

AFR**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****Original Application No 93 of 2018**Tuesday, this the 23rd day of November, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**Nagesh Bahadur, JC-693729X Sub/NT, S/o Sri Sada Brij, R.o
House No 219/16K/42, Sector- D, Shantipuram, Phaphamau,
Allahabad (U.P.)- 211013.

..... Applicant

Ld. Counsel for the : **Shri VK Pandey, Advocate**
Applicant

Versus

1. Union of India, through the Secretary to the Govt of India, Ministry of Defence, South Block, RK Puram, New Delhi – 110011.
2. The Chief of Army Staff, IHQ of MoD (Army), South Block, RK Puram, New Delhi.
3. IHQ of MoD (Army), Adjutant General's Branch (AG-CW-2). New Delhi.
4. OIC Records, AMC, Lucknow.
5. PCDA (P), Draupadighat, Allahabad (U.P.) – 211014

..... Respondents

Ld. Counsel for the : **Shri RKS Chauhan,**
Respondents **Central Govt Counsel**

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”

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 kindly be pleased to quash the impugned order dated 21.11.2016, passed by the opposite party no. 3, contained as annexure no. 1, and also quash the impugned order dated 13.02.2014, passed by the opp. Party no. 2, after summoning the same.

(ii). That this Hon’ble Tribunal may kindly be pleased to direct the opposite parties to promote the applicant to the rank of Hony Commission i.e. Hony Lt. wef 26.01.2013, with all consequential benefits as well as promotional benefits to the applicant.

(iii). That this Hon’ble Tribunal may kindly be pleased to award the cost Rs. 2,20,000/- (Rs. Two lac twenty thousand) to the applicant against the opposite parties.

(iv) Any other beneficial relief which this Hon’ble Tribunal deems fit and reasonable be also awarded to the applicant against the respondents.

2. Facts giving rise to Original Application in brief are that applicant was enrolled in Indian Army on 06.12.1985. He was promoted to the rank of Subedar on 14.01.2004. He was discharged from service on 01.01.2014 after rendering 28 years of service. He was awarded punishment of Severe Reprimand under Section 39 (b) of the Army Act 1950 on 26.07.2008. He was unwilling for extension of service for two years. Applicant was screened for Honorary Commission on Republic Day 2013 but he was not granted Honorary Commission. Being aggrieved, the applicant has filed instant O.A. for grant of Honorary Commission.

3. Learned Counsel for the applicant pleaded that applicant was discharged from service on 01.01.2014 after rendering 28 years of excellent army service. Applicant was awarded the punishment of Severe Reprimand on 26.07.2008 under Section 39 (b) of the Army Act 1950 which lost its efficacy after three years on 26.07.2011 in accordance with Integrated Headquarters of Min of Def (Army) letter No B/33513/AG/PS2 (2) dt 10 Oct 1997. Para 3 of this letter lays down discipline criteria. Appendix "A" to this letter lays down offences permanently debarring JCOs and NCOs for promotion.

Appendix "B" to this letter is a list of offences debaring JCOs and NCOs for three years for promotion. A combined reading of para 3 of this letter and Appendix "B" thereof discloses that recordable censure has been treated at par with red ink entry. In spite of that respondents have not granted the promotion to the rank of Honorary Lieutenant to the applicant in very illegal and arbitrary manner which is violative of Article 14 of the Constitution of India. Similarly situated personnel were granted Honorary Commission of Lieutenant but the applicant was wrongly denied the same. Applicant filed statutory complaint which was rejected vide letter dated 13.02.2014. He pleaded that respondents be directed to grant Honorary Commission to the applicant.

4. On the other hand, Ld. Counsel for the respondents contended that applicant was enrolled in army on 06.12.1985 as a Sepoy (Nursing Assistant) and thereafter he was re-mustered into Nursing Technician category and promoted to the rank of Subedar on 14.01.2004. He was unwilling for extension of service for two years vide unwilling certificate dated 02.10.2011. He was found eligible for extension of service for two years but since he was unwilling, hence

extension was not granted to him. He was discharged from service wef 01.01.2014. The applicant was screened for Honorary Commission on Republic Day 2013 (26.01.2013), he was found ineligible by board of officers having been awarded 'Severe Reprimand' on 26.07.2008 in the rank of Subedar. Applicant was not eligible for grant of Honorary Commission in terms of Para 7 (c) (i) of Integrated Headquarter, Ministry of Defence letter dated 16.05.2008 which stipulates that for grant of Honorary Commission 'individual should not have more than three red ink entries during their entire service of which none should be in the rank of a JCO'. Applicant submitted statutory complaint dated 06.05.2013 against the rejection order for grant of Honorary Commission stating that 'the severe reprimand awarded to him on 26.07.2008, should not be considered as the punishment has already lost effect on 26.07.2011 after 03 years in accordance with Integrated Headquarter, Min of Def letter dated 10.01.1997. His statutory complaint was examined with all relevant documents and policies on the subject and the same was rejected vide order dated 13.02.2014. Learned counsel for the respondents pleaded that instant O.A. has no substance and is liable to be dismissed.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the policy on the subject.

6. The questions which needs to be answered is whether the applicant awarded Severe Reprimand in the rank of JCO is entitled for grant of Honorary Commission or not?

7. Honorary Commission is granted to JCOs of the Army on active list on the occasion of Republic Day and Independence Day. The entire profile and performance including medical category of a JCO are taken into consideration while making final list for grant of Honorary Commission. The system of processing of recommendations for Honorary Commission is computerised at Army Headquarters. There are inbuilt safeguards in the system to ensure 100 percent accuracy. It is fool proof and immune to external influences and manipulations. The inputs of all JCOs are authenticated by the Officer-in-Charge Records and any amendment to the basic data is processed through the Commands to ensure accuracy. The award of Honorary Commission is based on merit and pro rata basis vis-a-vis vacancies allotted by the Govt.

8. From the pleadings on record we find that applicant was awarded severe reprimand under Section 39 (b) of the Army Act 1950. As per Integrated Headquarter, Min of Def letter No B/43435/Policy/AG/CW-2 dated 16 May 2008 which stipulates that the individual 'should not have more than three red ink entries during their entire service of which none should be in the rank of a JCO'. His name was considered for selection in the list of Honorary Commission on his turn but he was not eligible for the same.

9. We have perused para 7 (c) (i) of policy letter dated 16.05.2008 and according to this, applicant was ineligible for grant of Honorary Commission. For convenience sake, extracts of para 7 (c) (i) of policy letter dated 16.05.2008 is reproduced as under:-

“(Disciplinary Criteria For Honorary Commission/ Ranks To JCOs/Dafadars/Havildars)”

- (i) *Should not have more than three red ink entries during their entire service, of which none should be in the rank of a JCO.*

10. In the instant case, applicant was ineligible for grant of Honorary Commission in terms of Min of Def policy letter dated 16.05.2008. Moreover, the Tribunal does not sit in appeal over decisions not to grant Honorary Commission, based on policy

guidelines. The applicant failed to establish that the respondents acted illegally in not granting Honorary Commission to him. The policy letter relied upon by the applicant has been superseded. Thus, taking into consideration of aforementioned policies and guidelines, we are clear that applicant was not eligible for grant of Honorary Commission on Republic Day.

11. In view of the above, the O.A. lacks merit and is accordingly **dismissed**.

12. No order as to costs.

13. Pending applications, if any, are disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 23 November, 2021

Ukt/-