

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 605 of 2017**Thursday, this the 16th day of September, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)Om Prakash Mishra No. 15376120K Ex Havildar
R/o Village – Koripur, PO – Bairampur,
District – Kaushambhi (UP)**.... Applicant**Ld. Counsel for the Applicant : **Shri Ashok Kumar &**
Shri Rajendra Prasad Misra, Advocate

Versus

1. The Chief of the Army Staff, Headquarters South Block, New Delhi – 110011.
2. The Commandant PIO Signal Records Pin-908770, C/o 56 APO (P.I.O.) Jabalpur) M.P.

... RespondentsLd. Counsel for the Respondents : **Dr. Shailendra Sharma Atal,**
Central Govt Counsel**ORDER**

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

- “(i) That this Hon'ble Tribunal may kindly be pleased to direct to provide to the respondent No. 2/opposite party No. 2 decided pending promotion procedure of Army Act according with law.
- (ii) That this Hon'ble Tribunal may kindly be directed to provide direction through the respondent No. 2/opposite party No. 2 decided representation application before

pending authority of Commandant about promotion of Naib Subedar.

- (iii) That this Hon'ble Tribunal may kindly be directed to the quash the discharge dated 31.08.2017 passed by the opposite parties and further direction may also be given to the opposite parties to reinstate applicant in service with all the service benefits.
- (iv) That this Hon'ble Tribunal may kindly be pleased to direct the respondents/opposite parties to treat the applicant continuous in duty and the concern authorities be directed to pay the salary from the date of alleged discharge till the date of joining the duty by the applicant.
- (v) That this Hon'ble tribunal may kindly be pleased to pass any other orders or directions which is deemed, just and proper in the circumstances of justice.”

2. Brief facts of the case are that the applicant was enrolled in the Army on 14.08.1991 and was discharged from service on 31.08.2017 under Army Rule 13 (3) III (i) on completion of service or tenure or on reaching age limit vide Signals Records discharge order dated 09.06.2016 after rendering 26 years and 17 days of service. Date of birth of the applicant is 11.02.1973, promoted to Naik w.e.f. 01.10.2003, Havildar w.e.f. 01.06.2009 and MACP Naib Subedar w.e.f. 14.08.2015. The applicant was detailed to undergo Non Commissioned Officer's (NCO's) course Serial No. 906 w.e.f. 16.05.2016 to 09.07.2016 alongwith his batch mates as per his seniority. However, he failed in the said course and was given second chance to appear in NCO's course serial No. 910 and in that he passed on 30.07.2016. The promotion board was due to be held in April 2016 for vacancies occurring w.e.f. 01.07.2016 to 31.12.2016

and applicant was also considered for promotion, hence his name was included in the promotion board (being he was attending the NCO's course) and was found eligible after passing NCO's course and also meeting other promotional conditions as mentioned in IHQ of MoD (Army) letter dated 10.10.1997. The applicant was fulfilling all the eligibility criteria for promotion to the rank of Naib Subedar and was due for promotion to Naib Subedar w.e.f. 01.03.2017 as per his own seniority, however, the applicant attained the upper age limit of 44 years w.e.f. 10.02.2017 and as per para 149 of Regulations for the Army (Revised Edition 1987), he was discharged from service on completion of extended terms of engagement i.e. 26 years and 17 days w.e.f. 31.08.2017 and thus, he was superseded for promotion to the rank of Nb Sub due to overage at the time of occurrence of a vacancy at his own turn. The applicant preferred a petition dated 20.03.2017 to provide details of vacancies of Naib Subedar from December 2016 to March 2017, which was suitably replied vide Signals Records letter dated 02.05.2017. Thereafter, the applicant submitted a petition dated 23.05.2017 regarding promotion details of Naib Subedar against the vacancy on 01.02.2017 which was also suitably replied vide Signals Records letter dated 16.06.2017. Subsequently, an appeal for First Appeal dated 16.07.2017 was received on 02.08.2017 and a speaking order of First Appellate Authority dated 08.09.2017 was communicated to the applicant vide Signals Records letter dated 16.09.2017. Being aggrieved, the applicant has filed the present Original Application to grant promotion of Nb Sub and reinstate him service with all service benefits.

3. Learned counsel for the applicant submitted that applicant has been discharged from service on 31.08.2017 without adopting legal procedure as provided in Army Act and Army Rules without promotion of Naib Subedar post. The applicant preferred several representations from time to time but the same have not been decided by the concerned authorities. He further submitted that applicant's batch-mates have been promoted after discharge from service and rejoined in his promoted post of Naib Subedar i.e. Havildar M.K. Sinha and Havildar Meena of similar categories. He pleaded that since the applicant passed promotion cadre and course as applicable for promotion to the post of Naib Subedar, applicant should also be promoted to Nb Sub and be reinstated in service with all service benefits.

4. On the other hand, Ld. Counsel for the respondents submitted that applicant was discharged from service on 31.08.2017 under Army Rule 13 (3) III (i) on completion of service or tenure or on reaching age limit vide Signals Records discharge order dated 09.06.2016 after rendering 26 years and 17 days of service as MACP Naib Subedar. The applicant was detailed to undergo Non Commissioned Officer's (NCO's) course Serial No. 906 w.e.f. 16.05.2016 to 09.07.2016 alongwith his batch mates as per his seniority, however, he failed in the said course and was given second chance to appear in NCO's course serial No. 910 and in that he passed NCO's course on 30.07.2016. The promotion board was due to be held in April 2016 for vacancies occurring w.e.f. 01.07.2016 to

31.12.2016 and applicant was also considered for promotion, hence his name was included in the promotion board but he was eligible only after passing NCO's course and fulfilling other promotional conditions as mentioned in IHQ of MoD (Army) letter dated 10.10.1997.

5. Learned counsel for the respondents further submitted that the applicant was fulfilling all the eligibility criteria for promotion to the rank of Naib Subedar and was due for promotion to Naib Subedar w.e.f. 01.03.2017 as per his seniority, however, the applicant attained the upper age limit of 44 years w.e.f. 10.02.2017 and as per para 149 of Regulations for the Army (Revised Edition 1987), he was discharged from service on completion of extended terms of engagement i.e. 26 years and 17 days w.e.f. 31.08.2017 and thus, he was superseded for promotion to the rank of Nb Sub due to overage at the time of occurrence of a vacancy at his own turn. He pleaded for dismissal of O.A.

6. We have heard learned counsel for both sides and perused the material placed on record.

7. We find that though applicant was fulfilling all the eligibility criteria for promotion to the rank of Naib Subedar which was due w.e.f. 01.03.2017 as per his seniority but he could not pass promotion cadre in time and therefore, he superseded for promotion and attained the upper age limit of 44 years w.e.f. 10.02.2017, hence, as per para 149 of Regulations for the Army (Revised Edition 1987), applicant became overage at the time of occurrence of a vacancy and

could not be promoted to the rank of Naib Subedar being overage. Thus, he was not promoted to the rank of Naib Subedar, though the applicant has already been granted MACP Nb Sub grade w.e.f. 14.08.2015, hence his prayer for grant of promotion to the rank of Naib Subedar has rightly been rejected by the respondents as per rules and regulations.

8. We also find that applicant was discharged from service as per Army Rules, 1954 on completion of service or on reaching age limit after rendering 26 years and 17 days of service in the rank of MACP Nb Sub, hence, is prayer to reinstate him in service is not logical being contrary to provisions of Rule 13 of Army Rules, 1954.

9. In view of the above, we do not find any irregularity or illegality neither in discharging the applicant from service nor in granting promotion of Nb Sub. The discharge of the applicant and promotion of MACP Nb Sub grade (not to the rank of Nb Sub) are procedurally correct and there is no violation of principle of natural justice. The O.A. is devoid of merit and deserves to be dismissed. It is accordingly **dismissed**.

10. No order as to costs.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)

Member (A)

Member (J)

Dated: Sept., 2021

SB