

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 329 of 2021****Wednesday, this the 15<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)**No. 13987927L Ex Hav Basdeo Ram Pal,  
S/o Sri Shiopujan Ram Pal,  
R/o-Raja Rahul City (Malak Road), Nilmatha, Post Office-Dilkusha,  
District-Lucknow, Pin-226002 (UP).

.... Applicant

Ld. Counsel for the Applicant : **Shri KP Datta**, Advocate

Versus

1. Union of India, through Secretary, Min of Defence, New Delhi-110011.
2. The Chief of Army Staff, IHQ of MoD (Army), South Block, New Delhi-110001.
3. Officer-in-Charge, AMC Records, Lucknow, Pin-226002.
4. PCDA (P), Draupadi Ghat, Pin-211014, Allahabad (UP).

... Respondents

Ld. Counsel for the : **Ms. Amrita Chakraborty**, Advocate  
Respondents. Central Govt Counsel.**ORDER (Oral)**

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

*(a) To issue/pass an order or directions to set-aside/quash rejection order issued by Officer-in-Charge AMC Records on 04.06.2021 for grant his promotion to the rank of regular Nb Subedar w.e.f. 01.06.2018, then Subedar as per seniority while in service vide their letter No 13987927L/NE/1122/CC dated 07.06.2021.*

*(b) To issue/pass an order or direction to set-aside/quash AMC Records discharge order letter No 490009MP/RO (A&D)/Ser-05 dated 23 Jan 2019 and re-instate the applicant in active service from the date of discharge w.e.f. 29.02.2020.*

*(c) To issue/pass an order or direction to grant his seniority and promotion to the rank of regular Nb Subedar w.e.f. 01.06.2018 as per Corps seniority with all consequential benefits and arrears of pay and allowances along with interest @ 18% p.a. and grant him same seniority for further promotion to the rank of Subedar, Sub Major and Hony rank of Lt/Capt as per seniority of its own turn.*

*(d) To issue/pass any other order or direction as may deem just, fit and proper under the circumstances of the case in his favour.*

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

2. Brief facts of the case are that applicant was enrolled in Army Medical Corps (AMC) on 15.02.1994 and during the course of his service he was promoted to the rank of Havildar. Applicant had passed promotion cadre of Senior Cadre Course on 16.04.2018 but due to being overage he could not get promotion to the rank of Naib Subedar and was discharged from service on 29.02.2020 (AN) after completion of 26 years and 14 days of extended service. He is in receipt of pension of Naib Subedar grade vide PPO dated 20.02.2020. The grievance of applicant is that he was not promoted to the next higher rank despite there being a vacancy and passing of promotion cadre. In this regard applicant had filed an appeal dated 11.11.2019 to AMC Records. During pendency of aforesaid appeal applicant filed O.A. No. 164 of 2020 in this Tribunal which was disposed off vide order dated 05.04.2021 with directions to respondents to decide his appeal within two months. The appeal was decided and rejected vide order dated

04.06.2021. This O.A. has been filed by applicant for quashing of order dated 04.06.2021 and grant of regular Naib Subedar promotion with all consequential benefits like promotion to the rank of Subedar and Subedar Major including grant of Honorary rank of Lt/Capt.

3. Submission of Learned counsel for the applicant is that applicant was not promoted to the rank of Naib Subedar despite having been passed promotion cadre on 16.04.2018 and existing of a clear vacancy. His further submission is that facts related to becoming overage were intimated to 181 Military Hospital vide Records AMC letter dated 15.06.2018. His other submission is that applicant was considered for promotion to the higher rank against vacancy falling on 01.07.2018 instead of 01.06.2018, therefore he could not be promoted to the higher post due to becoming overage on 15.06.2018. His contention is that had he considered for promotion on 01.06.2018, he would have been promoted to the higher post. Applicant's learned counsel further submitted that since the respondents have failed to distribute month wise vacancies proportionately, therefore he could not get further promotion on 01.06.2018 and by the time he was considered i.e. on 01.07.2018 he became overage. He pleaded for grant of Naib Subedar promotion to applicant alongwith his batch-mates.

4. Per contra, learned counsel for the respondents submitted that after passing the Senior Cadre Course on 16.04.2018 applicant became eligible for promotion to the rank of Naib Subedar as per his seniority subject to availability of vacancy. His further submission is that vacancies occurred between May and June 2018 were allotted to eligible candidates senior to applicant and applicant was screened for

promotion to the higher rank on 01.07.2018 but he could not be promoted as he became overage on 15.06.2018 prior to occurrence of vacancy. 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 on 01.07.2018 when he was considered for promotion.

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 Army Medical Corps (AMC) on 15.02.1994 and he was discharged from service on 29.02.2020 (AN). The applicant is in receipt of pension to the rank of Naib Subedar Grade w.e.f. 01.03.2020. He was due for promotion to the post of Naib Subedar in the year 2018 but could not get further promotion owing to age criteria. After discharge from service against non grant of Naib Subedar promotion he submitted an appeal dated 11.11.2019 and while its pendency he filed O.A. No. 164 of 2020 in this Tribunal which was disposed of vide order dated 05.04.2021 directing respondents to decide his appeal within two months. The appeal was rejected vide order dated 04.06.2021.

7. We find that though applicant was due for promotion to the rank of Naib Subedar w.e.f. 01.07.2018 as per his seniority but he superseded for promotion and attained the upper age limit of 44 years w.e.f. 15.06.2018, hence, as per para 398 of Army medical Corps Record office Instruction 12/2014, para 2 of IHQ of MoD (Army) policy letter dated 04.05.1999 and para 149 of Regulations for the Army (Revised Edition

1987), applicant became overage and could not be promoted to the rank of Naib Subedar being overage. Thus, he was not promoted to the rank of Naib Subedar, though the applicant has already been granted financial upgradation of MACP (Nb Sub grade), hence his prayer for grant of promotion to the rank of regular Naib Subedar has rightly been rejected by the respondents as per rules and regulations.

8. In view of the above, we do not find any irregularity or illegality in denying higher rank of regular Nb Sub to the applicant. The promotion of MACP Nb Sub grade (not to the rank of Nb Sub) is procedurally correct and there is no violation of any rules and regulations. The O.A. is devoid of merit and deserves to be dismissed. It is accordingly **dismissed**.

9. No order as to costs.

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

**(Vice Admiral Abhay Raghunath Karve)**  
**Member (A)**

**(Justice Umesh Chandra Srivastava)**  
**Member (J)**

Dated : 15 December, 2021  
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