

**RESERVED****ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW****TRANSFERRED APPLICATION No. 6 of 2014**Tuesday this the 21<sup>st</sup> Day of December, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

Sepoy Ramesh Prasad Army No. 4262644L, Son of Sri Jainarain Prasad at present posted at 9 BIHAR, Pin Code 910509, C/o 56 APO, Resident of Government Quarter No P/80/2 Khojatoli, P.S. &amp; Post- Namkum, District- Ranchi.

**..... Petitioner**Ld. Counsel for the : **Shri Yashpal Singh, Advocate.**  
Petitioner

Versus

1. Union of India through Secretary, Ministry of Defence, Government of India, New Delhi.
2. The Chief of Army Staff, Integrated Headquarters of MoD (Army), South Block- III, New Delhi- 11.
3. The Director General Infantry-6, (Personnel), General Staff branch, Army headquarters, New Delhi.
4. The Commanding Officer, 9 BIHAR Pin Code 910509, C/o 56 APO.
5. The Senior Record Officer, The Bihar Regimental Centre Record Office, Danapur Cantt, Pin- 908765, C/o 56 APO.
6. The Commandant, The Bihar Regimental Centre, Danapur Cantt, Pin – 908765, C/o 56 APO (Bihar).
7. Adjutant, 9 BIHAR, Pin Code- 910509, C/o 56 APO.

8. The Officer- In - Charge, The Bihar Regimental Centre Record Office, Danapur Cantt, Pin – 908765, C/o 56 APO.
9. Colonel Sanket Pandey, Commanding Officer, 9 Bihar Regiment, Pin- 910509, C/o 56 APO.
10. General Officer Commanding in Chief, Eastern Command, Kolkata.

**.....Respondents**

Ld. Counsel for the Respondents.

**Shri Sunil Sharma,  
Central Govt. Counsel**

**ORDER**

**“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”**

1. T.A. No 82 of 2011 arising out of Civil Writ Petition(S) No 4841 of 2008 High Court Jharkhand at Ranchi has been received by this Tribunal by transfer from Armed Forces Tribunal, Regional Bench, Kolkata on 27.03.2014 and renumbered as Transferred Application No. 6 of 2014.

2. By means of the instant T.A., the petitioner had originally made the following prayers:-

- (i). To set aside the finding and sentence/ punishment awarded by the summary court martial presided over by Colonel Sanket Pandey, Commanding Officer, 9 Bihar Regiment (Annexure No IE to the Transferred Application) and order dated 18.10.2007 passed by the General officer Commanding-in-Chief,

Eastern Command, Kolkata (Annexure No IC to the Transferred Application), after summoning the original records and grant all consequential service benefits including reinstatement and promotion to the rank of Naib Subedar from due date and fix pension and other benefits accordingly.

And/Or

(ii) After hearing of both the further this Hon'ble court may further be pleased to make the writ and rule absolute as against the concerned respondent authorities.

And/Or

(iii) Petitioner further prayed that during the pendency of this entire order writ application passed by the respondents against the petitioner may kindly be stayed.

And/Or

(iv) Pass such other order/ order is your Lordship may deem fit and proper for doing conscionable justice to the petitioner in the facts and circumstances of this writ petition.

And

(v) For this the petitioner shall ever pray.

3. Brief facts of the case giving rise to this petition are that the petitioner was enrolled in the Army on 01.09.1983. He was promoted to the rank of Havildar on 01.03.1999. The petitioner was due for promotion to the rank of Naib Subedar but could not be promoted due to lack of Annual Confidential Report. Aggrieved by non promotion, petitioner submitted non statutory

complaint which was rejected by the respondents. Then he wrote letter to Hon'ble Defence Minister, National Human Right Commission with a copy to President of India. A court of inquiry was held to investigate if any injustice was done with him. The petitioner was served Show Cause Notice. On 23.06.2008 Summary of Evidence was ordered and the petitioner was found guilty. He was tried by Summary Court Martial under Army Act Sec 63 and was awarded punishment of 'reduce to rank'. Since he was made Sepoy from Havildar, he was discharged from service. Petitioner filed Writ Petition No 6770 of 2007 before High Court Jharkhand which was disposed off as infructuous. Petitioner again filed Writ Petition No 4841 of 2008 before High Court Jharkhand with the prayer to set aside the punishment awarded by summary court martial and grant him all consequential benefits which was transferred to AFT, Kolkota and AFT Kolkota has transferred the same to this Tribunal.

4. Learned counsel for the petitioner submitted that petitioner was enrolled in the army on 01.09.1983. In due course of time he was promoted to the rank of Havildar. He was awarded best Non Commissioned Officer award for the year 2007. The petitioner successfully completed his promotion

cadre course and was due for promotion to the rank of Naib Subedar. His juniors were promoted but petitioner was denied his promotion. Aggrieved by non promotion, petitioner submitted non statutory complaint which was rejected by General Officer Commanding in Chief, Eastern Command. He prayed for interview with General Officer Commanding in Chief, but he was never given opportunity to meet him. The petitioner again sent applications to General Officer Commanding, 23 Inf Div, General Officer Commanding in Chief, Chief of Army Staff and Colonel of Regiment, Bihar Regiment complaining against various officers of 47 Rastriya Rifles, HQ Bengal Area and 9 Bihar. He prayed for permission to interact with media which was rejected. During pendency of Writ Petition a Court of Inquiry was held against the petitioner for writing letter to National Human Rights Commission with copy of President of India, and Defence Ministers on service matter. In the meantime, he again submitted two applications one for interview of General Officer Commanding 23 Inf Div with prayer to interaction with media, interview with Defence Minister and second application for CBI enquiry. Respondents annoyed and petitioner was sent in Military Hospital Namkum by Commanding Officer 9 Bihar for psychiatric evaluation. Then

wife of the petitioner Smt Puran Devi wrote letter to Hon'ble Defence Minister for intervention.

5. On 09.06.2008, the petitioner was served with Show Cause Notice and Summary of Evidence was ordered by Commanding Officer 9 Bihar and the petitioner was found guilty. He was tried by Summary Court Martial for prejudice of good order and military discipline under Army Act Sec 63 and was awarded punishment of 'reduce to rank'. Learned counsel for the petitioner submitted that this order was passed during pendency of WP (S) No 6770 of 2007 filed by the petitioner. Rank of the petitioner was reduced to Sepoy and petitioner was discharged from service. Due to this reason Writ Petition No 6770 of 2007 became infructuous. Learned counsel for the petitioner submitted that it is duty of the Presiding Officer to ask the accused under trial to object any officer sitting in SCM in terms of Army Rule 130 which was not followed in the case of petitioner. Trial was concluded on 19.08.2008 in the absence of his legal counsel appointed by the petitioner to defend his case. Petitioner was not provided copy of Court of Inquiry.

6. Learned counsel for the petitioner submitted that petitioner was recommended for extension of service for two years but the same was denied to him. Petitioner successfully

completed his promotion cadre course and was eligible for further promotion to the rank of Naib Subedar. His juniors were promoted but he was denied promotion. After filing Writ Petition in High Court, Jharkhand, Commanding Officer, 9 Bihar started coercing and harassing the petitioner for withdrawal of the said writ petition. His payment was withheld. The petitioner was put in illegal confinement and even process was initiated to declare him a mental case. Petitioner was sent to Military Hospital by Commanding Officer for mental check up and after all examination within a period of one and half month, he was released with discharge certificate with remark 'NAD' (Not Any Disease). Summary Court Martial was conveyed on 06.08.2008 and petitioner was awarded the punishment of reduction in rank and petitioner was discharged from service on 30.09.2008 under Army Rule 13 (3)(III) (i). Petitioner was not granted leave for preparation of his pension documents. Neither his Release medical Board was held nor he was issued ECHS Card.

7. Learned counsel for the petitioner submitted that while discharging, proper procedure for discharge as prescribed in Army Order 3/89 was not followed, hence discharge order is arbitrary, malafide and violating of principle of natural justice as

well as fundamental rights of the petitioner and is liable to be quashed.

8. On the other hand, learned counsel for the respondents submitted that petitioner posted to Infantry School, Mhow, was tried and punished for an act under Section 63 of the Army Act, 1950. Further, while in service with 47 Rashtriya Rifles petitioner was again punished for an act under Section 63 of the Army Act for violation of good order and military discipline. Petitioner was under extended service period of two years. He was awarded the punishment of "To be Reduced to Ranks" by a summary Court Martial held on 06.08.2008 and he was made Sepoy from Havildar. His discharge order was issued by Records The Bihar Regiment vide letter No 1040/I/66/RAI dated 25 August, 2008. The discharge order was issued on fulfilling the terms of engagement on being awarded the punishment of Reduced to rank by a Summary Court Martial during extended period of service. As per Notes to Rule 13 of Army Rule 1954, issuing Show Cause Notice before discharge is not mandatory requirement, hence petitioner was not denied his fundamental right. Petitioner was tried by Summary Court Martial for violation of good order and military discipline. He was found guilty and was awarded the

punishment of 'To be Reduced to Ranks'. The petitioner was given every opportunity and was found guilty after hearing the testimony of prosecution witnesses and the defence. On perusal of charge sheet, it is evident that both the charges are in no way connected to the issues raised in Writ Petition (S) No 6770 of 2007, hence contention of the petitioner is baseless. This petition was filed by the petitioner for promotion to the rank of Naib Subedar. Learned counsel for the respondents submitted that any act of indiscipline by any person subject to Army Act cannot be overlooked as they have an adverse effect on the discipline of the unit. All legal provisions were followed before holding trial and the verdict of Summary Court Martial was scrutinised by Deputy Judge Advocate General, 1 Corps. The petitioner had requested Commander 61 Inf Bde for reassembly of Summary Court Martial which was turned down vide Headquarters 61 Inf Bde letter dated 28 August, 2008 since there is no provision to reassemble the same. The Summary Court Martial proceedings were reviewed and countersigned by competent authority. The petitioner was having right to submit petition under Section 116 of Army Act against Summary Court Martial and he was directed to avail same before coming to

the Hon'ble Court. Petitioner was given full freedom to meet his civil legal counsel and call him in the Court. Counsel attended trial but due to behaviour of the petitioner, counsel left him. Disciplinary proceeding was initiated against the petitioner for violation of Good order and Military discipline under Section 63 of Army Act, 1950 which he committed on 24 August, 2007 by writing directly to National Human Rights Commission and President of India. Repeated act of gross indiscipline are not expected from a senior NCO, as they not only erode the ethos of military service but also set a wrong precedence to whole army.

9. His name had come up in seniority for promotion to the rank of Naib Subedar with effect from 01.11.2004 but he was superseded due to lack of ACR criteria laid down in promotion policy issued vide Army Headquarters letter dated 10.10.1997. It is stated that there is no provision to relax the ACR criteria for promotion. Petitioner wrote letter to Records The Bihar Regiment to know the reasons of his supersession. He was informed that he was superseded due to lack of ACR criteria. Perusal of ACR for the last five years indicate that petitioner was having a poor service profile. The details of ACR of the petitioner for last five year are as under:-

<b>Ser No</b>	<b>Year</b>	<b>Grading</b>	<b>Unit/Establishment in which ACR earned</b>
(i)	2003	4 (Average)	47 RR Bn
(ii)	2004	6 (High Average)	47 RR Bn
(iii)	2005	5 (High Average)	HQ Bengal Area
(iv)	2006	5 (High Average)	HQ Bengal Area
(v)	2007	5 (High Average)	9 Bihar

10. Petitioner submitted non statutory complaint for redressal of his grievances which was rejected after investigation. The petitioner was found guilty under Section 63 of Army Act, 1950 for two charges which were independent of the issues under contest in Writ Petition (S) No 6770 of 2007. After hearing of charge proceedings, a summary of evidence was ordered and petitioner was tried by summary court martial and was awarded the punishment of "To be Reduced to Ranks". The petitioner had prayed that he was not granted Annual Leave before discharge. It is submitted that a maximum of 30 days of Annual Leave can be encashed for any calendar year. Since family of the petitioner was located in station, he was given time to prepare his pension documents but he showed defiance. Records The Bihar Regiment had intimated vide letter dated 25 August, 2008 that the petitioner had to report to Depot Company on 01

September, 2008 for discharge drill as he was to proceed on discharge on 30 September, 2008. Due to short duration of only five days, petitioner could not avail his leave as preparation of his pension documents was more important failing which only the petitioner could have suffered. The petitioner was sent for Release Medical Board as per Army order 3 of 1989 before he was transferred to pension establishment. The petitioner had requested for an extension of occupation of Govt Married Accommodation till completion of academic session i.e. 31 March, 2009 but the notification of the Govt of India, Min of Def clearly lays down that such an extension can be granted only for a period upto 3 months from the date of discharge, which in this case was 30 September, 2008, therefore, his request was turned down as other entitled personnel were waitlisted for allotment of accommodation. The petitioner was granted extension of service for two years. After reduction of his rank he was liable to be discharged from service. He prayed that instant Transferred Application lacks substance and is liable to be dismissed.

11. We have heard learned counsel for the parties and perused the documents available on record.

12. The question before us for consideration is whether the punishment of reduction in rank is liable to be quashed and whether petitioner can be promoted to the rank of Naib Subedar or not?

13. In the instant case, it is not disputed that the petitioner was enrolled in the army on 01.09.1983 and dismissed from service on 30.09.2008. He had completed more than 24 years of service at the time of dismissal and he is getting pension of Sepoy. He wrote letters direct to Human Rights Commission as well as to President which is against Army Rule. For this unlawful Act, he was tried by Summary Court Martial and was awarded punishment of reduce to rank accordingly he was made Sepoy from Havildar and petitioner was dismissed from service as Sepoy. He was lacking ACR criteria, hence he was not promoted to the rank of Naib Subder. Non statutory complaint submitted by the petitioner was suitably replied by the respondents and petitioner was informed that he was not promoted to the rank of Naib Subedar due to lacking of ACR criteria.

14. On due consideration of the case, we find that petitioner was not promoted to the rank of Naib Subdar due to lacking of ACR criteria. In the army, there are certain parameters for

promotion. A candidate cannot be promoted to the rank of Naib Subedar only on passing promotion Cadre Course. He should meet other conditions for promotion i.e. disciplinary criteria, medical condition and ACR criteria. Since petitioner was not meeting prescribed criteria for promotion, he was not promoted as Naib Subedar. Prayer of the petitioner for grant of promotion is rejected. Petitioner was rightly denied extension of Govt married accommodation as there were other candidates in waiting list for accommodation. As far as prayer of the petitioner to quash punishment of reduction of rank is concerned, proper procedure was followed while awarding punishment of reduced to rank from Havildar to Sepoy. In the instant case, petitioner had rendered more than 24 years of service, hence he was granted service pension of Sepoy.

15. Considering all issues, we are of the considered opinion that Ld. Counsel for the petitioner has failed to make out any case in his favour. We do not find any procedural illegality or irregularity in conducting the SCM and finding recorded on the basis of the evidence is also in accordance with the material on record. We find that petitioner was negligent towards his duties and disciplined. Thus considering that due process has been followed by army authorities in dismissing the petitioner from

service, we are not inclined to interfere with this process or provide any other relief to the petitioner.

16. In view of the above, the Transferred Application No 6 of 2014 deserves to be dismissed, hence **dismissed**.

17. No order as to costs.

18. Pending applications, if any, stand disposed off.

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

Dated: 21 December, 2021

Ukt/-