

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 271 of 2018**Wednesday, this the 1st day of December, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

1. Shiv Bhushan Mishra
S/o Late Shashidhar Mishra
R/o Village – Birbal, Post – Dhingwas, PS – Lalganj,
District – Pratapgarh.
2. Jitendra Kumar Chaturvedi
S/o Sri Kewala Prasad
R/o Village – Khewli Kala, PS – Koraon,
District – Allahabad

.... ApplicantsLd. Counsel for the Applicant : **Shri Akhilesh Tripathi**, Advocate

Versus

1. Union of India through Secretary Ministry of Defence,
Government of India, South Block, New Delhi.
2. Additional Director General, Territorial Army, Army
Headquarters, New Delhi.
3. Colonel Record, Kumaon, Ranikhet Centre, Ranikhet,
Uttarakhand.
4. Commanding Officer, Headquarters Company Commander,
111 Inf Bn (TA) Kumaon, Allahabad.

... RespondentsLd. Counsel for the Respondents : **Ms. Appoli Srivastava**,
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:-

- i. Issue an appropriate order or direction quashing/setting aside the discharge on 28th February 2018 by antedating and treat the applicants to be in service till 31.03.2018.
- ii. Issue appropriate direction directing the respondent authorities to promote the applicants to the next higher rank of Naib Subedar as they have passed the promotional examination.
- iii. Issue any other suitable and equitable order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case."

2. Brief facts of the case are that the applicants were enrolled in the Territorial Army on 01.03.1998 and were discharged from service on 28.02.2018 (AN) under Rule 14 of Territorial Army Act and Regulations, 1948 (1976 Edition) on completion of the conditions of terms of engagement/tenure of service. The applicants were promoted to the rank of Havildar on 01.03.2014 and their discharge from service was due on 31.03.2018 as is evident from the discharge roll. The applicants were under expectation that they would be promoted on 1st March 2018. As per Part II Order, discharge from service was due on 31.03.2018 which was cancelled on 07.03.2018 forcing the applicants to retire on 28.02.2018. Being aggrieved, the applicants have filed the present Original Application to grant them promotion of Nb Sub rank treating them in service till 31.03.2018.

3. Learned counsel for the applicants submitted that both the applicants were inducted in the Territorial Army on 01.03.1998. The service of the applicants is governed by Territorial Army Act, 1948 and Regulations (1976 Edition) made there under. The applicants

were promoted to the rank of Havildar on 01.03.2014 and their discharge from service was due on 31.03.2018 as is evident from the discharge roll. Meanwhile opportunity of promotion came in the way and applicants alongwith one more person were empanelled for promotion to the next higher grade having cleared promotional examination. As approval for promotion was taking time the applicants procedure for discharge from service was also initiated in which date of discharge was mentioned as 31.03.2018 after completion of 20 years and 30 days.

4. Learned counsel for the applicants further submitted that discharge from service is provided in Rule 14(a) of T.A. Act and Regulations. Since the applicants were appointed on 1st March, they were due for discharge from service on the last day of the month, i.e. 31st March. As a proof, learned counsel for the applicants brought on record five names of Nanak Chand, Jai Prakash Narayan, Sep Mohd. Imtijaj Khan, LNk Ram Pal Singh Yadav and Sep Gulam Haidar submitting that all aforesaid individuals were inducted on 1st day of the month and retired from service on the last day of the month.

5. Learned counsel for the applicants also submitted that clearance certificate which was given to the applicants clearly showed that they were to be discharged from service on 31.03.2018 and applicants were assigned duties till 07.03.2018 and it was presumed that they would retire on 31.03.2018. As per Part II Order discharge from service was due on 31.03.2018 which was cancelled on 07.03.2018 forcing the applicants to retire on 28.02.2018. The

applicants were under legitimate expectation that they would be promoted on 1st March 2018. The applicants are highly aggrieved by the arbitrariness and illegal action on the part of the respondents in discharging the applicants from service and not promoting them to the rank of Naib Subedar. He pleaded that since the applicants were in service till 08.03.2018, they should be promoted to the rank of Nb Sub as on 01.03.2018 treating their service till 31.03.2018.

6. On the other hand, Ld. Counsel for the respondents submitted that applicants were promoted to the rank of Havildar on 01.03.2014. In accordance with Para 5 of Govt. of India letter dated 03.09.1998, discharge of the applicants was due on 28.02.2018 (AN). As a matter of clerical oversight leading to erroneous computation of the terms of engagement of the applicant, the discharge papers reflected 31.03.2018 as date of discharge. After the observation on subject by Territorial Army Directorate vide their letter dated 07.03.2018, the discharge documents of the applicant were corrected and correct date of discharge i.e. 28.02.2018 was endorsed. Since the date of discharge from service was miscalculated due to clerical oversight, the applicants were ineligible for the promotion to the rank of Naib Subedar despite their attending and passing the promotion examination. The clearance certificate initially issued to the applicants reflecting date of discharge 31.03.2018, however as and when the unit was intimated about this mistake, new clearance certificate showing correct date of discharge 28.02.2018 was issued.

7. Learned counsel for the respondents further submitted that applicants remained on the strength of the unit till 07.03.2018 due to wrongful computation of terms of engagement assuming date of discharge 31.03.2018 whereas the correct date of discharge was 28.02.2018 as per laid down policy. However, due amendment was made instantly and discharge documents were re-processed accordingly showing the correct date of discharge 28.02.2018. As per discharge policy, the Junior Commissioned Officers/Other Ranks enrolled in Army on the first date of the month will be discharged from service on the last day of preceding month and person who enrolled after the first day of the month, will be discharged from service on the last day of the same month. The applicants were discharged from service w.e.f. 28.02.2018 (AN) as per rules. The vacancy of Naib Subedar occurred w.e.f. 01.03.2018 and not on 28.02.2018 (AN), hence contention of applicants is not sustainable. He pleaded for dismissal of O.A.

8. We have heard learned counsel for the parties and perused the material placed on record.

9. We find that though as per Govt. of India letter dated 03.09.1998, discharge of the applicants was due on 28.02.2018 (AN) but due to clerical error in calculation of terms of engagement of the applicants, date of discharge from service was reflected as 31.03.2018. Since the applicants were discharged on 28.02.2018 (AN) as per rules and policy on the subject, they are not eligible for promotion to the rank of Naib Subedar which was due on 01.03.2018

