

**Court No. 1**

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

**Original Application No. 364 of 2019**

**Friday, this the 4<sup>th</sup> day of February, 2022**

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

No. 15122321 Ex Hav Mohd Nizamuddin  
S/o Late Usman Ali  
R/o Village – Arangi, Post – Usia, Tehsil – Jamania,  
District – Ghazipur (UP)

.... Applicant

Ld. Counsel for the Applicant : **Shri Rohit Kumar**, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, New Delhi-110011.
2. The Chief of Army Staff, New Delhi-110011.
3. Commandant cum Chief Records Officer, Artillery Centre & Records, Hyderabad.

... 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, whereby the applicant has sought following reliefs:-

*(a) To quash the rejection order bearing no. CF/15122321Y/150FR/03/RA-2 dated 25 mar 2019 signed by Lt. Col. RN Padhi, Senior Records Officer, signing for the Officer in charge Arty Records rejecting the statutory complaint of the applicant.*

*(b) Grant promotion to the applicant to the rank of Naib Subedar with effect from the date of original batch seniority with all the consequential benefits to the applicant.*

*(c) To issue any other order or direction considered expedient and in the interest of justice and equity.*

*(d) Award cost of the petition.”*

2. Brief facts of the case are that applicant was enrolled in the Army on 28.12.1994. During the course of his service he was promoted to the rank of Naik, Havildar and MACP Naib Subedar at his own turn. As per existing policy the promotions are made by the unit concerned based on seniority, availability of vacancies and promotion criteria. As per para 17 of Army Order 12/2009/MT, a Non Commissioned Officer (NCO) will be eligible to attend the promotion cadre to the rank of Havildar or Naib Subedar for a maximum of three times for each rank. The applicant was unable to clear Havildar to Naib Subedar promotion cadre within the stipulated three chances, hence, the applicant was declined further promotion from the rank of Havildar to Naib Subedar. The applicant preferred a statutory complaint dated 15.01.2019 which was rejected by OIC Artillery Records vide letter dated 25.03.2019. Being aggrieved, the applicant has filed the present Original Application for grant of regular promotion to the rank of Naib Subedar and its financial benefits.

3. Submission of Learned counsel for the applicant is that applicant was enrolled in the Army on 28.12.1994. The applicant was promoted to Lance Naik, Naik and Havildar at his turn. The applicant had undergone the HNS cadre course. The applicant was in SHAPE-1 and fit for promotion to the rank of Naib Subedar but the same was not done and juniors of the applicant have been promoted and the applicant due to

denial of promotion has been retired from service w.e.f. 31.12.2018. He also submitted that Havildar Mahesh Yadav of 150 Fd Amb was promoted as Nb Sub despite having cleared the HNS cadre course in the 4<sup>th</sup> attempt and therefore, applicant's case was also one of the fittest cases for waiver in those cases who passed the cadre course in fourth attempt as special case.

4. Learned counsel for the applicant further submitted that applicant preferred a statutory complaint under Section 26 of the Army Act, 1950 on 15.01.2019 which was rejected by OIC Artillery Records vide letter dated 25.03.2019 without looking into the fact. Thus, the action of the respondents was against the Right of Equality before the law, illegal and irrational and in gross violation of Law reported in para 5 of AIR 1992 SC 417 and also violative of Article 14 and 21 of the Constitution of India. He pleaded for grant of Naib Subedar promotion to applicant with original batch seniority and consequential benefits.

5. Learned counsel for the respondents submitted that applicant was promoted to the rank of Naik, Havildar and MACP Naib Subedar at his own turn. As per existing policy the promotions are made by the unit concerned based on seniority, availability of vacancies and if meeting the requisite promotion criteria. As per para 17 of Army Order 12/2009/MT, a Non Commissioned Officer (NCO) will be eligible to attend the promotion cadre to the rank of Havildar or Naib Subedar for a maximum of three times for each rank. Passing of promotion cadre is mandatory and a pre-requisite for promotion to the next rank.

6. Learned counsel for the respondents further submitted that in the instant case, the applicant was unable to clear Havildar to Naib Subedar

promotion cadre within the stipulated three chances, hence, the applicant was declined further promotion from the rank of Havildar to Naib Subedar. As per records, Havildar Mahesh Yadav had cleared Havildar to Naib Subedar promotion cadre in stipulated three chances and not in fourth attempt. Accordingly, he was promoted to the post of Naib Subedar on meeting promotion criteria. The applicant's name was included in Annual Unit Promotion Board of Havildar to Naib Subedar Nov 2017 held on 18.11.2017 at 150 Field Regiment but later the applicant's name was deleted by unit by submitting a certificate dated 02.03.2018 stating that the applicant had passed the Havildar to Naib Subedar promotion cadre by availing more than three chances. As per policy in vogue a NCO will be eligible to attend the promotion cadre to the rank of Havildar to Naib Subedar for a maximum of three times for each rank. The applicant was discharged from service on completion of 24 years of service giving the benefit of MACP Naib Subedar. The applicant has submitted a statutory complaint dated 15.01.2019 which was replied by Artillery Records vide letter dated 25.03.2019 rejecting prayer of the applicant for grant of promotion to the rank of Naib Subedar on the ground of non clearance of promotion cadre in three chances. He pleaded for dismissal of O.A. on the ground that applicant could not be promoted to the rank of Naib Subedar as he had not cleared promotion cadre within the stipulated three chances as per rules.

7. We have gone through the rival submissions made by both the parties and perused the material placed on record.

8. We find that though applicant was due for promotion to the rank of Naib Subedar and his name was included in Annual Unit Promotion Board of Havildar to Naib Subedar Nov 2017 held on 18.11.2017 but later the applicant's name was deleted by unit stating that the applicant had passed the Havildar to Naib Subedar promotion cadre by availing more than three chances. As per para 17 of Army Order 12/2009/MT, a NCO will be eligible to attend the promotion cadre to the rank of Havildar to Naib Subedar for a maximum of three times for each rank but the applicant could not clear promotion cadre within the stipulated three chances and therefore, applicant could not be promoted to the rank of Naib Subedar due to lack of passing of promotion cadre in time. Though, the applicant has already been granted financial upgradation of MACP (Nb Sub grade), hence his prayer for grant of promotion to the rank of regular Naib Subedar has rightly been rejected by the respondents as per rules and regulations.

9. In view of the above, we do not find any irregularity or illegality in denying higher rank of regular Nb Sub to the applicant. The promotion of MACP Nb Sub grade (not to the rank of Nb Sub) is procedurally correct and there is no violation of any rules and regulations. The O.A. is devoid of merit and deserves to be dismissed. It is accordingly **dismissed**.

10. No order as to costs.

11. Pending Misc. Application(s), if any, shall stand disposed off.

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

Dated : February, 2022

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