

Reserved

COURT No.1

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

ORIGINAL APPLICATION No. 386 of 2023

Saturday, this the 02nd day of December, 2023

Hon'ble Mr. Justice Ravindra Nath Kakkar, Member (J)
Hon'ble Lt Gen Anil Puri, Member (A)

JC-704938X Nb Sub (AA) Manoj Kumar Tripathi Son of Sri Ram Vidya Tripathi, Resident of Village- Budhhi Gaon, Post Office- Ram Nagar, Semra, Police Station- Nawabganj, Tehsil- Nanpara, District- Bahraich,

Presently residing at

KH4/251 Om Sai Enclave Vijay Nagar, Sector 6, Khargapur, Gomti Nagar Extension, Lucknow 226010

Presently Posted at

423 Field Hospital (Ranchi Cantt) C/o 99 APO, PIN- 903423.

..... Applicant

Learned counsel for the Applicant : **Shri Gyanendra Kumar Pandey, Advocate**

Versus

1. Union of India, through Secretary, Min of Defence, Govt of India, New Delhi.
2. The Chief of Army Staff, Sena Bhawan, New Delhi.
3. The Officer in Charge, Headquarters Army Medical Corps, Lucknow, PIN-226002(UP).

4. Brigadier Record, Army Medical Corps, Lucknow – 226002.
5. Senior Record Officer, AMC (Records), Promotion Section, Lucknow – 226002, C/o 56 APO
6. The Senior Record Officer, AMC Record Pension Section, Lucknow – 900450, C/o 56 APO.
7. The Commanding Officer, 423, Field Hospital, C/o 99 APOO, PIN- 903423 (Ranchi Cantt Jharkhand).

.....Respondents

Learned counsel for the Respondents.

**:Shri Amit Jaiswal,
Central Govt. Counsel**

ORDER

“Per Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

(i) This Hon’ble Armed Force Tribunal may very graciously be pleased to set aside the impugned order as contained as Annexure No 8 dated 08.11.2022 passed by respondent No 5 together with impugned order as contained in Annexure No 9 dated 12.03.2022 passed by respondent No 6 by which the applicant is preferred promotion although his juniors are promoted at one hand and at the other applicant is ordered to be discharged from the service to pension wef 01.05.2023.

(ii) Allow to continue the applicant on his next promotional post of Subedar/Ambulance Assistant in accordance with law applicable to matter without prejudice to the fact of pendency in civil court case as party unless not held guilty to secure the ends of justice.

(iii) Any other order which this Hon'ble Tribunal deems fit and proper under facts and circumstances may also be passed in favour of applicant.

(iv) To allow the cost of this original application against respondents in favour of applicant.

2. The undisputed facts of the case are that the applicant was enrolled in Army Medical Corps (AMC) on 24.04.1995. During course of his service he was promoted to the rank of Naib Subedar. He was in medical category SHAPE-1. He was approved for promotion to the rank of Sub for the vacancy of 01 September 2022 but was not promoted due to pendency of case in civil court under Section 420/406/34 IPC and was discharged from service on completion of terms of engagement w.e.f. 01.05.2023 (FN). Applicant represented his case for grant of promotion which was rejected. Being aggrieved, applicant has filed instant O.A. for grant of promotion to the rank of Sub.

3. Learned counsel for the applicant submitted that the

applicant was granted Annual Leave. During leave he was going on religious tour to Kamakhya Devi, District Gauhati (Assam) He stayed at Sainik Aram Ghar. In a nearby Tea shop one Anarul Islam met and told him that due to some personal emergency need he wants to sell some piece of gold on concessional rate. Anarul Islam told him to come with him to check the commodity of the gold and brought the applicant to north Lakhimpur bus station and requested to wait for one hour and after about one hour he came back with yellow metal piece, silli about 250 gram and told that it is gold and you may get it checked by any jeweler shop. On about 100 meter distance at jeweler shop he was told that this piece of gold is of 22 carat and its value is Rs. 41,665/- per 10 grams and Anarul Islam agreed to give 22 carat gold at the rate of Rs. 35,000/- per 10 grams. Finally, 80 grams piece out of checked gold silli in Rs. 2,70,000/- was fixed and applicant withdrawn the money amounting to Rs. 2,70,000/- from his account. Anarul Islam told the applicant to pay money to Harej Ajijur and told that gold silli is in his hand. Anrul Islam further told the applicant to go to jeweler shop where out of it, 80 grams gold will be given to him. In jeweler shop, he was told that silli with him was fake and hot words took place between them and local police came and FIR No 0784 of 2020 at Police Station North Lakhimpur Assam dated 19.09.2020 was registered on complaint of Mr Tarun Chetry,

Inspector Police under Section 34, 406 and 420 I.P.C. accusing the applicant also who has been a victim and Rs. 2,70,000/- was also recovered. The applicant was sent to jail and remained in jail wef 27.08.2020 upto 16.10.2020. In the meantime promotion order of the applicant was issued. Respondents were informed regarding status of case that applicant has been released on bail but case was pending against him. His juniors were promoted to the rank of Sub but applicant was not promoted due to his involvement in civil court case. Learned counsel for the applicant submitted that till date applicant has not been summoned and conclusion of trial may take several years. The applicant has been discharged from service wef 01.05.2023. The applicant is fully eligible and qualified for next promotion to the post of Sub and he has never been awarded any red ink entry during whole service. Learned counsel for the applicant pleaded that respondents be directed to promote the applicant to the rank of Subedar from due date and allow him to continue in service.

4. Per contra, learned counsel for the respondents contended that applicant While serving with 428 Field Hospital was granted 58 days part of Annual Leave from 26.06.2020 to 21.08.2020. It was informed by investigation officer, Police Station District- Lakhimpur (Assam) that applicant was arrested under

Section 420, 406 and 34 of IPC. He was released on bail by Guwahati High Court vide Bail Application dated 12.10.2020.

5. Learned counsel for the respondents pleaded that Army Order 01/2010/DV deals with promotion and discharge of Junior Commissioned Officers and Other Ranks. Paragraph (a) (iii) of AO 01/2010/DV states that before ordering promotion, substantive or acting, the Record Office will obtain clearance from the unit/formation where individual is serving regarding his non-involvement in any disciplinary, vigilance or criminal case and if an individual is reported to be involved in a criminal case, where a person is facing prosecution by Govt in a Court of Law on matter involving moral turpitude or lack of integrity, a ban on his promotion will be imposed.

6. Learned counsel for the respondents further stated that as per Corps seniority, the applicant came up for consideration for promotion to the rank of Sub for the vacancy of 01.09.2022. Applicant had not produced any document related to his acquittal/disposal of criminal case. Accordingly, the applicant was temporarily superseded for promotion to the rank of Sub till acquittal from criminal case. On completion of 26 years of service limit on 23.04.2021, he was granted two years 'Extension of Service' from 24.04.2021 to 23.04.2023 as per policy in vogue. On

completion of his extended service limit in the rank of Nb Sub, he was discharged from service on 30.04.2023 (Afternoon). Learned counsel for the respondents pleaded that instant O.A. has no substance and is liable to be dismissed.

7. Heard learned counsel of both the parties and perused the documents available on record.

8. The facts necessary for adjudication of the present controversy are enumerated in succeeding paragraphs.

9. Applicant was enrolled in the Army Medical Corps on 24.07.1995 and during course of his service, he was promoted to the rank of Nb Sub on 01.01.2020. He was considered for promotion to the rank of Sub on his own turn against the vacancy of 01.09.2022. Since case was pending against him in civil court, he was not promoted to the rank of Sub in terms of Army Order 01/2010/DV. Paragraph 3 (d) of AO 01/2010/DV states that ***“Persons against whom proceedings are pending in a criminal or civil court as also those who are material witnesses in disciplinary cases will be discharged/ invalidated out on the due dates”***. As per Govt of India, Min of Def letter dated 03.09.1998, age limit for retirement with effect from 30.05.1998 in respect of Nb Sub was revised as 26 years colour service extendable by 2 years by screening or 52 years of age, whichever is earlier. The applicant had completed 26 years of

Normal Service Limit on 23.04.2021. He was granted two years extension of service from 24.04.2021 to 23.04.2023 as per policy in vogue. As per mandate timelines, discharge order of the applicant was issued and applicant was discharged from service from 01.05.2023 (FN).

10. Having given our anxious consideration and keeping in view the policy in vogue, since case was pending against the applicant in Civil Court and neither he was acquitted nor exonerated from criminal charge hence, he was not legible for promotion to the rank of Sub and after completion of terms of engagement in the rank of Nb Sub, he was rightly discharged from service. Therefore, on the basis of aforesaid reasons, we are of the definite view that the respondents have rightly not promoted the applicant to the rank of Sub.

11. In view of the facts and circumstances explained above, the O.A. is **dismissed** being devoid of merit.

12. No order as to costs.

13. Miscellaneous application(s), pending if any, stand disposed of.

(Lt Gen Anil Puri)
Member (A)

(Justice Ravindra Nath Kakkar)
Member (J)

Dated: 02 December 2023

Ukt/-