

**RESERVED****COURT NO.1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 205 of 2018**Friday, this the 31<sup>st</sup> day of May, 2019**“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)  
Hon’ble Air Marshal B.B.P. Sinha, Member (A)”**

Hav (Amb Asst) Kasivisweswara Rao J (No. 13986361W)  
 S/o Sri Late Papa Rao J, Village & Post : Hukumpeta, Savithrinagar,  
 D. No : 3-351, Rajahmundry, East Godavari (District),  
 Andhra Pradesh – 533107

..... **Applicant**

Ld. Counsel for the Applicant : **Col AK Srivastava (Retd),**  
 Advocate

**Versus**

1. The Secretary, Govt of India (MoD), South Block, DHQ P.O. New Delhi – 110001.
2. The Chief of Army Staff, Integrated HQ of MoD (Army), South Block, DHQ PO New Delhi – 110001.
3. Officer Commanding, AMC Records, Lucknow

----- **Respondents**

Ld. Counsel for the Respondents : **Shri Yogesh Kesarwani,**  
 Central Government Counsel

**ORDER**

**“ Per Hon’ble Air Marshal BBP Sinha, Member (A)”**

1. The Present Application under section 14 of the Armed Forces Tribunal Act, 2007 has been preferred for the following reliefs.

*“(a) Issue/pass an order or direction of appropriate nature to the respondents to quash/set aside AMC Records letter dated 27/01/2018 stating temporary supersession of the applicant for promotion to the rank of a Nb Sub due to ACR criteria.*

*(b) Issue/ Pass an order or direction of appropriate nature to the respondents to quash/set aside the reason/reasons in ACRs leading to applicant’s temporary supersession for promotion to the rank of a Nb Sub as intimated vide AMC Records letter dated 27/01/2018.*

*(c) Issue/ Pass an order or direction of appropriate nature to the respondents to quash/set aside the under assessed ACR or ACRs or review it due to which the applicant was temporarily superseded for promotion to the rank of a Nb Sub.*

*(d) Issue/ Pass an order or direction of appropriate nature to the respondents to initiate an Early/Special ACR and its consideration by a promotion board in respect of the applicant before he is over age on 11/08/2018 and promote him, if found fit.*

*(e) Issue/ Pass an order or direction of appropriate nature to the respondents to condone/ set aside the over age factor to enable a 2<sup>nd</sup> look for promotion after initiation of his ACR due on 01/10/2018 i.e. merely 1 month and 21 days after his over age on 11/08/2018 and promote him, if found fit.*

*(f) Issue/ Pass an order or direction of appropriate nature as this Hon’ble Tribunal deems appropriate in favour of the applicant.*

*(g) Allow this application with costs and interest.”*

2. The facts draped in brevity are that the applicant was enrolled in the Army on 17.06.1993. He was promoted to the rank of Naik (Nk) on 01.01.2010 and was promoted to the rank of Havildar (Hav) 01.08.2014. The applicant as a Havildar came to know that his juniors were approved for promotion to the rank of Nb Sub whereas he had been superseded. He received a letter from AMC Records dated 27.01.2018 intimating that he was temporary superseded for promotion to the rank of Nb Sub due to lack of ACR grading. Since the applicant did not have a second chance to be considered for promotion next year because he was becoming overage for promotion on 11.08.2018, therefore the applicant submitted a statutory complaint against his supersession, but the same was not replied. Being aggrieved by denial of promotion, the applicant has approached this Tribunal for grant of promotion by means of present O.A.

3. Based on the submission in O.A., the learned counsel for the applicant submitted that the applicant was promoted to the rank of Hav 01.08.2014. He has earned two ACRs in the rank of Nk and three ACRs in the rank of Hav during the reporting year from 2012 to 2017 i.e. his promotion zone. That during this period the applicant was directly working under the Initiating Officer and in all the five ACRs, he was graded 'Above Average' by his Initiating Officer but

the Reviewing Officer in three ACRs out of five ACRs, has graded him 'High Average'. Reviewing Officer has not given any reason for variation of two marks in ACR grading. He was never given any performance counselling. He submitted that when there was difference of two marks, his ACRs should have been sent to Senior Reviewing Officer but the same was not done. The applicant was screened for promotion to the rank of Nb Sub on 11.01.2018 as per his Corps seniority but he was not found fit for promotion and was superseded. He received a letter from AMC Records dated 27.01.2018 intimating that he was temporary superseded for promotion to the rank of Nb Sub due to lacking of ACR grading. Thereafter he submitted a statutory petition dated 17.03.2018 against his supersession but the same has not yet been replied by the respondents. The learned counsel pleaded that the applicant has wrongly been denied the promotion to the rank of Nb Sub. He claimed that the applicant will become overage for promotion on 11.08.2018 whereas his next ACR is due on 01.10.2018. Learned counsel for the applicant prayed that directions be issued to the respondents to set aside or review the under assessed ACRs and pleaded for applicant to be promoted to the rank of Nb Sub.

4. On the other hand, the contentions of the learned counsel for the respondents as contained in the counter affidavit are that the applicant was screened for promotion to the rank of Nb Sub as per

his seniority on 11.01.2018 but he was temporarily superseded due to lack of ACR grading criteria in terms of paragraph 6(b) of Army Headquarters letter dated 10.10.1997. The ACR grading earned by the applicant for the years from 2012 to 2017 are as under:-

Year	ACR Grading earned by the applicant			Final Grading	Recommendation (R)/Non Recommendation (NR) for promotion by IO & RO		Unit in which ACR Initiated
	IO	RO	SRO		IO	RO	
2012	7 (Above Average)	5 (High Average)	-	5 (High Average)	R	R	38 AMSD
2013	7 (Above Average)	6 (High Average)	-	6 (High Average)	R	R	38 AMSD
2014	NIR Initiated due to the applicant was promoted to the rank of Hav on 01.08.2014						404 Field Hospital
2015	7 (Above Average)	7 (Above Average)	-	7 (Above Average)	R	R	404 Field Hospital
2016	7 (Above Average)	7 (Above Average)	-	7 (Above Average)	R	R	404 Field Hospital
2017	7 (Above Average)	6 High Average)	-	6 (High Average)	R	R	314 Field Hospital

5. Paragraph 6 (a) & (d) of Army Headquarters letter dated 10.10.1997 stipulates 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 the minimum of two in the rank of Dfr/Hav and remaining should be not less than ‘High Average’.*

*(c) The individual must have a minimum of two reports on Regimental Duty or as an instructor in any Army School of Instructions, incl IMA, ND, OTA and ACC, out of which at least one should be Above Average, one of the Regimental Reports should have been earned in the rank of Dfr/Hav.*

*(d) The individual should have been recommended for promotion in all the five reports”.*

6. Learned counsel for the respondents submitted that the applicant had earned 02 x Above Average ACRs and 03 x High Average ACRs out of last 05 x ACRs which were considered for promotion. Whereas the requirement was at least 03 x Above Average ACRs out of last five reports and the remaining should not be less than 'High Average' hence the applicant was temporarily superseded for promotion to the rank of Nb Sub due to non fulfilling of ACR grading criteria. The applicant submitted an application under RTI Act 2005 to seek information regarding his supersession, the same was suitably replied by the respondents vide letter dated 20.02.2018. The applicant thereafter preferred a statutory complaint dated 17.03.2018 which is under process with the respondents. Learned counsel for the respondents submitted that as per para 62 of AO 1/2002/MP “CRs, once received in the Record Office and accepted as technically correct will not be allowed to be revised and returned to the unit, IO, RO or SRO, as the case may be for review or revision under any circumstances. There will be no amendments, cuttings, erasures, overwriting made to the CRs after they have been received in the Record Offices, except where extract of CR, signed by the Ratee (s) are received and then pasted in the CRs”.

**7. Paragraph 42 of AO 1/2002/MP communication of weak points/adverse remarks/advisory remarks and “Low Average/Below Average” assessment to the Ratee :**

*The following aspects, whether endorsed in the Pen Picture, figurative assessment or overall grading will be communicated to the Ratee by the IO:-*

- (a) *Weak Points.*
- (b) *Adverse remarks.*
- (c) *Advisory remarks.*
- (d) *“Low Average” or “Below Average” whether in figurative assessment or overall grading.*

In the instant case, the applicant was not graded Low Average or Below Average, hence remarks were not communicated to him.

8. It was further submitted by learned counsel that in terms of Paragraph 45 of Army Order No 1/2002/MP **“in case assessment of the RO is widely at variance with the assessment and more than two steps in overall grading, the RO will elaborate the variation and endorse full justification for his assessment, in the pen picture.”** He further stated that in the instant case the variation by RO is within the policy limits, hence there was no need for RO to elaborate on the variations.

9. He added that as per para 9 (b) of AO 1/2002/MP, Early Confidential Reports of Hav can be initiated on 02 Aug (i.e. 60 days earlier than due date of 01 Oct) due to vacation of appointment either

by the IO or the Ratee. In the instant case, neither the applicant nor the ratee was vacating the appointment.

10. As per Paragraph 398 of Record Office Instruction No 12/2014 and paragraph 149 of the Regulation for the Army 1987 age limit for promotion to the rank of JCO is 44 years of age & 26 years of service. The applicant has already become over age for promotion to the rank of Nb Sub on 12.08.2018 and is due for superannuation on 01.07.2019 after completing his two years extended tenure as Hav. He further submitted that due to overage factor he could not be considered second time for promotion to Nb Sub in the year 2018. Learned counsel for the respondents submitted that keeping in view of the facts mentioned above, the applicant has correctly been superseded for promotion to the rank of Nb Sub in accordance with rules and policies governing on the subject.

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

12. The question which needs to be answered is whether the variation in the assessment of the applicant by RO is justifiable and is the applicant entitled for promotion to the rank of Nb Sub?

13. We have given our anxious thought to this case and following facts are clear to us:-



(a) That the applicant could not be empanelled in his first promotion board due to lacking in ACR Grading i.e. he did not meet the minimum criteria of having three Above Average reports in last five years ACRs.

(b) That though his IOs had given him Above Average the same has been assessed as High Average by the RO who is the Commanding Officer.

(c) That the applicant became overage for promotion to Nb Sub only after one consideration for promotion and hence could not be considered for promotion in subsequent years.

14. In the above situation we find that the fact that the applicant became overage only after one consideration for promotion is a policy matter of the respondents and hence we are of the considered opinion that no injustice has been done to the applicant on this count. The next issue which was repeatedly raised by the learned counsel for the applicant relates to the submission that the applicant as Ambulance Assistant in AMC was directly working under the IOs and hence his interaction with Commanding Officer as RO was very less therefore reduction of assessment from Above Average to High Average by RO i.e. Commanding Officer was unfair. In this context we have noticed in the records that the applicant as a senior Hav was functioning in important appointments like Mess Hav and Coy Hav Maj (CHM). Hence we are of the considered opinion that the

submission of learned counsel that the Commanding Officer as RO had no interaction or exposure with the applicant does not appear to be a realistic assessment because it is well known that Commanding Officers have a direct role in the functioning of Messes and also interact frequently with Company Havildars. We have also noticed that the respondents have mentioned in their counter affidavit that in 2010, the applicant was caught by Military Police to be in unauthorised possession of a large quantity of medicines which were to be sent to his home and he was punished for the same. Thus considering all issues we would not like to get into the issue of what is the ability of the Commanding Officer to assess a Hav or senior Nk under his command. We feel that the complete design of command and control in Army is through the Commanding Officer, who is a specially selected officer to discharge his duties and hence unless otherwise proven, we have no reason to doubt the objectivity of the assessment of the Commanding Officer as RO who is more experienced and senior than the IO.

15. Thus considering all the issues we are of the opinion that the Commanding Officer i.e. RO has assessed the applicant at variance with IO and to the disadvantage of the applicant. However this variance is within the policy parameters of the Army and is hence valid. Thus we find that no irregularity has taken place in the ACR of the applicant and therefore his ACR is technically correct. The

applicant was superseded for promotion to the rank of Nb Sub because he was not fulfilling the ACR grading criteria. As per rules, there is no need to communicate the grading or justify the grading in case of variation of two point between Initiation Officer and Reviewing Officer.

16. Thus, we are of the view that the applicant has failed to prove his case and hence we have no valid reason to interfere with the denial of his promotion. In this view of the matter, we are of the considered opinion that no injustice has been done by the Reviewing Officer and the applicant is not entitled to any relief as claimed from this Tribunal.

17. Accordingly, the **Original Application No 205 of 2018**, being devoid of merit, is hereby **dismissed**.

**(Air Marshal BBP Sinha)**  
**Member (A)**

Dated : May, 2019  
ukt

**(Justice S.V.S. Rathore)**  
**Member (J)**