

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 459 of 2020**Friday, this the 03<sup>rd</sup> day of November, 2023**“Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”****“Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

No. 480252-L, Sub Raeesul Hasan (Retd.), s/o shri Jalil Khan, R/o  
:- Village – Gularia, Post Office :- Jarai, Tehsil – Farrukhabad,  
District – Farrukhabad , Uttar Pradesh -209739.

**..... Applicant**Ld. Counsel for the: **Shri Shailendra Kumar Singh, Advocate.**

Applicant

Versus

1. Union of India, through, Secretary, Ministry of Defence (Army), South Block –III, New Delhi -110011.
2. Chief of Army Staff, Integrated Headquarters, Ministry of Defence, South Block-III, New Delhi -110011.
3. Dte. Gen. of Inf/Inf-6 (Pers), General Staff Branch, IHQ of MoD (Army). PIN – 900256, C/o 56 APO.
4. OIC Records, The Rajput Regiment, PIN-900427, C/o 56 APO.
5. JC No. 480664-M, Sub (Sub Major Wef. 01 August 2015) Mohammad Aslam, 15 Rajput, PIN 912115, C/o 56 APO.
6. JC No. 480744-K, sub (Sub Major wef 01 apr 2016) Mohammad Equhal, 16 Harayan Batalain NCC Narnual, District – Mahender Garh (HR) -123001.

**.....Respondents**Ld. Counsel for the  
Respondents.**: Dr. Shailendra Sharma Atal,  
Central Govt. Standing Counsel**

## ORDER

**“Per Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”**

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

- A. *To summon the service records of the applicant and that of Respondents No.5 and Respondent No.6 for proper adjudication of instant case in the interest of justice.*
- B. *To quash or set aside the Respondent No.4 letter dated 24 Jan 2018 being incorrect and arbitrary in nature.*
- C. *To issue order or direction to grant the rank of Subedar Major at par with Respondent No. 5 i.e. 01 Aug 2015, if found fit and proper by this Hon’ble Tribunal in the interest of justice.*
- D. *Any other relief as considered proper by the Hon’ble Tribunal be awarded in favour of the applicant.*

2. The factual matrix on record is that the applicant was enrolled in the Army on 28.07.1987. He was promoted to the rank of Subedar on 27.01.2012 and discharged from service on 31.07.2017 in the rank of Subedar (Sub) on completion of terms and conditions of service. The applicant was screened for promotion to the rank of Subedar Major as per Govt policy letters but could not come in the merit list for promotion to the rank of Subedar Major. Applicant submitted representation dated 15.12.2017 for consideration of his case for grant of promotion to the rank of Sub Maj or Hony

Commission which was rejected. Being aggrieved by denial of promotion to the rank of Sub Maj including honorary rank, applicant has filed this Original Application.

3. Learned counsel for the applicant submitted that the applicant in spite of having good service records was not promoted to the rank of Sub Maj or granted Hony Commission prior to his retirement from service. After collecting relevant documents and information, applicant made a representation dated 15.12.2017 for consideration of his case for grant of promotion to the rank of Sub Maj or Hony Commission. Respondents vide letter dated 24.01.2018 informed the applicant that he could not come up in merit in DPC in his caste Hindustan Muslim(HM), therefore, he was not promoted to the rank of Sub Maj or granted Hony Commission prior to his retirement from service. He submitted that as per para 5 of said impugned order, there was no vacancy in the rank of Sub Maj in the year 2015 and 2016 whereas Respondent No 5 and 6 were promoted to the rank of Sub Maj on 01.08.2015 and 01.04.2016.

4. Learned counsel for the applicant further submitted that after filling instant Original Application before this Tribunal on 31.12.2018, impleading Sub Maj Mohd Aslam and Sub Maj Mohd Equbal (Respondent No 5 and 6) Rajput Regiment Records issued another letter dated 23.04.2019 that one vacancy occurred in each year in

2015 and 2016, hence Respondents No 5 and 6 were promoted to the rank of Sub Maj. Learned counsel for the applicant prayed that Original documents be summoned for proper adjudication of the instant matter and if applicant is deemed eligible, he may be promoted to the rank of Subedar Major and granted Hony Commission.

5. On the other hand, learned counsel for the respondents submitted that applicant was enrolled on 28.07.1987 and was promoted to the rank of Subedar on 27.01.2012 as per seniority in the Unit roaster. The applicant was screened for extension of service for two years in terms of Integrated Headquarters of Min of Def (Army), letter dated 20.09.2010. He was found fit and was granted extension of service from 28.07.2015 to 27.07.2017.

6. The applicant was screened for promotion to the rank of Subedar Major by Departmental Promotion Committee (DPC) (1<sup>st</sup> look) in the year 2014 for one vacancy of HM occurring during 2015. Based on Over All Performance (OAP) selection system, considering Annual Confidential Report (ACR) profile of the applicant for five years in the rank of Junior Commissioned Officer (JCO), attendance of courses, honours & awards in entire service, service in Field Area/High Altitude Area/Operations (during last 15 years) award of punishment if any are given minus marks and depending on the

availability of vacancies for the year 2015. He was not approved due to low in merit, hence, the Subedar in top position was approved. Thereafter, the applicant was screened for promotion to the rank of Subedar Major by Departmental Promotion Committee (DPC) in the year 2015 (2<sup>nd</sup> look) for one vacancy occurring in the year 2016. Based on overall performance (OAP), the applicant could not come in the selected merit list for promotion to the rank of Subedar Major. Thereafter, there was no vacancy of HM Class in 2017 for DPC held in Nov 2016 and the applicant was transferred to pension establishment with effect from 31.07.2017 under the Army Rule 13 (3) I (I) on completion of terms and conditions of service before availing the third chance/look.

7. Learned counsel for the respondents further stated that applicant submitted a representation dated 24.01.2018 seeking for the redressal that he should be reconsidered for promotion to the rank of Subedar Major which was suitably replied.

8. Learned counsel for the respondents also submitted that promotion to the rank of Subedar Major is based on Over All Performance (OAP) selection system and “merely qualifying for consideration by DPC does not entitle a Subedar for promotion to the rank of Subedar Major as selection is based on seniority-cum-merit depending upon the vacancies available. As per Integrated Headquarters of Min of Def (Army) letter dated 16.05.2008, all

Sub/Sub Maj's are considered for grant of Hony Commission on active list for a maximum of two occasions and once after retirement. Further as per Paras 177 to 180 and 184 of Regulations for the Army, 1987, Hony Commission is awarded to JCOs for their distinguished service on Republic Day and Independence Day twice in the last year of their colour service in terms of Army Headquarters letter dated 16.05.2008. The applicant was also considered for grant of Honorary Commission. However, he could not come up in the merit list for grant of Hony Commission on both the occasions i.e. Independence Day as well as Republic day. Learned counsel for the respondents prayed that instant O.A. has no substance and is liable to be dismissed.

9. We have heard learned counsel of both the parties and have perused the material placed on record.

10. As per Integrated Headquarters of Min of Def letter dated 10.10.1997, a JCO may be given maximum three chances/ look for his consideration by the DPC for promotion to the rank of Sub Maj from the time when he comes up for consideration by DPC initially. However, to avail second and third chance, he should continue to remain in service. We have perused both the Original DPCs of HM for promotion to the rank of Sub Maj. On perusal of Merit List DPC 2014, it has been established that JC-480664M Sub Mohammad Aslam scored top position in merit list and he was approved for

promotion to the rank of Sub Maj. Further we have also perused Merit List DPC 2015 wherein JC-480744K Sub Md Equbal scored top position in merit list and he was approved for promotion to the rank of Sub Maj. We have also observed that applicant scored less points in comparison to other Subedars who were approved in the list of DPCs for the year 2014 and 2015, hence he was not approved for promotion to the rank of Subedar Major.

11. Merely processing the documents for grant of Hony Commission is not the guarantee that an individual will be getting the Hony Commission as grant of Hony Commission is based on merit vis a vis the number of vacancies available. The numbers of vacancies have been fixed by the Government and increase thereto is linked with cadre review in the Army. JCOs 'eligible' for Hony Commission and well placed in the order of merit, in relation to the existing vacancies, are awarded Hony Commission. As per para 10 of Integrated Headquarters of Min of Def (CW-2) letter dated 16.05.2008, based on the recommendations of the Officer Commanding Units and Master Sheet signed by the JCO, the respective Record Offices fills up the recommendation form as well as data sheets and forward them, in duplicate, direct to respective Command Headquarters in whose jurisdiction the unit of the JCO is/are located. In the instant case, the JCO did not come up in the

merit list for grant of Hony Commission during active service, hence could not get the Hony Commission.

12. In view of above guiding factors, Army Regulations and policy letters, we hold that the claim of applicant for grant of promotion to the rank of Subedar Major and subsequent grant of Hony Commission to the rank of Lt. and Capt has rightly been rejected by the respondents as per rules which needs no interference. Resultantly, O.A. is **dismissed**.

13. No order as to costs.

**(Vice Admiral Atul Kumar Jain)**  
**Member (A)**

**(Justice Ravindra Nath Kakkar)**  
**Member (J)**

Dated : 03 Nov, 2023  
UKT/-