

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No 2 of 2019**

Thursday, this the 30th day of September, 2021

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

Vijay Kumar, Service No. 15415152Y, Rank Naik Chef (Hospt)
 S/o Sri Vishwanath Yadav
 R/o 592 K/99, Defence Colony (Telebagh),
 PO – Vrindavan Colony, PS – PGI, Tehsil – Sadar, Cantt,
 Distt – Lucknow (UP) – 226029

..... Applicant

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

Versus

1. Union of India, through Secretary to the Govt. of India, Ministry of Defence, South Block, RK Puram, New Delhi-110011.
2. COAS, AHQ, Sena Bhawan, South Block, New Delhi.
3. DGMS (Army), IHQ of MoD (Army), Adj. Gen. Branch, L-Block, New Delhi-110001.
4. ADG (DV), DV-4 (Sena Bhawan), IHQ of MoD (Army), DHQ PO, New Delhi – 110011.
5. GOC-in-C, HQ Southern Command (DV), PIN-908541, C/o 56 APO.
6. Officer in Charge Records, Records, AMC Lucknow, PIN-900450, C/o 56 APO.
7. GOC, HQ 12 Corps, PIN-908512, C/o 56 APO.
8. GOC, HQ 11 Inf Div, C/o 56 APO, PIN-908411.
9. Brigadier Records, AMC Record, Lucknow.
10. CRO, Records AMC, Lucknow, PIN-900450, C/o 56 APO.
11. SRO, Records AMC, Lucknow, PIN-900450, C/o 56 APO.
12. Officer in Charge Records, Records AMC, Lucknow, PIN-900450, C/o 56 APO.
13. Commanding Officer, 411 Field Hospital, C/o 56 APO, PIN – 903411.

14. Commanding Officer, 404 Field Hospital, C/o 56 APO, PIN – 903404.
15. Col. AK Karmakar, CRO, Records AMC Lucknow, PIN – 900450, C/o 56 APO, presently posted at Command Hospital, Eastern Command, Kolkata C/o 99 APO as Quarter Master.
16. Col. Divakar T, Commanding Officer, 411 Field Hospital, C/o 56 APPO, PIN – 903411, presently posted at 16 Corps, Nagrota, J&K.
17. Col. R. Ganesh, Commanding Officer, 404 Field Hospital, C/o 56 APO, PIN – 903404.
18. Major Rajeesh K, SRO for OIC Records, Records AMC, Lucknow, PIN – 900450, C/o 56 APO.

..... Respondents

Ld. Counsel for the Respondents : **Shri R.C. Shukla**,
Central Govt Counsel.

ORDER (Oral)

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:-

- “(i) That this Hon’ble Tribunal may kindly be pleased to direct the opposite parties i.e. opposite party no. 14 to promote the applicant to the rank of Havildar as per the order dated 06.09.2018, issued by opposite part no. 7 w.e.f. 28.03.2018, contained as annexure no. 01, with all consequential benefits as well as promotional benefits to the applicant.
- (ii) 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.
- (iii) Any other beneficial relief which this Hon’ble Tribunal deems fit and reasonable be also awarded to the applicant against the respondents.”

2. The factual matrix on record is that the applicant was enrolled in the Army on 30.07.2002 and was promoted to the rank of Naik w.e.f. 01.02.2016 and Havildar w.e.f. 06.02.2019 with notional seniority w.e.f.18.03.2018. While serving with 411 Field Hospital w.e.f. 03.05.2015 to 30.06.2018, he was awarded Severe Reprimand under Sec 41 and Reprimand under Section 63 on 21.09.2016 and 22.09.2016 respectively. The petitioner submitted Statutory Complaint dated 23.10.2017 for redressal of the punishments awarded to him. The applicant also filed a Writ Petition (Civil) No. 5954/2018 before the Hon'ble High Court of Delhi for redressal of the same. The Hon'ble High Court of Delhi disposed of Writ Petition of the applicant on 29.05.2018 with directions to the respondents to decide the statutory complaint of the applicant in accordance with law. Meanwhile applicant was considered for promotion to the rank of Havildar vide AMC Records promotion order dated 09.03.2018 but found ineligible due to award of Red ink entry (Severe Reprimand) on 21.09.2016 under Section 41 (1) of Army Act 1950, in terms of Appendix B to para 286(b) of AMC Records Instructions 10/2014 and IHQ of MOD (Army) letter dated 10.10.1997. This was intimated to unit concerned of the applicant vide AMC Records letter dated 13.06.2018. The statutory complaint of the applicant dated 23.10.2017 was decided and punishments awarded to the applicant were set aside by GOC 12 Corps vide order dated 06.09.2018 stating *"Court of Inquiry failed to comply with AR 180, hence, Court of Inquiry is invalid"*. Accordingly, after taking clarification from AMC Records, Commanding Officer of 404 Field Hospital has promoted to the

applicant to the rank of Havildar on 06.02.2019 with notional seniority from 18.03.2018. Being aggrieved, the applicant has filed present original application for grant of promotion to the rank of Havildar from due date.

3. Learned counsel for the applicant submitted that applicant was due for promotion on 28.03.2018 but due to illegal, arbitrary and malafide punishment dated 21.09.2016, applicant was not promoted to the rank of Havildar whereas his juniors were promoted and the applicant was superseded in promotion. Writ Petition of the applicant was also decided by the Hon'ble Delhi High Court vide order dated 29.05.2018 with directions to the respondents to decide the statutory petition of the applicant dated 23.10.2017. Commanding Officer of 404 Field Hospital has promoted to the applicant to the rank of Havildar on 06.02.2019 with notional seniority from 18.03.2018. Learned counsel for the applicant submitted that applicant was granted MACP Havildar w.e.f. 30.07.2018 whereas he was entitled to substantive Havildar.

4. Learned counsel for the respondents submitted that applicant was promoted to the rank of Havildar on 06.02.2019 with notional seniority from 18.03.2018. While serving with 411 Field Hospital w.e.f. 03.05.2015 to 30.06.2018, he was awarded Severe Reprimand under Sec 41 and Reprimand under Section 63 on 21.09.2016 and 22.09.2016 respectively. The petitioner submitted Statutory Complaint dated 23.10.2017 for redressal of the punishments awarded to him. The applicant also filed a Writ Petition (Civil) No. 5954/2018 before the Hon'ble High Court of Delhi for redressal of the same. The

Hon'ble High Court of Delhi disposed of Writ Petition of the applicant on 29.05.2018 with directions to the respondents to decide the statutory complaint of the applicant in accordance with law. Meanwhile applicant was considered for promotion to the rank of Havildar vide AMC Records promotion order dated 09.03.2018 but found ineligible due to award of Red ink entry (Severe Reprimand) on 21.09.2016 under Section 41 (1) of Army Act 1950, in terms of Appendix B to para 286(b) of AMC Records Instructions 10/2014 and IHQ of MOD (Army) letter dated 10.10.1997. This was intimated to unit concerned of the applicant vide AMC Records letter dated 13.06.2018.

5. Learned counsel for the respondents further submitted that statutory complaint of the applicant dated 23.10.2017 was decided and punishments awarded to the applicant were set aside by GOC 12 Corps vide order dated 06.09.2018. Accordingly, casualties regarding set aside of punishment were published by 411 Field Hospital vide Part II Order dated 11.10.2018. The directions of GOC 12 Corps setting aside the punishment awarded to the applicant were filed before the Hon'ble High Court by AMC Records vide letter dated 12.09.2018. After setting aside of the punishments, the applicant was re-considered for promotion to the rank of Havildar with his batch mates seniority w.e.f. 18.03.2018 vide AMC Records promotion order dated 12.11.2018 and his promotion was announced subject to fulfilment of conditions. On receipt of promotion order, 404 Field Hospital asked AMC Records that a Court of Inquiry has been ordered by HQ 4 Corps on allegation of theft of applicant's personal

belongings and asked clarification for promotion from his concerned formation Headquarters. HQ 1 Corps (JAG Branch) vide their signal dated 21.01.2019 intimated that *"promotion of the individual during court of inquiry is not a legal matter and therefore no advise can be rendered"*. However, on perusal of Army Order No. 1/2001/DV, Commanding Officer of 404 Field Hospital has promoted to the applicant to the rank of Havildar on 06.02.2019 and he assumed the rank of Havildar on 06.02.2019 with notional seniority from 18.03.2018, hence, no injustice has been done to the applicant by the respondents.

6. We have heard learned counsel for the parties and have perused the record.

7. We find that applicant was promoted to the rank of Havildar on 06.02.2019 with notional seniority w.e.f. 18.03.2018 as conceded in counter affidavit. However, punishments awarded to the applicant were set aside by GOC 12 Corps vide order dated 06.09.2018 holding invalid Court of Inquiry, therefore, applicant is entitled his pay and allowances to the rank of Havildar from the date his punishments were set aside i.e. w.e.f. 06.09.2018.

8. In view of above, the impugned order passed by the respondents, if any, is set aside. Original Application is disposed of with the direction to the respondents to grant promotion to the applicant to the rank of Havildar w.e.f. 06.09.2018 with notional seniority w.e.f. 18.03.2018 and pay arrears of pay and allowances to the applicant to the rank of Havildar w.e.f. 06.09.2018. The Respondents are directed to comply with the order within a period of four months from the date

of receipt of certified copy of the order. Default will invite interest @ 8% per annum till actual payment.

9. 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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