

RESERVED**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****ORIGINAL APPLICATION No. 396 of 2019**Friday, this the 12th day November, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

No. JC-703740M Sub (Clk SD) Simanchal Dalai, S/o Sri Bishwanath Dalai, R/o C/o Administrative Bn, AMC Centre & College, Lucknow, Pin-226002.

..... Applicant

Ld. Counsel for the : **Shri KP Datta**, Advocate
Applicant

Versus

1. Union of India, through Secretary, Min of Defence, New Delhi.
2. The Chief of Army Staff, Integrated HQ of MoD (Army), South Block, New Delhi-110011.
3. Brig Records, Records AMC, Lucknow-226002 (UP).
4. Commanding Officer, Adm Bn, AMC Centre & C, Lko-2
5. PCDA(CC), Lucknow, PIN-226002. (UP).
6. PAO (OR), AMC, Lucknow, Pin-226002 (UP).

.....Respondents

Ld. Counsel for the
Respondents.**Shri Yogesh Kesarwani**, Advocate
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) To issue/pass an order or direction to set-aside/quash the PAO (OR) AMC, Lucknow letter No VIII/13981133/Re-instate dated 12.06.2019 is being annexed as Annexure A-1 to the original application.

(b) To issue/pass an order or direction to the respondents for release the arrears of salary (pay & allces) alongwith interest @ 18% p.a. for the period wef 01.03.2016 to 26.04.2018 (periods from discharge to physical reinstate in service) with all consequential benefits.

(c) To issue/pass an order or direction to the respondents to consider the applicant for seniority in the rank of Naik w.e.f. 01.02.1996, subsequently Hav and Nb Subedar on 01.08.2014, Subedar on 01.12.2016 respectively as per Records AMC ROG Pt II Order published on seniority of promotion alongwith his batch mates during the same periods of service, with retrospective effect of salary (pay and allowances) and arrears along with @ 18% interest p.a. w.e.f. 01.02.1996 to 31.07.2014 to the rank of Naik & Hav, and wef 01.08.2014 to 21.01.2019 to the rank of Nb Subedar and Subedar respectively, with all consequential benefits, duly revised the pay and allowances as per 6th and 7th CPC pay Band, with proper due drawn audit report statement of the applicant.

(d) To issue/pass an order or direction to the respondents to consider the applicant for promotion to the rank of Subedar Major required to be calculated as per merits and seniority of promotion roster, similar to his batch mates during the same periods of service with retrospective effects of pay and allowances and arrears subsequently. It is relevant to mention here that the juniors of the applicant have been promoted to the rank of Sub Major. But, the applicant has not been considered for promotion to the rank of Sub Major through Departmental Promotion Committee (DPC) till date.

(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 with costs.

2. Brief facts of the case are that applicant was enrolled in the Army on 26.02.1990. He was promoted to the rank of Naik w.e.f. 25.11.1997 and was given antedate seniority w.e.f.

14.08.1996. Later, this seniority was fixed w.e.f. 01.02.1996 along with his batch mates in compliance of Chief of Army Staff (COAS) order dated 02.09.2017 issued on disposal of statutory complaint dated 23.09.2015. Applicant's promotion/seniority in the rank of Naik was fixed in accordance with his passing of Promotion Foundation Course (PFC). He was promoted to the rank of Havildar w.e.f. 06.05.2004 with seniority w.e.f. 01.04.2004 based on the seniority in the rank of Naik and requisite eligibility criteria. Later, this was fixed w.e.f. 01.01.2003 as per directions of COAS vide order dated 02.09.2017. He retired in the rank of Havildar on 29.02.2016. Earlier, he preferred a non-statutory complaint dated 10.10.2014 against his promotion to the rank of Naib Subedar which was rejected by GOC-in-C vide order dated 13.06.2015 (exhibit R-6). Being aggrieved, he submitted a statutory complaint which was redressed by COAS vide order dated 02.09.2017 and notional promotions were granted to him after he was re-instated into service w.e.f. 27.04.2018. He was taken on strength w.e.f. 29.02.2016 i.e. w.e.f. the date he was discharged from service in the rank of Havildar. After re-instatement he was notionally promoted to the rank of Naib Subedar w.e.f. 01.08.2014 and thereafter, underwent JLPT cadre course required for promotion from Naib Subedar to Subedar which he passed and he was promoted to the rank of Subedar w.e.f. 22.01.2019 with notional seniority w.e.f.

01.12.2016 along with his batch mates. He was also granted 02 years extension of service in the rank of Subedar and retired w.e.f. 29.02.2020. This O.A. has been filed for release of pay and allowances along with arrears for the period prior to his reinstatement into service i.e. 01.03.2016 to 26.04.2018 and difference of pay and allowances of Naik, Havildar and Naib Subedar ranks after issue of directions of COAS.

3. Submission of learned counsel for the applicant is that applicant's BFC Part-II Order was delayed by AMC Records which resulted in late declaration of PFC-1 thereby getting late promotion to the rank of Naik. His further submission is that applicant's further promotions were delayed on account of seniority of the rank of Naik. Applicant has cited reference of No. 1397937P Havildar (later Subedar) Khandaker Nurul Amin (Annexure A-7) who was granted full redressal vide order dated 09.02.2015.

4. On the other hand submission of learned counsel for the respondents is that applicant is not entitled to pay and allowances for the period for which he did not serve physically in the Army. His further submission is that applicant was taken on strength w.e.f. 29.02.2016 and since he physically reported on 27.04.2018, he is entitled to pay and allowances w.e.f. the date he physically reported in the unit. He further submitted that pay and allowances applicable to him were granted from

the date he physically reported in the unit. Learned counsel for the respondents has further submitted that applicant was screened for promotion to the rank of Subedar Major but he was not considered due to lack of mandatory annual confidential reports in the rank of JCO. He submitted that after re-instatement into service no injustice was done to him, therefore O.A. deserves dismissal.

5. We have heard learned counsel for both the sides and perused the material placed on record.

6. Applicant was discharged from service in the rank of Havildar w.e.f. 29.02.2016 and after redressal of his grievances vide order dated 02.09.2017, he was taken on strength w.e.f. 29.02.2016 but he physically reported to unit on 27.04.2018. He was granted subsequent promotions with antedate seniority and was promoted to the rank of Subedar w.e.f. 22.01.2019 as per notional seniority of previous ranks w.e.f. 01.12.2016 along with his batch mates. The record shows that he was also granted 02 years extension in the rank of Subedar and he retired from service w.e.f. 29.02.2020. Prior to his retirement he was also screened for promotion to the rank of Subedar Major but due to insufficient number of confidential reports in the rank of JCO, he was not considered.

7. It is not disputed that his grievances were redressed vide order dated 02.09.2017, operative portion of which for convenience sake is reproduced as under:-

"1. x x x x

2. x x x x x

3. *I have perused the statutory complaint by the NCO and examined the same in conjunction with relevant rules, policy letters and recommendations of the intermediary authorities. After consideration of all the aspects of the complaint and viewing it against the redress sought, it emerges that the indl was not responsible for delay in passing PFC-1 exam consequent to which his seniority was revised below his batch mates.*

4. *I, therefore, direct that redress be granted to No. 13981133K Hav/Clk (SD) (Now retd) Simhanchal Dalai, AMC by way of granting him notional seniority in the rank of Nk along with his batch mates with other consequential benefits, without any retrospective effect on pay and allowances, as per applicable rules and regulations."*

8. From the aforesaid, it is obvious that applicant was granted redressal vide aforesaid order and it was implemented as per case of Khandaker (supra) as mentioned in letter dated 06.02.2018 (Annexure R-9). Para 2 (b) (iv) of aforesaid letter clearly indicates that pay and allowances should accrue from the date of physical reinstatement in service, however, the complete service should be taken into account while calculating pensionable service.

9. A perusal of para 26 of counter affidavit it emerges that respondents have taken up a case with IHQ of MoD (Army)/DGMS-3D vide letter dated 17.04.2019 for release of pay and allowances for the period from 01.03.2016 to 26.04.2018, outcome of which is still awaited from the competent authority.

10. Be that it may, respondents are directed to take appropriate action on letter dated 17.04.2019 within a period of three months from today and pay due entitlements to applicant as was paid in the case of Khandaker (supra) which is a similar case as of applicant. Default will invite interest @ 8% p.a.

11. No order as to costs.

12. Pending miscellaneous applications, if any, stand disposed off.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: 12 November, 2021
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