

RESERVED**COURT NO.1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 269 of 2015**Wednesday, this the 5th day of September, 2018**“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)
Hon’ble Air Marshal BBP, Sinha, Member (A)”**

JC-804567-P Nb Sub Clk Radhe Shyam Sharma (Retd) son of late Shri Phudena Sharma, resident of G-8, Lane 12 (C), Opposite Jeevan Jyoti Academy, Sainik Nagar, Rae Bareli Road, Lucknow (UP) 226025.

.....Petitioner

Ld. Counsel for the : **Shri Shailendra Kumar Singh, Advocate**
Petitioner

Versus

1. Union of India through Defence Secretary, Ministry of Defence, South Block, New Delhi – 110106.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army), South Block, New Delhi – 110011.
3. Directorate General of Military Training (MT-14), General Staff Branch, Integrated HQ of Min of Def (Army), PIN 900256 C/o 56 APO
4. OIC Records, Army Educational Corps Records, PIN 908777 C/O 56 APO.

----- Respondents

Ld. Counsel for the Respondents : **Shri D.K. Pandey,**
Addl. Central Govt Counsel

ORDER

“ Per Hon’ble Air Marshal BBP Sinha, Member (A)”

1. By means of the present O.A., the applicant has approached this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 with the following prayers:-

“(a) to summon the FINAL discharge order dated 23 Jan 2014 issued by Respondent No. 4 in respect of the applicant and quash the same being illegal in the eye of law.

(b) to issue necessary directions/orders to the respondents to consider the case of the applicant’s afresh for re-instatement and be granted the rank of Subedar from the date (31.05.2015) Sub Inst Man Mohan Singh has been promoted to the rank of Sub Major with full pay and allowances.

(c) to summon the criteria and guidelines and other records to ascertain what procedure has been adopted by the Respondents for adjustment of the surplus vacancies owing to reduction of the personnel establishment of AEC in terms of MoD Ltr dated 14 Jan 2015.

(d) to issue directions/orders to the respondents to prepare the proper guidelines and procedure to avoid such occurrence where senior has been discharged and junior has been promoted to next higher rank along with extension of service.

(e) Any other relief as considered proper by the Hon’ble Tribunal be awarded in favour of the humble applicant.

(f) Cost of the application may be awarded to the applicant.”

2. The facts necessary for adjudication of the controversy in question, in brief, are that the applicant was enrolled on 14.05.1987 in the Army Education Corps as a Sepoy in the trade of Clerk (SD). Serving the Indian Army in various Units, the applicant was promoted to the ranks of Naik, Havildar and finally on 01.01.2012 to the rank of Naib Subedar. On 31.08.2013 warning order in respect of applicant and certain other Army personnel were issued for discharge from service and final

discharge order was passed on 23.01.2014. The applicant retired from service on 31.05.2015 after completing 28 years' service under the provisions of Rule 13 (3) (i)(a) of the Army Rules, 1954.

3. As per the broad policy for retirement of JCOs, Naib Subedars are discharged after rendering 26 years' of pensionable service extendable by 02 years, Subedars are discharged after rendering 28 years of pensionable service, extendable by 02 days and Subedar Major are discharged after rendering 32 years of pensionable service extendable by 2 years.

4. Revised Peace Establishment V/210/1946/15 was issued and adopted by AEC Records on 18.02.2015. By means of said revised Peace Establishment policy, on 01.01.2015, 19 vacancies of combatant clerks in Army Education Corps were reduced with immediate effect. The said Policy Letter was received by the AEC Records on 28.04.2015 and the revised Peace Establishment policy was adopted and implemented. Till 31.12.2014 the AEC Records was functioning under the Old Peace Establishment V/210/1946/14. With the introduction of the new Peace Establishment policy (supra), two Subedar Clerks, thus, became surplus in the Corps on adoption of revised Peace Establishment policy.

5. Applicant's promotion in the rank of Subedar was due in terms of Adjt General's Branch Letter No. B/33513/AG/OS2 (C) dated 10.10.1997 on 01.05.2015. However, applicant's case for promotion to

the rank of Subedar was not considered on said date against two vacancies of Subedars on 30.04.2015. The applicant orally represented his case to OIC AEC Records and CRO AEC Records for consideration of his case for promotion on the ground that he was the senior most Naib Subedar in the Establishment and was due for promotion in said rank on 01.05.2015. Getting no favourable action, the applicant made written representation dated 27.05.2015 which was decided by order dated 30.05.2015 admitting that two vacancies occurred on 01.05.2015 but denying promotion to the applicant to the rank of Subedar on the ground that there are two surplus Subedar Clerks in the Corps who were adjusted against the reduction in vacancies, as such no promotion was granted with effect from 01.05.2015 to 31.05.2015 in the Subedar Clerk rank of AEC. It was further admitted that against two vacancies of Subedar Clerks occurring on 01.06.2015, orders had been issued for promotion of two Naib Subedars who were junior to the applicant. The claim of the applicant is that while he was retiring on 31.05.2015 and was denied promotion despite vacancy occurring on 01.06.2015, his senior Subedar Clerk Man Mohan Singh, who was also due to retire on 31.05.2015 due to no vacancy was given a 'hard luck vacancy' for one day on 31.05.2015 and was promoted to the rank of Subedar Major, but the applicant has been denied 'hard luck vacancy'.

6. It is submitted by learned counsel for the applicant that grant of promotion to the similarly situated person and denial to the applicant contravenes the mandate of Article 14 and Article 16 of the Constitution

of India and is infringement of the principles of natural justice and fairness expected from a Government organization. It was further submitted that due to promotion of Subedar Man Mohan Singh to the rank of Subedar Major on 31.05.2015, there was a clear vacancy of Subedar on 31.05.2015 and the applicant should have been adjusted and promoted as Subedar on 31.05.2015. It is submitted that the applicant was subjected to hostile discrimination viz-a-viz Subedar Man Mohan Singh in that while the respondents took a lenient view in safeguarding the promotional career of Subedar Man Mohan Singh to the next higher rank of Subedar Major, the applicant was denied such promotional progression to the rank of Subedar which fell vacant on 31.05.2015 due to the promotion of Subedar Man Mohan Singh. He further contended that the respondents have acted in an arbitrary and illogical manner in that because of their discriminatory action of the respondents, the applicant has been made victim of arbitrariness and has missed a promotion for which he was entitled. It was further argued that the respondents decided to seek one vacancy from the IHQ of MoD (Army) on 31.05.2015 and promote Subedar Man Mohan Singh to the rank of Subedar Major. Thereafter due to promotion of Subedar Man Mohan Singh on 31.05.2015, automatically a vacancy was created in the rank of Subedar on 31.05.2015 and, therefore, the case of the applicant is that despite there being a vacancy for Subedar on 31.05.2015 the respondents due to their arbitrariness and lack of fair-play have denied promotion to the applicant from the rank of Naib Subedar to Subedar.

7. Learned counsel for the respondents assailed the submissions made by learned counsel for the applicant by contending that on adoption of the revised Peace Establishment policy, posts of two Subedars became surplus and till liquidation of the surplus staff, promotions in respective ranks were to be withheld against future vacancies. Thus, vacancies created in the month of May 2015 were liquidated against two Subedar Clerks who became surplus in the Corps on adoption of the revised Peace Establishment policy and no promotion was issued with effect from 01.05.2015 for the rank of Subedar Clerk of Army Education Corps. It is admitted that two vacancies were created on 01.06.2015, but since the applicant retired on 31.05.2015, he could not be adjusted against said vacancies. So far as claim of the applicant regarding promotion of Subedar Man Mohan Singh is concerned, learned counsel for the respondents argued that Subedar Suneel Dutt Tyagi who was expected to retire on 30.04.2015 due to low medical category, was upgraded in his medical category. Due to upgradation of his medical criteria, his services were extended till 31.03.2016 which affected the promotion prospects of Subedar Man Mohan Singh who was approved by the Departmental Committee and recommendation for bestowing honorary rank during Republic Day, 2015 was also withheld, as such, as a hard luck case, his case was recommended and permission obtained from Integrated Headquarters of Ministry of Defence (Army). It was contended that vacancy obtained for promotion of Subedar Man Mohan Singh was surrendered on the very next day. It was vehemently argued that the

applicant did not merit benefit of hard luck pool vacancy for one day. Learned counsel for the respondents further submitted that promotion of the applicant would have also affected promotion of one Naib Subedar Shah Alam (though it was admitted that he was junior to the applicant) who was to retire on 30.09.2015.

8. Having heard learned counsel for the parties and having perused the pleadings on record, we find that the moot question to be decided in the instant case is, 'whether the applicant was entitled to be promoted to the rank of Subedar on 31.05.2015 in consonance with the decision taken by the respondents in respect of Subedar Man Mohan Singh and Naib Subedar Shah Alam and denial of it infringed the constitutional mandate of equality before law'.

9. It is admitted position that the old Peace Establishment policy was substituted by revised Peace Establishment policy which was implemented with effect from 01.01.2015. The new Peace Establishment policy provided reduction of 19 combatant clerks in Army Educational Corps resulting in liquidation of 2 posts of Subedar Clerk, 1 Naib Subedar Clerk, 9 Havildar Clerk, 4 Naik Clerk, 2 Lance Naik Clerk and 2 Sepoy Clerk in the establishment. It is also admitted position that one Subedar Man Mohan Singh, who was in line to be promoted to the rank of Subedar Major, due to implementation of the revised Peace Establishment policy, was to retire from service on 31.05.2015 without being promoted to the rank of Subedar Major. The respondents, however, in order to help Subedar Man Mohan Singh to get promotion,

obtained permission from Integrated Headquarters of Ministry of Defence (Army) for one 'hard luck Subedar Major vacancy' for one day, i.e 31.05.2015 and promoted him to the rank of Subedar Major on 31.05.2015 and on the very next day surrendered said vacancy.

10. The case of the applicant also stood on the same footing. On account of introduction and implementation of revised Peace Establishment policy, two posts of Subedars were curtailed and were surrendered. The applicant was also to retire on 31.05.2015. Thus, once the respondents approached the appropriate authority for 'hard luck Subedar Major vacancy' in respect of Subedar Man Mohan Singh, the principles of natural justice demanded that the respondents should have similarly approached the appropriate authority for 'hard luck Subedar vacancy' for promoting the applicant and in the similar manner should have surrendered the vacancy as was done in the case of Subedar Man Mohan Singh. Nonetheless, when Subedar Man Mohan Singh was promoted on 31.05.2015, therefore, despite respondents not planning for it, one post of Subedar automatically fell vacant on 31.05.2015. Therefore, the respondents should have promoted the applicant on said vacant post of Subedar and then in tune with the action adopted by them with respect of Subedar Man Mohan Singh should have surrendered the vacancy of Subedar on 01.06.2015 as having been abolished in view of revised Peace Establishment policy. The ground pleaded by respondents for not approaching the appropriate authority for sanction of one 'hard luck Subedar vacancy' for adjusting the applicant and/or not promoting

him on the vacancy created on account of promotion of Subedar Man Mohan Singh on 31.05.2015 has resulted in grave miscarriage of justice.

11. In view of observations made hereinbefore, we **allow** the O.A. The respondents are directed to grant notional promotion to the applicant to the rank of Subedar with all consequential benefits with effect from 31.05.2015. He is to be notionally considered to be in service as Subedar for next two years i.e. till 31.05.2017. He will be entitled to receive 50% back wages for the period of notional service. His new pension as Subedar is to be accordingly worked out. This order shall be complied within four months from the date of production of a certified copy of this order failing which the applicant shall be entitled to receive interest at the rate of 9 per cent per annum till date of actual payment.

No order as to costs.

(Air Marshal BBP Sinha)

Member (A)

Dated : 5th September, 2018

anb

(Justice S.V.S. Rathore)

Member (J)