

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 219 of 2018**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)**Dinesh Kumar Singh (No. 1480180M Ex Hav)  
S/o Late Shri Ajayab Singh  
R/o Village – Bajpurwa, Post Office – Raiganj,  
District – Bahraich (UP)**.... Applicant**Ld. Counsel for the Applicant : **Shri Yashpal Singh**, Advocate

Versus

1. Union of India, through the Secretary to Government of India, Ministry of Defence, South Block, New Delhi.
2. Officer-in-Charge Records, Bengal Engineer Group Records, PIN – 908779, C/o 56 APO.
3. Commandant Bengal Engineer Group and Centre, Roorkee – 247667.

**... Respondents**Ld. Counsel for the Respondents : **Dr. Shailendra Sharma Atal**,  
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) Issuing/passing of an order or direction to the respondents setting aside the order/letter dated 18.05.2016 issued by the Officer-in-Charge Records, Bengal Engineer Group Records rejecting the case of the applicant for promotion in the rank of Naib Subedar.
- (b) Issuing/passing of an order or direction to the respondents to grant all consequential service benefits notionally to the

applicant of the rank of Naib Subedar with effect from 01.07.2010 including status, continuity of service and revision of pensionary benefits with arrears and interest at the prevailing rate.

- (c) Issuing/passing of an order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.
- (d) Allowing this original Application with cost."

2. Brief facts of the case are that the applicant was enrolled in the Army on 14.08.1986 and was discharged from service on 31.08.2011(AN) in low medical category P2 (Permanent) in extension period in terms of IHQ of MoD (Army) policy letter dated 21.09.1998. The applicant has passed promotion cadre from Havildar to Naib Subedar successfully and was considered for promotion to the rank of Naib Subedar vide BEG Records promotion order dated 29.05.2010. However, on the date of physical assumption of rank of Naib Subedar, applicant was found involved in a disciplinary case and was awarded red ink entry punishment which debarred him assumption of rank for a period of one year in terms of promotion policy. The representation of the applicant was rejected vide BEG Records letter dated 18.05.2016. Being aggrieved, the applicant has filed the present Original Application to grant notional promotion to the rank of Naib Subedar and pensionary benefits.

3. Learned counsel for the applicant submitted that applicant has passed promotion cadre successfully and became eligible to be promoted to the next rank of Naib Subedar. The applicant was to assume his rank of Naib Subedar on 01.07.2010 vide BEG Records order dated 29.05.2010 but he was not promoted on 01.07.2010 nor

he was apprised of any reason for not promoting him on due date. On 17.07.2010 a charge sheet was issued under Section 63 of Army Act, 1950 and applicant was punished with 'Severe Reprimand'. The applicant was granted two years extension of service in the rank of Havildar from 14.08.2010 as such he was to serve upto August 2012. The Re-categorisation medical board of the applicant was held on 10.03.2011 and he was placed in low medical category P-2 (Permanent) and due to downgrading of medical category, applicant was discharged pre-maturely w.e.f. 31.08.2011. The applicant submitted various representations to the respondents but nothing was done with regard to his promotion and as per directions of this Tribunal passed in OA No. 1/2015, applicants representation for grant of promotion was rejected by BEG Records vide order dated 18.05.2016. He pleaded that order dated 18.05.2016 passed by the respondents is illegal and arbitrary which should be quashed and applicant should be notionally promoted to the rank of Naib Subedar with pensionary benefits.

4. On the other hand, Ld. Counsel for the respondents submitted that applicant was discharged from service on 31.08.2011(AN) in low medical category P2 (Permanent) in extension period in terms of IHQ of MoD (Army) policy letter dated 21.09.1998. The applicant has passed promotion cadre from Havildar to Naib Subedar and was considered for promotion to the rank of Naib Subedar vide BEG Records promotion order dated 29.05.2010. However, on the date of physical assumption of rank of Naib Subedar, applicant was found

involved in a disciplinary case due to fake "*introduction of himself as Colonel D.K. Singh Bhaduria, Board member of a recruitment rally, to meet the Superintendent of Police, Lakhimpur Khiri, regarding recruitment of his cousin*". The applicant vide his statement dated 17.07.2010 has also agreed that he has committed an offence and accepted his fault. A ban on promotion of the applicant was imposed in terms of Army Order 1/2001 as per Govt. policy. On finalization of the disciplinary case, applicant was awarded "Severe Reprimand" on 17.07.2010 and due to award of red ink entry the applicant was debarred for promotion for a period of one year upto 17.07.2011 in terms of para 3(f) of IHQ of MoD (Army) promotion policy letter dated 10.10.1997. Further, applicant became overage for further promotion on 10.10.2010 in terms of para 2 of IHQ of MoD (Army) promotion policy letter dated 18.09.1998.

5. learned counsel for the respondents further submitted that applicant himself is responsible for his punishment by committing offence under Army Act Sec 63 and became ineligible for his promotion upto one year and subsequently, he became overage as per promotion policy and was also downgraded to low medical category P2 (Permanent), hence, the applicant was discharged from service on 31.08.2011 as per Govt. policy. The applicant had earlier filed OA No. 1/2005 before this Tribunal which was disposed of vide order dated 31.03.2016 with directions to the respondents to decide pending representation of the applicant by a speaking and reasoned order within two months. The representation of the applicant was

examined in detail by the respondents and applicant was not found eligible for promotion to the rank of Naib Subedar, therefore, his representation was rejected vide BEG Records letter dated 18.05.2016 .

6. Learned counsel for the respondents also submitted that as per Para 3 of Army Order 1/2001, ***“if an individual is reported to be involved in any disciplinary cases, a ban on his promotion will be imposed”***. As per Para 3 (f) of promotion policy letter dated 10.10.1997, ***“An individual will not be considered for promotion within one year of the award of red ink entry/recordable censure, as the case may be”***. As per promotion policy/letter dated 18.09.1998, “the prescribed age limit for promotion to the rank of Havildar to Naib Subedar is upto 44 years”. The applicant crossed the prescribed age limit of 44 years on 01.10.2010, hence he became permanently ineligible for promotion to the rank of Naib Subedar. Keeping in view IHQ of MoD (Army) promotion policy dated 10.10.1997, letter dated 18.09.1998 and Army Order 1/2001, applicant was not eligible for promotion to the rank of Naib Subedar on 01.07.2010. He pleaded for dismissal of O.A.

7. We have heard learned counsel for both sides and perused the material placed on record.

8. We find that though applicant was fulfilling all the eligibility criteria for promotion to the rank of Naib Subedar which was due w.e.f. 01.07.2010 as per BEG Records order dated 29.05.2010 but on the ground of offence committed under Army Act Section 63, he was

awarded red ink entry which debarred him assumption of promotion to the rank of Naib Subedar for a period of one year and thereafter, applicant became over age crossing upper age limit of 44 years for grant of promotion from Havildar to Naib Subedar, hence, applicant became ineligible for promotion. Therefore, applicant's prayer for grant of promotion to the rank of Naib Subedar has rightly been rejected by the respondents as per rules and promotion policy.

9. In view of the above, we do not find any irregularity or illegality neither in discharging the applicant from service in low medical category P2 (Permanent) nor in granting promotion to the rank of Naib Subedar as per promotion policy. The O.A. is devoid of merit and deserves to be dismissed. It is accordingly **dismissed**.

10. No order as to costs.

11. Pending Misc. Applications, if any, stand disposed of.

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

Dated: December, 2021  
SB