

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW  
(CIRCUIT BENCH, NAINITAL)**

**Original Application No. 409 of 2019**

Tuesday, this the 16<sup>th</sup> day of November, 2021

**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)  
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

JC-413417M Ex Naib Subedar Mahipal Singh Rawat S/o Late Sri Trilok Singh, R/o Village-Majigaon, P.O.-Bantola, District-Bageshwar.

..... Applicant

By Legal Practitioner – **Shri CS Rawat**, Advocate  
for the applicant                      Learned Counsel for the Applicant

Versus

1. Union of India through Secretary, Ministry of Defence, Central Civil Secretariat, New Delhi.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army), New Delhi.
3. Director Pension/Policy, Government of India, Ministry of Defence, Department of Ex-Servicemen Welfare, New Delhi.
4. Record Officer, The Parachute Regiment.
5. P.C.D.A. (Pension), Allahabad.

..... Respondents

By Legal Practitioner – **Shri Neeraj Upreti**, Advocate  
for the respondents      Learned counsel for the Respondents

**ORDER (ORAL)**

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

*(i) That this Hon'ble Tribunal may graciously be pleased to summon the entire records and set aside the impugned order dated 05.05.2016 and grant the further promotion to the rank of Sub and thereafter Sub Maj and also grant the Hony rank of Lt as per the notional reinstatement w.e.f. 15.07.2007 in the year 2007 and notional discharge in the year 2009 with all consequential benefits, otherwise petitioner shall suffer irreparable loss and injury.*

*(ii) Such other suitable order is deemed fit and proper in the facts and circumstances of the case also kindly be pleased to meet in the interest of justice.*

2. Brief facts of the case are that applicant was enrolled in the Army on 30.04.1983 through Branch Recruiting Office (BRO), Almora. During the course of service while serving with 5 Parachute Regiment he was promoted to the rank of Havildar w.e.f. 01.10.1996. Applicant was due to be promoted to the next rank in the year 2003 and for this purpose his documents were scrutinised. During the process of scrutiny it was observed by the Record Office that there was some discrepancy in his date of birth recorded in Transfer Certificate issued by Madhyamik Vidyalaya Kameri Devi, Almora, High School Marks Sheet and Transfer Certificate issued by Uttar Pradesh Board of Secondary Education. The variation in date of birth was intimated to the unit i.e. 5 Parachute Regiment on 23.03.2002 and unit tried to resolve the anomaly in date of birth and after a lot of correspondence on the subject, a statement of case was made and the matter was referred to Integrated Headquarters of Ministry of

Defence (Army) who turned down the case vide letter dated 13.09.2004 (Annexure CA-4). Applicant applied for premature discharge from service due to his personal problems. His discharge order was issued in terms of Rule 13 (3) III (iv) of Army Rules, 1954 giving date of discharge w.e.f 31.12.2004 (AN). Meanwhile, applicant sought for cancellation of his discharge order in terms of Rule 11 (2) of Army Rules, 1954 which was agreed and his discharge order was cancelled vide letter dated 14.12.2004 (Annexure CA-6). Being aggrieved with rejection of request with regard to correction in date of birth, applicant served a legal notice dated 11.10.2004. The case was referred to Integrated Headquarters of Ministry of Defence (Army) which was turned down on the ground that request for alteration in date of birth after twenty years of enrolment cannot be accepted. Thereafter, applicant filed Writ Petition No. 44771/2006 in the Hon'ble High Court of Judicature at Allahabad which was dismissed vide order dated 25.09.2008. Special Appeal No. 1669/2008 was disposed off vide order dated 02.12.2008 with directions to applicant to prefer his representation as per para 26 of Army Act, 1950 for correction of date of birth. Applicant preferred representation dated 21.09.2009 to Chief of the Army Staff who directed to promote applicant on the post of Nb Sub notionally with all consequential benefits. Accordingly, applicant was reinstated in service notionally w.e.f. 01.05.2007 and notionally promoted to the

rank of Nb Sub w.e.f. 01.01.2003. Since terms of engagement of applicant had already expired on 30.04.2009, he was notionally discharged from service w.e.f. 30.04.2009 (AN) and casualty to this effect was notified vide Part II Order No. NE/74/2009 dated 20.12.2009. The applicant is in receipt of service pension vide PPO No. S/0575595/2006 (Army) dated 20.02.2007 revised vide PPO No. S/Corr/220300/2009 (Army) dated 21.12.2009. This O.A. has been filed for his promotion to the rank of Sub, Sub Maj and Hony Lt on the ground that his grievance was redressed by Chief of the Army Staff and he was notionally promoted to the rank of Nb Sub.

3. Submission of learned counsel for the applicant is that applicant was discharged from service w.e.f. 30.04.2007 after completion of 24 years of service prior to pronouncement of judgment of the Hon'ble High Court of Allahabad dated 02.12.2008. His further submission is that applicant should have been promoted to the rank of Sub w.e.f. May 2007 alongwith his batch mates and thereafter to the rank of Sub Maj and Hony Lt. Learned counsel for the applicant further submitted that it is the respondents who entered wrong date of birth at the time of enrolment and for this applicant should not have been blamed which has caused immense harassment and huge loss to applicant. He pleaded that applicant be granted notional promotion to the rank of Sub, Sub Maj and Hony Lt along with his batch mates.

4. On the other hand, learned counsel for the respondents

submitted that after redressal of applicant's grievance by Chief of the Army Staff, he was notionally reinstated into service w.e.f. 01.05.2007 and notionally promoted to the rank of Nb Sub w.e.f. 01.01.2003. His further submission is that he was notionally discharged from service w.e.f. 30.04.2009 as this date had already expired. Respondents' learned counsel further submitted that after his notional discharge he was paid an amount of Rs 4,80,702/- as arrears towards difference of pay and allowances after notional reinstatement and notional promotion to the rank of Nb Sub. His further submission is that for further promotion to the rank of Sub there are certain qualitative requirements laid down viz. Applicant should have passed junior leader proficiency test and should have earned three Annual Confidential Reports (two reports in the rank of Nb Sub and one in the rank of Hav) but since the applicant was not in active service and the aforesaid qualitative requirements could not be fulfilled, he was found ineligible for promotion to the rank of Sub and Sub Maj and thereafter Hony Lt. He pleaded for dismissal of O.A.

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

6. It is not disputed that applicant was enrolled on 30.04.1983 and promoted to the rank of Havildar w.e.f. 01.10.1996. While he was about to be considered for further promotion to the rank of Nb Sub, an anomaly came to light with regard to variation of his date of birth

mentioned in different certificates when promotion panel of the Havildars was sent to Record Office for approval. On scrutiny it was found as under:-

- |   |   |
|---|---|
| (a) Date of birth recorded in transfer Certificate issued by Head Master Uchchatter Madhyamik Vidyalaya, Kameri Devi, Almora. | -24.12.1964                                       |
| (b) Date of birth recorded in Marks Sheet of High School Examination issued by Uttar Pradesh Board of Secondary Education.    | -24.02.1964<br>(amended to read as<br>24.12.1964) |
| (c) Date of birth recorded in Matric Certificate.   | -24.02.1964                                       |

7. In the year 2004, a case was taken up with Integrated Headquarters of Ministry of Defence (Army) for change of date of birth in respect of applicant which was turned down vide letter dated 13.09.2004, which for convenience sake is reproduced as under:-

1. x x x x x x

2. *Vide para 138 of Regulations for the Army, 1987 (Revised Edition Vol-I) COAS has the power to sanction alteration of date of birth where such alteration requires necessary due to clerical error involving in re-adjudicating of pay and allowances. The request for alteration of date of birth should be made within two years of individual's enrolment.*

3. *There is no provision to alter the date of birth at this stage, as the request of the individual has been made after twenty years after his enrolment."*

8. Applicant had filed Civil Miscellaneous Writ Petition No. 44771 of 2006 in the Hon'ble High Court of Judicature at Allahabad but it was dismissed. Thereafter, Special Appeal No. 1669/2008 was disposed

off vide order dated 02.12.2008 with directions to applicant to prefer representation to Chief of the Army Staff as the case was within the ambit of Chief of the Army Staff, as per para 26 of Army Act, 1950 for correction of date of birth. Applicant preferred representation dated 21.09.2009 to Chief of the Army Staff who directed to promote applicant on the post of Nb Sub notionally with all consequential benefits. Accordingly, applicant was reinstated in service notionally w.e.f. 01.05.2007 and notionally promoted to the rank of Nb Sub w.e.f. 01.01.2003. Since terms of engagement of applicant had already expired on 30.04.2009, he was notionally discharged from service w.e.f. 30.04.2009 (AN) and casualty to this effect was notified vide Part II Order No. NE/74/2009 dated 20.12.2009. As is evident from record, the applicant is in receipt of service pension of the rank of Nb Sub vide PPO No. S/0575595/2006 (Army) dated 20.02.2007 revised vide corrigendum PPO No. S/Corr/220300/2009 (Army) dated 21.12.2009 and arrears of difference in pay and allowances have already been paid to applicant covering the period from 01.05.2003 to 30.04.2009.

9. While filing counter affidavit the respondents in para 5 have quoted letter dated 18.06.2005 which envisages that the anomaly in date of birth came to the knowledge of applicant approx six months after his enrolment but he did not take any action with regard to

correction of his date of birth. For convenience sake, para 3 (b) of aforesaid letter is reproduced as under:-

*"3(b). The petitioner vide his application dated 03 Aug 2003 has admitted that his date of birth since his admission in the school in 1<sup>st</sup> standard is recorded as 24 Dec 1964. Whereas in his High School Marks Sheet and Matriculation Certificate it has been shown as 24 Feb 1964. He also admitted that he came to know about the facts of variation in his date of birth when he received his original High School Certificate after six months of his enrolment. But he did not disclose the facts due to the reason best known to him. As and when he came to know the variation of the date of birth, he should have reported to Commanding Officer to take action to get the date of birth amended, but instead he kept quiet and got promotion up to the rank of Hav since it was unit based promotion. The alteration in date of birth was observed by this office when the panel for promotion to the rank of Nb Sub was received from the unit."*

10. From the aforesaid it is crystal clear that applicant was well aware of the fact that there is a variation in his date of birth in two certificates and he did not take action with regard to correction of his date of birth immediately after it came to his knowledge. Since no rejoinder affidavit has been filed by the applicant to rebut the submission made by the respondents in this regard, the aforesaid fact led to a conclusion that averments made by learned counsel for the respondents are true. Had applicant got his date of birth corrected by following due process when it came to his knowledge, the inconvenience would not have caused to him which he faced during service and after retirement.

11. During the course of hearing, learned counsel for the applicant has relied upon judgment of the Hon'ble Apex Court in the case of **Major General HM Singh, VSM vs Union of India & Ors**, Civil Appeal No. 192 of 2014, decided on 09.01.2014 and pleaded that applicant be also granted benefits as was given in the aforesaid case. We have gone through the case and we find that the instant case is totally different to that of aforementioned case and therefore, the case relied upon by the applicant is of no help.

12. The respondents vide letter dated 13.09.2004 had categorically denied alteration in change of date of birth as request for the same was submitted twenty years after enrolment. The respondents have taken stand that a Govt servant is eligible for correction of his date of birth in his service records within a certain period after enrolment/commission. In this regard, during course of hearing, learned counsel for the respondents have relied upon the Hon'ble Supreme Court judgment in the case of **Union of India & Ors vs Harnam Singh**, (1993) 2 SCC 162. For convenience sake, operative portion of the aforesaid judgment is as under:-

*"It is nonetheless competent for the Govt to fix a time limit, in the service rules, after which no application for correction of date of birth of a Govt servant can be entertained. A Govt servant who makes an application for correction of date of birth beyond the time, so fixed, therefore, cannot claim, as a matter of right, the correction of his date of birth even if he has good evidence to establish that the recorded date of birth is clearly erroneous."*

13. We find that vide order dated 02.12.2008 applicant was notionally promoted to the rank of Nb Sub w.e.f. 01.01.2003 and was provided financial and pensionary benefits vide PPOs dated 20.02.2007 and 21.12.2009. With regard to his further promotion, contention of respondents, that for promotion to the rank of Sub it was mandatory for the applicant to earn three confidential reports (two in the rank of Nb Sub and one in the rank of Hav), is justified on the ground that applicant was not in service and he had earned no confidential reports in the rank of Nb Sub which was granted notionally. In addition to above, for promotion to the rank of Sub, a Nb Sub should also have passed Junior Leader Proficiency Test (JLPT) which was only possible when he was in active service.

14. In view of the above, applicant is not entitled for promotion to the rank of Sub, and thereafter Sub Maj and Hony Lt which are granted on attaining certain qualitative requirements which applicant did not possess being notionally promoted to the rank of Nb Sub.

15. In view of the above, O.A. deserves to be dismissed. It is accordingly, **dismissed**.

16. No order as to costs.

17. Pending miscellaneous applications, if any, shall stand disposed off.

**(Vide Admiral Abhay Raghunath Karve)**  
**Member (A)**

Dated : 16.11.2021  
rathore

**(Justice Umesh Chandra Srivastava)**  
**Member (J)**