

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No 1 of 2019**

Thursday, this the 16<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. 14411237-F Hav/MACP Nb Sub Mrinal Kanti Dan Poddar  
 S/o Durga Pada Dan Poddar  
 R/o Quarter No. 70/11, I.B.G.H. Line, Near JAT Record Office,  
 Bareilly Cantt – 423001 (UP)

..... Applicant

Ld. Counsel for the Applicant: **Shri K.P. Datta** holding brief of  
**Shri Om Prakash Kushwaha**, Advocate

Versus

1. The Union of India, through the Secretary, Ministry of Defence (Army), New Delhi-110011.
2. The Chief of Army Staff, Army Headquarters, MoD (Army), South Block, DHQ PO, New Delhi – 110011.
3. The Officer Incharge Records, Artillery Records, Nasik Road, Camp, Nasik.
4. Commanding Officer, Battery Commander, Demob Battery.

..... Respondents

Ld. Counsel for the Respondents : **Dr. Chet Narain Singh**,  
 Central Govt Counsel.

**ORDER**

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

- “A. To issue/pass an order or directions to set aside/quash the discharge order of the applicant, which is annexed as Annexure No. A-1 to this Original Application.

- B. To issue/pass an order or directions set aside/quash the ACR for year 2016 bearing an Adverse ACR.
- C. To issue/pass an order or directions to the respondents to consider the applicant for promotion to the rank of Naib Subedar and re-instate him with all consequential benefits.
- D. To issue/pass any other order or direction as this Hon'ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant.
- E. To allow this original application with costs."

2. The factual matrix on record is that the applicant was enrolled in the Army on 29.06.1994 and was discharged from service on 30.06.2018 under the provisions of Rule 13 (3) III (i) of Army Rules, 1954 on fulfilling the conditions of enrolment. The applicant was promoted to the rank of Havildar on 13.12.2007. The applicant was due for promotion to the rank of regular Naib Subedar on 01.02.2017 but he was not considered for promotion to the next rank due to Average report of ACR of 2016 which resulted in juniors getting promotion to the rank of Nb Sub and applicant retired as MACP Nb Sub. Being aggrieved, the applicant has filed the present original Application for grant of promotion to the rank of regular Naib Subedar.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Army on 29.06.1994 and was discharged from service on 30.06.2018 under the provisions of Rule 13 (3) III (i) of Army Rules, 1954 after rendering 24 years and 2 days of service. The applicant was promoted to the rank of Havildar on 13.12.2007. In the year 2016, applicant's rank was reduced from R.H.M. to Havildar

without any notice. From the year 2002 to 2015, applicant got 8 marks in each ACR but all of sudden in the year 2016 his marks of ACR were reduced to 4 and no Show Cause Notice was given to the applicant which is illegal and arbitrary. ACR report of 4 Marks is Average ACR and not Adverse report but it has adversely affected the promotion process of the applicant and he was not considered/promoted to the rank of Naib Subedar due to Average report of ACR of 2016.

4. Learned counsel for the applicant pleaded to set aside 4 marks Average Report of 2016 being inconsistent and not in conformity with his ACRs for the last 3 years in which applicant was given 8 marks and thereafter, applicant to be considered afresh alongwith his batchmates for promotion to the rank of regular Naib Subedar taking his last five years ACR reports from 2013 to 2018 excluding ACR of 2016. Thus, the applicant will be eligible for promotion to the post of regular Naib Subedar as on 01.02.2017 alongwith his batchmates/juniors i.e. Hav Prem Shankar and Hav Biju R who were promoted in Feb. 2017 and Apr. 2017 respectively.

5. Learned counsel for the respondents submitted that as per existing policy, the promotions are made by the unit concerned based on seniority subject to availability of vacancy and if meeting the requisite promotion criteria such as promotion cadre, discipline, medical standard and ACR grading etc. The criteria for promotion to the rank of Naib Subedar is laid down in IHQ of MoD (Army) letter dated 10.10.1997. As per criteria, only last five ACRs are considered

for further promotion to the next higher rank. Details of last five years ACR grading of the applicant are as under :-

Sr. No.	Year	Grading	Remarks
1	2013	8 (Above Average)	Recommended for further promotion.
2	2014	8 (Above Average)	Recommended for further promotion.
3	2015	8 (Above Average)	Recommended for further promotion.
4	2016	4 (Average)	Not Recommended for further promotion.
5	2017	8 (Above Average)	Recommended for further promotion.

6. Learned counsel for the respondents further submitted that applicant was warned on 10.03.2016 to improve his attitude and lackadaisical approach based on the poor performance in the duties assigned to him. The applicant had rendered his unwillingness by signing a certificate for further extension of two years of service in the rank of Havildar. Accordingly, Part II Order regarding non-retention of service was published by the unit, i.e. 106 Medium Regiment. The applicant did not avail the remedies available to him by submitting any non statutory complaint/appeal/representation to higher authorities for his grievance of Average report in the ACR of 2016 and approached this Tribunal directly which is violation of provisions of para 364 of Regulations for the Army 1987 (Revised) read in conjunction with Army Order 1/99. The applicant was awarded Average grading and not recommended for further promotion in the ACR for the year 2016, therefore, as per promotion policy, the applicant was not eligible for further promotion to the next higher rank of Naib Subedar due to Average grading of 4 marks in the ACR of 2016 and non recommendation for further promotion. The applicant has been rightly

denied promotion as per promotion policy/ rules. He pleaded for dismissal of O.A.

7. We have heard learned counsel for the parties and have perused the original documents including ACRs of the applicant.

8. We have analysed 4 marks ACR report for the year 2016 for inconsistency of performance of the applicant and in view of its wide variation from previous profile of the applicant, we find that it is not in conformity with majority of his last three years ACRs and the ACR of 2017 in all of which applicant was awarded 8 marks. In the interest of justice and considering that his sudden downgrading of ACR to 4 in 2016 is an aberration and “out of profile”, we feel that the benefit of doubt can be given to the applicant.

9. In view of above, we are of the view that applicant lost out on timely promotion of regular Naib Subedar due to 4 marks Average report of ACR of 2016 for no fault of his. A promotion which he would otherwise have duly earned on 01.02.2017 alongwith his batch mates was thus denied to him. In the light of the unfair circumstances presented as a fait accompli to the applicant it is highly unjust on the part of the respondents in not promoting him on due date as regular Naib Subedar. Therefore, we feel that the ACR of 2016 may be expunged and respondents are directed to reconsider the applicant for promotion alongwith his batch-mates in 2017, by conducting a fresh board after expunging the 2016 ACR.

10. In the result, the Original Application deserves to be **partly allowed**. The impugned order, if any, passed by the respondents is set aside. The respondents are directed to reconsider the applicant

for promotion to the rank of Naib Subedar in 2017 after expunging his ACR for 2016, alongwith his other batch-mates. There will be no consideration for further promotion and date of discharge of the applicant will be the same on which he was discharged from service i.e. on 30.06.2018. If the applicant is found fit for promotion after setting aside his ACR of 2016, he will be granted regular increments due to him w.e.f 01.02.2017 to 30.06.2018 and accordingly, his pension will be calculated on last basic pay (including increments) on the date of discharge from service and consequently, applicant will be entitled for pensionary benefits in the rank of regular Naib Subedar. The respondents are directed to comply with the order within four months from the date of production of a certified copy of this order and issue Corrigendum PPO to the applicant granting arrears w.e.f. 01.07.2018. Delay shall invite interest @ 8% per annum till actual payment.

11. No order as to costs.

**(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)**  
**Member (A) Member (J)**

Dated: 16<sup>th</sup> December, 2021  
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