

Court No. 1
RESERVED

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No 401 of 2017

Monday, this the 13th day of September, 2021

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

Sub Ranjay Kumar (JC-696846N)
S/o Shri Nageshwar Dhari Singh
R/o Qr No. 144/01 Sanyog Chhetri Vihar,
Lucknow Cantt.

..... Applicant

Ld. Counsel for the Applicant: **Col A.K. Srivastava (Retd)**, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi.
2. Chief of the Army Staff, IHQ of MoD (Army), South Block, New Delhi-110011.
3. The Adjutant General, IHQ of MoD (Army), New Delhi – 110011.
4. OC AMC Records, Lucknow Cantt.

..... Respondents

Ld. Counsel for the Respondents : **Shri Sunil Sharma**,
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) Issue/pass an order or direction of appropriate nature to the respondents to set aside AMC Records letter No. 356006-J/PHARM/DPC-2016 dated 12 May 2016 restricting consideration of Field Service in HAA including Counter Insurgency (only recognized CI Ops such as Op RAKSHAK, Op RHINO and the like) at during last 15

years preceding DPC for promotion to the rank of Sub Maj (Annexure No. A-1).

- (b) Issue/pass an order or direction of appropriate nature to the respondents to set aside data sheet [para 12 (b) (ii) (a)] forwarded by AMC Records vide their letter dated 14 Nov 2016 denying consideration of service in HAA IMTRAT, Bhutan from 11 Nov 2006 to 31 Jan 2009 (26 months) for promotion to the rank of Hony Lt due on 15 Aug 2017 (Annexure No. A-2).
- (c) Issue/pass any other order or direction appropriate nature to the respondents to consider and grant weightage points for his entire Field/HAA service including HAA tenure in IMTRAT, Bhutan from 11/11/2006 to 13/01/2019 (2 years and 2 months) and if in meritorious place in DPCs held in 2014/2015/2016, promote him to the rank of Sub Maj (Pharma) fixing his seniority and benefits accordingly.
- (d) issue/pass any other order or direction appropriate nature to the respondents to consider and grant weightage points for his entire Field/HAA service including HAA tenure in IMTRAT, Bhutan from 11/11/2006 to 13/01/2009 (2 years and 2 months) and if in meritorious place in DPCs held in 2014/2015/2016, grant him rank of Hony Lt w.e.f. 15 Aug 2017 accordingly.
- (e) issue/pass any other order or direction as this Hon'ble tribunal may deem fit in the circumstances of the case.
- (f) Allow this application with costs."

2. The factual matrix on record is that the applicant was enrolled in the Army (AMC) on 20.06.1988. The applicant was promoted to the rank of Subedar on 26.12.2009 with notional seniority w.e.f. 01.11.2009. The applicant was screened for promotion to the rank of

Subedar Major by Departmental Promotion Committee (DPC) for the year 2014 against the vacancy for the year 2015 as per Govt. policy letters but could not come in the selected merit list for promotion to the rank of Subedar Major. Thereafter, applicant was screened for promotion to the rank of Subedar Major by DPC for the year 2015 against the vacancy for the year 2016 but could not come in the selected merit list for promotion to the rank of Subedar Major. Again the applicant was screened for promotion to the rank of Subedar Major by DPC for the year 2016 against the vacancy for the year 2017 but could not come in the selected merit list for promotion to the rank of Subedar Major, hence he was not granted promotion to the rank of Subedar Major. Thereafter, an application dated 16.00.2017 under RTI Act was submitted by the applicant asking for information regarding his promotion which was denied by the respondents being out of the purview of RTI Act 2005. Thereafter, applicant submitted a statutory complaint dated 07.04.2017 seeking for the redressal that he should be reconsidered for promotion to the rank of Subedar Major with anti-date seniority to his batch mates. The ibid statutory complaint is still under process at Headquarters Central Command, Lucknow for disposal vide their letter dated 06.10.2017. The applicant was considered for grant of Honorary Commission (first Chance) as honorary Lieutenant on the occasion of Independence Day 2017 and his Master Sheet was prepared and forwarded to Command Hospital, Central Command, Lucknow duly signed by applicant and countersigned by the Commanding Officer. However, the applicant could not come up in the merit list for grant of honorary commission

on Independence Day 2017. The applicant being aggrieved by unjust denial of promotion including honorary rank filed Original Application before this Tribunal due to paucity of time as applicant was due to retire from service on 31.01.2018.

3. Learned counsel for the applicant submitted that the applicant has been found ineligible for promotion to the rank of Subedar Major by DPCs held in 2014, 2015 and 2016 and subsequently also not granted the rank of Hony Lt. On 15th August 2017. Since no reasons for promotions were intimated applicant asked information under RTI Act vide application dated 16.01.2017. Thereafter, applicant submitted a statutory complaint dated 07.04.2017 which has not yet been disposed by the respondents. The applicant came to know that his points for Field/HAA tenures prior to 1999, Op PARAKRAM tenure from 31.12.2001 to 12.10.2002 and HAA tenure in IMTRAT, Bhutan has not been counted while preparing merit list by respective DPCs held in 2014, 2015 and 2016.

4. Learned counsel for the applicant in Para 4.8 of O.A. mentioned that as per AG's Branch policy, complete Field and HAA tenures including his tenure of 2 years and 2 months in HAA of IMTRAT, Bhutan has not been considered while preparing merit list of DPCs held in 2014, 2015 and 2016 which resulted denial of promotion to the rank of Subedar Major and honorary rank of Lt. and Capt. He pleaded for grant of promotion to the rank of Subedar Major and honorary rank of Lt. and Capt.

5. Learned counsel for the respondents submitted that applicant was enrolled on 20.06.1988 and was promoted to the rank of Subedar

on 26.12.2009. The applicant was screened for promotion to the rank of Subedar Major by Departmental Promotion Committee (DPC) for the year 2014 (1st look) held at AMC Record Office from 22.09.2014 to 24.09.2014 against the vacancy for the year 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 in terms of IHQ of MoD (Army) letters dated 10.10.1997, 23.12.1997 and 06.05.2002. On scrutiny of the board proceedings of DPC for the year 2014 against the vacancy of 2015, it is found that last selected candidate had scored 91.84 points whereas the applicant had scored only 82.46 points, hence, the applicant could not come in the selected merit list for promotion to the rank of Subedar Major. Merit list has been annexed as Annexure No. CA-3 to the counter affidavit. Thereafter, applicant was screened for promotion to the rank of Subedar Major by Departmental Promotion Committee (DPC) for the year 2015 (2nd look) held at AMC Record Office w.e.f. 27.07.2015 to 29.07.2015 against the vacancy for the year 2016 based on overall performance (OAP) selection system considering ACR profile of the applicant for five years in the rank of JCO, courses, honours & awards, service in Field Area/High Altitude Area/Operations (during last 15 years) and depending on the availability of vacancies for the year 2016 in terms of IHQ of MoD

(Army) policy letters. On scrutiny of the board proceedings of DPC for the year 2015 against the vacancy of 2016, it is found that last selected candidate had scored 90.52 points whereas the applicant had scored only 83.65 points, hence, the applicant could not come in the selected merit list for promotion to the rank of Subedar Major. Merit list has been annexed as Annexure No. CA-4 to the counter affidavit. Again the applicant was screened for promotion to the rank of Subedar Major by Departmental Promotion Committee (DPC) for the year 2016 (3rd look – last chance) held at AMC Record Office w.e.f. 26.07.2016 against the vacancy for the year 2017 based on overall performance (OAP) selection system considering ACR profile of the applicant for five years in the rank of JCO, course, honours & awards, service in Field Area/High Altitude Area/Operations (during last 15 years) and depending on the availability of vacancies for the year 2016 in terms of IHQ of MoD (Army) policy letters. On scrutiny of the board proceedings of DPC for the year 2015 against the vacancy of 2016, it is found that last selected candidate had scored 88.25 points whereas the applicant had scored only 83.33 points, hence, the applicant could not come in the selected merit list for promotion to the rank of Subedar Major. Merit list has been annexed as Annexure No. CA-5 to the counter affidavit.

6. Learned counsel for the respondents further submitted that an application dated 16.00.2017 under RTI Act was submitted by the applicant asking for information regarding his promotion which was denied by the respondents being out of the purview of RTI Act 2005.

Thereafter, applicant submitted a statutory complaint dated 07.04.2017 seeking for the redressal that he should be reconsidered for promotion to the rank of Subedar Major with anti-date seniority to his batch mates. The ibid statutory complaint is still under process at Headquarters Central Command, Lucknow for disposal vide their letter dated 06.10.2017.

7. Learned counsel for the respondents in Para 6 & 7 of Supplementary affidavit have clarified that any foreign service including IMTRAT, Bhutan does not fill in the areas mentioned in policy letter and also not counted in any operational area. There is no provision in existing policy to consider any marks for foreign service in IMTRAT, Bhutan for DPC and accordingly, no marks of HAA have been given to any other person being posted in Bhutan and no such marks were considered while considering the applicant for promotion in the rank of Subedar Major.

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 Paras 177 to 180 and 184 of Regulations for the Army, 1987, honorary 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 (first Chance)

as Honorary Lieutenant on the occasion of Independence Day 2017 and his master sheet was prepared and forwarded to Command Hospital, Central Command, Lucknow duly signed by applicant and countersigned by the Commanding Officer. However, the applicant could not come up in the merit list for grant of honorary commission on Independence Day 2017.

Learned counsel for the respondents pleaded for dismissal of O.A being devoid of merits.

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

10. We observe that contention of learned counsel for the applicant that HAA tenure of IMTRAT, Bhutan was not considered as per para 12 (b) (ii) of Annexure A-2 which is wrong whereas 2 years and 2 months service period for 'Service Outside India in Non Operational Unit' has been shown in para 12 (a) in HQ IMTRAT Bhutan. Considering that applicant scored less points in comparison to other Subedars who were included in the list of DPCs for the year 2014, 2015 and 2016, the applicant could not come in the selected merit list for promotion to the rank of Subedar Major and accordingly, he was not selected for promotion to the rank of Subedar Major.

11. We also observe that respondents in their supplementary affidavit has clarified that posting to IMTRAT, Bhutan is not treated as foreign service as applicant was on posted strength of WE and no point for foreign service of Bhutan is allotted/included to any Subedar in DPC of Subedar Major as per policy constraints as clarified in Para 6 & 7 of Supplementary Affidavit filed by the respondents. However,

2 years and 2 months service period of IMTRAT, Bhutan is included for grant of honorary commission to the applicant on Independence Day 2017 which is evident from Ser 16 (a) Page 6, Part-VI of Data Sheet of Honorary Commission, service outside India but the applicant could not come up in the merit list for grant of honorary commission on Independence Day 2017.

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

Dated: Sept., 2021

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