

e-Court
RESERVED

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 473 of 2020

Wednesday, this the 16th day of February, 2022

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Hav Mhatru Narasewadekar, S/o Sri Mhatru Yallappa Narasewadekar, House No 744, Shiva Krupa, Jambhoti Road, Shivaji Nagar, PO-Tal, Khanpur, Belgaum, PIN-591303.

.... Applicant

Ld. Counsel for the: **Col AK Srivastava (Retd)**, Advocate.
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi.
2. The Chief of the Army Staff, IHQ of MoD (Army), South Block, New Delhi-110011.
3. The CO, MH Belgaum.
4. OIC Records, AMC Records, Lucknow.
5. Principal Controller of Defence Account (Pension), CDA (P), Draupadi Ghat, Allahabad.

... Respondents

Ld. Counsel for the : **Shri Namit Sharma**, Advocate
Respondents.

ORDER

"Per Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)"

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) Issue/pass an order or direction of appropriate nature to summon and quash/set aside respondents' impugned orders 'COAS direction' dated 18.11.2019 (Annexure No 1) rejecting applicant's Statutory Complaint dated 02.02.2019 denying promotion to the applicant to the rank of a Nb Sub w.e.f. 01.01.2019.

(b) *Issue/pass an order or direction of appropriate nature to summon and quash/set aside respondents' impugned orders passed by respondents vide AMC Record letter No 35006J/PROM/AA/NB/2019 dated 24 Dec 2018 (Annexure No 2) denying promotion to the applicant to the rank of a Nb Sub w.e.f. 01.01.2019 and thereby grant him said promotion, ensuing pay and allowances and other benefits.*

(c) *Issue/pass an order or direction of appropriate nature to the respondents' to promote the applicant to the rank of a Nb Sub w.e.f. 01.01.2019 on the basis of available ACRs since they evidently have lost the ACR of 2018 in respect of the applicant and there is no fault of the applicant on that count.*

(d) *Issue/pass an order or direction of appropriate nature to the respondents to grant waiver for the period for which the applicant is over age for being considered for promotion to the rank of a Nb Sub.*

(e) *Issue/pass an order or direction of appropriate nature to the respondents to seek waiver of ACR of 2018 lost misplaced by them and consider his promotion on the basis of available number of ACRs of the applicant and thereafter consider and promote him to the rank of a Nb Sub w.e.f. 01.01.2019 after reinstating him in service alongwith ensuing benefits of pay and allowances and other benefits.*

(f) *Issue/pass an order or direction of appropriate nature to respondents to set aside inconsistent ACRs, if any and thereby promote the applicant to the rank of a Nb Sub w.e.f. 01.01.2019 after reinstating him in service alongwith ensuing benefits of pay and allowances.*

(g) *Issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.*

(h) *Allow this application with costs.*

2. Brief facts of the case are that the applicant was enrolled in the Army Medical Corps (AMC) as Ambulance Assistant on 29.06.1994. During the course of his service he was promoted to the rank of Naik in the year 2014 and Havildar in the year 2016. As per applicant he has earned 'Above Average' gradings in all his confidential reports but despite that he was not promoted to the rank of Naib Subedar which was due on 01.01.2019. Against supersession applicant submitted statutory complaint dated 02.02.2019 which was rejected by Chief of the Army Staff (COAS) vide reasoned order dated

18.11.2019. The applicant became overage for promotion to the next rank of Naib Subedar on 20.06.2019 and thus he was discharged from service in the rank of Havildar having rendered more than 26 years of service. This O.A. has been filed to quash impugned order dated 18.11.2019 (Annexure No 1) passed by the COAS, order dated 24.12.2018 (Annexure No 2) passed by AMC Records and promote him to the rank of Naib Subedar by granting age relaxation.

3. Submission of learned counsel for the applicant is that due to his honesty and loyalty he was always graded 'Above Average' in his confidential reports and therefore, he was granted timely promotions upto the rank of Havildar and there were no counselling/warnings from any Initiating/Reviewing Officer during his service. He further submitted that the applicant had successfully qualified Senior Cadre Course for the period 15.05.2018 to 16.07.2018 even though he was not promoted to the rank of Naib Subedar. Applicant's learned counsel further submitted that applicant's confidential report for the year 2018 was not traceable in the Record Office as it was reflected pending in their website. His further contention is that in this regard numerous correspondences made between MH, Belgaum and Records became futile as the word 'pending' related to the confidential report for the year 2018 was intact in the website of the Records. His other submission is that the misplaced confidential report for the year 2018 should have been taken as 'Above Average'

based on his preceding year's report and he be promoted to the rank of Naib Subedar. His grievance is mainly related to his misplaced report for the year 2018 which he apprehends that non inclusion of this report for consideration of his promotion led to supersession for the next promotion whereas his batch mates were promoted to the next rank. Further submission of the learned counsel for the applicant is that the applicant was having all the basic criterion for promotion to the rank of Naib Subedar and had also successfully completed the Promotion Cadre Course, as such, he was entitled for promotion to the rank of Naib Subedar. Learned counsel for the applicant vehemently argued that the applicant was never informed the ground for non-consideration of his promotion to the rank of Naib Subedar and only through the letter dated 24.12.2018 he knew that his name was not included in the list of promotes.

4. Per contra, learned counsel for the respondents emphatically submitted that the applicant lacked the required ACR entries for promotion to the rank of Naib Subedar. Further, it was submitted that as per norms fixed for promotion, last five ACR reports have to be considered. Atleast three reports among them should be 'Above Average' and the residual two reports should not be less than 'High Average'. Since the applicant was not fulfilling the ACR grading criteria, thus, he was not recommended by the Board of Officers and was superseded by his eligible and qualified juniors. It is further submitted by learned counsel for the respondents that the applicant

was aware that he has been granted 'High Average' Report during the reporting year 2017 by three tier reporting. In para-4 of the counter affidavit, the respondents have mentioned the last five years report grading given to the applicant as under:-

<u>"Year</u>	<u>Grading</u>	<u>Rank in which CR Initiated</u>
2013	Above average.	Naik
2014	Above average.	Naik
2015	Outstanding	Naik
2016	NIR	Naik/Havildar
2017	High average.	Havildar
2018	Above Average	Havildar"

5. We have heard learned counsel for the parties and perused the record.

6. Applicant's contention that his confidential report for the year 2018 was lost/misplaced is not sustainable as the respondents have taken it into account while considering his promotion as mentioned in para 4 of counter affidavit.

7. Learned counsel for the applicant has cited the case of O.A. No. 124 of 2016 **Havildar Rajendra Singh vs. The Union of India and Ors** decided on 18.04.2017 wherein the co-ordinate Bench of Armed Forces Tribunal, Regional Bench, Jabalpur in similar circumstances, has allowed the applicant to be promoted to the rank of Naib Subedar. We have gone through the judgment aforementioned and find that the facts in the instant case are dissimilar to the case cited. In that case a relaxation of one ACR criteria was given to the entire batch of affected persons by the competent authority on the ground

that all the persons had earned only one report in the rank of Havildar. In the instant case the facts are different which are discussed in the succeeding paras.

8. Based on policy letter dated 10.10.1997, the following is the criteria for promotion to the rank of Nb Sub:-

(i) Only last five reports will be considered out of which minimum three reports must be in the rank of Havildar and in case of shortfall rest may be in the rank of Naik.

(ii) At least three out of last five reports should be 'Above Average' with a minimum of two in the rank of Havildar and remaining should be not less than 'High Average'.

9. Thus, from the aforesaid it is abundantly clear that the applicant was required to possess two CR entries of 'Above Average' gradings in rank of Havildar to enable him to get next rank but since the applicant was having only one 'Above Average' entry in the rank of Havildar, he is not eligible to be considered for promotion to the next rank which he is claiming.

10. In view of the above, the O.A. is **dismissed** being devoid of merit.

11. No order as to costs.

12. Pending application(s), if any, stand disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated :16.02.2022
rathore