

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No 474 of 2021****Tuesday, this the 15th day of February, 2022****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)NO. JC-805308Y Sub/Instr Niketan Kumar Panjiyara
S/o Late Chandragupt Panjiyara
Presently posted at Headquarters Central Command,
PIN-908544, C/o 56 APO

..... Applicant

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

Versus

1. Union of India, through Secretary, Ministry of Defence, Room No. 101, South Block, New Delhi-110011.
2. Chief of the Army Staff, IHQ of MOD (Army), South Block, New Delhi-110011
3. The Officer-in-Charge, Army Educational Records, PIN-908777, C/o 56 APO.
4. GOC-in-C, Headquarters Central Command, PIN-908544, C/o 56 APO.

..... Respondents

Ld. Counsel for the Respondents : **Shri R.C. Shukla**,
Central Govt Counsel.**ORDER (Oral)**

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

“A. To issue/pass an order or directions to set-aside/quash the letter/order no. CA3/00401 dated 24 June 2021

passed by respondent no. 3 which is being annexed as Annexure No. A-1 to this Original Application.

- B. To issue/pass an order or directions to the respondents to consider the second chance (DPC-2022) as a first chance.
- C. To issue/pass any other order or direction as this Hon'ble tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant.
- D. To allow this original application with costs.”

2. Written arguments / parawise reply of counter affidavit filed by the applicant is taken on record.

3. The brief facts of the case are that applicant was enrolled in the Indian Army on 02.09.2002. In the year 2020, respondent no. 3 vide letter dated 25.06.2020 asked ACR for the year 2021 in respect of all affected Subedars (Instructor) for consideration of name in DPC 2021. During DPC-2021 which was the first chance of the applicant option certificate as per IHQ of MoD letter dated 26.12.2003 was not obtained/demanded from the applicant while as per letter dated 27.05.2021, direction was issued to obtain option certificate from all JCOs who were to be considered for promotion to the rank of Subedar Major. During DPC-2021 applicant had neither accepted for promotion to Subedar Major rank nor given his willingness for the same however, his name has been selected due to which applicant's both first and second chances have been redeemed. The applicant submitted his option certificate dated 07.06.2021 for deferment of promotion to the rank of Subedar Major which was not considered by

the respondents. Thereafter, applicant preferred a representation dated 08.06.2021 to respondent No. 3 to consider his second chance as a first chance, but the same has been illegally rejected by the respondent no. 3 without any consideration to treat his second chance as first chance in DPC-2022. Being aggrieved, the applicant has filed the present Original Application to consider his second chance in DPC-2022 as a first chance.

4. Learned counsel for the applicant submitted that applicant was enrolled in the Indian Army on 02.09.2002. In the year 2020, respondent no. 3 vide letter dated 25.06.2020 directed all Headquarters for submission of ACR for the year 2021 in respect of all affected Subedar (Instructors) for consideration of name in DPC 2021 in which applicant's name was in serial no. 341. Thereafter, in the year 2021, respondent No. 3 vide letter dated 06.04.2021 directed all Headquarters for submission of ACR for the year 2021 for DPC 2022 and applicant's name was shown in serial no. 247. During DPC-2021 which was the first chance of the applicant option certificate as per IHQ of MoD letter dated 26.12.2003 was not obtained/demanded from the applicant while as per letter dated 27.05.2021, direction was issued to obtain option certificate which is discrimination. During DPC-2021 applicant had neither accepted for promotion to Subedar Major rank nor given his willingness for the same however, his name has been selected due to which applicant's both first and second chances have been redeemed.

5. Learned counsel for the applicant further submitted that applicant submitted his option certificate dated 07.06.2021 for deferment of promotion to the rank of Subedar Major. As such now both chances (DPC 2021 & DPC 2022) of applicant have been redeemed. However he had not given his option certificate for deferment/forgo his promotion to the rank of Subedar Major for DPC 2021 and if said option certificate demanded during DPC-2022 is only considered then applicant still has overall three chance left for promotion. Being aggrieved, the applicant preferred a representation dated 08.06.2021 to respondent No. 3 to consider his second chance as a first chance, but the same has been illegally rejected by the respondent no. 3 without any consideration to his second chance as first chance in DPC-2022. He pleaded to consider his second chance in DPC-2022 as a first chance.

6. Learned counsel for the respondents submitted that applicant was promoted to the rank of Subedar on 01.11.2018. As per seniority his name was mentioned at serial No. 341 of AEC Records letter dated 25.06.2020 for promotion to next higher rank of Subedar Major in DPC-2021 which was held from 28 to 29 Oct. 2020. The JCO was not selected by the Committee in his first look being low in merit and he was considered again in next DPC scheduled in Nov. 2021 as second chance. The option to defer his name at the time of first look as asked by IHQ of MOD (Army) letter dated 26.12.2003 was not received by the applicant, however option certificate for deferment was received from only two JCOs. Thereafter, AEC Records asked

option certificate from all JCOs who would be screened in first look in DPC 2022 vide letter dated 06.04.2021. The applicant forwarded said Option Certificate dated 07.06.2021 for deferment of promotion vide letter dated 08.06.2021 to consider his second look as first look. As per policy letter option certificate for deferment is only applicable to those candidates who are screened for their first look for DPC-2021. Accordingly, his request to consider second look as first look in DPC-2022 was not accepted due to policy constraints.

7. Learned counsel for the respondents further submitted that applicant had not submitted option certificate for deferment which was circulated to the environment by IHQ of MoD (Army). Accordingly, he was considered for his first look in the DPC-2021. However, based on his service profile and other related QR the applicant could not be selected in DPC-2021. Since the applicant has already availed his first chance in the DPC 2021 and he is due for his second chance in DPC-2022, his request to consider second chance into first chance is against the policy in vogue. It is also submitted that JCO is left with two more chances (second & third) as per the existing policy. He pleaded for dismissal of Original Application.

8. Heard learned counsel for the parties and perused the relevant documents available on record.

9. We find that as per policy letter dated 26.12.2003 any JCO who has less than 25 years of service and 50 years of age may opt to defer his name at the time of first chance only. The ibid policy letter

was circulated to all Command Headquarters, however, AEC Records received option certificate for deferment from two JCOs only. This shows that out of early 340 or more candidates only two have submitted their option certificates while others may also not have done so due to non receipt of the above policy letter of 2003 thus strengthening the case of the applicant that he has not submitted his option certificate. Further, even though the applicant was neither asked for nor he submitted any option certificate for deferment of his name for DPC-2021 yet his name was considered though of course he was not selected by the Committee in his first chance. As per AEC Records letter dated 27.05.2021, direction was issued to all concerned to obtain option certificate for the next DPC-2022 and accordingly, applicant submitted his option certificate dated 07.06.2021 for DPC-2022 for deferment of promotion to the rank of Subedar Major which was not accepted/considered by the respondents since the respondents had already considered him for DPC-2021 being first chance and option certificate is required/obtained only for the first chance. Therefore, applicant's prayer to consider his option certificate dated 07.06.2021 as his first chance option certificate seems to be logical and hence, we are of the view to consider this option of the applicant for DPC-2022 as a first chance and thus, applicant will be left with two more chances (second & third) for next DPCs.

10. In view of above, Original Application is allowed. The impugned order passed by the respondents is set aside. The respondents are

directed to consider applicant's second chance of DPC-2022 as a first chance. The respondents are directed to give effect to this order within three months from the date of receipt of a copy of this order.

11. No order as to costs.

12. Pending Misc. Application(s), if any, shall be treated to have been disposed off.

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

Dated: February, 2022

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