

RESERVED**COURT NO.2****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 150 of 2016**Tuesday, this the 13th day of February, 2018**“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)****“Hon’ble Air Marshal BBP, Sinha, Member (A)”**

Subedar Keshav Patel (JC 699057-M), son of Shri Bhuneshwar Patel, Residence of Administration Battalion AMC Centre & College Lucknow **Applicant**

Ld. Counsel for the : **Shri P.N. Chaturvedi, Advocate**
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defense, South Block New Delhi.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence, South Block, New Delhi - 110001.
3. The Officer-in-Charge Records, Record Office, AMC, Pin 900450, C/O 56 APO.
4. Brigadier AMC Records, Pin 900450 C/O 56 APO.
5. Pay and Account Officer (OR), AMC, (Near Topkhana Market) Lucknow.
6. Subedar Santhil Kumar D (JC-698434L), 158 Base Hospital Pin 900326 C/O 99 APO.

...Respondents

Ld. Counsel for the: **Shri Sunil Sharma, Advocate,**
Respondents. **Sr. Central Govt Standing Counsel.**

Assisted by : **Maj Rajshri Nigam, OIC Legal Cell.**

ORDER**“Per Hon’ble Air Marshal BBP Sinha, Member (A)”**

1. Present O.A has been preferred under section 14 of the Armed Forces Tribunal Act, 2007 by the Applicant for the following reliefs.

“(a) To issue/pass an order or direction of appropriate nature to the respondents for consideration of the applicant case to the rank of Subedar Major immediately with the benchmark of the Departmental promotion Committee (DPC) held in the year f2015 and act as per the result/outcome of the same. The applicant is two months senior to Respondent No. 6 and Respondent No 6 could not even be promoted to the rank of Naib Subedar and Subedar.

(b) Associated with prayer 8 (a) above, to issue/pass an order or direction of appropriate nature to the respondents to quash/set aside the promotion of Respondent no 6 to the rank of Naib Subedar and Subedear and also approval to the rank of Subedar Major by the DPC held in the year 2015, being illegal at the very inception as besides other factors Respondent no 6 is junior to the applicant by two months.”

2. The salient facts in nutshell are that the Applicant was enrolled as Nursing Assistant in the Indian Army on 22.12.1986. In due course of time, he was promoted on the

rank of Naik on 01.04.2005 and subsequently, he was promoted to the rank of Havildar w.e.f 05.05.2008. He was again considered and approved for promotion to the rank of Naib Subedar in the year 2011. Before proceeding on promotion-cum-posting to Base Hospital Lucknow, the applicant requested for 4 days casual leave w.e.f 23.10.2011 to 26.10.2011. While on leave, he was caught with liquor costing Rs 9000/- by the Police at Ahmedabad (Gujrat) which was duly intimated by the Police vide letter dated 13.11.2011. Thereafter, the applicant resumed duties on promotion cum posting at base Hospital Lucknow on 4.11.2011 without intimating his arrest by the Police. The applicant was reported to have committed the offence on 24.10.2011, i.e. before the date of reporting at the Base Hospital Lucknow on Promotion cum posting, his matter was reported to the Headquarters Lucknow Sub Area for action. Consequently, the promotion was revoked and the applicant was demoted to the rank of Havildar. The next personnel i.e respondent no 6 approved for promotion was promoted on the rank of Naib Subedar. On being demoted, the applicant preferred O.A No 23 of 2012 in the Armed Forces Tribunal at Lucknow which culminated in being allowed with the direction that the applicant be given his rank of Naib Subedar from the date of issue of this order and case be investigated

in detail by the competent Authority and then on merit of the case, action be taken within a month from the date of issue of this order. The order was accordingly complied with and the applicant was restored to the rank of Naib Subedar attended with his seniority. On completion of the age of 44 years, willingness for extension for two years in service was asked for from the applicant. The Special Screening Board for extension of service limit by two years was held on 11.12.2012 and consequently, applicant was granted extension upto 21.12.2014. In the meanwhile, in the criminal case, the applicant was convicted and sentenced to six months RI attended with a fine of Rs 500/- for the offence under section 66B of Prohibition Act as per the provision of Sec 255 (S) of Cr.P.C. The applicant was further convicted and sentenced to six months RI and a fine of RS 1000/- for offence under section 65 (A) (E). Subsequently, the applicant preferred a Criminal Appeal No 69 of 2013 before the City Civil and Sessions Court no 9 Ahmedabad wherein he was acquitted of the charges vide order dated 03.06.2013. Thereafter, the Applicant was considered for promotion to the rank of Subedar and was promoted on the said rank with seniority w.e.f 01.03.2014 vide letter dated 18.01.2014. Subsequent to the promotion on the rank of Subedar, the willingness was asked for from the Applicant for extension of

service limit for two years in the rank of Subedar vide letter dated 07.02.2014 for Extension Board for the Quarter ending March 2014. However, the Applicant expressed his unwillingness for extension of service for two years which was received alongwith letter of Base Hospital dated 26.02.2014. The extension of Service Board for the quarter ending March 2014 was held on 04.04.2014 in which on account of unwillingness of the applicant, the extension of service by two years beyond his normal service limit was not granted. The order retiring the Applicant was issued whereby he was ordered to be retired with effect from 01.04.2015. However vide representation dated 10.06.2014, the applicant prayed for withdrawal of unwillingness certificate for extension of service which was received by Army Medical Corps on 12.06.2014. The representation aforesaid was rejected on the ground that Special Screening Board was held on 04.04.2014 which did not approve his extension of service for two years on account of his unwillingness to continue in service, the decision for retirement of the Applicant on the aforesaid was final. Aggrieved, the Applicant preferred a statutory complaint dated 26.08.2014. Thereafter, the Applicant filed O.A No 126 of 2015. However, the aforesaid O.A was disposed of with the direction to the competent authority to dispose of his statutory complaint by

a reasoned and speaking order within two months vide order of this Tribunal dated 23.09.2015. In observance of the directions of the Tribunal, the statutory complaint was decided with the direction dated 31.12.2015 which are quoted below.

" Redress be granted to JC-699057M Sub (STA) Keshav Patel AMC, by way of accepting his willingness certificate for extension of service and accordingly be granted all consequential benefits."

On receipt of the aforesaid direction, the Applicant was reinstated in service with effect from 01.01.2015.

3. In the meanwhile, Departmental Promotion Committee 2015 for selection of Subedar Major for the vacancies of 2016 was held at Army medical Corps Record office with effect from 27 July to 29 July 2015 and Subedars who were promoted during the year 2013 and 2014 were considered in the Departmental Promotion Committee as first Look in accordance with Integrated Headquarters, Ministry of Defence letter dated 10.10.1997. According to Over All Performance based selection system, Subedar Sentail Kumar D respondent no 6 was selected for promotion to the rank of Subedar Major amongst other selected JCOs in accordance with the policy in vogue. However, the applicant was not considered as he was not in service at that time.

4. The main brunt of submission of learned counsel for the Applicant is that the applicant was reinstated in service with effect from 01.01.2015 and he rejoined the service on 28.05.2016. However, in the meantime in July 2015 D.P.C was held for promotion against one vacancy of Subedar Major and the respondent no 6 was selected for the said post and was promoted on 1.08.2016. It is submitted that if there was short fall in the ACR, Special Confidential Reports ought to have been asked for. It is submitted that the Applicant could not get two ACRs for the year 2015 and 2016 because of illegal discharge from service for which he was not responsible nor he could be blamed. It is also submitted that as per the Adjutant General, IHQ of MoD (Army) letter dated 26.03.2010 shortfall of a report as JCO due to organizational constraints, there could be inclusion of one confidential report as NCO make up the required mandatory numbers of Confidential Reports. It is also submitted that there was only one vacancy of Naib Subedar on 01.11.2011 which was initially given to the applicant being entitled. Respondent no 6 was to retire as Havildar on 01.03.2013. However, there being only one vacancy and that the applicant was demoted to the rank of Havildar on account of criminal case from which he was subsequently acquitted and he was again

promoted to the rank of Naib Subedar, the respondent no 6 ought to have been brought down to the rank of Havildar.

5. In connection with the above, we may refer to Integrated Headquarters of Ministry of Defence (Army) Letter No B/33513/AG/PS-2 © dated 10 October 1997 which postulates in para 8 thereof that promotion to the rank of Subedar Major is based on Over All Performance (OPA) selection system and merely qualifying for consideration by Departmental Promotion Committee (DPC) does not entitle a Subedar for promotion to the rank of Subedar Major as selection is based on seniority-cum-merit depending upon the vacancies available. Appendix 'C' to Integrated Headquarters of Ministry of Defence (Army) letter No. B/33513/AG/PS-2 (c) dated 10 Oct 1997 lays down that in this system, five year Annual Confidential Report Profile of a candidate in the rank of Junior Commissioned Officer will be taken into account. Other factors like courses honours and awards will be given due weightage.

6. It is conceded in para 2 of the rejoinder affidavit that the Applicant was physically out of service between 01.01.2015 to 27.05.2016. Likewise in para 4 of the rejoinder affidavit, it is conceded that no annual confidential report was initiated during the period between 01.01.2015 to 27.05.2016. One of the reasons for non consideration of the

Applicant was shortfall of two Annual Confidential Reports vis a vis five mandatory Annual Confidential Reports in terms of Appendix 'C' to Integrated Headquarters of Ministry of Defence (Army) letter No. B/33513/AG/PS-2 (c) dated 10 Oct 1997

7. Before proceeding further, we would highlight the significance of Annual Confidential Report. Annual confidential reports are written with a view to adjudge their performance every year in the areas of their work, conduct, character and capabilities. The system of writing confidential reports has two main objectives. First and foremost is to improve performance of the subordinates in their present job. The second is to assess their potentialities and to prepare them for the jobs suitable to their personality. Confidential reports are of immense importance in the career of personnel, efficiency of service, for the work, conduct, character and capabilities of the officer reported upon can be accurately judged from the recorded opinion. The ACRs provide the basic and vital inputs for assessing the performance of a personnel and his advancement in his career as also to serve the data for judging his comparative merits for confirmation, promotion, selection grade, crossing efficiency bar, continuance in service beyond certain age or completion of certain years' service. The columns of ACR are,

therefore, to be filled up by the Reporting, Reviewing and Accepting authorities in an objective and impartial manner. The case of **R. Ramesh v. Bharath Sanchar Nigam Limited in Writ Petition No 21271 of 2012 rendered on 30.04.2013**, the Madras High Court highlighted that-

“Annual Confidential Report' is an important document for judging an employee/public servant's ability, initiative, capacity, industry and integrity in discharging duties allotted to him. Further, it will provide a cementing platform to evaluate its potentiality to the higher posts in the cadre or otherwise. Ordinarily, the Annual Confidential Reports are recorded annually based on the subjective assessments in regard to the quality of service turned out by the Reported Officer during the calendar year/financial year April to March. It cannot be gainsaid that the said report is initiated by the Superior Officer of the concerned employee/public servant/ Government servant as the case may be, who is in a position to monitor/observe the day to day activities of the employee for a certain period. Subsequently, the said report is reviewed by a higher authority and then accepted by still higher authority, so as to reach perfection in assessing/grading the concerned individual. In this regard, there are administrative instructions issued from time to time by the Department of Personnel and other officers concerned.”

8. It brooks no dispute that the applicant was physically out of service between 01.01.2015 to 27.05.2016 on account of the unwillingness certificate dated 26.02.2014 containing his unwillingness to continue in service. Hence no ACRs were

awarded for the period he was physically out of service. As stated supra, the annual remarks are awarded assessing their work, conduct, character and capabilities. When the Applicant was physically out of service, there was no question of any ACR being awarded for the period aforesaid. In this connection, we feel called to refer to the Appendix 'C' to Integrated Headquarters of Ministry of Defence (Army) letter No. B/33513/AG/PS-2 (c) dated 10 Oct 1997 lays down that in this system, five year Annual Confidential Report Profile of a candidate in the rank of Junior Commissioned Officer will be taken into account. Other factors like courses honours and awards will be given due weightage. Hence it would clearly transpire that the Applicant was short of mandatory five year Annual Confidential Report profile in the rank of Junior Commissioned officer. To rephrase it, the Applicant did not fulfill the mandatory conditions of five Annual Confidential Report profile for promotion to the rank of Subedar Major.

9. It is also worthy of notice here that since unwillingness of the Applicant to continue in service as contained in letter dated 26.02.2014 was there on record, the Extension of Service Board for the quarter ending March 2014 was conducted on 04.04.2014 in which extension of service limit by two years beyond his normal service limit was not

granted. The representation dated 10.06.2014 was made by the Applicant for withdrawal of unwillingness certificate for extension of service. The said representation was returned un-acted upon on the ground that as per integrated Headquarters, Ministry of defence (Army) Letter No B/33098/AG/Ps-2 (c) dated 03.04.22000 mentioning that the decision of Screening Board constituted in accordance with the laid down instruction on the subject was final and was not subject to change by subsequent submission of willingness of the applicant. The statutory complaint was filed and as stated supra, in the meantime OA No 126 of 2015 was also filed in which direction was given to dispose of the statutory complaint within two months. In terms of direction of the Tribunal, the statutory complaint was allowed by way of accepting willingness certificate for extension of service with all consequential benefits. As a consequence, the applicant was restored in service vide order dated 31.12.2015. It may be noted that Departmental Promotion Committee 2015 for selection of Subedar Major for the vacancies of 2016 was held at Army Medical Corps Record office between 27.07.2015 to 29.07.2015 in which Subedars who were promoted during the year 2013 and 2014 were considered. The Applicant was not considered as he was not in service at that time. The Applicant was restored in service

in terms of order of the Chief of Army Staff dated 31.12.2015 while the Departmental Promotion Committee held its meeting between 27.07.2015 to 29.07.2015. Hence there was no question of applicant being considered for promotion on the rank of Subedar Major.

10. Another peculiar relief claimed in the instant case is the prayer for setting aside the promotion of respondent no 6 to the rank of Naib Subedar and Subedar. The name of respondent no. 6 was considered by the Departmental Promotion Committee in accordance with the Rules and policies in vogue. The Applicant assailed the promotion on the ground that he was senior to respondent no. 6. The grievance of the Applicant is that he was not considered by the Departmental Promotion Committee held from 27.07.2015 to 29.07.2015 for promotion to the rank of Subedar Major. According to the own admission by the Applicant he was physically out of service between 01.01.2015 to 27.05.2016. The vexed question is how he could be considered for promotion by the Departmental promotion Committee when he was not physically in service and he also did not fulfill the mandatory condition of five Annual Confidential Reports profile as mandated by Appendix 'C' to Integrated Headquarters of Ministry of Defence (Army) letter No. B/33513/AG/PS-2 (c) dated 10 Oct 1997.

11. The submission of the learned counsel for the applicant that shortfall in ACR could be made good and in support of his submission, he cited the decision of the Delhi High Court in **Ex Havildar Tilka Raj Singh Vs Union of India (Mil LJ 2009 Del 40)**. We have gone through that decision. The decision it would transpire has been rendered in different set of facts inasmuch as the ACR could not be recorded in that case as the Applicant of that case had been posted to ERE. It was held that the applicant was not to be blamed for his posting to ERE. Thus, the aforesaid decision is unavailing to the Applicant. Here in the instant case, the applicant was physically out of service and it all happened on account of unwillingness expressed by the applicant to continue in service as Subedar. No doubt subsequently he withdrew his unwillingness that too after the Extension Board had already met on 04.04.2014 and his extension was not approved on account of unwillingness certificate.

12. We would like to add here that a large combatant organisation like Army can't be subjected to the indecision of a single individual. While permitting an individual to withdraw his unwillingness is fair on grounds of principles of natural justice, however for the individual to expect that the Board for the extension of service and the promotion boards generally held once or twice a year should also be

re-conducted as per his change of decision from unwillingness to willingness does not come in the four corners of principles of natural justice . This will amount to subjecting a fighting organisation like Army to the whims and Fancies of individuals decision makings. What has happened in organisational interest can't be undone & re-done for individual interest. Hence we do not agree that promotion board for Subedar Major already held in 2015 should have been re-done in 2016 for the benefit of the applicant who was re-instated in the back ground of a situation which was created because he primarily could not make up his mind on whether to continue in service or quit it.

13. In so far as question of promotion with regard to respondent no 6 is concerned, it would suffice to say that since the applicant had got promotion to the rank of Naib Subedar in compliance with the order of the Tribunal, the dispute pertaining to demotion Senthil Kumar D is unwarranted in the facts and circumstances of the case. Besides the applicant was screened for promotion to the rank of Subedar for the vacancy of 01.03.2014 and promoted with seniority with effect from 01.03.2014 whereas respondent no 6 was promoted to the rank of Subedar against the vacancy of April 2014 only with seniority w.e.f 01.04.2014. Thus the

promotion of the respondent to the rank of Naib Subedar was fully in accordance with rules and policies on the subject.

14. Thus as a result of foregoing discussion, the petition lacks merit and being devoid of merit, is accordingly dismissed.

15. There shall be no order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice S.V.S. Rathore)
Member (J)

Dated: February, 13 ,2018
MH/-

Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW
COURT NO.2

O.A. No. 150 of 2016

Subedar Keshav Patel
By Legal Practitioner for the Applicant
 Versus

Applicant

Union of India & Others
By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>13.02.2018</u> <u>Hon'ble Mr. Justice S.V.S. Rathore, Member (J)</u> <u>Hon'ble Air Marshal BBP Sinha, Member (A)</u></p> <p>Judgment pronounced. Original Application No. 150 of 2016 is dismissed. For orders, see our judgment and order of date passed on separate sheets.</p> <p style="text-align: center;">(Air Marshal BBP Sinha) (Justice S.V.S. Rathore) Member (A) Member (J)</p> <p>MH/-</p>