

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****M.A. No. 1497 of 2018
In re:
OA No. (Nil) of 2018**Thursday, this the 23rd day of August, 2018**“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)
Hon’ble Air Marshal BBP Sinha, Member (A)”**

Ex Naib Subedar Surendra Singh (JC- 695599Y), Son of Shri Khem Singh Chauhan, R/o Village & Post- Upper Tunwala (Near Glacier Public School), Distt- Dehradun, State- Uttarakhand.

..... Applicant

Ld. Counsel for the: Shri R. Chandra, Advocate
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, Government of India, New Delhi- 110011.
2. Chief of Army Staff, Integrated Headquarters of Ministry of Defence (Army) DHQ, Post Office, New Delhi-11.
3. The Officer-in-Charge, Army Medical Corps Records, Lucknow- 226002 (U.P.)
4. PAO (Ors), Army Medical Corps, Lucknow – 226002 (U.P.)

.....Respondents

Ld. Counsel for the: Shri Yogesh Kesarwani, Advocate
Respondents.**ORDER (Oral)**

1. We have heard learned counsel for the parties on preliminary objection on the point of maintainability of the

petition under Section 14 of the Armed Forces Tribunal Act before this Tribunal and perused the record.

2. Instant O.A. has been filed alongwith an application for condonation of delay.

3. Learned counsel for the respondents has raised a preliminary objection that the applicant has no actionable cause of action, therefore, this O.A. is not maintainable.

4. In brief the facts of the case are that the applicant filed an O.A. No.223 of 2013 in this Regional Bench, feeling aggrieved by the denial of extension of two years of service while holding the rank of Naib Subedar. This O.A. was disposed of vide order dated 03.09.2015, with the following direction:-

“16. Let the applicant’s case be reconsidered for extension of service for a period of two years expeditiously from the date of discharge within one month after receipt of the copy of this order. In any case if the rule does not permit for extension due to age factor then respondents shall consider notionally the extension of service period with all retiral benefits for the two years and grant monetary benefits as well as revised pension in accordance with the Rule.

17. The O.A. is allowed, accordingly.

18. No order as to costs.”

5. Now the applicant by means of this O.A. has challenged the order dated 26.06.2018 and has also prayed that he be promoted to the rank of Subedar, if his juniors and batchmates have been promoted to the rank of Subedar from 31.10.2008 to 31.10.2010. The order which the applicant has challenged is

dated 06.06.2018, which has wrongly been mentioned as 26.06.2018. At this stage, we would like to reproduce the order/ letter dated 06.06.2018, which is as under :-

“	<u>REGD SDS/ POST</u>
Tele Mil : 6459, Civ Tele: 5222480312 Email ID: amcrecordslegal@gmail.com	Sena Chikitsa Corps Abhilekh Karyalaya Army Medical Corps Record Office PIN : 900 450 c/o 56 APO
JC- 695599Y/NE/645/CC	06 Jun 2018

JC-695599Y
Ex Nb Sub Surendra Singh
S/O Shri Khem Singh Chauhan
Vill & PO: Upper Tunwala
(Near Glacier Public School)
Dist: Dehradun
State: Uttrakhand
PIN- 248002

APPEAL FOR GRANTING PROM TO THE RK OF
SUB WITH BATCHMATES WHO HAVE BEEN
PROMOTED TO THE RK OF SUB

1. Refer Court order dated 03 Sep 2015, PPO dt 05 May 2017 and your application dated 02 Jan 2018.
2. In compliance of Hon'ble AFT (RB), Lucknow order dt 03 Sep 2015 passed in OA No. 223 of 2013, PPO was issued by PCDA(P) Allahabad vide PPO No S/23928/2017 dated 05 May 2017. The same was fwd to your CPPC vide this office letter No JC695599Y/CC/LC/2017 dt 15 May 2017. Thus, Hon'ble AFT (RB), Lucknow order dt 03 Sep 2015 passed in OA No 223 of 2013 stands complied.
3. This is for your information please.

Sd/-
(Raju P)
Lt Col
OIC Legal Cell
For OIC Records”

6. The order passed in the earlier O.A. was very clear in itself and the respondents were directed to consider the extension of two years service to the applicant. However, there was absolutely no direction to the respondents to promote the applicant, if he is entitled to any promotion. There was not even a direction that the applicant shall be entitled for consequential benefits. Law is well settled on the point that the consequential benefit does not include promotion. Whether promotion can be claimed as a matter of right, where the O.A. has been allowed even with consequential benefit, this point has been considered by the Hon'ble Apex Court in the case of **Lt. Col. K.D. Gupta vs. Union of India and others** 1989 Suppl (1) SCC 416, wherein Hon'ble Apex Court has held as under :-

“8. The respondents have maintained that the petitioner has not served in the appropriate grades for the requisite period and has not possessed the necessary experience and training and consequential assessment of ability which are a precondition for promotion. The defence services have their own peculiarities and special requirements. The considerations which apply to other government servants in the matter of promotion cannot as a matter of course be applied to defence personnel of the petitioner's category and rank. Requisite experience, consequent exposure and appropriate review are indispensable for according promotion and the petitioner, therefore, cannot be given promotions as claimed by him on the basis that his batchmates have earned such promotions. Individual capacity and special qualities on the basis of assessment have to be found but in the case of the petitioner these are not available. We find force in the stand of the respondents and do not accept the petitioner's contention that he can be granted promotion to the higher ranks as claimed by him by adopting the promotions obtained by his batchmates as the measure.”

7. Hon'ble Apex Court has reiterated the said view in the case of Col Ran Singh Dudee in Civil Appeal No. 11009 of 2017 **Union of India & others vs. Col Ran Singh Dudee** decided on 03.07.2018, whereby Hon'ble Apex Court has held as under :-

“6. The first question that arises is regarding the significance of the expression “consequential benefits” as used in the order dated 20.11.2013. The matter which was directly in issue and under consideration was the correctness and validity of General Court Martial proceedings. While annulling the findings and effect of such General Court Martial proceedings, the idea was to confer those benefits which the officer stood denied directly as a result of pendency of such proceedings. Such benefits would therefore be those which are easily quantifiable namely those in the nature of loss of salary, emoluments and other benefits. But the expression cannot be construed to mean that even promotions which are strictly on the basis of comparative merit and selection must also stand conferred upon the officer. It is true that as a result of pendency of the General Court Martial proceedings the respondent was kept out of service for nearly nine years and as such his profile would show inadequacy to a certain extent.....”

8. In the facts of the instant case the applicant was kept out of service for a period of two years and there was no direction for consequential benefits, therefore, no question for promotion of the applicant arises at all.

9. We find substance in the objection raised on behalf of the respondents that applicant has no actionable cause of action and accordingly we hereby dismiss this O.A. in limine.

(Air Marshal BBP Sinha)
Member (A)

(Justice SVS Rathore)
Member (J)

August 23, 2018

JPT

