

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 571 of 2018**Monday, this the 20<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. 4073039N Hav Ganga Singh  
S/o Late Sh. Jaman Singh  
R/o 402/1, Anarwala, Dehradun  
PO – Garhi Cantt, Uttarakhand – 248003  
Unit – 12 GARHWAL, C/o 56 APO**.... Applicant**Ld. Counsel for the Applicant : **Shri D.S. Kauntae**, Advocate

Versus

1. Union of India, through its Secretary, Govt. of India, Ministry of Defence, South Block, New Delhi – 110011.
2. The Chief of Army Staff, Army Headquarters, New Delhi.
3. Capt. Adjutant, for Commanding Officer 12 GARHWAL Rifles, C/o 56 APO.
4. Centre Commandant & Officer Incharge Records The GARHWAL Rifles, Lansdowne, PIN-900400 (Uttarakhand)
5. Commanding Officer, 66 UP Bn, NCC, Kachery Road, Rai Bareilly, PIN-229001.
6. Colonel M.K. Singh, The then CO 12 GARHWAL Rifles, C/o 56 APO.

**... Respondents**Ld. Counsel for the Respondents : **Ms. Appoli Srivastava**,  
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, whereby the applicant has sought following reliefs:-

- “(a) Quash/set aside the aforesaid impugned order dt 12.02.2016 being wholly illegal and contrary to official records.
- (b) Direct the respondents No. 3, 4 & 5 to declare the promotion cadre result of the applicant which was withheld by the respondent.
- (c) Summon the original incoming dak register of the respondent No. 3 for the period containing the incoming dak record w.e.f. 01.08.2012 till 31.10.2012 in particular for perusal and verification of the facts as stated under para 4.10 above so as to give a just decision by deciding the present case in the light of the said document for the sake of justice accordingly.
- (d) Keeping inn view the huge financial loss suffered by the applicant not picking up his higher rank of Naib Subedar qua his batch mates and non consideration of the applicant’s willingness certificate as true and genuine and finally by keeping in view the present status as ‘Ex Serviceman’ holding the rank of ‘Havildar’ grant a compensation to the tune of Rs. 50 lacs for depriving the applicant to his well deserve promotion to the rank of Naib Subedar for his no faults at all.
- (e) Pass any such other order/directions as this Hon’ble Tribunal may deem just, fit and proper in the interest of justice.”

2. Brief facts of the case are that the applicant was enrolled in the Army on 14.08.1991 and was discharged from service on 28.02.2017 (AN) under Rule 13 (3) III (i) of Army Rules, 1954. The applicant was given three chances to pass promotion cadre, out of which he failed in two and in third chance he did not appear. The applicant submitted several letters for redressal of his promotion cadre issue which was

suitably replied by the respondents. On 04.05.2016 during a conference, the applicant was interviewed by Colonel of the Garhwal Rifles in the presence of the Commanding Officer of 12 Garhwal Rifles where all documents were produced and the allegations made by the applicant were found to be false and baseless. The applicant was granted MACP (Naib Subedar grade) w.e.f. 11.07.2015 vide 12 Garhwal Rifles Part II Order dated 31.08.2016. On completion of his terms of engagement, the applicant was discharged from service on 28.02.2017 (AN). Being aggrieved with result of promotion cadre and non grant of promotion to the post of Naib Subedar, the applicant has filed the present Original Application.

3. Learned counsel for the applicant submitted that applicant was promoted to the rank of Havildar and was posted with 66 UP Bn NCC. On 08.07.2012, applicant was selected to undergo Havildar to Naib Subedar promotion cadre to be held in 12 GARHWAL Rifles. Accordingly, the applicant submitted his willingness to attend the said cadre which was forwarded to the unit vide letter dated 26.07.2012. The applicant made several representations inquiring about the conduct of promotion cadre which was never replied to the applicant. On 09.04.2013, a communication was received from respondent No. 3 i.e. Commanding Officer disputing the fact of willingness certificate stating that applicant has given an unwillingness certificate instead of willingness to attend the said cadre. Later on, respondents agreed to conduct a special Havildar to Naib Subedar promotion cadre from 01.07.2013. In the meantime, respondent No. 5 got personally

annoyed and started acting in a revengeful manner and with vindictive attitude sent a letter to parent unit CO levelling false allegations against the applicant. The applicant sent a representation dated 19.04.2014 asking declaration of promotion cadre result which was not declared. The applicant was issued two Show Cause Notices dated 19.06.2014 and 26.06.2014 calling upon the applicant to file his fresh willingness/unwillingness certificate to attend the fresh cadre despite the fact that applicant has already appeared in the said cadre one year back, the result of which was not declared. The applicant was communicated vide letter dated 02.08.2014 that he has been found 'Failed' in the promotion cadre.

4. Learned counsel for the applicant further submitted that applicant was denied his statutory right to attend his next cadre and special promotion cadre w.e.f. 15.07.2013 which had been conducted in gross violation of the rules and regulations. The act of depriving the applicant to pickup his higher rank of Naib Subedar has been blatantly denied due to unfair attitude adopted by the respondents by misusing their powers.

5. On the other hand, Ld. Counsel for the respondents submitted that applicant attended his first promotion cadre from Havildar to Naib Subedar from 09.01.2012 to 03.03.2012 at 12 GARHWAL Rifles location and failed in the subject cadre. Thereafter, applicant proceeded on ERE posting to 66 UP Bn NCC on 24.06.2012. On being eligible for his second attempt, 12 GARHWAL asked willingness of the applicant to attend promotion cadre commencing

w.e.f. 05.11.2012 through his unit 66 UP Bn NCC vide letter dated 08.07.2012. On 17.08.2012, 12 GARHWAL received unwillingness certificate of the applicant from 66 UP Bn NCC vide letter dated 24.07.2012. The cadre was conducted from 05.12.2012 to 02.03.2013 instead of from 05.11.2012 due to operational commitment/exigencies of service. On 06.03.2013 on completion of cadre, the applicant wrote a letter to 12 GARHWAL Rifles that he was willing to attend Havildar to Naib Subedar promotion cadre but his reliever was not dispatched to relieve him to attend promotion cadre. 12 GARHWAL Rifles asked clarification from 66 UP Bn NCC regarding unwillingness certificate received by the unit alongwith a copy of letter of the applicant dated 06.03.2013 informing that applicant was willing to attend the cadre whereas this unit has received his unwillingness certificate. 12 GARHWAL Rifles agreed to conduct a special cadre for the applicant w.e.f. 01.07.2013, however, due to operational commitment, the cadre started on 15.07.2013. 12 Garhwal Rifles also convened a Court of Inquiry to investigate as to whether unwillingness certificate of the applicant to attend promotion cadre from 05.11.2012 was manipulated as alleged by the applicant. The Court of Inquiry opined that there was no possibility for manipulation with the said certificate and they also approached 66 UP Bn NCC to conduct a Court of Inquiry to find out the truth of Willingness/Unwillingness certificate.

6. learned counsel for the respondents further submitted that applicant attended special promotion cadre from Havildar to Naib Subedar w.e.f 15.07.2013, however, the applicant alleged by his

letter dated 02.08.2013 that tests during special promotion cadre were not conducted as per policy and also objected to chain promotion of existing cadre qualified eligible Havildars in the Battalion. The applicant was informed that as per existing policies and rules, chain of promotions cannot be stopped. The applicant gave his unwillingness to continue the special promotion cadre and threatened to take legal course of action against chain promotion. On receipt of his unwillingness certificate, the special promotion cadre was terminated and applicant was sent to unit i.e. 66 UP Bn NCC. The applicant instead going back to 66 UP Bn NCC, absented himself for 11 days from 06.08.2013 to 16.08.2013. The promotion cadre that was terminated on 02.08.2013 intermediately was resumed and continued till 15.09.2013 and applicant failed in this cadre. The result was not declared as the applicant was told to regularize his absence period. The result of this cadre was announced to the applicant on 12.06.2014. The applicant did not give his willingness/unwillingness certificate to attend the third promotion cadre. He was given a Show Cause Notice on 19.06.2014 and again on 26.06.2014 asking reasons for not giving willing/unwilling certificate to which he did not respond. The applicant again absented himself without leave from 12 GARHWAL Rifles from 29.06.2014 to 09.07.2014 for which he was tried and awarded 10 days pay fine and Severe Reprimand.

7. Learned counsel for the respondents further submitted that applicant submitted several letters for redressal of his promotion cadre issue which were suitably replied from time to time. On

04.05.2016 during a conference, the applicant was interviewed by Colonel of the Garhwal Rifles & Garhwal Scouts in the presence of the Commanding Officer of 12 Garhwal Rifles where all documents were produced and the allegations made by the applicant were found to be false and baseless. The applicant was granted MACP (Naib Subedar grade) w.e.f. 11.07.2015 vide 12 Garhwal Rifles Part II Order dated 31.08.2016. On completion of his terms of engagement, the applicant was discharged from service on 28.02.2017 (AN) under Rule 13 (3) III (i) of Army Rules, 1954. The applicant was given three fair chances to pass promotion cadre, out of which he failed in two and in third chance he did not appear. Hence, allegations made by the applicant are baseless and fictitious. He pleaded for dismissal of O.A.

8. Heard learned counsel for the respondents and perused the material placed on record.

9. We find that applicant has attended his first promotion cadre from Havildar to Naib Subedar from 09.01.2012 to 03.03.2012 at 12 GARHWAL Rifles and failed in the subject cadre. The applicant was also declared 'Fail' in the second cadre. The applicant did not give his willingness/unwillingness certificate to attend the third promotion cadre. Thus, the applicant was given three fair chances to attend/pass promotion cadre, out of which he was declared 'Fail' in first and second chance and he did not appear in the third chance. Hence, allegations made by the applicant are false and baseless which were investigated by the higher authorities and allegations

made by the applicant were not found to be true. The applicant was granted MACP (Naib Subedar Grade) w.e.f. 11.07.2015 and was discharged from service on 28.02.2017 (AN) as per rules.

10. In view of the above, we do not find any irregularity or illegality neither in detailment to attend promotion cadre from Havildar to Naib Subedar nor in the conduct and declaration of result of promotion cadre. The applicant could not pass promotion cadre in his allotted attempts. The discharge of the applicant after giving MACP-III (Nb Sub grade) is procedurally correct and there is no violation of any rules or principles of natural justice. The O.A. lacks merit and deserves to be dismissed. It is accordingly **dismissed**.

11. No order as to costs.

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

Member (A)

Member (J)

Dated:      December, 2021

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