

RESERVED

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

ORIGINAL APPLICATION No. 753 of 2022

Friday, this the 01st day of December, 2023

"Hon'ble Mr Justice Anil Kumar, Member (J)
Hon'ble Maj Gen Sanjay Singh, Member (A)"

BHM (Gnr) Ram Babu, S/o Sri Raghu Raj, R/o Paschimi Taraus, Kumhrauda, Maudaha, Hamir Pur (UP), posted in 332 Med Regt, C/o 56 APO.

.... Applicant

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

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi-110011.
2. The Chief of the Army Staff, IHQ of MoD (Army), South Block, New Delhi-11.
3. The Commanding Officer, 332 Med Regt, C/o 56 APO (APS Pin-926332).
4. OC Records, Arty Records, Nasik Road.
5. Pr CDA (P), Pr CDA (P), Draupadi Ghat, Allahabad-211014.

..... Respondents

Ld. Counsel for the : **Shri Amit Jaiswal**, Advocate
Respondents Central Govt Standing Counsel.

ORDER

1. Being aggrieved with supersession for promotion to the rank of Naib Subedar, applicant had submitted statutory complaint dated 27.02.2022 which being rejected vide order dated 14.01.2022, this O.A. has been filed in which the following reliefs have been sought:-

(i) Issue/pass an order or direction of appropriate nature to summon and quash/set aside orders/letters leading to denial of applicant's promotion to the rank of a Nb Sub w.e.f. 21.10.2021.

(ii) Issue/pass an order or direction of appropriate nature to quash/set aside Arty Records letter No 1272/332/Med/13/RA-2 dated 14 Jan 2022 (Annexure No A-1) and 3323/332 Med Regt letter dated 13.02.2022 (Annexure No A-1) intimating the applicant that he was denied promotion to the rank of a Nb Sub due to lack of ACR criteria.

(iii) Issue/pass an order or direction of appropriate nature to summon and quash/set aside inconsistent and under assessments including 'Not Recommended' ('NR') remarks in ACRs leading to denial of applicant's promotion to the rank of a Nb Sub w.e.f. 21.10.2021.

(iv) Issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.

(v) Allow this application with costs.

2. Brief facts of the case are that the applicant was enrolled as gunner in the Regiment of Artillery on 14.10.2000 and after completion of due military training he was posted to 230 Medium Regiment. Thereafter, in the year 2011 he was posted to 232 Medium Regiment w.e.f. 02.10.2011. During the course of his service, he was promoted to the rank of Havildar. Besides serving in the unit, he served twice in Rashtriya Rifles

in the rank of Naik from 17.11.2007 to 30.03.2010 and Havildar from 30.04.2016 to 10.11.2017. He passed promotion cadre from Havildar to Naib Subedar in the year 2020. In the year 2021, as per seniority roster, applicant came up for promotion to the rank of Naib Subedar but was superseded. Against his supersession, he submitted application for redressal of grievance on 08.01.2022 which was rejected by Arty Records vide letter dated 14.01.2022. Thereafter, he preferred statutory complaint dated 27.02.2022 which has still not been decided. Being aggrieved with denial of promotion to the rank of Naib Subedar and rejection of his redressal application, applicant has filed this O.A.

3. The averments made by learned counsel for the applicant are that the applicant was enrolled in Army on 14.10.2000. During the course of his service he served in different parts of the country. He further submitted that on completion of prescribed courses at different levels, he was promoted to the rank of Havildar after fulfilling all requisite qualifications. The applicant was due for promotion cadre during 2018-19 but since he was serving with Rashtriya Rifles on extra regimental employment (ERE), he could not attend the said cadre at that time and underwent the said cadre course in the year 2020 after return to his parent unit. It was further submitted that

there was no adverse remark in his service record but even then he was not promoted to the rank of Naib Subedar.

4. Further averments made by learned counsel for the applicant are that applicant has served and still serving in the Army with utmost devotion and satisfaction of his seniors. It was further averred that besides serving in the unit, applicant has served with Rashtriya Rifles on two occasions. His total service includes 50% service in various Field/High Altitude Area/Counter Insurgency Operational Area. Applicant has never been issued verbal/written counselling during his entire service.

5. It was further submitted that due to applicant's consistent and excellent performance and conduct, he has been assigned independent responsibilities by appointing him as Battery Havildar Major (BHM) and Regimental Havildar Major (RHM) which post he is holding till date while serving in the unit. Advancing his submission, learned counsel for the applicant submitted that on being superseded for promotion, he had submitted statutory complaint which when not decided by the competent authority, he filed O.A. No. 411 of 2022. The said O.A. was disposed off vide order dated 19.05.2022 directing the respondents to decide statutory complaint within two months but it is intriguing to note that the representation has still not been decided and reply has been forwarded by

Record Office that due to ACR criteria, applicant could not be promoted to the rank of Naib Subedar.

6. Further submission made by learned counsel for the applicant is that there is no inconsistency in his ACR profile which debarred him for further promotion. His other submission is that his junior Havildar Daljit Singh has been promoted to the rank of Naib Subedar on 21.10.2021. It was submitted that owing to his overall consistent profile without any warning/counselling, applicant deserves to be promoted to the rank of Naib Subedar with immediate effect to avoid mental harassment, humiliation and recurring financial loss.

7. Repudiating submission of applicant, learned counsel for the respondents submitted that applicant was posted on ERE with 6 Rashtriya Rifles on his own turn and he was not in promotion zone. He underwent promotion cadre after returning from ERE and appointed BHM w.e.f. 01.05.2021. It was further submitted that assessment of the applicant towards his trade work as well as other task assigned to him during his tenure in the Regiment since 2011 has been high average as per records.

8. Learned counsel for the respondents further submitted that as per assessment given in the individual's confidential reports since 2011, it was found that the individual is generally a high average performer and he has been rated

independently by six Initiating Officers and five Reporting Officers during this period. It was further submitted that since applicant was graded 'High Average' in all confidential reports, there was no need to inform about his gradings.

9. Further submission of learned counsel for the respondents is that as per promotion criteria for the rank of Naib Subedar, out of last five reports, three reports should be outstanding/above average with a minimum of two in the rank of Havildar and remaining should not be less than high average. It was further submitted that the applicant has been rated by four IOs and three ROs during the years 2018, 2019 and 2020 and due to lacking ACR criteria, he was not approved for his next rank and superseded by his subordinate Havildar (now Naib Subedar) Daljit Singh. The learned counsel for the respondents pleaded for dismissal of O.A. stating that applicant could not be promoted to next rank due to lacking ACR criteria.

10. Heard learned counsel for the parties and perused original records pertaining to confidential reports for the period of assessment.

11. The applicant bearing Army No. 1443554A BHM Ram Babu was enrolled as gunner in the Regiment of Artillery on 14.10.2000 and during the course of his service he was promoted to the rank of Havildar at his own turn. He passed

promotion cadre from Havildar to Naib Subedar in the year 2020. The applicant came up for promotion to the rank of Naib Subedar in October 2021 as per his seniority but got superseded due to not meeting qualitative requirement as laid down in Army Order 45/80 and policy letter dated 10.10.1997, amended vide letter dated 23.12.1997. He was considered for promotion to the rank of Naib Subedar in his own turn with his batch matches as per seniority against the vacancy of October, 2021 but was superseded by his eligible and qualified junior Daljit Singh as applicant did not fulfil the ACR grading criteria at the time of promotion as per ibid policy letter.

12. Based on policy letter dated 10.10.1997, the following is the criteria for promotion to the rank of Nb Sub:-

(i) Only last five reports will be considered out of which minimum three reports must be in the rank of Havildar and in case of shortfall, rest may be in the rank of Naik.

(ii) At least three out of last five reports should be 'Above Average' with a minimum of two in the rank of Havildar and remaining should be not less than 'High Average'.

13. Thus, from the aforesaid it is abundantly clear that for promotion to the rank of Naib Subedar, last five ACRs are mandatorily considered. The applicant was required to

possess three CR entries of 'Above Average' gradings and two 'High Average' gradings to enable him to get next rank but since he was having only 'High Average' gradings in the CRs, he was not considered for promotion to the next rank in the month of October, 2021 which he is claiming.

14. Main contention of the applicant is that Daljit Singh, who being junior to him, was promoted to the rank of Naib Subedar but applicant being senior has not been promoted even though he is having excellent record of service. Though, no record of CR entries pertaining to Daljit Singh has been produced before us, yet we are of the view that applicant could not be promoted to the rank of Naib Subedar only on the ground of lacking 'Above Average' CRs which is mandatory for further promotion.

15. Applicant had submitted redressal of grievance dated 08.01.2022 which was rejected by Artillery Records vide order dated 14.01.2022, extract of which, for convenience sake, is reproduced as under:-

*"As per service records available with this office No 14435514A Hav (Gnr) Ram Babu of 332 Med Regt could not be promoted to the rk of Nb Sub, as the NCO was lacking **ACR criteria**. For soughting out any further clarification, you may pl be appch with unit concerned.*

16. The Respondents have produced CR dossier of the applicant, perusal of which indicates that there is consistency

in all his CRs for the years 2018, 2019 and 2020 and applicant has been rated 'High Average' grading which debarred him for further promotion to the rank of Naib Subedar.

17. Having given our consideration and keeping in view the policy in vogue, since the applicant was lacking ACR criteria for promotion to the next rank, we are of the considered view that the respondents have rightly not considered applicant for promotion to the rank of Nb Sub in October, 2021.

18. In view of the above, the O.A. is **dismissed** being devoid of merit.

19. No order as to costs.

20. Miscellaneous application(s), pending if any, stand disposed of.

(Maj Gen Sanjay Singh)
Member (A)

Dated : 01.12.2023
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(Justice Anil Kumar)
Member (J)

RESERVEDCourt No 2

Form No. 4

{See rule 11(1)}
ORDER SHEET

ARMED FORCES TRIBUNAL, REGIONAL BENCH,

LUCKNOW

O.A. No. 753 of 2022

BHM (Gnr) Ram Babu

Applicant

By Legal Practitioner for the Applicant

Versus

Union of India & Ors

Respondents

By Legal Practitioner for Respondents

| Notes of the Registry | Orders of the Tribunal |
|-----------------------|---|
| | <p data-bbox="488 1580 623 1615"><u>01.12.2023</u></p> <p data-bbox="488 1615 1097 1650"><u>Hon'ble Mr. Justice Anil Kumar, Member (J)</u></p> <p data-bbox="488 1650 1097 1685"><u>Hon'ble Maj Gen Sanjay Singh, Member (A)</u></p> <p data-bbox="583 1749 862 1784">Judgment pronounced.</p> <p data-bbox="583 1803 997 1838">O. A. No. 753 of 2022 is dismissed.</p> <p data-bbox="583 1857 1382 1892">For orders, see our judgment and order passed on separate sheets.</p> <p data-bbox="505 1999 857 2072">(Maj Gen Sanjay Singh) Member (A)</p> <p data-bbox="488 2072 574 2107"><i>rathore</i></p> <p data-bbox="1187 1999 1484 2072">(Justice Anil Kumar) Member (J)</p> |