgments and AFT Orders passed in similar cases.
- D. To issue/pass an order or directions to the respondents to decide his representation dated Feb 2021 and Statutory Complaint dated 02 Mar 2021.
- E. To issue/pass any other order or direction as this Hon’ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant.
- F. To allow this original application.”

2. Brief facts of the case are that the applicant was enrolled in the Army on 29.02.1996. He was promoted to the rank of Havildar on 07.07.2017. 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 and 01.11.2021 but he was temporarily superseded for promotion to the rank of Naib Subedar on both the occasions 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 in the rank of Havildar. The applicant submitted representation for expunction of ACR and to promote him in the rank of Naib Subedar 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 29.02.1996. The applicant was promoted as Havildar on 07.07.2017. The applicant passed Senior Cadre Course in May 2020 and fulfilled all promotion criteria as per policy in vogue. As per seniority, the applicant was due for promotion to the rank of regular Naib Subedar (Amb Asst) w.e.f. 01.01.2021 alongwith his batch mates and some juniors have been promoted to the rank of Naib Subedar on 01.01.2021 vide AMC Records promotion order dated 30.12.2020. The applicant was temporarily superseded for promotion to the rank of Naib Subedar due to ACR grading criteria as mentioned in AMC Records letter dated 22.10.2021 unjustly and arbitrarily without enlightening the deficiency of ACR grading. The ultimate result is that his batch mates and juniors have been promoted which is against the principles of nature justice and in violation of Articles 14 and 16 of the Constitution of India.

4. Learned counsel for the applicant further submitted that as per Para 44 of Army Order 1/2002/MP, average grading given affecting promotion is required to be communicated to the affected individual

so that he is not deprived of an opportunity to submit his favour for expunging that grading and ACR of this period should not have been acted upon and he should have been considered for promotion ignoring the defective ACR, if any. He placed reliance on the judgment of the Armed Forces Tribunal (Principal Bench), New Delhi in TA No. 297 of 2010, **Ex Nb Sub Balraj vs. Union of India and Others**, decided on 04.05.2011, AFT (RB) Kochi judgment in OA No. 61 of 2015, **Havildar Bopaiah vs. Union of India and Ors**, decided on 28.01.2015 and AFT (RB) Jabalpur judgment in O.A. No. 124 of 2016, **Hav Rajendra Singh vs. Union of India and Ors**, decided on 18.04.2017 being a similar matter.

5. Learned counsel for the applicant further submitted that as per para 12 of IHQ of MoD (Army) letter dated 10.10.1997 and 26.03.2010, sanction of the competent authority may be taken for relaxation in the mandatory requirement of CRs for promotion to the rank of Naib Subedar but in the instant case no such sanction has been taken by the respondents. In this regard, wife of the applicant submitted a representation dated 07.01.2021 to the Commandant, AMC Centre to set aside supersession order of AMC Records dated 15.11.2020 and promote her husband as per his seniority but nothing has been done by the respondents. The applicant submitted a detailed representation in Feb. 2021 to respondent No. 3 against his temporary supersession for promotion but no reply has been received yet.

6. Learned counsel for the applicant further submitted that ACR for the year 2021 of the applicant was initiated well in time and submitted to AMC Records during October 2021 but the same has not been considered for promotion to the rank of Naib Subedar being eligible for such promotion. Thus, the applicant has been unjustly and arbitrarily denied his legitimate promotion to the rank of Naib Subedar w.e.f 01.01.2021 and further promotions of Subedar and Subedar Major as per seniority similar to his batchmates. He pleaded for grant of promotion to the applicant w.e.f. 01.01.2021 as per decision given by the above mentioned Benches of the AFT relaxing mandatory requirements of ACRs/gradings.

7. On the other hand, Ld. Counsel for the respondents submitted that applicant was promoted to the rank of Naik on 02.06.2014 and Havildar on 07.07.2018. He was discharged from service on 28.02.2022 on completion of 2 years extension of service limit. The applicant was screened for promotion to the rank of Naib Subedar as per Corps seniority in his own turn against the vacancy of 01.01.2021 and was temporarily superseded for promotion to the rank of Naib Subedar due to lacking of ACR grading criteria as per IHQ of MoD (Army) policy letter dated 10.10.1997. ACR/grading criteria for promotion to the rank of Naib Subedar as per policy letter dated 10.10.1997 is as under :-

- (a) Only last five reports will be considered, out of which minimum three reports must be in the rank of Hav and in case of shortfall rest may be in the rank of Nk.

- (b) At least three out of last five reports should be “Above Average” with a minimum of two in the rank of Dfr/Hav and remaining should not be less than “High Average”.

8. As per IHQ of MoD (Army) letter dated 17.01.2019, even if an individual is given consideration of one confidential report in lower rank, he still has to meet Qualitative Requirement of minimum two ‘Above Average’ confidential reports in Havildar rank. The details of the ACR/grading earned by the applicant from the year 2014 to 2021 are as under :-

Ser No.	Year	Rank	Grading
1.	2014	Naik	6 (High Average)
2.	2015	Naik	6 (High Average)
3.	2016	Naik	7 (Above Average)
4.	2017	Naik	8 (Above Average)
5.	2018	Havildar	No points allotted being Non Initiation Report
6.	2019	Havildar	6 (High Average)
7.	2020	Havildar	5 (High Average)
8.	2021	Havildar	8 (Above Average)

9. Learned counsel for the respondents further submitted that initially the applicant was screened for promotion to the rank of Naib Subedar against the vacancy of 01.01.2021 and his last five ACRs (3 ACRs in Naik and 2 ACRs in Havildar rank) were taken into consideration. The applicant in 2 ACRs of 2019 & 2020 in the rank of Havildar has been graded ‘High Average’ and thus he was not meeting the mandatory requirement of minimum two ‘Above Average’ ACRs in the rank of Havildar and was temporarily superseded due to lacking of ACR grading criteria which was conveyed to the applicant vide AMC Records letter dated 15.11.2020. In ACRs for the period

from 2014 to 2021, no weak points, adverse and advisory remarks were given by the IO/RO/SRO and 'High Average' assessment is not required to be communicated to the ratee (applicant), hence, there is no inconsistency of reporting of ACR in the instant case and therefore, para 44 of Army Order 1/2002/MP is not relevant in the present case.

10. Learned counsel for the respondents further submitted that applicant submitted a statutory complaint dated 26.02.2021 seeking promotion to the rank of Naib Subedar by setting aside the ACR grading criteria which was rejected by the respondents being devoid of merit vide COAS order dated 17.06.2022. Thereafter, applicant was again considered for promotion to the rank of Naib Subedar against the vacancy of 01.11.2021 in which 3 ACRs in the rank of Havildar and 2 ACRs in rank of Naik for the year of 2019 & 2020 were taken in which applicant was graded with 'High Average' and in ACR for the year 2021, applicant was graded with 'Above Average'. Hence, against the requirement of two Above Average reports, applicant got only one ACR grading of 'Above Average', hence, he was again temporarily superseded due to lack of ACR grading criteria and thus, he was not promoted to the rank of Naib Subedar and on completion of applicant's extended service limit, he was discharged from service on 28.02.2022. Hence, applicant's discharge from service in the rank of Havildar was carried out as per policy in vogue and no injustice has been done to him. He pleaded for dismissal of Original Application.

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

12. It is pertinent to mention here that judgments relied up by the applicant in Para 4 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 to expunge ACR which is clarified as under :-

(a) In the case of **Nb Sub Balraj** (supra), applicant was awarded 'Below Average' (3 points) in one of the ACRs and not recommended for promotion which was not communicated to the applicant as per ACR/promotion policy and thus his ACR was expunged but the present case of the applicant is on different ground.

(b) In the case of **Havildar Bopaiah** (supra), applicant was not communicated the adverse entry made in his ACR and further denied of an opportunity to prefer an explanation why it should not be expunged and not to adversely affect his promotional prospects.

(c) In the case of **Hav Rajendra Singh** (supra), applicant was awarded 'Outstanding' and 'Above Average' grading in all four ACRs and he was short of one ACR in the rank of Havildar. Therefore, taking into consideration of his overall (Outstanding and Above Average) profile, mandatory requirement of one 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.

13. 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 for the vacancy as on

01.01.2021, applicant was graded 'High Average' in both ACRs of 2019 and 2020 in the rank of Havildar. The applicant was again considered for promotion to the rank of Naib Subedar against the vacancy as on 01.11.2021 in which 3 ACRs in the rank of Havildar and 2 ACRs in rank of Naik were taken for the year from 2019 to 2021 in which applicant was graded with 'High Average' in the year 2019 & 2020 and Above Average in the year 2021 in the rank of Havildar. Hence, against the requirement of two Above Average reports in the rank of Havildar, applicant got only one ACR grading of 'Above Average', hence, applicant was again temporarily superseded due to lack of ACR grading criteria and thus, he was not promoted to the rank of Naib Subedar and on completion of extended service limit, he was discharged from service on 28.02.2022 as per rules/policy.

14. In view of above, we find that there is no illegality, bias or prejudice neither in ACR grading nor in DPC proceedings and applicant temporarily superseded for promotion due to mandatory requirement of minimum two 'Above Average' ACRs in the rank of Havildar on both the occasions as on 01.01.2021 and 01.11.2021. 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 and has completed ACR criteria for promotion to the rank of Naib Subedar but sanction of competent authority was not taken for relaxation in the gradings/requirement of CRs, if there exists any such ACR. The

