

**Court No.1**

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**

**ORIGINAL APPLICATION No. 79 of 2017**

Monday, this the 18<sup>th</sup> day of December, 2017

**“Hon’ble Mr. Justice D.P. Singh, Member (J)  
Hon’ble Air Marshal BBP, Sinha, Member (A)”**

**Dharmendra Pratap Singh son of Late Shiv Parson Singh  
resident of village & Post – Handour, Police Station – Lalganj,  
District - Pratagarh ..... Applicant**

Ld. Counsel for the Applicant : **Dr. V.K. Singh, Advocate**  
(Counsel for the applicant)

**Versus**

1. Union of India through the Secretary, Department of Defence, New Delhi.
2. The Army Chief- Incharge, Army Bhawan, Army Head Quarter, New Delhi.
3. The Commanding Officer, 16 Battalion, Rajutana Rifles, Agra, C/o 56 APO.
4. The Commanding Officer, 23 Battalion, The Parachute Regiment, PIN No. 911823, C/o 56 APO.
5. The Central Commandant and Record Officer, Rajputana Rifle, New Delhi, Cantt - 10, New Delhi – 110010
6. The Central Commandant & Para Record Officer, Bangalore, C/o 99 APO.

**...Respondents**

Ld. Counsel for the Respondents: **Dr. Gyan Singh, Advocate**  
Central Govt Standing Counsel.

**Assisted by : Maj Salen Xaxa, OIC Legal Cell.**

**ORDER (ORAL)**

1. Present O.A has been preferred under section 14 of the Armed Forces Tribunal Act, seeking the relief of promotion to the rank of Naib Subedar since Jan 2015 on the basis of Para Non Volunteer as in the case of other counterparts and juniors in service attended with the relief of paying salary as is being paid to other counterparts of the Original Unit Agra.
2. The grievance of the Applicant is that he was meted out discriminatory treatment by granting selective promotion to the personnel junior to him and not promoting him inspite of having been selected for promotion by the Selection Committee.
3. The facts draped in brevity are that the Applicant was enrolled in the Indian Army on 11.12.1995 and was assigned to Rajputana Rifles where he served from 22.12.1995 to 06.09.1996. After passing out attestation parade, the Applicant served the 16<sup>th</sup> Rajputana Rifles upto 07.07.1997. Thereafter, the Applicant was sent on second posting in the year 1997 at Khannawal Avantipur Kashmir IRR DIV HQDIMN Section (Survey Section). While posted there, the Applicant also participated in Kargil war fought against Pakistan Army. He was relegated to his parent unit in the year 1999 and was posted at Akhnoor Sector where he successfully completed his Lance Nayak Cadre for

promotion. Again, he was posted at Delhi in the year 2000 where he was assigned the work in the INT Section (Survey Section) in June 2000 where he continued till Feb 2002. Thereafter, he was sent back to his Unit at Gwalior. The said Unit was sent to Jaisalmer where the Applicant worked upto 2003. The Applicant passed his promotion cadre in 2003. In July 2004, the applicant was assigned the work on the post of Survey Hawaldar in 163 INF BDE HQ Naushera Rajauri District Naushera and thereafter, he was again sent to 16 Rajputana Rifles (Bikaner) in Sept 2007. The Applicant was promoted on the post of Havildar in March 2009 and was again transferred to INT Hav 43 RR in June 2009. The Applicant then was sent back to 16 Rajputana Rifles in Sept 2011. On 01.05.2011, 23 Rajputana Rifles was established with its Headquarters at Delhi. Several Jawans from 16 Rajputana Rifles were transferred to 23 Rajputana Rifles including the Applicant. In the said Unit, the Applicant signed for being enrolled as Para Volunteer and he was sent for course of Map Corps to Panchamadhi (MP). After completing the course, the Applicant was sent back to his Unit at 23 Rajputana Rifles where he completed the course of Naib Subedar from Nov 2012 to Jan 2013 and was selected by the selection committee as successful on 12.04.2013. It may be noted that the Applicant completed his basic Para Training from Jan 2013 to March 2013 and during the said training, he jumped before height of 1200 ft

9 times whereas only 5 jumps were required by a candidate for successful training in para. After training, he was issued a certificate certifying that he had successfully completed the training. Thereafter he also participated in the Shapath Parade on 01.03.2013 in complete para Uniform as successful. The Para training was completed on 13.05.2013 and after that, the Applicant was granted 30 days leave. Though the Applicant was also assured but after requisite training all the personnel junior to the Applicant were promoted to the rank of Naib Subedar to the exclusion of the Applicant. The relevant averments have been made in para 4 (W) of the O.A which being relevant are quoted below.

*"That the petitioner is suffering because he has not been paid higher revised salary for the reason for which he is in no way responsible. The petitioner has also not been granted the increment nor has his pay has been revised though the salaries of the other counterparts and the juniors have been revised. Here it is relevant to point out that the original unit of the applicant and the other counterparts junior to him is same i.e. Agra. It is patently illegal and unjustified for example the employees of the same unit Hawaldar Bhagirath Singh, Pramod, Dayaran, Virendra Singh, Sunil Singh, Prabhakar, Khemnchandra, Sumer Singh who are junior to the applicant were getting higher salary then the applicant and some of them have been promoted at higher*

*post of the Naib Subedar. The photocopy of the statement of salary account for month of October, 2015 of the petitioner and Halwaldar Bhagirath Singh are being herewith as **Annexure No. 9 & 10** to this original application”.*

4. In reply to the aforesaid averments, the respondents have made following averments as contained in paras 25 and 26 of the counter affidavit which being relevant are quoted below.

*“25. That the contents of the para No. 4 (W) & (X) of the O.A. filed by the applicant/petitioner are not admitted as stated hence denied. In reply thereto, it is submitted that the Unit and Regiment of persons mentioned in said paragraphs are different with effect from 01.06.2014, and most of them have been promoted to the next higher rank who are presently serving with 23 PARA. However, in case of No 289331X Hav Bhagirath Singh who is junior and getting more pay than applicant/petitioner, case may be taken up with Payment Accounts Office (Other Rank), RAJ, RIF, Delhi Cantonment by his parent unit 16 RAJ RIF as presently both persons are serving with same unit i.e. 16 RAJ RIF.*

*“26. That the contents of the para No. 4(Y) of the O.A. filed by the applicant/petitioner are not admitted as stated hence denied. In reply thereto, it is submitted that the 23 RAJ RIF has already been converted to 23 PARA with different Records Office/Regiment/Payment Accounts Office (Other Rank) from 01.06.2014 and only Para Volunteer persons can serve with this unit. Person once opted Non-Para Volunteer, however, can come*

*back if he meets the qualitative requirements of lateral entry into Parachute Regiment. As per the existing orders, only Sepoy below 6 years of service may join the Parachute Regiment as lateral entry. In this particular case, applicant/petitioner of 16 RAJ RIF is not eligible to join the Parachute Regiment. The photocopy of the letter 07.03.2013 is being annexed herewith as **Annexure No. CA- 11** to this affidavit”.*

5. From a plain reading of the aforesaid provisions, there appears to be no doubt that all the personnel junior to the Applicant of the same Unit like *Hawaldar Bhagirath Singh, Pramod, Dayaran, Virendra Singh, Sunil Singh, Prabhakar, Khemnchandra, Sumer Singh* were promoted as Naib Subedar. It is not disputed by the learned counsel for the respondents that only the Applicant was not granted promotion to the rank of Naib Subedar and those junior to the Applicant in the same Unit were promoted .

6. The submission of the learned counsel for the Applicant is that since those junior to the Applicant have been promoted, it amounted to discriminatory treatment hit by Article 14 of the Constitution of India. It is also submitted that the authorities have exercised power arbitrarily for extraneous reasons while withholding the Applicant's promotion to the higher rank. It is also argued by learned counsel for the Applicant that right to consider is the fundamental right but in case the promotion is selectively withheld it affects the civil rights of the applicant

and on account of discriminatory treatment, the fundamental rights of the Applicant is infringed being violative of Article 14 of the Constitution of India.

7. Per contra, it is canvassed by learned counsel for the respondents that there is no denying that the Applicant was selected successfully for promotion to the rank of Naib Subedar and that those junior or Senior to the Applicant have been promoted and only Applicant's promotion has been withheld but the action of the respondent authorities, it is contended, is justified on the ground that at later stage, the Applicant was found weak with regard to Non Para Volunteer certificate on 30.05.2014. It is submitted that on account of incompetence, the Applicant was relegated to his parent Unit and he was unable to perform the task assigned to him and was wanting in basic skill of map reading during the Tactical Battalion Validation exercise in Feb 2014 and Airborne Validation Exercise in May 2014.

8. Admittedly, the Applicant was selected for promotion by the Selection Committee. It is argued that in 2014, the standard for passing out in rank of Naib Subedar was low. Admittedly, the Applicant was selected for promotion to the rank of Naib Subedar 12.03.2013. The two fold arguments advanced by learned counsel for the respondents is that the criteria was low in 2014 and subsequently, the Applicant was found to be not fit, seem to be misconceived. Once

Selection Committee has considered and selected the Applicant for promotion to the rank of Naib Subedar and all personnel junior to the Applicant of the same unit have been promoted to the next higher rank as admitted in para 25 of the counter affidavit, there appears to be no justification on the part of the respondents to withhold the Applicant's promotion. By all reckoning, it amounts to discriminatory treatment hit by Article 14 and 16 (1) of the Constitution of India.

9. The Constitution Bench of Hon. Apex Court in a case reported in *Ajit Singh & Ors Vs State of Punjab and others* reported in AIR 1999 SC 3471, while considering the importance of promotion for an employee held as under:

*19. While interpreting provisions of the Constitution and in particular fundamental rights of citizens, it is well to bear in mind certain fundamental concepts. In McCulloch v. Maryland (17 US (4 Wheat) 316 : 4 L Ed 579 (1819) Chief Justice Marshall cautioned that we must keep in mind that it is the Constitution that we are expounding. He said that the Constitution was intended to endure for ages to come and had consequently to be adapted to the various crises of human affairs from time to time. Brandeis, J. wrote : "Our Constitution is not a straitjacket. It is a living organism. As such it is capable of growth, of expansion and of adaptation to new conditions. Growth implies changes, political, economic and social. Growth which is significant manifests itself rather in intellectual and moral*



*conceptions of material things ..... Similarly, in a beautiful metaphor Mr. J. M. Beck said as follows : "The Constitution is neither, on the one hand, a Gibraltar rock, which wholly resists the ceaseless washing of time and circumstances, nor is it, on the other hand, a sandy beach, which is slowly destroyed by erosion of the waves. It is rather to be likened to a floating dock which, while firmly attached to its moorings, and not therefore at the caprice of the waves, yet rises and falls with the tide of time and circumstances."*

*20. Such should be and would be our approach in resolving the important constitutional issues arising in these IAs and in this batch of cases.*

*21. We shall first deal with the fundamental rights under Articles 14 and 16(1) and then with the nature of the rights of the reserved candidates under LAWNET INDIA CD Page 8 Articles 16(4) and 16(4-A). Articles 14 and 16(1) : is right to be considered for promotion a fundamental right*

*22. Article 14 and Article 16(1) are closely connected. They deal with individual rights of the person. Article 14 demands that the "State shall not deny to any person equality before the law or the equal protection of the laws". Article 16(1) issues a positive command that "there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State". It has been held repeatedly by this Court that clause (1) of Article 16 is a facet of Article 14 and that it takes its roots from Article 14. The said clause particularises the generality in Article 14 and identifies, in a constitutional sense "equality of*

*opportunity" in matters of employment and appointment to any office under the State. The word "employment" being wider, there is no dispute that it takes within its fold, the aspect of promotions to posts above the stage of initial level of recruitment. Article 16(1) provides to every employee otherwise eligible for promotion or who comes within the zone of consideration, a fundamental right to be "considered" for promotion. Equal opportunity here means the right to be "considered" for promotion. If a person satisfies the eligibility and zone criteria but is not considered for promotion, then there will be a clear infraction of his fundamental right to be 41 considered" for promotion, which is his personal right. "Promotion" based on equal opportunity and "seniority" attached to such promotion are facets of fundamental right under Article 16(1)*

*23. Where promotional avenues are available, seniority becomes closely interlinked with promotion provided such a promotion is made after complying with the principle of equal opportunity stated in Article 16(1). For example, if the promotion is by rule of "seniority-cum-suitability", the eligible seniors at the basic level as per seniority fixed at that level and who are within the zone of consideration must be first considered for promotion and be promoted if found suitable. In the promoted category they would have to count their seniority from the date of such promotion because they get promotion through a process of equal opportunity. Similarly, if the promotion from the basic level is by*

*selection or merit or any rule involving consideration of merit, the senior who is eligible at the basic level has to be considered and if found meritorious in comparison with others, he will have to be promoted first. If he is not found so meritorious, the next in order of seniority is to be considered and if found eligible and more meritorious than the first person in the seniority list, he should be promoted. In either case, the person who is first promoted will normally count his seniority from the date of such promotion. (There are minor modifications in various services in the matter of counting of seniority of such promotees but in all cases the seniormost person at the basic level is to be considered first and then the others in the line of seniority.) That is how right to be considered for promotion and the "seniority" attached to such promotion become important facets of the LAWNET INDIA CD Page 9 fundamental right guaranteed in Article 16(1). Right to be considered for promotion is not a mere statutory right.*

10. A plain reading of the aforesaid decision of the Apex Court shows that Article 14 of the Constitution are closely interlinked with Article 16 (1) of the Constitution involving equal opportunity in the matter of promotional avenues. Once the similarly situated persons of the Unit who succeeded for promotion to the next higher rank alongwith the Applicant and have been granted promotion as pleaded in para 4 (W) of the O.A there is no justification on the part of

the respondents to deny the promotion to the Applicant either for some earlier standard or latter standard more-so when it is not the case of the respondents that any fraud was committed or the Applicant was selected for next higher rank on some fraudulent or unfounded grounds. Thus, in our view, the Applicant has been denied equal opportunity for promotion which is hit by Article 14 of the Constitution of India amounting to discriminatory treatment.

11. Our attention has not been drawn to any provision or to any Rules or Regulation under which a person selected for the next higher grade may not be promoted in a manner other than the one prescribed by law. Admittedly, the selection result of the Applicant has not been cancelled. Rather, all other personnel of the same unit have been promoted to the next higher rank to the exclusion of the Applicant. In such situation, it appears that the decision taken by the respondents is not based on any source or provision of law, hence anti-thesis to any rule of law. The principles of Rule of Law have been repeatedly defined by the Apex Court that in case authorities want to do some, it should be done in the manner prescribed by the Act or the Statute and not otherwise. It was further held by the Apex Court in a catena of decision that there must be some source to exercise discretionary power affecting the fundamental rights of the citizen or the employee. Our attention has not been invited to any provisions under which the Selection was

rejected or they have had the right to withhold the promotion of the Applicant. In such situation, it appears that the decision taken by the respondents to withhold the Applicant's promotion that too in the teeth of the fact that the result of the selection committee has never been cancelled.

12. In the case of **Dhirendra Kumar Rai Vs State of U.P. reported in {2010 (28) LCD 1248}**, while considering the factum of arbitrariness, the High Court in paras 30,32 and 32 held as under:

*"30. In number of cases Hon'ble Supreme Court ruled that every arbitrary action, whether in the nature of legislative or administrative or quasi-judicial exercise of power, is liable to attract the prohibition of Article 14 of the Constitution of India vide AIR 1974 SC 555; E.P. Royappa v. State of Tamil Nadu, 1979 (3) SCC 489; R.D Shetty v. International Airport Authority, 1978 (1) SCC 248; Maneka Gandhi v. Union of India, 1981 (1) SCC 722; Ajay Hasia v. Khalid Mujib, 1990 (3) SCC 223; Shri Sitaram Sugar Co. Ltd v. Union of India.*

*"31. In M.I. Builders Pvt. Ltd. v. Radhey Shyam, reported in (1999) 6 SCC 464, the Apex Court ruled that the decision is unlawful if it is one to which no reasonable authority could have come.*

*"32. The Constitution Bench of Hon'ble Supreme Court in a case reported in AIR 1991 SC 101; Delhi Transport Corporation v. D.T.C. Mazdoor Congress and others, had repelled the presumption that person holding high office does not commit wrong. Discretion enjoyed by the persons holding high offices should not be left to the*

*good sense of individuals. Relevant portion from the judgment of Delhi Transport Corporation (supra) is reproduced as under:-*

*"There is need to minimize the scope of the arbitrary use of power in all walks of life. It is inadvisable to depend on the good sense of the individuals, however high-placed they may be. It is all the more improper and undesirable to expose the precious rights like the rights of life, liberty and property to the vagaries of the individual whims and fancies. It is tries to say that individuals are not and do not become wise because they occupy high seats of powers, and good sense, circumspection and fairness does not go with the posts, however high they may be. There is only a complaisant presumption that those who occupy high posts have a high sense of responsibility. The presumption is neither legal nor rational. History does not support it and reality does not warrant it. In particular, in a society pledged to uphold the rule of law, it would be both unwise and impolitic to leave any aspect of its life to be governed by discretion when it can conveniently and easily be covered by the rule of law....."*

*25. The "high authority" theory so-called has already been adverted to earlier. Beyond the self-deluding and self-asserting righteous presumption, there is mothering to support it. This theory undoubtedly weighed with some authorities for some time in the past. But it's unrealistic pretensions were soon noticed and it was buried without even so much as an ode to it. Even while Shah, J. in his dissenting opinion in Moti Ram Deka v. General Manger, E.E.P. Railways, Maligaon, Pandu,*

*(1964) 5SCR 683; (AIR 1964 SC 600) had given vent to it, Das Guptam H. In his concurring judgment but dealing with the same point of unguided provisions of Rule 148 (3) of the Railways Establishment Code, had not supported that views and had struck down the rule as being violative of Article 14 of the Constitution. The majority did not deal with this point at all and struck down the Rules as being void on account of the discrimination it introduced between railways servants and other government servants."*

13. In the same judgment, the Division Bench of High Court emphasized that the authorities must act within their jurisdiction conferred by the Act or the Statute. In paras 36 and 37 of the said decision, the High Court held as under:

*"36. In the famous Minerva Mills v. Union of India case reported in 1980(2) SCC 1789, the Apex Court held that the High Court can substitute its own finding in case an action is found to be wrong. The controversy was relating to Government right to exercise power under Article 352 of the Constitution of India but the Hon'ble Supreme Court had given emphasis to exercise power to preserve the constitutional rights of the people of country. For convenience relevant portion from Minerva Mill case (supra) is reproduced as under:-*

*"Para 79 Three Articles of our Constitution and only three stand between the heaven of freedom into which Tagore wanted his country to awake and the abyss of*

*unrestrained power. They are Article 14, 19 and 21. Article 31 C has removed two sides of that golden triangle which affords to the people of this Country an assurance that the promise held forth, by the Preamble will be performed by ushering an egalitarian era through the discipline of fundamental rights, that is, without emasculating of the rights to liberty and equality which alone can help preserve the dignity of the individual."*

*"para 103 it will be convenient at this stage to consider the question as to whether and if so to what extent, the Court can review the constitutionality of a proclamation of Emergency issued under Art 353 Cl.(1). There were two objections put forward on behalf of the respondents against the competence of the Court to examine the question of validity of a proclamation of Emergency. One objection was that the question whether a grave emergency exists whereby the security of India or nay part thereof is threatened by war or external aggression or internal disturbance is essentially a political question entrusted by the Constitution to the Union Executive and on that account, it is not justiciable before the court. It was urged that having regard to the political nature of the problem, it was not amenable to judicial determination and hence the court must refrain from inquiring into it. The other objection was that in any event by reason of Cls. (4) and (5) of Article 352, the*



*Court had no jurisdiction to question the satisfaction of the President leading to the issue of a proclamation of Emergency or to entertain any question regarding the validity of the Proclamation of Emergency or its continued operation. Both these objections are in view unfounded and they do not bar judicial review of the validity of the proclamation of Emergency issued by the Present under Article 352 Cls (1) My reasons for saying so are as follows.*

*"Para 104... So long as the question is whether an authority under the constitution has acted within the limits of its power or exceeded it, it can certainly be decide by the court. Indeed it would be its constitutional obligation to do so. I have said before, I repeat again, that the Constitution is *suprema lex*, the paramount, law of the land, and there is no department or branch of government above or beyond it. Every organ or government, be it the executive or the legislature or the judiciary, derives its authority from the Constitution and it has to act within the limits of its authority and whether it has done so or not I for the court to decide. The court is the ultimate interpreter of the Constitution and when there is manifestly unauthorized exercise of power under the Constitution, it is the duty of the court to intervene. Let it not be forgotten, that to this court as much as to other branches of government, is committed*

*the conversation and furtherance of constitutional values. The Court's task is to identify those values in the constitutional plan and to work them into life in the cases that reach the court. "Tact and wise restraint ought to temper any power but courage and the acceptance of responsibility have their place too." The Court cannot be and should not shirk this responsibility, because it has sworn the oath of allegiance to the Constitution and is also accountable to the people of the country....."*

*"37. In a case reported in 1965 SC 1150, Devlal v. Sales Tax Officer. Hon'ble Supreme Court held that an application under Article 226 of Constitution of India cannot be refused on mere ground that application is not in proper form. The relevant portion from the Apex Court judgment is reproduced as under:-*

*"There can be no doubt that the fundamental rights guaranteed to the citizens are a significant feature of our Constitution and the High Court's under Article 226 are bound to protect these fundamental rights. There can also be no doubt that if a case is made out for the exercise of its jurisdiction under Article 226 in support of citizen's fundamental rights, the High Court will not hesitate to exercise that jurisdiction."*

14. Apart from the above, the Applicant having been selected for the rank of Naib Subedar, there was legitimate

expectation that he would be promoted to the rank of Naib Subedar. Such expectation arises from a representation or any express promise including an implied representation or from consistent past practice which squarely covers the Applicant's case. The Apex Court in **Union of India Vs Lt Col PK Chaudhary reported in (2016) 4 SCC** considered the principle of legitimate expectation as under:

*"51. Halsbury's Laws of England, 4<sup>th</sup> Edn., Vol. I(I) 151 explains the meaning of "Legitimate expectation" in the following words.*

*"81. Legitimate expectations- A person may have a legitimate expectation of being treated in a certain way by an administrative authority even though he has no legal right in private law to receive such treatment. The expectation may arise either from a representation or promise made by the authority, including an implied representation, or from consistent past practice.*

*The existence of a legitimate expectation may have a number of different consequence; it may give locus standi to seek leave to apply for judicial review; it may mean that the authority ought not to act so as to defeat the expectation without some overriding reason of public policy to justify its doing so; or it may means that, if the authority proposes to defeat a person's legitimate*

*expectations, it must afford him an opportunity him an opportunity to make representations on the matter. The courts also distinguish, for example in licensing cases, between original applications, applications to renew and revocations; a party who has been granted a license may have a legitimate expectations that it will be renewed unless there is some good reason not to do so, and may therefore be entitled to greater procedural protection than a mere applicant for a grant.*

*52. Legitimate expectations as a concept has engaged the attention of this Court in several earlier decisions to which we shall presently refer. But before we do so we need only to say that the concept arise out of what may be described as a reasonable expectation of being treated in a certain way by an administrative authority even though the person who has such an expectation has no right in law to receive the benefit expected by him. Any such expectation can arise from an "express promise" or a "consistent cause of practice or procedure" which the person claiming the benefit may reasonably expect to continue. The question of redress which the person in whom the legitimate expectations arise can seek and the approach to be adopted while resolving a conflict*

*between any such expectations, on the other hand, and a public policy in general public interest on the other, present distinct dimensions every time the plea of legitimate expectations is raised in a case.*

15. In support of aforesaid proposition of law, learned counsel for the Applicant has cited number of cases and they are as under:

**"1. Ajit Singh and others Vs State of Punjab & Others,** order dated 16.09.1999 passed by Hon'ble Apex Court- Relevant Para No. 22 to 27.

**2. Arun Kumar Chatterjee Vs South Eastern Railway & Others,** order dated 01.03.1985 passed by Hon'ble Apex Court- relevant page No. 6

**3. Union of India and another Vs Lieutenant Colonel P.K. Chaudhary,** order dated 15.02.2016, passed by Hon'ble Apex Court-relevant para No. 52 & 57.

**4. Union of India, and another Vs Hemraj Singh Chauhan,** order dated 23.03.2010, passed by Hon'ble Apex Court-relevant para No. 38.

**5. Union of India and others Vs Tarsem Singh,** order dated 13.08.2008 passed by Hon'ble Apex Court-relevant para No.5.

**6. *Sheetla Bux Singh Vs Union of India and others* order dated 10.03.1992, passed by Allahabad High Court, Lucknow Bench-relevant para No. 21."**

16. As a result of foregoing discussions, we feel that denial of promotion to the Applicant by the respondents selectively is hit by Article 14 read with Article 16 (1) of the Constitution of India. It constitutes not only discriminatory treatment but also is an incidence of abuse of process of law and arbitrarily exercise of power. Hence O.A deserves to be allowed with all consequential benefits.

17. At this stage, learned counsel for the Applicant spoke about mental pain and agony on account of selective and arbitrary action in denying promotion to the Applicant despite he having been selected by the Selection Committee for promotion. It is not disputed that the respondents have not passed any written order for withholding the Applicant's promotion. It is also not disputed by the respondents that the applicant had passed the cadre promotion and was selected by the selection committee on 12.04.2013 but to his exclusion, the other batch-mates including junior and senior to the Applicant were granted promotion without any valid justification. The selective denial of promotion constitutes arbitrary exercise of power which is discriminatory in nature. This has caused mental pain and agony to the applicant who suffered humiliation and disrespect amongst his own

colleagues for the last four years. In our view, it is a fit case in which the Applicant should be adequately compensated by exemplary cost in view of settled proposition of law by the Apex Court in catena of decisions.

18. Hon'ble Supreme Court in the case of ***Ramrameshwari Devi and others V. Nirmala Devi and others***, (2011) 8 SCC 249 has given emphasis to compensate the litigants who have been forced to enter litigation. This view has further been rendered by Hon'ble Supreme Court in the case reported in ***A. Shanmugam V. Ariya Kshetriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam represented by its President and others***, (2012) 6 SCC 430. In the case of ***A. Shanmugam*** (supra) Hon'ble the Supreme considered a catena of earlier judgments for forming opinion with regard to payment of cost; these are:

1. ***Indian Council for Enviro-Legal Action V. Union of India***, (2011) 8 SCC 161;
2. ***Ram Krishna Verma V. State of U.P.***, (1992) 2 SCC 620;
3. ***Kavita Trehan V. Balsara Hygiene Products Ltd.*** (1994) 5 SCC 380;
4. ***Marshall Sons & CO. (I) Ltd. V. Sahi Oretrans (P) Ltd.***, (1999) 2 SCC 325;
5. ***Padmawati V. Harijan Sewak Sangh***, (2008) 154 DLT 411;
6. ***South Eastern Coalfields Ltd. V. State of M.P.***, (2003) 8 SCC 648;
7. ***Safar Khan V. Board of Revenue***, 1984 (supp) SCC 505;
8. ***Ramrameshwari Devi and others*** (supra).

19. In the case of **South Eastern Coalfields Ltd** (supra), the apex Court while dealing with the question held as under :

*"28. ...Litigation may turn into a fruitful industry. Though litigation is not gambling yet there is an element of chance in every litigation. Unscrupulous litigants may feel encouraged to interlocutory orders favourable to them by making out a prima facie case when the issues are yet to be heard and determined on merits and if the concept of restitution is excluded from application to interim orders, then the litigant would stand to gain by swallowing the benefits yielding out of the interim order even though the battle has been lost at the end. This cannot be countenanced. We are, therefore, of the opinion that the successful party finally held entitled to a relief assessable in terms of money at the end of the litigation, is entitled to be compensated by award of interest at a suitable reasonable rate for the period for which the interim order of the court withholding the release of money had remained in operation".*

20. The question of award of cost is meant to compensate a party, who has been compelled to enter litigation unnecessarily for no fault on its part. The purpose is not only to compensate a litigant but also to administer caution to the authorities to work in a just and fair manner in accordance to law. The case of **Ramrameshwari Devi and others** (supra) rules that if the party, who is litigating, is to be compensated.



21. In the case of ***Centre for Public Interest Litigation and others V. Union of India and others***, (2012) 3 SCC 1, the Hon'ble Supreme Court after reckoning with the entire facts and circumstances and keeping in view the public interest, while allowing the petition, directed the respondents No 2, 3 and 9 to pay a cost of Rs. 5 crores each and further directed respondents No 4, 6, 7 and 10 to pay a cost of Rs. 50 lakhs each, out of which 50% was payable to the Supreme Court Legal Services Committee for being used for providing legal aid to poor and indigent litigants and the remaining 50% was directed to be deposited in the funds created for Resettlement and Welfare Schemes of the Ministry of Defence.

22. Since we have held above that it is a fit case for compensating the Applicant adequately, we quantify the cost at Rs. 100000/- (One lac). The cost shall be deposited with the Registry within two months and the same shall be released in favour of the applicant by the Registry through cheque immediately thereafter.

23. In view of the above, the O.A is allowed with all consequential benefits and the decision of the respondents denying the promotion to the Applicant is set aside. The Applicant shall stand promoted to the rank of Naib Subedar from the date his batch-mates (Juniors) were promoted and his seniority shall stand restored in terms of the above. The

arrears of difference of salary shall be paid to the applicant within four months. The order shall be complied with within four months from today.

24. No order as to costs.

**(Air Marshal BBP Sinha)**  
**Member (A)**

**(Justice D.P. Singh)**  
**Member (J)**

**Dated: 18 December, 2017**

MH/-