

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No 411 of 2021**Monday, this the 6th day of December, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

JC-643087X Sub Ginesh Kochukuttan Kurup
 S/o Shri (Late) P Kochukuttan,
 Permanent R/o Gayatri Niwas, Road No. 11A, Survey No. 67/1B5,
 Bhairav Nagar, Dhanori Road, Bishrantwadi, Pune (Mah)-411015 and
 posted at No. 506 ASC Battalion (Mtn Division) PIN – 905506, C/o 56
 APO (Bareilly, UP) and presently attached to HQ Central Command,
 Lucknow (UP)

..... Applicant

Ld. Counsel for the Applicant : **Shri Shailendra Kumar Singh,**
 Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence (Army), South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated HQ of MoD (Army), DHQ PO, New Delhi – 110011.
3. Dte Gen of Sup & Tpt (ST-12), Quartermaster General's Branch, IHQ of MoD (Army), DHQ PO, New Delhi – 110011.
4. Officer-in-Charge Records, ASC Records (South), PIN – 900493, C/o 56 APO.
5. Commanding Officer, No. 506 ASC Battalion (Mountain Division), PIN-905506, C/o 56 APO.

..... Respondents

Ld. Counsel for the Respondents : **Shri Yogesh Kesarwani,**
 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 for the following reliefs:-

- “A. To quash the respondent No. 4 letter dated 16 Feb 2021 (Annexure A-2 & Impugned Order) wherein applicant’s willingness has not been accepted.
- B. To consider applicant’s case afresh in DPC 2020 alongwith other personnel of same DPC and to issue promotion order, if had merit in the said DPC 2020.
- C. Any other relief as considered deemed fit and proper in the circumstances by this Hon’ble Tribunal be awarded in favour of the applicant.
- D. Cost of the present case as the applicant has been forced in litigation of instant case.”

2. The factual matrix on record is that the applicant was enrolled in the Army on 02.02.2004 as Direct JCO in the trade of catering. After completion of basic training, he was promoted to the rank of Naib Subedar on 08.09.2004 and subsequently promoted to Subedar on 01.02.2011. In the year 2015, applicant and Subedar Shishir Sudhakar Kamble exercised their option of willingness to forgo or defer promotion to the rank of Subedar Major before completion of 25 years of service or attaining 50 years of age in terms of policy dated 26.12.2003. In the year 2017, Subedar Shishir Sudhakar Kamble re-exercised his option from willingness to unwillingness to forgo or defer promotion to the rank of Subedar Major which was accepted by IHQ of MoD (Army). On 09.01.2020, applicant also submitted his option from willingness to unwillingness to forgo or defer promotion to the rank of Subedar Major but the same was rejected by respondent No. 4 in terms of policy letter dated 26.12.2003. Being aggrieved, the applicant has filed the present Original Application for consideration of

his name in DPC 2020 and grant promotion to the rank of Subedar Major.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Army on 02.02.2004 as Direct JCO in the trade of catering. After completion of basic training, he was promoted to the rank of Naib Subedar on 08.09.2004 and subsequently promoted to Subedar on 01.02.2011. In the year 2015, applicant and Subedar Shishir Sudhakar Kamble exercised their option of willingness to forgo or defer promotion to the rank of Subedar Major before completion of 25 years of service or attaining 50 years of age in terms of policy dated 26.12.2003. In the year 2017, Subedar Shishir Sudhakar Kamble re-exercised his option from willingness to unwillingness to forgo or differ promotion to the rank of Subedar Major which was accepted by IHQ of MoD (Army). On 09.01.2020, applicant also submitted his option from willingness to unwillingness to forgo or defer promotion to the rank of Subedar Major but the same was returned by respondent No. 4 unactioned in terms of policy letter dated 26.12.2003.

4. Learned counsel for the applicant further submitted that on 22.01.2021, applicant placed his grievance through ARMAAN APP mode for converting/re-exercising his earlier option of unwillingness into willingness for promotion but Respondent No. 4 vide letter dated 16.02.2021 rejected the re-exercised option stating that applicant's re-exercising option from unwillingness to willingness for promotion before completion of 25 years of service or 50 years of age cannot be accepted due to policy constraints. On 23.03.2021, applicant sought

clarification as to how case of Subedar Shishir Sudhakar Kamble has been accepted and his case being denied when both of them have given their option of unwillingness in the year 2015. Applicant was replied that his case has been looked into an appropriate level and rejected vide letter dated 16.02.2021 whereas case of Subedar Shishir Sudhakar Kamble has been accepted/approved by IHQ of MoD (Army). He further submitted as per applicant's knowledge, respondent No. 4 has issued promotion order in respect of Subedar Shishir Sudhakar Kamble for the rank of Subedar Major w.e.f. 01.09.2021.

5. Learned counsel for the applicant further submitted that in ***Associated Cement Companies Ltd vs. PN Sharma, AIR 1965 SC 1595 (1965) 2 SCR 366 ; (1995) 1 LLJ 433 = 1964-65 (27) FLR 204,*** the Hon'ble Apex Court has observed that "*Administrative Authorities or Bodies are mandated to act fairly and objectively and in many cases to comply with Principles of Natural Justices*". He also submitted that in case of ***Angad Das vs. Union of India*** (SC 2012 (1) AFLJ 221), the Hon'ble Apex Court observed that "*People in power and authority should not easily loose equanimity, composure and appreciation for the problem of the lesser morale. They are always expected to remember that power and authority must be judiciously exercised accordingly to the laws and human compassion. Arrogance and vanity have no place in discharge of their official functions and duties.*"

6. In view of aforesaid facts, learned counsel for the applicant pleaded for consideration of applicant's name in DPC 2020 taking into

consideration his re-exercised option of willingness for promotion to the rank of Subedar Major.

7. Learned counsel for the respondents submitted that applicant was enrolled in the Army as direct entry JCO on 02.02.2004. The applicant came up for consideration by Departmental Promotion Committee (DPC) 2016 for promotion to the rank of Sub Maj as per his seniority. As per para 2(a) & 4 of IHQ of MoD (Army) letter dated 26.12.2003, once an individual who has exercised willingness to forgo or defer his promotion till completion of 25 years of service or attaining 50 years of age, whichever is earlier, he cannot change the same before completion of the stipulated age or service. The applicant had exercised an option to forgo or defer his promotion till completion of 25 years of service or attaining 50 years of age, whichever is earlier vide EME School letter dated 27.01.2016, hence, re-exercising option from unwillingness to willingness for promotion before completion of 25 years of service or 50 years of age cannot be accepted due to policy constraints.

8. Learned counsel for the respondents further submitted that Subedar Catering Shishir Sudhakar Kamble had earlier exercised his option of willingness to forgo or defer promotion to the rank of Sub Maj in DPC 2016, however, JCO later opted for unwillingness to forgo or defer promotion to the rank of Sub Maj in the DPC 2017, subsequently, a case was taken up with IHQ of Mod (Army) for consideration and accordingly, approval was accorded vide IHQ of MoD (Army) letter dated 31.10.2017 and therefore, name of the JCO was included in the DPC 2017. A clarification was again sought from

IHQ of MoD (Army) during DPC 2020, wherein three Subedars had re-exercised their option to unwillingness to forgo or defer promotion before completion of the stipulated age/service. IHQ of MoD (Army) vide their letter dated 05.03.2020 clarified that once an individual who has exercised willingness to forgo or defer his promotion till completion of 25 years of service or attaining 50 years of age, whichever is earlier, cannot change the same and status quo to be maintained, thus option of willingness was rejected. Re-exercised option of willingness of Subedar Shishir Sudhakar Kamble was accepted by IHQ of MoD (Army) and accordingly, the JCO came up for consideration for promotion to the rank of Subedar Major in DPC 2020 and subsequently promoted to the rank of Subedar Major w.e.f. 01.09.2021.

9. Learned counsel for the respondents further submitted that case of applicant for change of option of willingness for consideration for promotion to the rank of Subedar Major in DPC 2020 cannot be accepted due to policy constraints and pleaded for dismissal of O.A.

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

11. We observe that applicant has exercised an option to forgo or defer his promotion till completion of 25 years of service or attaining 50 years of age, whichever is earlier vide letter dated 27.01.2016 but as per IHQ of MoD (Army) policy letter dated 26.12.2003, once an individual who has exercised willingness to forgo or defer his promotion till completion of 25 years of service or attaining 50 years of age, whichever is earlier, cannot change the same before

completion of the stipulated age or service and therefore, re-exercised option from unwillingness to willingness for promotion before completion of 25 years of service or 50 years of age was not accepted by the respondents due to policy constraints. It is also noticed that case of Subedar Shishir Sudhakar Kamble who has earlier exercised his option of willingness to forgo or defer promotion to the rank of Sub Maj in DPC 2016, later opted for unwillingness to forgo or defer promotion to the rank of Sub Maj in the DPC 2017, a case was taken up with IHQ of Mod (Army) for consideration and accordingly, approval was accorded vide IHQ of MoD (Army) letter dated 31.10.2017 and name of Subedar Shishir Sudhakar Kamble came up for consideration for promotion to the rank of Subedar Major in DPC 2020 and subsequently promoted to the rank of Subedar Major w.e.f. 01.09.2021.

12. In the light of unfair circumstances for not giving parity to the applicant it is highly unjust on the part of the respondents to not consider re-exercised option of willingness of the applicant whereas on the other part, case of Subedar Shishir Sudhakar Kamble was accepted for DPC 2020 and he was promoted to the rank of Subedar Major w.e.f. 01.09.2021. We are of the view that respondents cannot adopt different way/double standard for similarly situated personnel for consideration of re-exercised option of willingness for DPC and further promotion to the rank of Subedar Major. Moreover "policy constraints" cited as reason for not acceding to the applicant's request does not appear to be justified as such a policy which debars change of option (unwillingness to willingness) after first exercising it

itself is unjust and does not meet the criteria of principles of natural justice, and needs to re-examined, more so as it has been arbitrarily allowed in the case of Subedar Shishir Sudhakar Kamble and denied to the applicant.

13. We, are, therefore, of the opinion that the applicant needs to be considered for DPC 2020 taking into consideration his re-exercised option of willingness as in the case of Subedar Shishir Sudhakar Kamble and grant promotion to the rank of Subedar Major, if he comes in the merit as per policy on the subject.

14. In the result, the Original Application deserves to be allowed. The impugned orders passed by the respondents are set aside. Original Application is disposed of with the direction to the respondents to consider applicant's case afresh in DPC 2020 alongwith other personnel of same DPC and promote him to the rank of Subedar Major, if he comes in the merit list and is otherwise found fit for such promotion as per promotion policy. The respondents shall take appropriate decision expeditiously, preferably within three months from the date of receipt of certified copy of this order.

15. No order as to costs.

16. 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