

**RESERVED**  
**COURT No.2**

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**

**ORIGINAL APPLICATION No. 399 of 2023**

Thursday, this the 16<sup>th</sup> day of January, 2025

**Hon'ble Mr. Justice Anil Kumar, Member (J)**

**Hon'ble Maj Gen Sanjay Singh, Member (A)**

No 669491-N Ex WO/Eng/Fit Ganesh Shanker son of Shri Shridhar,  
R/o Plot No 110, Viman Puri, Sanigawan Road, Post-Sanigawan,  
District-Kanpur-208021 (UP).

..... Applicant

Learned counsel for the : **Shri R Chandra**, Advocate  
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence,  
Government of India, New Delhi-110011.
2. The Chief of the Air Staff, Air Headquarters, New Delhi-110011.
3. Directorate of Air Veterans, Air Headquarters, SMC Building, 1<sup>st</sup>  
Floor, Subroto Park, New Delhi-110010.
4. Joint CDA (Air Force), Subroto Park, New Delhi-110010.

.....Respondents

Learned counsel for the : **Shri JN Mishra**, Advocate  
Respondents. Central Govt. Counsel

**ORDER**

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

- (a) *The Hon'ble Tribunal may be pleased to direct the respondents to grant promotion to the higher rank of MWO due on 01.11.2019 which is being missed just for 01 day and a fresh Corrigendum PPO be issued duly re-fixation of pension with all consequential benefits along with its arrears and interest thereon at the rate of 18% per annum.*
- (b) *Any other appropriate order or direction which the Hon'ble Tribunal may deem just and proper in the nature and circumstances of the case.*

2. The undisputed facts of the case are that the applicant was enrolled in the Indian Air Force (IAF) on 20.04.1981. During the course of his service, he was promoted to the rank of Warrant Officer (WO). He superannuated on 31.10.2019 (AN) after completion of terms of engagement. Prior to discharge from service, he was empanelled for promotion to the next higher rank i.e. Master Warrant Officer (MWO) in the panel year 2019-2020 at Serial Number 30 in Grade-I. Since there was no vacancy available as on 31.10.2019 i.e. on the date of his retirement, he was discharged from service without granting promotion after completion of terms of engagement. This O.A. has been filed for grant of next promotion w.e.f. 01.11.2019 on which date there was a vacancy.

3. Learned counsel for the applicant submitted that the applicant was enrolled in the IAF on 20.04.1981 as Eng Fit. He has served in the IAF in peace, field, HAA and CI Ops with full satisfaction of his superiors. It was further submitted that though the applicant was

discharged from service on 31.10.2019, he would have been considered for grant of promotion to the next higher rank on 01.11.2019 keeping in view that after grant of next promotion the applicant would have been benefitted to the extent of one increment only followed by increase of pensionary benefits.

4. Learned counsel for the applicant further submitted that the applicant was in promotion panel 2019-20 and stood at serial number 30, which could not be cleared till his retirement due to release of vacancy on 01.11.2019 on which date he was not in service. It was further submitted that the applicant had submitted appeal dated 27.09.2019 to the higher authority through chain of command, which was duly recommended by his Commanding Officer and the Station Commander but even then, he was not promoted to the next rank.

5. Further submission of learned counsel for the applicant is that even if the applicant was promoted to the next higher rank he would have been granted one increment only i.e. equivalent to notional increment for which law has already been settled in the case of ***P Ayamperumal vs The Registrar, Central Administrative Tribunal, Madras Bench & Ors***, SLP (Civil) Diary No 22282 of 2018. It was further submitted that the instant case being of similar nature, applicant be considered for further promotion on 01.11.2019 and accordingly, corrigendum PPO be issued by granting one increment alongwith consequential benefits.

6. Per contra, learned counsel for the respondents submitted that the applicant was enrolled in the IAF on 20.04.1981 and superannuated

on 31.10.2019. He was empanelled for promotion to the next higher rank in the panel year 2019-20 at serial number 30 in Grade-I.

7. Learned counsel for the respondents further submitted that the promotions are released on the basis of month-wise accrual of vacancies in a particular rank and trade. Accordingly, promotions up to serial number 27 in Grade-I were released till October, 2019 and promotions from serial numbers 28 to 36 were released w.e.f. 01.11.2019. It was further submitted that since applicant's seniority for promotion came up on 01.11.2019 i.e. the date on which he was not in service, his promotion could not be released as he was superannuating on 31.10.2019.

8. Further submission of learned counsel for the respondents is that based on application submitted by the applicant, case was taken up by his unit which was replied by Records IAF dated 21.10.2019 (Annexure CA-1) clarifying the reason for not releasing the promotion order prior to applicant's date of retirement. He pleaded for dismissal of O.A.

9. Heard learned counsel for the parties and perused the record.

10. The undisputed facts on record are that the applicant was enrolled in the IAF on 20.04.1981 and superannuated on 31.10.2019 (AN) after completion of terms of engagement in WO rank. While he was empanelled for promotion to the next higher rank in the panel year 2019-20, he stood at serial number 30 in Grade-I. Promotions up to serial number number 27 in Grade-I were released till October, 2019 and promotions from serial numbers 28 to 36 were released w.e.f. 01.11.2019 against accrual of vacancies. Since the applicant was

retiring on 31.10.2019 on which date there was no vacancy, he could not be promoted to the next rank.

11. The respondents have filed annexure CA-1 which is the letter issued by Air Force Record Office to applicant's unit in response to appeal submitted by the applicant through his unit regarding denial of promotion. Extract of the aforesaid letter is reproduced as under:-

- "1. x x x  
 2. Promotions are released on the basis of month wise accrual of vacancies in a particular rank and trade. Accordingly, till the month of Oct 19, promotions up to SI No 27 in grade-I were released on the basis of monthly accrual of vacancies in his trade and rank.  
 3. However, 669491-N WO Ganesh Shanker Eng Fit was empanelled in promotion panel 2019-20 at SI No 30 in Grade-I. His seniority will come up for promotion in Nov 2019 against accrual of 05 vacancies in his trade and rank. Since, WO is superannuating on 31 Oct 19, there is no feasibility to release his promotion before his superannuation date i.e. 31.10.2019".

12. The rule of promotion is very clear which stipulates that the promotion cannot be granted retrospectively after retirement, as it requires the actual assumption of duties and responsibilities of the promotional post. In the present case, since the applicant superannuated before accrual of vacancy and before assumption of duty, he could not have formally assumed the charge of the promotional post.

13. In the case of ***Bihar State Electricity Board & Ors vs Dharamdeo Das***, Civil Appeal No 6977 of 2015 decided on 23.07.2024 the Hon'ble Apex Court has held that it is well settled principle that promotion becomes effective from the date it is granted, rather than from the date a vacancy arises. It has been further held that while the Courts have recognized the right to be considered for promotion as not only a statutory right but also a fundamental right, there is no

fundamental right to the promotion itself. In the present case the applicant was not on the effective strength of the unit when vacancy arose, and also he did not assume the responsibility of a higher post to draw corresponding pay, he seems to be not entitled to get further promotion. Thus, the legal precedents discussed above establish that promotion only becomes effective upon the assumption of duties on the promotional post and not on the date of occurrence of the vacancy.

14. Considering that the applicant superannuated on 31.10.2019 i.e. before his promotion was effectuated, he is not entitled to retrospective financial benefits associated to the promotional post of MWO as he did not serve in that capacity.

15. In view of the above, the O.A. is **dismissed** being devoid of merit.

16. No order as to costs.

17. Miscellaneous application(s), pending if any, stand disposed of.

(Maj Gen Sanjay Singh)  
Member (A)

Dated: 16.01.2025

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(Justice Anil Kumar)  
Member (J)

Form No. 4 Court No 2  
 {See rule 11(1)}  
 ORDER SHEET  
 ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

O.A. No. 399 of 2023

Ex WO Eng Fit Ganesh Shanker  
 By Legal Practitioner for the Applicant

Applicant

Versus

Union of India & Others  
 By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><b><u>16.01.2025</u></b>  <b><u>Hon'ble Mr. Justice Anil Kumar, Member (J)</u></b>  <b><u>Hon'ble Maj Gen Sanjay Singh, Member (A)</u></b></p> <ol style="list-style-type: none"> <li>1. Order pronounced.</li> <li>2. O.A. No. 399 of 2023 is <b>dismissed</b>.</li> <li>3. For order, see our judgment passed on separate sheets.</li> </ol> <p style="text-align: center;"> <b>(Maj Gen Sanjay Singh)</b>                      <b>(Justice Anil Kumar)</b>  <b>Member (A)</b>                                      <b>Member (J)</b> </p> <p><i>rathore</i></p>

