

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No 318 of 2016**

Wednesday, this the 29th day of September, 2021

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

Shib Bahadur Gurung, No. 5751365Y, Ex Hav
 S/o Late Shri Hari Lal Gurung
 R/o Vill – Tulsichaur, PO – Pelka Ghaur, District – Syangja (Nepal)
 Now residing at C/o R.B. Gurung, Sharda Nagar, Inrahimpur Ward
 No. 1 Nilmatha Cantt, District – Lucknow (UP) – 226002.

..... Applicant

Ld. Counsel for the Applicant: **Shri V.K. Pandey**, Advocate

Versus

1. The Union of India, through Secretary, Ministry of Defence South Block, RK Puram, New Delhi-110011.
2. COAS, IHQ of MoD (Army), South Block, New Delhi-110011.
3. Dte Gen of Infantry/Inf-6 (Pers), General Staff Branch, IHQ of MoD (Army), Sena Bhawan, New Delhi – 110105.
4. Commanding Officer, 6/8 Gorkha Rifles, C/o 56 APO.
5. OIC, Records, 58 Gorkha Rifles, Training Centre Happy Valley, Shillong (Meghalay) – 900332, C/o 99 APO.

..... Respondents

Ld. Counsel for the Respondents : **Shri Rajiv Narayan Pandey**,
 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:-

- “(i) That this Hon'ble Tribunal may kindly be pleased to quash the impugned rejection order dated 01.12.2005 & discharge order dated 31.03.2012, as contained in annexure no. 1 & 2 to this original application, and

respondents may kindly be directed to reinstate the appellant in service w.e.f. 01.04.2012 and thereafter promote him in the rank of Naib Subedar w.e.f. 2009, and further consequent promotion may also be granted to the applicant with all consequential benefits in the interest of justice.

- (ii) That this Hon'ble Tribunal may kindly be pleased to direct the opposite parties to pay the cost of Rs. 20,00,000/- (Rupees twenty lac only) for mental and physical harassment and agony and Rs. 20,000/- (Rs. Twenty thousand only) for financial loss as expenses in filing the instant original application with the interest @ 18% p.a. in the interest of justice 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 19.03.1986. The applicant while posted with 15 Rashtriya Rifles sustained injury on 21.10.1995 as 'Lacerated Wound Forehead' during the ongoing Operation Rakshak, however he was not downgraded to low medical category. The applicant was promoted to the rank of Naik on 01.08.1998 and Havildar on 05.05.2002. The applicant attended Havildar to Naib Subedar promotion cadre during the year 2006 but he could not pass the promotion cadre. The applicant was not downgraded to low medical category for the injury sustained by him in 1995 but after a lapse of 10 years, he was downgraded to LMC on 16.07.2005 for the disability "**NEUROCYSTICERCOSIS**" which was considered as NANA. As per

directions of Army Headquarters, LMC personnel (except battle casualty) were to be discharged from service and accordingly applicant was also discharged from service w.e.f. 01.07.2008. During the year 2008, as per the Hon'ble Apex Court judgment in ***Union of India & Ors vs. Rajpal Singh***, reported in (2009) 1 SCC, 216, applicant was allowed/reinstated in service in 58 GTC. After completion of necessary documentation for reinstatement, applicant was despatched to 6/8 GR on 16.04.2009 and his re-categorisation medical board was conducted in MH Dehradun and he was upgraded to SHAPE-1 w.e.f. 14.06.2009. Thereafter, applicant was detailed and attended Havildar to Naib Subedar promotion cadre but he could not pass. The applicant completed his terms of engagement in the rank of Havildar on 31.03.2012 and accordingly he was discharged from service on 31.03.2012 after rendering 26 years and 13 days of service in the rank of ACP Naib Subedar granting all pensionary benefits. The applicant filed a statutory complaint dated 21.12.2009 against non grant of promotion to the rank of Naib Subedar. The Statutory complaint of the applicant was considered in accordance with rules by the Chief of the Army Staff and was rejected on 27.09.2010 being devoid of merit. The applicant also filed OA No. 288 of 2012 before this Tribunal challenging the rejection order of COAS dated 27.09.2010 as well as discharge order dated 31.03.2012. This Tribunal vide its order dated 04.09.2015 directed the respondents to reconsider the statutory complaint of the applicant within three months in the light of observation made in the order. The case of the applicant was resubmitted to COAS and statutory complaint of the

applicant was rejected vide order dated 01.12.2015. Being aggrieved, the applicant has filed present original application.

3. Learned counsel for the applicant submitted that this is second original application filed by the applicant against the decision/order of COAS dated 01.12.2015 which was passed on the statutory complaint of the applicant as directed by this Tribunal vide order dated 04.09.2015. The present original application is filed against the illegal and arbitrary order dated 01.12.2015 passed by COAS for not granting the promotion to the applicant in the rank of Naib Subedar w.e.f. 01.03.2008. The applicant was discharged from service on 30.06.2008 being in low medical category S-2 (Permanent) and after passing the judgment by the Hon'ble Apex Court in ***Union of India & Ors vs. Raj Pal Singh***, reported in (2009) 1 SCC, 216, applicant was reinstated in service on 17.01.2009. After reinstatement in service, his juniors have been promoted to the rank of Nb Sub in 2008 but applicant has been denied promotion. The applicant was not detailed in another cadre course after having failed in first chance to earn the promotion for the post of Nb Sub which is great injustice and therefore, applicant is liable to be reinstated in service with promotion and other benefits. It is violation of Article 14 and 21 of Constitution of India.

4. Learned counsel for the applicant placed reliance on the judgments of the Hon'ble Apex Court in ***Ajit Singh (I) vs State of Punjab***, 1996 Vol.2 SCC 715, ***Direct Recruit Class II Engineers vs. State of Maharashtra***, 1990 Vol.2 SCC 715, ***State of Haryana vs. Ram Kumar Mann***, 1997 Vol.3 SCC 321, AIR 1991 SC 1902

(***Bangalore Medical Trust vs B S Mudappa***), 1999 Vol. 7 SCC 209 (***Ajit Singh & Ors (II) vs. State of Punjab***) and pleaded that applicant should also be given benefit of promotion to the rank of Naib Subedar.

5. Learned counsel for the respondents submitted that applicant while posted with 15 Rashtriya Rifles sustained injury on 21.10.1995 as 'Lacerated Wound Forehead' during the ongoing Operation Rakshak, however he was not downgraded to low medical category. The applicant was promoted to the rank of Naik on 01.08.1998 and Havildar on 05.05.2002. The applicant attended Havildar to Naib Subedar promotion cadre during the year 2006 but he could not pass the promotion cadre. The applicant was not downgraded to low medical category for the injury sustained by him in 1995 but after a lapse of 10 years, he was downgraded to LMC on 16.07.2005 for the disability "NEUROCYSTICERCOSIS" which was considered as NANA. As per directions of Army Headquarters, LMC personnel (except battle casualty) were to be discharged from service and accordingly applicant was also discharged from service w.e.f. 01.07.2008. During the year 2008, as per the Hon'ble Apex Court judgment in ***Union of India & Ors vs. Raj Pal Singh***, reported in (2009) 1 SCC, 216, applicant was allowed/reinstated in service in 58 GTC. After completion of necessary documentation for reinstatement, applicant was despatched to 6/8 GR on 16.04.2009 and his re-categorisation medical board was conducted in MH Dehradun and he was upgraded to SHAPE-1 w.e.f. 14.06.2009. Thereafter, applicant was detailed and attended Havildar to Naib Subedar promotion cadre

but he could not pass. The applicant completed his terms of engagement in the rank of Havildar on 31.03.2012 and accordingly applicant was discharged from service on 31.03.2012 after rendering 26 years and 13 days of service in the rank of ACP Naib Subedar granting all pensionary benefits.

6. He further submitted that applicant filed a statutory complaint dated 21.12.2009 against non grant of promotion to the rank of Naib Subedar. The Statutory complaint of the applicant was considered in accordance with rules by the Chief of the Army Staff and was rejected on 27.09.2010 being devoid of merit. The applicant also filed OA No. 288 of 2012 before this Tribunal challenging the rejection order dated 27.09.2010 of COAS as well as discharge order dated 31.03.2012. This Tribunal vide its order dated 04.09.2015 directed the respondents to reconsider the statutory complaint of the applicant within three months in the light of observation made in the order. The case of the applicant was resubmitted to COAS and statutory complaint of the applicant was rejected vide order dated 01.12.2015. He pleaded for dismissal of O.A.

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

8. We find that as per Army Headquarters policy, applicant was initially discharged from service being in low medical category (Permanent) and after passing the judgment by the Hon'ble Apex Court in **Raj Pal Singh** (supra) case, applicant was reinstated in service. Since, the applicant has not passed promotion cadre from Havildar to Naib Subedar and therefore, after completion of terms of

engagement applicant was discharged from service w.e.f. 31.03.2012 in the rank of ACP Naib Subedar as per Army Rules, 1954 and accordingly, he was granted pensionary benefits. Hence, we are of the view that claim of applicant to reinstate him in service and to grant promotion to the rank of Naib Subedar without fulfilling mandatory criteria is not sustainable and has rightly been rejected by the respondents which need no interference.

9. It is pertinent to mention here that judgments relied up by the applicant in Para 4 above are not relevant in this case being based on different facts and circumstances.

10. In view of above, O.A. has no merit, deserves to be dismissed and is accordingly **dismissed**.

11. 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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