

**RESERVED**  
**Court No. 1**

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

**O.A. No. 174 of 2015**

Tuesday, this the 04<sup>th</sup> day of December, 2018

**Hon'ble Mr. Justice SVS Rathore, Member (J)**  
**Hon'ble Air Marshal BBP Sinha, Member (A)**

No.14296636-F Ex-Nk Jageshwar Singh son of Shri Ram Pal Singh, resident of near SV Rozag School Near Narain Varma Road, Post Office – Fatehgarh, District- Farrukhabad (U.P.), Pin Code- 226022.

.... Applicant

Ld. Counsel for the: **Shri V.P. Pandey**, Advocate.  
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarters of the Ministry of Defence (Army), South Block, New Delhi-110011.
3. The Officer-in-Charge, The Records Signals, PIN- 908770, C/o 56 APO.
4. Additional Director General MP/MP-8 (I of R), Integrated HQ of MoD (Army), Adjutant General Branch, West Block-III, R K Puram, New Delhi- 11006.

...Respondents

Ld. Counsel for the: **Dr. Shailendra Sharma Atal**, Advocate.  
Respondents.

**ORDER**

**“(Per Hon’ble Mr Justice SVS Rathore, Member (J))”**

1. By means of this O.A. under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant prays for the following reliefs:-

“(a) Issue/pass an order or direction of appropriate nature to the respondents to quash/ set aside the impugned order dated 23 Jan 2015 passed by respondent no. 3.

(b) Issue/pass an order or direction of appropriate nature to the respondents to grant substantive rank of Havildar benefits to the applicant with his batch mates and all consequential benefits.

(c) Issue/pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.

(d) Allow this Application with exemplary costs.”

2. In brief the facts giving rise to the instant O.A. may be summarised as under:

The applicant was enrolled in the Army (Corps of Signals) on 07.05.1977 and was discharged on 01.10.1999 as a Naik. However the applicant had been promoted to the rank of Paid Acting Havildar with effect from 01.04.1997 with notional seniority with effect from 01.01.1997 without pay and allowances. Applicant’s Paid Acting rank was relinquished with effect from 24.05.1998 because of his hospitalization for more than 60 days. It is interesting to note that hundred percent substantive quota for all ranks was implemented vide IHQ of MoD (Army) letter No.

B/10194/Org-2(MP)(c)/5330/D(AG) dated 31.03.1995. The respondent no.3 has issued a letter dated 29.01.2002 with regard to sanction of 100% substantive quota with effect from 01.07.2000 and the requirement of 28 days unbroken period for assuming substantive capacity from the date of actual vacancy was abolished. It was communicated to the applicant vide letter dated 08.01.2013 that the applicant is entitled for the pension in the rank of Naik only. The applicant preferred statutory petition for the redressal of his grievance and requested the respondent no.3 to clarify as to why the respondent no.3 had relinquished him to a lower rank. In reply to the said representation the applicant was informed that he was relinquished as he was admitted in hospital for more than 60 days. Thereafter the applicant also moved a representation to the Defence Minister and he was informed that the concerned authority will soon take a decision and he will be informed about the outcome thereof. Since no information was given to the applicant, hence the present O.A.

3. The submission of the learned counsel for the applicant is that simply on the ground of hospitalization of the applicant for more than 60 days, he could not have been reduced in the lower rank and higher acting rank relinquished automatically. Therefore, the order is arbitrary and illegal. The applicant was promoted to the rank of Paid Acting Havildar w.e.f. 01.04.1997 with notional seniority w.e.f. 01.01.1997 without pay and allowance. In support of his submission learned counsel for the applicant has placed

reliance on the pronouncements of the Hon'ble Karnataka High Court and also of the Hon'ble Apex Court, which shall be considered at the relevant part of the judgment.

4. In the counter affidavit the respondents have pleaded that the applicant while serving with UP Area Signal Regiment, was admitted in Military Hospital, Bareilly on 25.03.1998 and discharged from there on 09.10.1998. An occurrence to this effect was published vide UP Area Signal Regiment Part II Order No. 272/1998. Thus, he stayed in Military Hospital for 199 days. It has also been pleaded that as per Para- 2(g) of Army Instruction 84/68 an individual holding Paid Acting rank and remained admitted in hospital for more than 60 days continuously will relinquish that rank automatically and therefore the Paid Acting rank of Havildar of the applicant was rightly relinquished by the respondents. It has also been pleaded that though the Government had sanctioned 100% substantive quota to the authorized cadre strength of JCOs/ NCOs of the Army w.e.f. 01.04.1994 vide Army HQ Note no. B/10194/Org 2 (MP) dated 31.03.1995 but due to several additional new raising units between the period from July 1988 to March, 1995 with concurrent increase in the number of JCOs and NCOs, the additional JCOs/NCOs exceeding the actual authorized cadre strength of the Regiment/ Corps could not be granted such rank w.e.f. the date of their Paid Acting promotion. Therefore, in the instant case of the applicant also he was not granted substantive rank as the Corps holding rank of NCOs at

the time of implementation of ibid policy was exceeding the actual authorized cadre strength of NCOs. It has also been pleaded in the counter affidavit that since the applicant remained hospitalized for more than 60 days, he stood automatically reduced to his substantive rank of Naik and accordingly he was discharged on 16.06.1999.

5. Before proceeding further, we would like to reproduce Para 2(g) of Army Instruction NC 84/68. The relevant part of Army Instruction 84/68 is as under:-

“ (g) Absence due to sickness

- (i) JCOs/OR, who are injured or fall sick not due to their own fault while serving in peace area and are admitted to a military or recognised civil hospital while on duty, will be treated as on duty vide Rule 6I(a) of Leave Rules for the Services, Vol. I- Army. They will retain their paid acting ranks or paid lance appointments for a maximum period of two months. The period of two months will include any period of sick leave granted on discharge from hospital on the recommendation of the competent medical authority under Rule 6I (b) ibid which is covered by their entitlement of annual/ accumulated annual leave for the current year. Acting promotion/ lance appointments in their place will be permissible from the 29<sup>th</sup> day of their admission to hospital.
- (ii) JCOs/Or, who overstay casual, annual or accumulated annual leave due to their own sickness and are admitted to a military or recognized civil hospital during the currency of such leave, will retain their paid acting ranks/ paid lance appointments up to 30 days during the period of sick leave granted to them on the expiry of casual/ annual/ accumulated annual leave granted to them initially.”

6. On behalf of the applicant it is submitted that before the discharge of the applicant the policy on the subject was revised in the year 1995 and on 01.08.1995 a substantive cadre of JCOs/NCOs was re-allocated. The said letter is reproduced as under :-

“Tele Mil : 2757

Sena Chikitsa Corps Abhilekh  
Army Medical Corps Records  
Lucknow – 2

360000- P

01 Aug 95

All DDMs/ADMS/Comd HQ/Corps HQ/Area HQ

REALLOCATION OF SUBSTANTIVE CADRE : JCOs/NCOs

1. The substantive cadre of JCOs/NCOs for all Arms/Services has been revised on the basis of enhanced quota sanctioned by the Govt. Now the Govt has sanctioned 100% substantive quota (against 80% originally sanctioned) w.e.f. 01 Apr 94.

2. Action to publish the substantive promotion of all JCOs/NCOs of our corps is being done on receipt of confirmation from the units regarding non-involvement in disciplinary case of JCOs/NCOs of their unit as on 01 Apr 94.

3. The units may please be apprised to furnish the certificate in term of AO 20/81 at the time of submitting physical presence certificate for 28 consecutive days for publication of P/A rank of the individuals.

Auth: Army HQ letter No. B/10194/Org 2 (MP)(c) /5330/D(AG), dated 31 Mar 95 addressed to all personal section and B/73129/DGMS-3 (C) dated 19 Apr 95.

(Ishwar Singh)  
Major  
Offg Col Records  
For Officer-in-Charge

Arun/\*

Internal

All Gp/Section

FOR ER GP ONLY:- 1. Since the 100% substantive quota has been sanctioned by the Govt on re-allocation and the POR regarding relinquishment due to OSL/Hospitalization/AWL may please be placed under observation and got cancelled if the units is published the same.

2. Action is being taken by this office to publish the substantive promotion of all JCOs/NCOs in Reg. immediately on receipt of communication from the units.”

7. Another letter dated 29.01.2002 has been issued for dealing with allocation of substantive cadre of JCOs and NCOs, which reads as under:-

“  
Signal Abhilekh Karlaya  
Signals Records  
Post Bag No.- 5

2658/C-7/ /R/138                      29 Jan 2002

All Comd HQ (Sigs)  
All Corps HQ (Signs)  
Commandants  
    MCTE, Mhow  
    1. STC  
    2. STC  
    Army HQ (Sigs)  
    CAF30, Air HQ New Delhi

ALLOCATION OF SUBSTANTIVE CADRE; JCOs/NCOs

1. Please refer to this office letter No.2696/CA-7/T-I/R/107 dated 13 Sep, 2000.

2. With the sanction of 100% substantive quota w.e.f. 01 Jul 2000(Seniority date), the requirement of 28 days unbroken period for assuming substantive rank has been abolished. As per revised policy, JCOs and NCOs are promoted to next higher rank in substantive capacity from the date of availability of actual vacancy. In case the individual was not present in the unit on the said date being away on leave other than casual leave, courses of instruction for more than 10 weeks duration, sickness in hospital or due to delay in move on posting, the promotion will be effected from the date, the individual rejoins the unit

and pay and allowances will commence from the date of assumption of the rank. But inter-se-seniority without effect on pay and allowances will be given to such individuals from the date as mentioned in the promotion order.

3. Promotion will be implemented from the date as indicated in promotion order provided individual is present in the unit on that day and assumption part fwd accordingly without waiting for 28 consecutive days.

4. The contents of this letter be disseminated to all units under your command.

Sd/-  
(Bindeshwar Mishra)  
Lt Col  
Chief Record Officer  
For OIC Records

Internal

'J' Coord, NEF Coord, LA-2 Sec and CA-2 Sec.

Copy of this letter fwd to Task-C, Task-D, Doc-1 to Doc-6."

8. On the basis of subsequent letter it is submitted on behalf of the learned counsel for the applicant that simply because a person remained in hospital for more than 60 days cannot be reduced to substantive rank automatically. This point has been considered by the Hon'ble Karnataka High Court in the case of **D. Kaliappant vs. Union of India** reported in 2001 (3) RSJ,144. The Hon'ble Karnataka High Court in the similar circumstances has observed in Para-13 as under:-

"13. Having held that passing of the impugned order at Annexure-G is bad in law, the next question for consideration by this Court is, whether the exercise of power under Regulation 163(ii) of the Regulations referred to supra and discharging the petitioner from service vide Annexure-A is sustainable in law or not. As I have already recorded a finding that reversion order passed against the petitioner is bad in law as the same is contrary to leave Rules and also the Army Instructions read with Section 13 of Army Act, 1950, the discharge of the petitioner from the post of Subedar on the ground that he was reverted to the said post



on account of exercise of power conferred on the 4<sup>th</sup> respondent under the Army Instructions 84/68 is bad in law for the reason that, the reversion of the petitioner to the lower rank of Subedar itself is illegal as the same is violative of Articles 14, 16 and 21 of the Constitution of India. Therefore, exercise of power by the 4<sup>th</sup> respondent under Regulation 163(ii) and discharging the petitioner from his post on the premises that, he had acquired 28 years of pensionable service or 50 years of age is not applicable to the facts of this case under law, as the same is contrary to Army Instructions and 163(ii) of the Regulations and, the law laid down by the Apex Court upon which the reliance is rightly placed by the learned counsel for the petitioner in the case of K.D. Gupta v. Union of India, reported in AIR 1983 SC 1122. By reading the said Judgment at paragraph 4 and 5, the law laid down in the said case which all fours applicable to the facts of this case. Therefore, law laid down in the said case has to be applied to the facts of this case and the reliance placed upon the said judgment by the learned counsel for the petitioner is well founded and the same must be accepted and grant the reliefs as sought for in this petition.”

9. Reliance has also been placed on the pronouncement of Hon'ble Apex Court in the case of **Major K.D. Gupta vs. Union of India and another** reported in 1983 AIR SC 1122. In the facts of this case a Lt Colonel was reduced to his substantive rank of Maj inter alia on the ground that he performed no duty for six months from March 22, 1976 when he was admitted in the hospital and under the rules he stood automatically reduced in rank. After considering the legal position for his reduction in rank Hon'ble Apex Court has opined in Para-5 of its judgment that we find no substance in any of the three submissions on the basis of which the applicant was reduced to his substantive rank. Para-5 reads as under:-

“5. As stated by us earlier, we find no substance in any one of the three reasons mentioned by Shri Abdul Khader on behalf of the respondents for the reversion of the petitioner from the rank of Acting Lieutenant Colonel to Major. The reversion or reduction in rank cannot be justified and it is accordingly quashed. The petitioner is directed to be restored to the rank of Acting Lieutenant Colonel with effect from the date he was reverted and stripped of the badges indicating his rank. As a result of the restoration of the rank of the Acting Lieutenant Colonel to the petitioner, other consequences, such as, consideration of the petitioner’s further claims to advancement, pay, arrears of pay, etc., will have to be considered by the authorities and it is directed that these claims may be considered and disposed of within a period of six months from today. The petitioner will submit all his claims to the appropriate authorities within a period of one month from today. The petitioner will get the costs of the Writ Petition from the respondents.”

10. Thus, keeping in view the aforesaid pronouncements of Hon’ble High Court and Hon’ble Apex Court and the fact that 100% substantive cadre was re-allocated for JCOs and NCOs in the year 1995 and keeping in view that simply on the ground of absence, order for relinquishment could not have been passed automatically, we find substance in this O.A.

11. In view of the above, O.A. deserves to be allowed and is hereby **allowed**. The applicant shall be treated to have been discharged in the rank of Paid Acting Havildar effective w.e.f. 01.04.1997 and accordingly he shall be entitled to the pension of the rank of Havildar and all consequential benefits including being considered to be notionally in service till he completes 24 years of total service i.e. until 31.05.2001. He will be entitled to 50% of back wages for the notional period of service. Order to be

implemented within 04 months of receiving a certified copy of the order. Failure will invite interest @ 7%.

No order as to costs.

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

Dated: December 04, 2018

JPT

**(Justice SVS Rathore)**  
**Member (J)**