

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Transferred Application No. 6 of 2019**Thursday, this the 23rd day of March, 2023**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)****Hon'ble Vice Admiral Atul Kumar Jain, Member (A)**

Bishram Singh Rajput
 S/o Sri Dhani Ram
 R/o Village and P.O. Khudagunj,
 Distt. Farrukhabad

.... Applicant

Ld. Counsel for the Applicant: **Shri Om Prakash Kushwaha, Advocate**
(Not Present)

Versus

1. Union of India, Defence Department, New Delhi.
2. Chief of Army Staff, New Delhi.
3. Director General of Medical Service, New Delhi.
4. Commandant A.M.C. Centre and School Lucknow.
5. Record Incharge Officer, A.M.C. Lucknow.
6. Commandant Military Hospital, Agra.

... Respondents

Ld. Counsel for the Respondents : **Shri Amit Jaiswal,**
 Central Govt Counsel

ORDER (Oral)

1. The petitioner filed Civil Misc. Writ No. 24780 of 1991 before the Hon'ble High Court of Judicature at Allahabad which has been transferred to this Tribunal and has been registered as T.A. No. 6 of 2019, whereby the petitioner has sought the following reliefs:-

- “(a) To issue a writ in the nature of certiorari for quashing the impugned order dated 21.3.89 (Anex VIII to the Writ Petition).
- (b) To issue a writ in the nature of mandamus commanding the opposite party concerned to give the arrears and difference in pay due to non promotion of the petitioner to the post of Havildar on 9.5.84.
- (c) To issue a writ in the nature of mandamus directing the opp. parties concerned to give the petitioner the same benefit as Havildar since 9.5.84, Naib Subedar since June 1986 and then Subedar since March 1990 and his retirement as such be fixed in the year 1994 and the petitioner be reinstated in service.
- (d) To issue such other writ order or direction which this Hon’ble Court may deem fit and proper.
- (e) To allow the writ petition with costs.”

2. Brief facts of the case are that the applicant was enrolled in the Army (AMC) on 30.09.1965. The applicant was promoted to the rank of Naik in the year 1980. The applicant attended Havildar cadre course in the year 1980. The applicant was awarded two numbers in the ACR and was recommended for promotion to the post of Havildar but he was not granted promotion to the post of Havildar. Since, the applicant has not earned ACRs of required gradings which were

taken into consideration for his further promotion from Naik to Havildar, applicant superseded in promotion. Thereafter, applicant was considered for promotion as per modified promotion policy dated 23.02.1987 and he was promoted to the rank of Havildar on 02.05.1987 fixing his seniority w.e.f. 01.01.1987. Thereafter, applicant made many representations to fix his seniority in the rank of Havildar w.e.f. 09.03.1984 and grant further promotion to the rank of Naib Subedar and Subedar which were rejected by the respondents. Being aggrieved, the applicant has filed the present Transferred Application to fix his seniority w.e.f. 09.03.1984 and to grant further promotion to the rank of Naib Subedar and Subedar.

3. Learned counsel for the applicant pleaded that applicant was enrolled in the Army (AMC) on 30.09.1965. The applicant was promoted to the rank of Naik in the year 1980. The applicant was given training of Havildar cadre in the year 1980. The applicant was awarded two numbers in the ACR and was recommended for promotion to the post of Havildar by Col. Sris Mishra as in those days a Naik securing two numbers in the ACR was eligible for promotion to the post of Havildar but promotion to the post of Havildar was not granted to the applicant.

4. Learned counsel for the applicant further pleaded that applicant was informed by the Record Officer, AMC Lucknow in the year 1983 that whenever he will get 4 numbers in the ACR, he will be promoted to the rank of Havildar. The applicant got 4 numbers in his ACR in the

year 1984 but no promotion to the post of Havildar was made even after securing 4 numbers in the ACR. Thereafter, applicant met to the Commandant of AMC Centre, Lucknow on 20.03.1984, 12.03.1985 and 20.08.1985 and he was assured that justice will be done but applicant was not granted promotion to the post of Havildar. The applicant submitted a statutory complaint to the Chief of the Army Staff on 01.09.1986 for grant of promotion considering his 4 number ACR but the statutory complaint of the applicant was rejected on 29.01.1987. On receipt of rejection letter, applicant approached to his Commanding Officer to grant permission to file a civil suit against rejection which was granted to him but in the meantime, applicant received a letter dated 23.02.1987, issued by ADG Personnel Services, Army Headquarters relating to revised criteria for promotion. The applicant approached to the Record Office mentioning reference of Army Headquarters letter dated 23.02.1987 by which promotion criteria was modified. Accordingly, case of the applicant for promotion to the post of Havildar was considered and applicant was granted promotion to the post of Havildar on 02.05.1987 with seniority w.e.f. 01.01.1987 whereas the applicant was eligible for seniority w.e.f. 09.03.1984. The applicant sent many applications and also submitted statutory complaint between July 1987 to December 1987 for grant of seniority w.e.f. 09.03.1984 but his case was not considered which resulted his supersession in further promotion to the post of Naib Subedar and Subedar.

5. It is also pleaded that had the applicant been promoted along with his juniors in the year 1984 to the post of Havildar, then the applicant would have been promoted again to the post of Naib Subedar alongwith his batch-mates/juniors in the year 1986 and he would have been eligible for next promotion to the post of Subedar in March 1990. Thus, applicant would not have been discharged from service in the rank of Havildar on 01.10.1989. He pleaded for grant of seniority in the rank of Havildar w.e.f. 09.03.1984 and further promotions of Naib Subedar and Subedar post as per his seniority w.e.f. 09.03.1984.

6. On the other hand, Ld. Counsel for the respondents submitted that applicant was promoted to the post of Naik as per seniority and fulfilling the criteria as per existing policy of Army Headquarters dated 18.12.1985. The promotion policy dated 18.12.1985 was further modified by the Army Headquarters vide letter dated 23.02.1987. Since, the applicant has not earned ACRs of required gradings which were taken into consideration for his further promotion from Naik to Havildar, applicant superseded in promotion as per rules which was intimated to the unit of the applicant. Thereafter, applicant was considered for promotion as per modified promotion policy vide Army Headquarters letter dated 23.02.1987 and accordingly, he was granted promotion to the rank of Havildar on 02.05.1987 fixing his seniority w.e.f. 01.01.1987 as per rules. Therefore, applicant's

contention that his seniority should be fixed w.e.f. 09.03.1984 is inconsistent and illogical.

7. Learned counsel for the respondents further submitted that applicant has been promoted to the rank of Havildar after meeting required criteria and he was discharged from service in the rank of Havildar w.e.f. 01.10.1989 on completion of his terms of engagement/service, therefore, applicant is not entitled for any further promotion to the rank of Naib Subedar and Subedar as prayed by the applicant. The applicant is also not entitled for reinstatement into service having been discharged from service on completion of terms of engagement/service. He pleaded for dismissal of petition being devoid of merit.

8. We have heard learned counsel for the respondents and perused the material placed on record.

9. We find that applicant was promoted to the rank of Naik as per seniority/turn. Thereafter, on completion/passing of promotion cadre, applicant became eligible for further promotion to the rank of Havildar as per his seniority but while considering his case for promotion, applicant was not meeting required criteria as per the then promotion policy dated 13.12.1985 and when revised/modified promotion policy dated 23.02.1987 was issued by the Army Headquarters, then only applicant fulfilled required ACR criteria and became eligible for grant of promotion. Accordingly, he was promoted to the post of Havildar

w.e.f. 02.05.1987 fixing his seniority in the rank of Havildar w.e.f. 01.01.1987.

10. We do not find any illegality in granting promotion to the applicant to the post of Havildar and fixing his seniority w.e.f. 01.01.1987. The applicant's contention that his seniority in the rank of Havildar to be fixed w.e.f. 09.03.1984 is unreasonable, irrelevant and against the promotion policy, therefore, his prayer to grant seniority in the rank of Havildar w.e.f. 09.03.1984 and further promotion to the post of Naib Subedar and Subedar are unsubstantiated which requires no further interference.

11. In view of the above, we do not find any irregularity, illegality or arbitrariness neither in consideration of required ACRs and grant of promotion to the post of Havildar w.e.f. 02.05.1987 as per laid down/existing policy nor in denying fixing of his seniority w.e.f. 09.03.1984 and further promotion to the post of Naib Subedar and Subedar.

12. Resultantly, the Transferred Application is devoid of merit and deserves to be dismissed. It is accordingly **dismissed**.

13. No order as to costs.

14. Pending Misc. Application(s), if any, shall stand disposed off.

(Vice Admiral Atul Kumar Jain) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: 23rd March, 2023
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