

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 270 of 2016****Thursday, this the 09<sup>th</sup> day of December, 2021****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

Jamuna Prasad Singh (Unit 111 Infantry Battalion Territorial Army, Kumaon, Allahabad) Havildar No 10182112W son of Kashi Prasad Singh, at present resident of Village-Chandi, Post Office-Jari Bazar (Maids), District-Allahabad, Last posted at 164 Infantry Battalion (TA) Home and Hearth in NAGA (Nagaland).

.... Applicant

Ld. Counsel for the: **Shri JN Mishra**, Advocate.  
Applicant (Not present)

Versus

1. Union of India through Secretary, Ministry of Defence, Government of India, New Delhi.
2. Additional Director General (Territorial Army), Army Headquarters, New Delhi.
3. Group Headquarters, Eastern Command, C/o 99 APO, through its Managing Director.
4. Chief Record Officer, OIC Records, The Kumaon Regimental Centre, Ranikhet.
5. 164 Infantry Battalion (TA) NAGA, C/o 99 APO.

... Respondents

Ld. Counsel for the: **Shri Yogesh Kesarwani**, Advocate  
Respondents. Central Govt Counsel.

**ORDER (Oral)**

1. The instant Original Application has been filed on behalf of the applicants under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicants have sought following reliefs:-

*(a) To issue an order or direction and set aside the rejection of the statutory appeal dated 05.09.2016 by Chief of the Army Staff issued by Group HQ Territorial Army Eastern Command, C/o 99 APO.*

*(b) To issue an order or direction to the respondents to give promotion to applicant in the rank of Naib Subedar in terms of letter dated 21.03.2001 from dated 01.11.2010 along with consequential benefits in the interest of justice.*

*(c) To allow this original application with costs.*

2. Brief facts of the case are that applicant was initially enrolled in III Infantry Battalion Territorial Army, Kumaon, Allahabad on 19.02.1988. During the course of his service he was promoted to the rank of Havildar. He was transferred to 164 Infantry Battalion (TA) (Home and Hearth) NAGA vide order dated 10.11.2001. He was discharged from service w.e.f. 31.05.2012 (AN) after rendering 24 years of service and he is in receipt of service pension to the rank of Hony Naib Subedar w.e.f. 01.06.2012 vide Corr PPO dated 31.05.2013. Prior to discharge from service, he was to complete 44 years of age on 02.02.2009 and vacancy for promotion to the rank of Naib Subedar in respect of applicant was not available before 01.11.2010. He came up for promotion during the year 2010 when he had completed 45 years of age (superannuation age of Havildars). However, 164 Infantry Battalion (TA) (H&H) NAGA initiated a case for getting confirmation regarding submission of proposal for promotion to the rank of Naib Subedar in

respect of applicant which was confirmed without going through the age limit, as the applicant was fulfilling all qualitative requirements for promotion to the rank of Naib Subedar except age limit. Accordingly vide letter dated 22.02.2011 documents related to promotion in respect of the applicant were returned unactioned mentioning therein that he was over age for further promotion to the rank of Naib Subedar as per policy letter dated 04.05.1999. He was granted Honorary rank of Naib Subedar w.e.f. 01.06.2012 i.e. from the date he became non effective. Being aggrieved by denial of promotion to the rank of Naib Subedar, applicant filed O.A. No. 349 of 2012 in this Tribunal which was disposed of vide order dated 14.10.2015 directing applicant to prefer statutory appeal within one month with a further direction to respondents to decide statutory appeal within a period of three months by a reasoned and speaking order. Accordingly, applicant preferred appeal dated 06.11.2015 which was rejected vide order dated 24.08.2016. It is in this perspective that this O.A. has been filed.

3. Learned counsel for the applicant submitted that documents related to applicant for grant of promotion to the rank of Naib Subedar were submitted to the respondents well in time on the ground that he was fulfilling the qualitative requirements for getting further promotion but even then he was not promoted to higher rank and was discharged from service on the ground that he became over age for promotion to the rank of Naib Subedar. His further submission is that on a query made to the respondents with regard to cut off age for promotion in respect of Territorial Army personnel, it was submitted vide letter dated 21.03.2001 that there was no cut of age for promotion in respect of TA

personnel (Annexure No 6 of O.A.). Thereafter, letter dated 28.01.2011 was issued by the respondents intimating 44 years maximum age limit for promotion to the rank of Naib Subedar. He submitted that vide letter dated 01.12.2004 the maximum limit of retirement applicable in case of applicant was 50 years and if so, he should have been promoted to the next rank of Naib Subedar. His submission is that despite forwarding his recommendation for promotion vide letter dated 19.11.2010, he was not promoted. Relying upon AFT, Kolkata order dated 27.08.2012 in O.A. No. 102 of 2011, ***Kritibas Khatua vs Addl Dir Gen Territorial Army & Ors***, learned counsel for the applicant submitted that applicant be also granted promotion to the post of Naib Subedar.

4. Per contra, learned counsel for the respondents submitted that applicant was embodied for service with 164 Infantry Battalion (TA) (H&H) w.e.f. November 2005 and vacancy for promotion to the rank of Naib Subedar in respect of applicant was not available before 01.11.2010. The applicant came up for promotion during 2010 when he had completed 45 years of age. However, 164 Infantry Battalion (TA) (H&H) initiated a case for getting confirmation regarding submission of proposal for promotion to the rank of Naib Subedar in respect of the applicant. His further submission is that submission of proposal for promotion to the rank of Naib Subedar in respect of applicant was confirmed erroneously and when it came to know that applicant became over age, it was cancelled. He pleaded for dismissal of O.A. on the ground that applicant could not be promoted to the rank of Naib Subedar as he had crossed age limit of 44 years.

5. We have gone through the rival submissions made by both the parties and perused the material placed on record.

6. It is not disputed that applicant was enrolled in Territorial Army on 19.02.1988 and he was discharged from service on 31.05.2012. The applicant is in receipt of pension to the rank of Hony Naib Subedar w.e.f. 01.06.2012. He was due for promotion to the post of Naib Subedar in the year 2010 but could not get further promotion owing to age criteria. After discharge from service against non grant of Naib Subedar promotion he filed O.A. No. 349 of 2012 in this Tribunal which was disposed of vide order dated 14.10.2015 directing applicant to prefer statutory appeal for redressal of grievance which on submission was rejected vide order dated 05.09.2016. For convenience sake, order dated 05.09.2016 rejecting applicant's statutory appeal is reproduced in its totality as under:-

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Addl Dte Territorial Army  
General Staff Brach  
Integrated HQ of MoD (Army)  
'L' Block, Church road  
New Delhi-110001  
24<sup>th</sup> Aug'2016

54246/Petn/184/TA/GS/TA-3  
TA GP Headquarters  
Eastern Command  
PIN -900285  
C/o 99 APO

DIRECTIONS OF THE CHIEF OF THE ARMY STAFF : STATUTORY  
COMPLAINT DATED 06NOV 2015 SUBMITTED BY NO.10182112W  
HAVILDAR JAMUNA PRASAD SINGH OF 164 INFANTARY  
BATTALION (TERRITORIAL ARMY (HOME AND HEARTH)  
NAGA FOR GRANT OF PROMOTION TO THE RANK  
OF SUBEDAR

1. No. 10182112W Ex Havildar Jamuna Prasad Singh of 164 Infantry Battalion (Territorial Army) (home and Hearth) NAGA has submitted a Statutory Complaint dated 06 November 2015, against denial of promotion to the rank of Naib Subedar. The man points of his complaint are:-

(a) He states that he passed promotion cadre Havildar to Naib Subedar on 27 April 2008 and fulfilled all Qualitative Requirements for promotion. Consequently, on creation of vacancy on 01 November 2010, the Draft Gazette Notification for his promotion to the rank of Naib Subedar was forwarded by his Battalions to Integrated Headquarters of

Ministry of Defence (Army) (Additional Directorate General Territorial Army) through Records, The Kumaon Regiment and Group Headquarters, Territorial Army Eastern Command. He avers that the same was returned on 22 February 2011 stating that the age limit for promotion for Territorial Army personnel is 44 years as per Adjutant General's Branch letter No. F/14/(3)/96/D(AG) dated 04 May 1999, as intimated vide Integrated Headquarters of Ministry of Defence (Army) (Additional Directorate General Territorial Army) letter No 81655/GS/TA-3(a) dated 24 Dec 2010 and that the complainant does not meet the age Qualitative Requirement.

(b) The Complainant avers that the Additional Directorate General Territorial Army, Integrated Headquarters of Ministry of Defence (Army) had clarified to the Group Headquarters Territorial Army Central Command vide their letter number 81655/GS/TA-3(a) dated 21 March 2001 that Territorial Army person can be promoted to the rank of Junior Commissioned Officer before completion of 50 years of age that is retirement age of Other Rank and there is no cut off age for promotion in respect of Territorial Army personnel. The letter had specifically mentioned that Integrated Headquarters of Ministry of Defence (Army), Adjutant General's Branch letter Number F/14/(3)/96/D(AG) dated 04 May 1999, (Which lays down the age limit for promotion in the Army to the rank of Naib Subedar to be 44 years), is not applicable to Territorial Army persons. Hence the complainant avers that he is fully eligible for promotion to the rank of Naib Subedar.

(c) The Complainant further avers that as per Additional Directorate General Territorial Army letter Number 48064/GS/TA-3(a) dated 01 December 2004, Territorial Army personnel who have completed their terms of engagement and have been retained beyond their terms of engagement due to embodiment of the unit for military service under Territorial Army Rule 33 are eligible for grant of higher promotion against the existing vacancies during their retention period, provided they have not attained the age of 50 years and meet all Qualitative Requirements for higher promotion.

(d) The Complainant suggests that the clarification provided by Integrated Headquarters of Ministry of Defence (Army) (Additional Directorate General (Territorial Army)), stating that age limit for promotion in Territorial Army is 44 years was given on 28 January 2011 vide their letter Number 81655/GS/TA-3(a) (based on existing Government of India Instruction of 1999). He therefore contends that this is not applicable in his case, as the above policy came into force with effect from 28 January 2011, whereas his date of seniority for promotion to the rank of Naib Subedar was 01 November 2010.

2. He has requested for the following redress:-

(a) Case for his promotion be re-initiated and processed within the parameters of the promotion policy as stated vide Integrated Headquarters of Ministry of Defence (Army) (Additional Directorate General Territorial Army) letter Number 81655/GS/TA-3 (a) dated 21 March 2001 and letter Number 48064/GS/TA-3 (a) dated 01 2004.

(b) He be granted promotion to the rank of Naib Subedar as well as Subedar, and if any Junior is promoted to the next higher rank as per his seniority he be granted all promotional benefits with effect from 01 November 2010.

3. The Statutory Complaint submitted by the Non Commissioned Officer has been perused and analysed in conjunction with relevant rules, policy letters and recommendations of the Intermediary Authorities and viewed it against the redress sought by the Chief of Army Staff. It has emerged that:-

(a) As per service documents, the date of birth of Number 10182112W Ex-Havildar, Jamuna Prasad Singh of 164 Infantry Battalion Territorial Army (Home & Hearth) is 03 February 1965 and he completed 44 years of age on 02 February 2009. The Non Commissioned Officer was eligible for promotion on 27 April 2008, however there was no vacancy for Naib Subedar in the Unit. By the time the vacancy occurred on 01 November 2010, the Non Commissioned Officer was overage and hence could not be promoted as per extant policy.

(b) The complainant was discharged from service on 31 May 2012, on completion of his terms of engagement. He was granted Honorary rank of Naib Subedar with effect from 01 June 2012.

(c) Policy letter for promotions are issued by Personnel Service Directorate of Adjutant General's Branch, Integrated Headquarters of ministry of Defence (Army), in consonance with the existing policy approved by the Ministry of Defence. The policy governing the age limit of 44 years for promotion to the rank of Naib Subedar is the Government of India, Ministry of Defence letter No. F14(3)/98/D(AG) dated 04 May 1990.

(d) *The complainant has sought relief based on two letters of Additional Directorate General Territorial Army viz. letter No 81655/GS/TA-3(a) dated 21 March 2001, addressed to Headquarters Territorial Army Group Central Command, and letter Number 48064/GS/TA-3(a) dated 01 December 2004, vide which he has inferred that 50 years is the permissible upper limit for promotion to Junior Commissioned Officer. The ibid letters though issued by Territorial Army Directorate are not policy letters, as they have not been approved by Personnel Services Directorate, Adjutant General's Branch, Integrated Headquarters of Ministry of Defence (Army). Additional Directorate General Territorial Army had issued a clarification vide letter Number 81655/GS/TA-3(a) dated 28 January 2011 that the age limit for promotion of Territorial Army Havildar to Naib Subedar in non-departmental Territorial Army units is 44 years, as is laid down in Government of India letter dated 04 May 1999. This clarification was issued well before the complainant retired on 31 May 2012. The letters quoted by the complainant therefore cannot be the basis for seeking relief.*

(e) *Notwithstanding, the aforesaid letters issued by Additional Directorate General Territorial Army dated 21 March 2001 and 01 December 2004 respectively, 164 Infantry Battalion Territorial Army (Home and Hearth) NAGA, did not promote any personnel to the rank of Naib Subedar above 44 years of age, whether junior or senior to the complainant, in the interim period.*

(f) *The extant policy which lays down the age limit as 44 years has been applied uniformly to all similar placed personnel and hence no injustice has been done to the complainant.*

4. *Chief of the Army Staff has directed that the complaint of the Non Commissioned Officer be rejected as it is devoid of merit.*

5. *The Hon'ble Armed Forces Tribunal (Regional Bench) Lucknow order dated 14 October 2015, passed in Original Application 349/2012 filed by Number 10182112W Ex Havildar Jamuna Prasad Singh of 164 Infantry Battalion (Territorial Army) (Home & Hearth) NAGA versus Union of India thus stands complied with.*

6. *The Non Commissioned Officer be informed accordingly."*

7. From the aforesaid, an inference may be drawn that petitioner's main pleading is based on two letters dated 21.03.2001 and 01.12.2004 on which he has placed reliance that 50 years is the permissible upper

age limit for promotion to the rank of Junior Commissioned Officer. In this regard, it may be noticed that these letters were issued by Headquarters Territorial Army Directorate which are not policy letters on which reliance may be made. During the course of hearing, we have been told that the policy letters are only issued by Personnel Services Directorate, Adjutant General's Branch, Integrated Headquarters of Ministry of Defence. Therefore, we are of the view that the aforesaid letters issued by Territorial Directorate being not policy letters, reliance cannot be made on the above letters with regard to permissible age limit for promotion to the rank of Junior Commissioned Officer.

8. We have also observed that by the time vacancy for promotion to the rank of Naib Subedar became available, the applicant had become overage, and therefore he could not be promoted to the higher post.

9. Under the facts and circumstances we find no illegality in denying next rank to the applicant. The O.A. being devoid of merit is hereby **dismissed**.

10. No order as to costs.

11. Pending application(s), if any, shall stand disposed off.

(Vice Admiral Abhay Raghunath Karve)  
Member (A)

(Justice Umesh Chandra Srivastava)  
Member (J)

Dated : 09.12.2021

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