

RESERVED

COURT NO.1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 325 of 2015

Tuesday, this the 03rd day of April, 2018

**“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)
Hon’ble Air Marshal BBP Sinha, Member (A)”**

No. JC- 377027 W Sub Rakesh Kumar Mishra S/O Late Sh Janki Prasad Mishra H.No- 2, Rail Vihar, IRWO Mansarovar Enclave Sector - P, Lucknow - 226012 Applicant

Ld. Counsel for the : Col R.C. Dixit (Retd), Advocate Applicant

Versus

1. Union of India, Through Secretary of Defence Ministry of Defence, D (Pension Grievances) 227- B Wing, Sena Bhawan New Delhi - 110011.
2. The Chief of Army Staff Integrated Headquarters of MoD (Army), Sena Bhawan DHQ PO New Delhi - 110011
3. Officer in Charge The Records Signals PIN 908770 C/O 56 APO
4. Colonel Kapil Jaiswal Commanding Officer 4. Field Sub Group Pin 918004 C/o 99 A.P.O.

...Respondents

**Ld. Counsel for the: Shri D.K. Pandey, Advocate,
Respondents. Addl. Central Govt Standing Counsel and
assisted by Maj Salen Xaxa, OIC Legal Cell.**

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

1. Present O.A has been preferred under section 14 of the Armed Forces Tribunal Act, 2007 by the Applicant for the following reliefs.

“(a) That Hon’ble Tribunal may direct respondents to hold DPC of the applicant for selection to the rank of Subedar Major and should he be graded as ‘found fit, be promoted to the rank of Subedar Major from the date of his due seniority. He may also be granted arrears of pay and allowances with all consequential benefits if found fit for promotion.

(b) The action of the (authorities) (respondent No Colonel Kapil Jaiswal, Commanding Officer, 4. Field Sub Group’s action vide (para 4 (p) & (q) refers), making comments in the same and forwarding a letter based on the same to Head Quarters Eastern Command(Signals) (Annexure A-4 & Annexure A- 4 (i) in all probabilities was aimed to deprive the appellant due consideration for promotion to the rank of the Subedar Major. Such an act deserves appropriate action as the Hon’ble Court deems fit.

(c) In view of aforesaid Hon’ble Tribunal may Pass suitable order or direction which is deems fit and proper in the interests of justice.

2. Shorn of unnecessary details, the facts of the case are that the Applicant was enrolled in the Indian Army on 18.03.1985 and was discharged on 31.03.2015 after rendering 28 years and two months of service. The grievance of the Applicant is that he was found fit for promotion to the rank of Subedar Major by the Departmental Promotion Committee and according to seniority he was due or

promotion and ought to have been promoted against any of the vacancies occurring in Jan 2015 and Feb 2015.

3. Per contra, it is contended that there were two vacancies of Subedar Major occurring in Jan 2015. However, these vacancies were liquidated against the reduction of 02 X Sub Major vacancies under 11th Army Plan as per directions of IHQ of MoD (Army) Vide letter No B/44255/Sigs 4 (B1)/PC-130 dated 01 Oct 2014. Hence, no promotion was issued for the month of Jan 2015. It is further contended that as against three vacancies of the rank of Sub Major which occurred in Feb 2015, promotions were issued as per seniority of the Select Panel. It is also contended that there was no vacancy in the month of March 2015. It is also contended that there were 10 X Subedars who were senior to the applicant in the select list but could not be promoted on account of their retirement before occurring of vacancy. It is further contended that the applicant had scored 93.48 points as per his service profile which included ACR, Field Service, decoration and awards, course grading and punishment etc and he figured in the merit list at Sl No 5 of OSS category but could not be promoted to Subedar Major as in accordance with IHQ of MoD (Army) Letter No B/33513/AG/PS-2 (c) dated 10 Oct 1997. Lastly, it is contended that the applicant was superannuated on 31.03.2015 before occurring of next vacancy, the promotion

to the rank of Sub Major of selected candidates was to be made strictly based on the original seniority of the candidates included in the select panel. The Applicant was junior and 18 senior Subedars had figured in the select panel before him. On occurring of the vacancy of Sub Major, Senior Subedars to the applicants were promoted who were in service on the date, the vacancy occurred.

4. We have heard learned counsel for the Applicant as also learned counsel for the respondents. We have also gone through the materials on record.

5. It may be noted that the promotion from Subedar to Subedar Major is carried out in the Corps of Signals as per promotion policy defined in IOHQ of MoD (Army) Letter No. B/33513/AG/PS-2 (c) dated 10 Oct 1997 as amended vide IHQ of MoD (Army) Letter No. B/33513/AG/PS-2 (c) dated 06 May 2002 and Signals Officer-in-Chief's General Policy Instruction No. 55 of 2011 which is based on following criteria:

"A ACR Criteria.

- (i) *Last five reports in the rank of JCO will be considered. Out of which at least three reports should be 'Above Average' and remaining two should be 'High Average'*
- (ii) *Two out of last five reports should be on regimental duty/or as an instruction in an Army School of Instructions including IMA, NDA and OTA, one of these two report must be 'Above Average.'*

- (iii) *The applicant should have been recommended for promotion in all the last five reports in the rank of JCO.*

B. Overall Performance (OAP) System

Promotion to the rank of Subedar Major is carried out based on 'Overall Performance (OAP) Based Selection System' by a Departmental Promotion Committee (DPC) under the orders of SO-in-C. The DPC will normally assemble once in a yr during the month of Oct to consider Subs for the vacancies occurring during the next year for promotion to the rank of Sub Maj. A merit list is prepared according to the points scored by the candidates to select against the anticipated vacancies. The promotions to the rank of Sub Major of selected candidates will be made strictly based on the original seniority of the candidates included in the select panel.

C. No of Looks/Chances.

A Sub may be given a max of three chances/Looks for his consideration by the DPC for promotion to the rank of Sub Major from the time he comes up for consideration by the DPC initially, however, to avail second and third chance/look, he should continue to remain in service.

D. Consideration of Candidates for inclusive in the DPC.

As a guideline, double the number of candidates, vis-à-vis vac or complete batch whichever is more may be considered for the DPC. All Subs promoted in a calendar year from 01 Jan to 31 Dec of a year will be regarded as a batch. The batch of Subs to be considered for inclusive in the panel will be strictly as per seniority.

E. Misc.

In addition, inclusive should meet ACR, Med and disciplinary criteria for further promotion."

6. In the instant case, the applicant was promoted to the rank of Subedar w.e.f 01.02.2010. The Departmental

Promotion Committee for the year 2014 for the vacancies occurring from 01 Jan 2015 to 31.12.2015 was held on 17-18 Oct 2014. As per guidelines, Subedars (OSS) category of 2009, 2010, and 2011 batches were considered in the D.P.C. Subedars (OSS) of 2010 and 2011 batches were screened as fresh batches whereas 2009 batch was taken as a review batch. Subedars of 2011 batch were considered since the Subedars of 2009 and 2010 batches were not enough to fill up the last vacancy occurring during the month of Nov 2015 due to Subedars of 2009 and 2010 batch were being superannuated before occurring of the vacancy. In all, 130 Subedars (OSS) trades of 2009, 2010 and 2011 batches were considered for the vacancies occurring during the year 2015 in terms of Para 7 of Appendix "C" to IHQ of MoD letter No B/33513/AG/PS-2 (c) dated 10 Oct 1997. Since 32 Subedars of 2008 batch and 60 Subedars of 2009 batch were sufficient to fill up the vacancies, as such Subedar of 2010 batch were not considered in the D.P.C of 2013. According to the criteria, each Subedar is to get three chances/looks, if he remains in service on the day of conduct of DPCs, and since the applicant proceeded on discharge on 31.03.2015, he was not considered for second and third chances as per existing policy.

7. It is also worthy of notice that the D.P.C is conducted by OAP based system, The promotion to Subedar Major is

issued based on seniority-cum-merit list against month wise vacancies occurring during the year 2015. The Applicant could not be promoted to Subedar Major since neither vacancy increased in Feb 2015 nor vacancies were available in March 2015. As stated supra, the applicant was not considered for promotion to the rank of Subedar Major even though his name figured in merit list on account of completion of terms of engagement and retirement before occurring vacancy as per his seniority. Not only the Applicant but 43 Subedars of same category who figured in the select panel like the applicant were also discharged without being promoted to Subedar Major.

8. It is argued by learned counsel for the Applicant that Subedar Balwan Singh did not figure in the list of JCO's approved for promotion. The promotion order of aforesaid JCO was subsequently cancelled since he was in low medical category and in lieu of aforesaid JCO promotion order of Subedar Ghanshyam Singh was issued while his name nowhere figured in the list of approved JCOs. The learned counsel for the respondents repudiated the above averments contending that Subedar Balwan Singh figured in the merit list as well as in the select panel at SI No 7 whereas the applicant was at SI No 19. The promotion order of Subedar Balwan Singh was cancelled as he was in low medical category during the extension period of service. It is further

contended that Subedar Ghanshyam Singh also figured in the select panel at SI no 8 which was well ahead of the applicant who was at sl no 19. By virtue of his seniority in the select panel, Subedar Ghanshyam Singh was promoted with effect from 01.02.2015. In the rejoinder affidavit, the applicant has denied the averments aforesaid but at the same time, he has not brought on record anything to belie the aforesaid contentions.

9. The next argument advanced by learned counsel for the Applicant is that Subedar Kulbir Singh, Subedar Raj Kumar, Subedar Balwan Singh and Subedar Ghanshyam were promoted in their third attempt and they were rejected by the DPC in the last two attempts. This argument does not commend to us for acceptance as every Subedar is afforded three chances/looks. In their third attempt, they were duly considered by the D.P.C and were recommended for promotion. As stated supra, there are (A) ACR Criteria, (B) Over all Performance (OAP) System, C No of Looks/chances, D consideration of candidates for inclusive in the DPC and (E). Misc which postulates that in addition, inclusive should meet ACR, Med and disciplinary criteria for further promotion. There is nothing on record to suggest that candidate rejected in first attempt has to be barred for remaining two attempts. As stated supra, every candidate

has to get three attempts and it is for the DPC to screen and recommend the candidates.

10. As explained above, the Applicant could not be promoted to Subedar Major since neither vacancy increased in Feb 2015 nor vacancies were available in March 2015. As stated supra, the applicant was not considered for promotion to the rank of Subedar Major even though his name figured in merit list on account of completion of terms of engagement and retirement before occurring vacancy as per his seniority. Not only the Applicant but 43 Subedars of same category who figured in the select panel like the applicant were also discharged without being promoted to Subedar Major. It is further explained that there were two vacancies of Subedar Major occurring in Jan 2015. However, these vacancies were liquidated against the reduction of 02 X Sub Major vacancies under 11th Army Plan as per directions of IHQ of MoD (Army) Vide letter No B/44255/Sigs 4 (B1)/PC-130 dated 01 Oct 2014. Hence, no promotion was issued for the month of Jan 2015. It is further contended that as against three vacancies of the rank of Sub Major which occurred in Feb 2015, promotions were issued as per seniority of the Select Panel. It is also contended that there was no vacancy in the month of March 2015.

11. In view of the above, the O.A is devoid of merit and deserves to be dismissed accordingly.

12. As a result of the foregoing discussion, the O.A fails and is accordingly **dismissed**.

(Air Marshal BBP Sinha)
Member (A)

(Justice S.V.S. Rathore)
Member (J)

Dated: April, 03 ,2018
MH/-