

RESERVED
(Court No. 2)

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No 388 of 2017

Thursday, this the 06th day of February, 2025

Hon'ble Mr. Justice Anil Kumar, Member (J)

Hon'ble Maj Gen Sanjay Singh, Member (A)

Gagan Singh (No. JC-811377L Subedar) son of Shri Durga Singh Dhami, Permanent resident of Village-Khela, Post Office-Khela, District-Pithoragarh (Uttarakhand) [presently posted at the Central Command Counter Intelligence Unit, C/o 56 APO].

..... Applicant

Ld. Counsel for the Applicant: **Mohd Zafar Khan**, Advocate

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, New Delhi.
2. Director General, Military Intelligence (MI-20), General Staff Branch, Integrated Headquarters of Ministry of Defence (Army), Sena Bhawan, DHQ Post Office, New Delhi-110011.
3. Officer-in-Charge Records, Military Intelligence Corps, Pune-40.
4. Commanding Officer, Central Command Counter Intelligence Unit, C/o 56 APO.

..... Respondents

Ld. Counsel for :
the Respondents

Dr. Shailendra Sharma Atal, Advocate
Sr. 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 for the following reliefs:-

- (i) *Issuing/passing of an order directing the respondents to consider the case of the applicant for promotion in the rank of Subedar Major with effect from 01.09.2017 as per the recommendation of the Departmental Promotion Committee held in the month of November 2017, and grant the same with all consequential service benefits.*
- (ii) *Issuing/passing of any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.*
- (iii) *Allowing this Application with cost.*

2. The facts necessary for adjudication of the case are that the applicant was enrolled in the Army (Kumaon Scouts) on 29.12.1987. He was transferred to Army Intelligence Corps w.e.f. 19.03.1993. During the course of his service, he was promoted to the rank of Subedar w.e.f. 16.09.2013 with seniority w.e.f. 01.09.2013. Against the vacancies of Subedar Majors for the year 2017, Departmental Promotion Committee (DPC) was held in November, 2016 in which the applicant was screened and being found suitable he was recommended for promotion to the rank of Subedar Major. He was placed at serial number 12.

3. In the year 2016, decision was taken by Govt of India, Ministry of Defence for conversion of 30 minor Intelligence Corps units to 11 upgraded major Intelligence Corps units. Accordingly, on 28.12.2016, Additional Directorate General of Manpower Policy and Planning, Adjutant General's Branch conveyed sanction of the Govt of India to implement the instructions. As a result of this re-structuring, four

vacancies of Subedar Majors were reduced from the Intelligence Corps in the year, 2017 to avoid excess holding strength of Subedar Majors in the Corps. Accordingly, out of 14 originally anticipated vacancies of Subedar Majors, only 10 vacancies were available in the year 2017. As per policy, 10 senior most Subedars were promoted to the rank of Subedar Major but applicant being placed at serial number 12 could not be promoted to the rank of Subedar Major as there were only ten vacancies available in the year 2017; and since he superannuated before occurrence of the next vacancy, which could only then arise in 2018 as 04 vacancies had ceased to exist in 2017.

4. In this backdrop, as the applicant could not be promoted to the rank of Sub Maj, his case was considered for grant of Honorary Commission on the eve of Independence Day 2017, but since he could not be granted Honorary Commission due to being low in merit, for this purpose he was discharged from service w.e.f. 31.12.2017 (AN) after completion of terms of engagement under Rule 13 (3) I (i) (a) of Army Rules, 1954. This O.A. has been filed for issuing directions to the respondents to consider applicant's case for promotion to the rank of Subedar Major w.e.f. 01.09.2017 as per recommendation of DPC held in the month of November, 2016 and grant all consequential benefits.

5. Learned counsel for the applicant submitted that the DPC held in the month of November, 2016 recommended the applicant for promotion to the next higher rank of Subedar Major. It was further submitted that in the selected list of candidates the applicant was placed at serial number 12 at the time of conduct of DPC, he was

likely to be promoted to the next rank w.e.f. 01.09.2017; but instead of being promoted to the higher rank of Subedar Major his discharge order was issued in contravention to the rules on subject. It was further argued that under normal conditions the process of retirement drill starts about eight months prior to the due date of discharge, but in the case of the applicant no such process was started because he was due for further promotion w.e.f. 01.09.2017. It was next submitted that the applicant being recommended by the DPC for next higher rank should not have been discharged from service prior to promotion, which was due on 01.09.2017.

6. Learned counsel for the applicant further submitted that the applicant was eligible to be considered for grant of Honorary Lieutenant rank which is used to be given twice in a year, i.e. on Independence Day and Republic Day, but as the applicant was in promotion zone as per the recommendation of the DPC, his candidature for grant of Honorary rank was not considered which has caused huge monetary loss in pension and other retiral benefits as well as loss of rank/status. It was also submitted that being in promotion zone the applicant was not sent for resettlement course/technical course for about three months, which would have enabled him to settle after retirement.

7. Concluding his submission, learned counsel for the applicant further submitted that action of the respondents for not granting promotion to the rank of Subedar Major is unfair and contrary to the provisions contained in Article 14 and 16 of the Constitution of India. He pleaded for issuing directions to the respondents for grant of due

promotion to the applicant w.e.f. 01.09.2017 and all consequential benefits.

8. On the other hand, learned counsel for the respondents conceded that the applicant was empanelled for promotion to the rank of Subedar Major by the DPC-2016 against the vacancies arising in the year 2017. However, during December 2016, Govt of India, Ministry of Defence implemented a new policy of re-structuring by which 30 Minor Intelligence Units were re-structured to 10 Upgraded Major Intelligence Units and in the process of re-structuring four vacancies of Subedar Majors were reduced in the Corps for the year 2017. It was further submitted that due to reduction of vacancies in the year 2017, only 10 vacancies were now available for Subedars to be promoted to the rank of Subedar Majors in 2017.

9. Learned counsel for the respondents further submitted that all Subedars senior to the applicant were promoted to the rank of Subedar Major but applicant being placed at serial number 12 could not be promoted to the next higher rank as there were only 10 vacancies available in the year 2017. He, however, submitted that applicant's name was considered for grant of Honorary Commission on the eve of Independence day, 2017 but he could not get it being low in merit for that purpose. He pleaded for dismissal of O.A. on the ground that firstly, the applicant could not be promoted to higher rank due to non availability of vacancy prior to his superannuation and secondly, he was not granted Honorary Commission due to low in merit. He also argued that the panel of a Sub Maj DPC itself does not get exhausted within a calendar year, and if the individual in question

had not retired on 31.12.2017, he may yet have been eligible for the next vacancy.

10. Heard learned counsel for the parties and perused the record. We have also gone through the Original Record produced on behalf of the respondents.

11. The applicant while serving in Corps of Intelligence was promoted to the rank of Subedar w.e.f. 16.09.2013 with seniority w.e.f. 01.09.2013. While serving with Central Command Intelligence Unit (CCLU), in the month of November 2016, DPC was held in the month of November 2016 to select the eligible Subedars for promotion to the rank of Subedar Major against the vacancy arising in the year 2017. The applicant being placed at serial number 12 was empanelled for promotion to the next rank of Subedar Major.

12. In the year 2016, Additional Directorate General of Manpower Policy and Planning, Adjutant General's Branch through letter dated 28.12.2016 conveyed sanction of the Govt of India, Ministry of Defence to implement the instructions for conversion of 30 minor Intelligence Units to 11 Upgraded Major Intelligence Corps Units. As a result of this re-structuring, 4 vacancies of Subedar Majors were reduced from the Corps authorised strength to avoid excess holding strength of Subedar Majors in the Corps. Prior to restructuring, there were 14 vacancies available in the Corps, but after re-structuring only 10 vacancies were available for the post of Subedar Major in the year 2017.

13. As per policy in vogue, ten senior most Subedars were promoted to the rank of Subedar Major in turn. The applicant being

placed at serial number 12 could not be promoted to the next higher rank as there was no vacancy available in the year 2017, by the end of which, he was discharged from service after completion of terms of engagement. As a result, there was no vacancy available for him before his retirement. Further, no junior has been promoted before him. Had he not retired by the end of the year, he may yet have been promoted in 2018, in light of Para 13 of Appendix 'C' to Army HQ letter No B/33513/AG/PS2(c) dated 10.10.1997 which states that "New Panel" will come to effect only after old panel has exhausted.

14. As far as grant of Honorary Commission is concerned, it is worthy to mention that as per Paras 177 to 180 and 184 of Regulations for the Army, 1987, Honorary Commission is awarded to Junior Commissioned Officers for their distinguished service on Republic Day and Independence Day twice in the last year of their colour service. Since the applicant was in the select panel of Subedar Major against the vacancies arising in 2017, his name was not considered for Honorary Rank on the eve of Republic Day 2017. During the process of re-structuring of units, his master sheet for consideration of Honorary Commission on the eve of Independence Day 2017 was forwarded vide letter dated 20.07.2017 (Annexure VI to CA). However, the applicant could not come up in the merit list for grant of Honorary Commission on Independence Day 2017.

15. The process of re-structuring started in 2016 in which 04 vacancies of Subedar Majors were reduced for the year 2017 after amalgamation of minor units to major units, thereby reducing four vacancies in the year 2017. In the process, the applicant being

placed at serial number 12 could not be promoted to the next higher rank of Subedar Major as there were only 10 vacancies available in the year 2017; and no vacancy for the Subedar Major rank in the Corps of Intelligence arose in his turn (of seniority) prior to his discharge/superannuation on 31.12.2017.

16. Re-structuring is a part of modernization of a Corps. We accept the contention of the respondents that keeping in view the recommendations of 'Kargil Review Committee', this re-structuring was inescapable to improve the functional efficiency of Intelligence Corps. It is not disputed that the applicant was empanelled for grant of promotion to the rank of Subedar Major but the fact remains that merely qualifying for consideration by DPC does not entitle a Subedar for promotion to the rank of Subedar Major. For getting promotion, the applicant ought to be on the strength of organization when the vacancy arises in his turn. The applicant may well have been promoted to the rank of Subedar Major against the vacancy of the ensuing year if he had not been discharged from service on 31.12.2017.

17. The total strength of any rank, as authorized in the peace establishment/war establishment as sanctioned by the Govt of India, cannot be exceeded. It is true that the applicant was empanelled in DPC-2016 for promotion to the rank of Subedar Major but prior to accruing of vacancy which would accrue only after 2017, he completed his terms of engagement and was discharged from service on 31.12.2017 (AN). In the circumstances, the applicant has rightly been denied promotion to the rank of Subedar Major.

18. The O.A. being devoid of merit, is **dismissed**.
19. No order as to costs.
20. Miscellaneous application(s), pending if any, shall stand disposed off.

(Maj Gen Sanjay Singh)
Member (A)

Dated: 06.02.2025
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(Justice Anil Kumar)
Member (J)

RESERVEDCourt No 2

Form No. 4

{See rule 11(1)}
ORDER SHEET

ARMED FORCES TRIBUNAL, REGIONAL BENCH,

LUCKNOW

O.A. No. 388 of 2017

Gagan Singh

Applicant

By Legal Practitioner for the Applicant

Versus

Union of India & Ors

Respondents

By Legal Practitioner for Respondents

Notes of the Registry	Orders of the Tribunal
	<p data-bbox="524 1602 662 1634"><u>04.02.2025</u></p> <p data-bbox="524 1636 1040 1671"><u>Hon'ble Mr. Justice Anil Kumar, Member (J)</u></p> <p data-bbox="524 1674 1040 1709"><u>Hon'ble Maj Gen Sanjay Singh, Member (A)</u></p> <ol data-bbox="524 1763 1490 1916" style="list-style-type: none"> <li data-bbox="524 1763 922 1798">1. Judgment pronounced. <li data-bbox="524 1822 1068 1857">2. O. A. No. 388 of 2017 is dismissed. <li data-bbox="524 1881 1490 1916">3. For orders, see our judgment and order passed on separate sheets. <p data-bbox="524 2064 812 2131">(Maj Gen Sanjay Singh) Member (A)</p> <p data-bbox="948 2064 1182 2131">(Justice Anil Kumar) Member (J)</p> <p data-bbox="524 2134 584 2150"><i>rathore</i></p>