

Court No. 1
RESERVED

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

TRANSFER APPLICATION No. 6 of 2021

Monday, this the 28th day of February, 2022

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

No. 791431N Ex. Sgt Somdatt Awasthi
S/o Shri DP Awasthi,
R/o House No. 2/159 Virat Khand,
Gomti Nagar, Lucknow (UP).

..... Petitioner

Ld. Counsel for the : **Shri Shailendra Kumar Singh**, Advocate.
Petitioner

Versus

1. Union of India, through the Secretary, Ministry of Finance, South Block, New Delhi.
2. The Chief of Air Staff, Integrated HQs of MoD (Air Force), Vayu Bhawan, New Delhi-110011.
3. Directorate of Air Veterans, Subroto Park, New Delhi -110010.
4. Dy. Controller of Defence Accounts (AF) Subroto Park, New Delhi-110010
5. Officer-in-Charge Records, Air Force Records Office, Subroto Park, New Delhi-110010.

.....Respondents

Ld. Counsel for the : **MS. Appoli Srivastava**, Advocate
Respondents. Central Govt. Counsel

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”

1. The petitioner had filed Original Application No 192 of 2019 under Section 14 of the Armed Forces Tribunal Act, 2007 in Armed Forces Tribunal, Regional Bench, J&K which on transfer to this Tribunal has been re-numbered as T.A. No. 6 of 2021.

The following reliefs have been prayed:-

- I.) Direction to the respondents for setting aside impugned order A-15 (08.01.2019) & A-17 (05.03.2019) wherein the respondents rejected his claim for grant of next higher rank of JWO.*
- II.) Direction to the respondents to grant promotion for the rank of JWO to the petitioner along with all consequential benefits w.e.f. 01.06.2018 and further benefits accrued of promotion to the rank of JWO.*
- III.) The respondent may be directed to re-issue discharge book and all necessary certificates issued at the time of discharge, making him eligible to apply for other services, medical facilities, canteen facilities etc as per promoted rank.*
- IV.) Any other order that the Hon’ble Tribunal may deem fit in the facts and circumstances of the case.*

2. Briefly stated facts of the case are that the petitioner was enrolled in the Indian Air Force (IAF) on 19.06.1998. In the year

2015 while undergoing trade course he got injured and sustained injury '**PARTIAL ACL TEAR LEFT KNEE**' which was regarded as attributable to military service. Since he was placed in a non promotable medical category A4G4(P), the petitioner submitted his unwillingness for further extension of service which was approved and consequent to that his discharge order was issued on 15.05.2017 (Annexure A-4) to be discharged from service w.e.f. 30.06.2018. The petitioner was undergoing pre-release course for the period 05.02.2018 to 20.07.2018 at Jammu. During the period of his course, an additional promotional panel 2017-18 for promotion to the rank of JWO was issued vide letter dated 07.03.2018 to be promoted to the next rank subject to acceptable medical category. Also, during this period his re-categorization medical board was conducted on 15.03.2018 by which his medical category was upgraded to A4G3(P) which is a promotable category subject to condonation board. Consequent to receipt of additional panel and upgradation of his medical category, the petitioner while on course rendered his willingness for extension of service for 3 years. Accordingly, on the basis of recommendation endorsed by the Commanding Officer, AFRO, his extension was accepted by Air Headquarters in the upgraded medical category. The condonation board conducted on 02.05.2018 did not recommend his name for promotion to the rank of JWO vide AFRO letter dated 15.05.2018 (Annexure D of SCA) due to his parent trade 'Radio Fitter' but the fact is that he was working in the capacity of IT and Legal Section

for the last 10 years and he received all his confidential reports from these two Sections. Earlier, the petitioner had requested to the authorities concerned for reversion to his parent trade but he was forced to work in IT and Legal Cell for 10 years. The grievance of the petitioner is that he should have been considered for next promotion keeping in view of his upgraded medical category and utilisation of his services in IT and Legal Cell and also condonation board could not have denied his further promotion when the sanction was accorded by the higher authority for extension of his service in the same medical category.

3. Learned counsel for the petitioner submitted that in the re-categorization medical board held on 15.03.2018 (Annexure B to SCA) his medical category was upgraded to A4G3(P) and vide para 21 of the said board there were no restrictions with regard to his employability whereas the condonation medical board held on 02.05.2018 (Annexure D to SCA) restricted his employability to the post of higher rank involving stress and strain relating to military service which resulted in his denial of further promotion. Further submission of learned counsel for the petitioner is that due to aforesaid remarks of condonation board when petitioner was denied further promotion, he applied for re-consideration of his promotion prior to 30.06.2018 or cancellation of extension of service on two counts- (i) his name was not empanelled in the next

promotional panel 2018-19 and (ii) that as per latest promotional panel 2018-19 he would have to serve under juniors.

4. Per contra, learned counsel for the respondents admitted the fact that initially the petitioner submitted his unwillingness for further service on 05.09.2016 and the same was actioned at AFRO on 03.10.2016 accordingly his discharge order dated 15.05.2017 was issued to discharge him from service w.e.f. 30.06.2018. He further submitted that while undergoing pre-release course, on 16.03.2018 petitioner applied for change of option to serve further citing reasons that he has been empanelled in additional promotional panel 2017-18 and also his medical category was upgraded to A4G3(P) vide re-categorization board dated 15.03.2018. He further submitted that his case for extension of tenure was processed by AFRO which was forwarded to the competent authority i.e. Air Headquarters, Vayu Bhawan, New Delhi which, after considering the fact that he has been empanelled in the additional promotional board, granted extension of engagement for 03 years. His further submission is that the petitioner could not be promoted to the higher rank keeping in view the remarks endorsed by the condonation board which held as "*he is an old case of partial ACL Tear (Lt) knee which has limited his functional capacity like PPG/prolonged standing etc and will be further reduced under stress and strain of military service and duties of higher rank, hence he is unfit for promotion*". He

concluded for dismissal of O.A. on the ground that since the petitioner was not recommended for further promotion to the next rank by condonation board, he was not promoted to the said rank.

5. Heard learned counsel for the parties and perused the material placed on record.

6. Having been enrolled on 19.06.1998 in Radio Fitter trade the petitioner was entrusted to work in IT and Legal Cell since 2007. In the year 2015 while undergoing trade course he got injured on duty. Accordingly, he was placed in low medical category A4G4(P) and his disability was regarded as attributable to military service. Thereafter, keeping in view of his medical category A4G4(P), a non promotable category, petitioner submitted his unwillingness for extension of service. Accordingly, his release order was issued to proceed on discharge w.e.f. 30.06.2018.

7. In view of his scheduled discharge, he was detailed to undergo pre-release commencing from 05.02.2018 at Jammu. During this period an additional promotional panel 2017-2018 was issued on 07.03.2018 in which petitioner's name figured. On 15.03.2018 the re-categorization medical board upgraded his medical category to A4G3(P) which is a promotable category subject to condonation board. Consequent to upgradation of his medical category the petitioner submitted his willingness for extension of service which was accorded by AFRO. The condonation board held on 02.05.2018 did not recommend his

name for promotion to the rank of JWO vide letter dated 15.05.2018 (Annexure D) keeping in view of his trade 'Radio Fitter' which requires stress and strain but the fact is that the petitioner was working in IT and Legal Section for the last 10 years and he received all his confidential reports from these two sections.

8. It is not disputed that petitioner's re-categorization medical board held on 15.03.2018 upgraded his medical category to A4G3(P) which is a promotable category. It is also not disputed that the re-categorization medical board vide para 21 has not imposed any restrictions with regard to his employability. The condonation board held on 02.05.2018 (Annexure D to SCA) imposed restrictions on his employability to the higher post keeping in view of his trade 'Radio Fitter' which involves stress and strain but the fact that the petitioner was working in IT and Legal Cell for the last 10 years was very well known to the respondents as he received all his confidential reports from there.

9. In re-categorization medical board petitioner was physically examined and his medical category was upgraded in which no restriction was imposed for his suitability to the next rank whereas based on re-categorization medical board, the condonation board held on 02.05.2018 imposed restriction for his suitability to the next rank without examining the petitioner physically which can not be accepted in the eyes of law.

10. In view of the above, petitioner is held entitled for promotion to the next rank of JWO w.e.f. 01.06.2018 on which date he was eligible to be promoted to the next rank alongwith all other candidates who were recommended by condonation board.

11. Thus, keeping in view all aspects hereinabove, the T.A. deserves to be allowed, hence **allowed**.

12. Since petitioner has already retired from service on 30.06.2018, he is entitled to get all his retiral dues based on notional promotion to the rank of JWO w.e.f. 01.06.2018. Respondents are directed to release the retiral dues to the petitioner within a period of four months from today. Default will invite interest @ 8% p.a. Respondents are further directed to issue revised PPO and other related documents to the petitioner accordingly.

13. No order as to costs.

14. Miscellaneous applications, pending if any, stand disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated :28.02.2022

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