

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No 706 of 2020**

Wednesday, this the 24th day of November, 2021

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

No. 13986820K Ex Hav Girish Chandra
 S/o Late Ram Singh
 R/o Vill – Padam Pur PO – Motadhak,
 District – Pauri Garhwal, Pin – 246149 (UK)

..... Applicant

Ld. Counsel for the Applicant : **Shri K.P. Datta**, Advocate
 Versus

1. Union of India, through Secretary, Ministry of Defence, New Delhi-110011.
2. The Chief of Army Staff, Integrated HQ of MoD (Army), South Block, New Delhi – 110011.
3. Officer-in-charge, AMC Records, Lucknow Pin – 226002 (UP).
4. PCDA (P), Draupadi Ghat, Allahabad (UP) Pin – 211014.

..... Respondents

Ld. Counsel for the Respondents : **Shri Somesh Singh**,
 Central Govt Counsel.

ORDER

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

- “A. To issue/pass an order or directions to the respondents to grant him seniority and promotion to the rank of regular Nb Subedar w.e.f. 01.10.2014, then Subedar, Sub Major, and Hony Lt /Capt as per its turn in active service, with all consequential monetary benefits alongwith arrears and

interest @ 18% p.a. on arrears till date as per policy in vogue.

- B. To issue/pass any order or direction to quash/set aside the punishment of "REPRIMAND" awarded on 16 Dec 2016 wrongly by Commanding Officer, 4002 Fd Hospital, without any offence, but due to unawareness of the applicant, and not in deliberate.
- C. To issue/pass any other order or directions as may deem just, fit and proper under the circumstances of the case in his favour.
- D. To allow this Original Application with costs."

2. The factual matrix on record is that the applicant was enrolled in the Army in Army Medical Corps on 27.08.1993 and was discharged from service on 31.08.2019 under the provisions of Rule 13 (3) III (i) of Army Rules, 1954 after rendering 26 years and 04 days of service. The applicant was promoted to the rank of Havildar on 17.12.2009 and was granted MACP III (Nb Sub Grade) w.e.f. 27.08.2017. The applicant was granted service pension in the rank of Havildar (ACP-I) vide PPO dated 23.08.2019. The applicant submitted an application dated 17.02.2020 against non promotion to the rank of Nb Sub w.e.f. 01.10.2014 which was suitably replied by Records vide letter dated 03.03.2020. Being aggrieved, the applicant has filed the present original Application.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Army in Army Medical Corps on 27.08.1993. The applicant was promoted to the rank of Havildar on 17.12.2009 and was granted MACP III (Nb Sub Grade) w.e.f. 27.08.2017. The

applicant was discharged from service on 31.08.2019 under the provisions of Rule 13 (3) III (i) of Army Rules, 1954 after rendering 26 years and 04 days of service. The applicant has passed the Senior Cadre Course w.e.f. 18.02.2014 to 21.04.2014 as per AMC Records letter dated 03.01.2014. The applicant was due for promotion to the rank of regular Naib Subedar on 01.10.2014 but superseded for promotion due to overage on 05.06.2015 which resulted in juniors getting promotion to the rank of Nb Sub. The applicant was detailed for UN Mission Indian Tajikistan Friendship Hospital (ITFH) w.e.f. 12.09.2014 to 17.08.2016. After de-induction from Tajikistan, the applicant was posted to 4002 Field Hospital w.e.f. 24.08.2016. The applicant submitted an application dated 23.01.2015 to OIC AMC Records while posted in UN Mission to promote him in the rank of Nb Sub which was denied vide letter dated 28.02.2015 stating that further promotion will be considered only on completion of tenure/de-induction from UN Mission.

4. Learned counsel for the applicant further submitted that applicant was forced to sign adverse career certificate without his willingness unjustly and arbitrarily without listening his grievances of career progression as he was due for promotion on 01.10.2014. On de-induction from UN Mission, applicant submitted a personal application on 21.10.2016 to OIC Records regarding his promotion to the rank of Naib Subedar but no action was taken by Records. The applicant has not been promoted to the rank of regular Nb Sub w.e.f. 01.10.2014, Subedar, Sub Major and Hony Lt/Capt as per seniority in active service. He also submitted that name of the applicant has not

been included in the seniority roll maintained by AMC Records and subsequently his junior NCO, Hav Avon Singh Chauhan who was amongst the personnel of India-Tajikistan Friendship Hospital was promoted to the rank of Nb Sub but having all eligibility criteria, the applicant has not been promoted to the rank of Nb Sub unjustly and arbitrarily which is against the natural justice.

5. Learned counsel for the respondents submitted that applicant was due/considered for promotion to the rank of Nb Sub against the vacancy of 01.10.2014 subject to receipt of ACR 2014. In the meantime, applicant was selected for India- Tajikistan Friendship Hospital, Tajikistan from 13.09.2014 to 19.08.2016. Accordingly, the applicant rendered adverse career certificate as per para 635 & 637 (g) and 656 of ROI 26/2014 duly signed by himself before induction to India-Tajikistan Friendship Hospital, Tajikistan. The applicant was temporarily superseded for promotion to the rank of Nb Sub as he was inducted in Mission abroad. The same was intimated to the applicant vide AMC Records letter dated 20.03.2015.

6. Learned counsel for the respondents further submitted that as per policy in vogue, the applicant being a NCO could not be promoted to the rank of JCO (Nb Sub) at Tajikistan and deferred till de-induction from Tajikistan (i.e. 19.08.2016). Meanwhile applicant had crossed 44 years of upper age limit on 05.06.2015 (i.e. before date of de-induction), hence, he was permanently superseded for further promotion till date of retirement. He further submitted that punishment "REPRIMAND" awarded to the applicant on 16.12.2016 is black ink entry and did not have any adverse effect on promotion.

The applicant submitted an application dated 17.02.2020 against non promotion to the rank of Nb Sub w.e.f. 01.10.2014 which was suitably replied by Records vide letter dated 03.03.2020. There is no existing policy to provide seniority of promotion who have superseded for promotion as per Govt. of India, Ministry of Defence letter dated 04.05.1999 and ROI 10/2014. He pleaded for dismissal of O.A.

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

8. We observe that after being detailed for India-Tajikistan Friendship Hospital, Tajikistan and before proceeding to Tajikistan applicant has signed an adverse career certificate as per para 635 & 637 (g) and 656 of ROI 26/2014. This adverse career certificate resulted supersession in promotion to the rank of Nb Sub fell during the period of his deputation in Tajikistan. The applicant was asked to sign adverse career certificate without his willingness and without listening to his grievances of career progression as he was due for promotion on 01.10.2014.

9. The net result of the delay in promoting the applicant to the rank of regular Nb Sub was that he could not be promoted to rank of Nb Sub on 01.10.2014. Instead MACP-I (Nb Sub Grade) was granted to him w.e.f. 27.08.2017. Thus he lost out timely promotion of regular Naib Subedar (due to his becoming overage upon return from the foreign mission) for no fault of his, which otherwise he would have duly got on 01.10.2014. In the light of the unfair circumstances presented as a fait accompli to the applicant it is highly unjust on the part of the respondents for not promoting him on due date as regular

Naib Subedar. We, therefore, consider that the date of notional promotion of the applicant be deemed to be on his rightfully due date i.e. on 01.10.2014 and not MACP-I (Nb Sub Grade) which was granted to him w.e.f. 27.08.2017.

10. In the result, the Original Application deserves to be partly allowed. The impugned orders passed by the respondents are set aside. The respondents are directed to grant notional promotion to the rank of regular Naib Subedar from due date i.e. 01.10.2014. There will be no consideration for further promotion and date of discharge of the applicant will be the same on which he was discharged from service i.e. on 31.08.2019. The applicant shall not be entitled for any arrears with regard to his regular Naib Subedar pay w.e.f. 01.10.2014. However, he will be granted regular increments due to him w.e.f. 01.10.2014 to 31.08.2019 and accordingly, his pension will be calculated on last basic pay (including increments) on the date of discharge from service and consequently, applicant will be entitled for pensionary benefits in the rank of regular Naib Subedar. The respondents are directed to comply with the order within four months from the date of production of a certified copy of this order and issue Corrigendum PPO to the applicant granting arrears w.e.f. 01.09.2019. Delay shall invite interest @ 8% per annum till actual payment.

11. No order as to costs.

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

Dated: 24th November, 2021
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