

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No 585 of 2019**Thursday, this the 16th day of December, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)No. JC-242963X Nb Ris (RT) Rakesh Kumar Tripathi
S/o Sri Vidyasagar Tripathi
R/o Krishna House, Station Road, Mishrikh,
Sitapur – 261401 (UP)

..... Applicant

Ld. Counsel for the Applicant : **Shri K.P. Datta**, Advocate

Versus

1. The Union of India, through the Secretary, Ministry of Defence, New Delhi-110011.
2. The Chief of Army Staff, IHQ of MoD (Army), South Block, DHQ PO, New Delhi – 110011.
3. The Officer in Charge Records, Armoured Corps Records, Ahmednagar, PIN-900476, C/o 56 APO.
4. Commanding Officer, 6 LANCERS, PIN-612606, C/o 56 APO.

..... Respondents

Ld. Counsel for the Respondents : **Shri Yogesh Kesarwani**,
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 rejection orders passed by respondent No. 4 vide letter No. 1177/A dated 24.06.2019, for rejecting Non Statutory Complaint by the applicant, against ‘Average’ ACR grading for the year 2018 with 4 marks and ‘NR’ remarks by Reviewing officer for further promotion, which

will adversely affect his profile and future promotion to the rank of Risaldar, which is annexed as Annexure No. A-1 to this Original Application.

- B. To issue/pass an order or directions to set aside/quash the ACR for year 2018 bearing an Adverse ACR of 4 marks and 'NR' remarks by RO unjustly and arbitrarily. .
- C. To issue/pass an order or directions to the respondents to consider the applicant for correct ACR grading and recommendation for further promotion to the rank of Risaldar (RT) and consider him for promotion to the rank of Risaldar on availability of next vacancy as per Corps seniority.
- 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 as Signalmán on 22.08.1995. Subsequently, after passing the requisite test, the applicant was transferred from Corps of Signals to Armoured Corps and mustered as Religious Teacher and assumed the rank of Naib Risaldar on 06.09.2008. The applicant passed Junior Leader Proficiency Test (JLPT) for promotion to the rank of Risaldar on 23.06.2009 vide 14 HORSE Part II Order No. 14H/0523/0002/2009. Thereafter, applicant was posted to 6 LANCERS w.e.f. 28.05.2017. ACR for the year 2017-18 was reviewed as 'Average' report with 'NR' remark by CO 6 LANCERS. On scrutiny by Armoured Records, it was observed that 'Average grading/Below Average' grading in figurative assessment awarded by Reviewing

Officer has not been communicated to the applicant in terms of Para 42 and 44 of Army Order 1/2002/MP. Subsequently, an extract of ACR for the year 2018 in respect of the applicant was made and his signature was obtained and forwarded to Armoured Records. The applicant submitted a Non Statutory Complaint on 21.12.2018 against 'Average' grading and 'NR' remark in the ACR of 2018 which was rejected by the competent authority being devoid of merit. The applicant also submitted a petition dated 31.10.2019 under RTI Act which was suitably replied by Artillery Records vide letter dated 20.12.2019. Being aggrieved, the applicant has filed the present Original Application for grant of promotion to the rank of Risaldar.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Army as Signalmans on 22.08.1995. Subsequently, after passing the requisite test, the applicant was transferred from Corps of Signals to Armoured Corps and mustered as Religious Teacher and assumed the rank of Naib Risaldar on 06.09.2008. The applicant passed Junior Leader Proficiency Test (JLPT) for promotion to the rank of Risaldar on 23.06.2009. Thereafter, applicant was posted to 6 LANCERS w.e.f. 28.05.2017. In the ACR of 2017-18, applicant was graded as 'Average' (4 marks) and was not recommended for further promotion by Reviewing Officer, Col Amit Berwal, CO 6 LANCERS without any intimation or signature of the applicant on ACR form. The applicant came to know this fact when a letter from Armoured Corps Records dated 04.09.2018 received by the unit with observation to take signature of the applicant on ACR report (being an Average report) which was signed by the applicant

on 01.11.2018. The applicant got good marks, hopefully Outstanding/ Above Average/High Average reports in his all previous ACRs but in the year 2018 his marks of ACR were reduced to 4 (Average report) with 'NR' remark by Reviewing Officer and no 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 prospect of the applicant and he was not considered/promoted to the rank of Risaldar by DPC due to Average report of ACR of 2018. Otherwise he would have been promoted to the rank of Risaldar before March 2020 as per his seniority. The applicant submitted a Non Statutory Complaint on 21.12.2018 against 'Average' grading and 'NR' remark in the ACR of 2018 which was rejected by the competent authority being devoid of merit. The applicant also submitted a petition dated 31.10.2019 under RTI Act which was replied by Artillery Records vide letter dated 20.12.2019 denying any relief to the applicant.

4. Learned counsel for the applicant pleaded to set aside 4 marks Average Report of 2018 with 'NR' remarks by Reviewing Officer being inconsistency and not in conformity with his ACRs for his last ACRs in which applicant was graded Above Average/High Average and recommended for promotion and thereafter, applicant to be considered afresh as per his seniority for promotion to the rank of Risaldar taking his last four years ACRs excluding ACR of 2018. Thus, the applicant will be eligible for promotion to the rank of Risaldar before March 2020 as per his seniority.

5. Learned counsel for the respondents submitted that applicant was transferred from Corps of Signals to Armoured Corps and mustered as Religious Teacher and assumed the rank of Naib Risaldar on 06.09.2008. 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 from Naib Risaldar to Risaldar is laid down in IHQ of MoD (Army) letter dated 10.10.1997. As per criteria, only last three ACRs are considered for further promotion to the next higher rank which should not be less than 'High Average'. ACR for the year 2017-18 was initiated by Lt Col Abhishek Trivedi, Second-in-Command and was reviewed by Col. Amit Berwal, CO 6 LANCERS as Reviewing Officer and was forwarded to Armoured Records. On scrutiny by Armoured Records, it was observed that 'Average grading/Below Average' grading in figurative assessment awarded by Reviewing Officer has not been communicated to the applicant in terms of Para 42 and 44 of Army Order 1/2002/MP. Subsequently, an extract of ACR for the year 2018 in respect of the applicant was made and his signature was obtained and forwarded to Armoured Records. Since the ACR report of the applicant for the year 2018 has been graded as 'Average' and he has not been recommended for next promotion by Reviewing Officer, the applicant was not approved for the next promotion to the rank of Risaldar due to 'Average' grading and 'NR' remark in the ACR of 2018.

6. Learned counsel for the respondents further submitted that applicant submitted a Non Statutory Complaint on 21.12.2018 against 'Average' grading and 'NR' remark in the ACR of 2018 which was rejected by the competent authority being devoid of merit. The applicant also submitted a petition dated 31.10.2019 under RTI Act which was suitably replied by Artillery Records vide letter dated 20.12.2019. The applicant was awarded 'Average' grading and not recommended for further promotion in the ACR for the year 2018 by Reviewing Officer, therefore, as per promotion policy, the applicant was not eligible for further promotion to the next higher rank of Risaldar due to Average grading of 4 marks in the ACR of 2018 and non recommendation for further promotion to the rank of Risaldar. The applicant has rightly been denied promotion to the rank of Risaldar due to lack of ACR criteria as required vide IHQ of MoD (Army) policy letter dated 10.10.1997. 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 the 4 marks ACR report for the year 2018, awarded by CO 6 LANCERS as RO, for inconsistency and its variation from past profile of the applicant. We find that it is not in conformity with majority of his last three years ACRs. It appears that this ACR grading is an "out of profile" grading and although the reason cited by the RO for award of this grading is "Indl refused to take charge of Sarv Dharm Sthal – bonafide duty. Warning duly issued – copy att. Performance not as per rk and seniority", this

seems to be an aberration and not consistent with his previous ACR reports.

9. In fact the ACR profile of the JCO from 2014 to 2018 is clearly evident from this Table :-

Ser No	Year	Rank	Grading by IO	R/NR	Grading by RO	R/NR	ACR Initiated by	Emp during the period
(a)	2014	Nb Ris	8(AA)	'R'	9 (OS)	'R'	HQ Sqn 23 (I) Armd Bde	RT JCO
(b)	2015	Nb Ris	8(AA)	'R'	8 (AA)	'R'	HQ Sqn 23 (I) Armd Bde	RT JCO
(c)	2016	Nb Ris	8(AA)	'R'	8 (AA)	'R'	HQ Sqn 23 (I) Armd Bde	RT JCO
(d)	2017	Nb Ris	5(HA)	'R'	5 (HA)	'R'	HQ Sqn 23 (I) Armd Bde	RT JCO
(e)	2018	Nb Ris	5(HA)	'R'	4 (A)	'NR'	6 LANCERS	RT JCO

From the profile it is clear that only after joining 6 LANCERS, the grading was reduced to 4 with remarks 'NR' (that to only by the RO and not IO), whereas in his previous four ACR gradings when he was posted in HQ Sqn 23 (I) Armd Bde, in the same capacity i.e. RT JCO, he has earned outstanding, Above Average and High Average grading with IO and RO recommending him for promotion.

10. We are therefore of the firm opinion that the ACR grading for 2018 is not consistent with his earlier profile and therefore, the ACR of 2018 needs to be expunged and the applicant should be reconsidered for promotion after setting aside the ACR of 2018.

11. In view of above, we are of the view that applicant lost out timely promotion to the rank of Risaldar due to 4 marks Average report of ACR of 2018 with one 'NR' remark for no fault of his, which otherwise he may have earned before March 2020, as per his seniority. In light of the unfair circumstances presented as a fait

accompli to the applicant it is highly unjust on the part of the respondents for not considering/promoting him to the rank of Risaldar on due date. Therefore, ACR of 2018 is to be treated as expunged and respondents are directed to reconsider the case of the applicant in next DPC being held (alongwith his batch mates) for promotion to the rank of Risaldar, as per his seniority.

12. In the result, the Original Application deserves to be partly allowed. The impugned orders passed by the respondents are set aside. Original Application is disposed of with the direction to the respondents to reconsider applicant's case afresh in next DPC for promotion to the rank of Risaldar as per his seniority, if found otherwise fit for 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.

13. No order as to costs.

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

Dated: 16th December, 2021

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