

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

**Reserved Judgment**

Court No. 1(List B)

**Original Application No. 195 of 2016**

**Monday the 16<sup>th</sup> day of January, 2017**

**Hon'ble Mr. Justice D.P. Singh, Member (J)**

**Hon'ble Lt Gen Gyan Bhushan, Member (A)**

No. 2998634-M Hav Nagendra Kumar Singh (Retd), S/o Brij Bihari Singh, R/O Village : Danaur, Post: Sarreji Tehsil : Salempur, Dist: Deoria (U.P.)-274702.

..... Applicant

By Shri Shailendra Kumar Singh, counsel for the applicant.

Versus

1. Union of India, through Secretary, Ministry of Defence (Army), South Block, New Delhi.
2. Chief of the Army Staff, Integrated Headquarters, Ministry of Defence, South Block-III, New Delhi-110 011.
3. Commanding Officer, 15 Rajput Regiment, C/O 56 APO.
4. OIC Records, Records, The Rajput Regiment, PIN : 900427, C/O 56 APO.
5. PCDA (Pension) (Army), Draupadhi Ghat, Allahabad (U.P.).

.....Respondents.

By Shri Virendra Kumar Singh, Learned counsel for the respondents duly assisted by Major Piyush Thakran, Departmental Representative.

**ORDER**

**“Hon’ble Lt. Gen. Gyan Bhushan, Member (A)”**

1. This Original Application has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby, the applicant has sought following reliefs:-

*“(A) To issue order or direction to the Respondents for grant of SERVICE PENSION and other retiral benefits to the applicant for the rank of Havildar wef 01 Nov 2015 (Date of discharge) by issuance of Corrigendum PPO (Pay Pension Order) to PPO Sl. No. S/34278/2015 (Army) dated 13 Aug 2015 (**Annexure A-1 & Impuned Order**) alongwith suitable rate of interest on the amount of arrears thereof.*

*(B) Any other relief as deemed just and proper by this Hon’ble Tribunal may be granted to the applicant in the nature and circumstances of the instant case in the interest of justice.*

*(C) Cost of application as deemed fit and proper by this Hon’ble Tribunal be awarded in favour of the applicant”.*

2. The factual matrix of the case is that the applicant was enrolled in Rajput Regiment on 12.01.1999 and was promoted to rank of Naik on 05.05.2011. He applied for discharge from service on compassionate grounds owing to domestic problems on 19 May 2014 wherein he also gave a certificate of unwillingness for further promotion. Subsequently the applicant was promoted to the rank of Havildar on 01.06.2015 and was discharged from service on 31.10.2015. A copy of the discharge book containing relevant page is

annexed as Annexure A-4 to the Original Application. As per that the applicant was discharged in the rank of Havildar. Subsequently, Records Rajput Regiment observed that NCO had given unwillingness for promotion, as such his promotion to the rank of Havildar was cancelled and he was granted pension of Naik. Aggrieved, the applicant has preferred this O.A.

3. Heard learned counsel for the parties and perused the documents on record.

4. Learned Counsel for the applicant submitted that applicant was enrolled in Rajput Regiment of Indian Army on 12.01.1999 and was promoted to the rank of Naik on 05.05.2011. He applied for discharge from the service on compassionate grounds on 19 May 2014. On 01.06.2015 the applicant was promoted to the rank of Havildar and was discharged from service with effect from 31.10.2015(Afternoon) under Army Rule 13(3)(III) (iv). He was issued discharge certificate in the rank of Havildar. However, on 05.11.2015 the applicant received his PPO dated 13.08.2015 wherein he was granted pension of the rank of Naik. The applicant made several visits to the respondent No. 4 between December 2015 to April 2016 to inquire about non grant of pension to the rank of Havildar. He was replied verbally that his application for discharge was processed in the rank of Naik and thus he was entitled for pension to the rank of Naik only. Learned Counsel for the applicant submitted that since he was promoted to the

rank of Havildar and was discharged in the rank of Havildar, he is entitled to the pension of Havildar.

5. **Per contra**, Learned Counsel for the respondents submitted that the applicant was promoted to the rank of Naik on 05.05.2011. He passed the promotion cadre from Naik to Havildar on 17.03.2015 and Map Reading Standard-I on 19.06.2013 which is mandatory for promotion from the rank of Naik to Havildar in the Indian Army. The applicant applied for premature discharge from the Army owing to domestic problems in May 2014, wherein he also gave the certificate of unwillingness of further promotion, based on which premature discharge from service on compassionate grounds was processed and his discharge order was issued. Though the applicant was promoted to the rank of Havildar by the Unit, Records of The Rajput Regiment observed that NCO had given unwillingness certificate for promotion as such the NCO was not entitled for grant for MACP of Havildar grade in terms of Integrated Headquarters of MoD(Army), New Delhi letter dated 13.06.2011, as such the Part II Order of his promotion published by the Unit was ordered to be cancelled. He further submitted that subsequently Records of The Rajput Regiment sought a clarification from Army Headquarters on the subject and as per clarification received from Integrated Headquarters of MoD(Army), New Delhi vide order dated 19.01.2016, it is clear that the applicant is entitled to rank of MACP Havildar.

6. It comes out from submission of Learned Counsel for the parties and perusal of the records that the applicant was fully qualified for promotion to the rank of Havildar and was promoted to the rank of Havildar on 01.06.2015 vide Part II Order No. 15 Rajput/0/0245/005/2015 dated 02.06.2015 and his discharge certificate is also in the rank of of Havildar. However, the PPO of the applicant has been issued in the rank of Naik. Promotion to the rank of Havildar has been cancelled vide Part II Order No. 0/0380/2015 dated 20.10.2015. It is observed that there was no intimation or warning given to the applicant as to why his promotion to the rank of Havildar was being cancelled.

7. For ready reference, Paragraph 21 of Integrated Headquarters of MoD(Army), New Delhi letter dated 13 Jun 2011, annexed as annexure CA-8 is quoted below:-

*“21. Effect of Refusal of Promotion. If an indl refuses promotion, MACP will also be denied, if an indl refuses promotion after MACP, earlier MACP will not be withdrawn. However, he will not be eligible for further MACP. If he again accepts promotion, MACP will also be deferred by the period of debarment due to refusal. Willingness for promotion will be assumed unless an indl states he is unwilling”.*

8. Letter dated 19<sup>th</sup> Jan 2016 issued by the Integrated Headquarters of MoD(Army), New Delhi annexed as Annexure CA-11 is also reproduced as under :

**“CLARIFICATIONS REGARDING GRANT OF MACP TO PERS PROCEEDING ON PREMATURE DISCHARGE”**

1. *Ref Para-21 of Adm instrs issued vide IHQ of MoD (Army) letter No. B/33513/ACP/AG/PS-2(c) dated 13 Jun 2011.*
2. *A clarification has been sought by one of the Record office that if an individual submits his application for premature discharge from service just prior to completion of his 8/16/24 yrs of service & SOS from service on completion of 8/16/24 yrs of service, whether the ibid individual is eligible for grant of 1<sup>St</sup> /2<sup>nd</sup> /3<sup>rd</sup> financial upgradation under MACP Scheme or otherwise.*
3. *The matter has been examined at appropriate level of this HQ and clarifications are as follows:-*
  - (a) *Premature discharge from service is due to domestic/other compulsion that propels the individual to seek the same. If the individual before being discharged completes the mandatory service in which he automatically is authorized MACP and otherwise qualifies for MACP it should be made available to him since he has served for that period.*
4. *This supersedes any previous clarifications on the subject matter issued earlier.*
5. *These clarifications will also be applicable from the date of effectiveness of Adm Instrs issued vide letter under ref.”*
9. *An extract of part II Order Number 0/0245/005/2015 dated 02.06.2015 regarding paid acting and substantive promotion in the rank of Havildar, annexed as Annexure A-03 is reproduced as under :*

<i>Part II Order No. &amp; dt</i>	<i>Date</i>	<i>Nature of Casualty</i>	<i>Casualty Remarks</i>	<i>Signature</i>
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0/0245/005/2015    01/06/2015    PROMOT    *Gtd paid acting and substantive promotion in the rank of Havildar wef 01-06-2015. Seneiority wef 01/06/2015. (Assumption & option cert att for Records Office only)*

10. An extract of part II Order Number 0/0380/2015 dated 20.10.2015 regarding cancellation of original part II order relating to the promotion to the rank of Havildar, annexed as Annexure CA-07 is reproduced as under :

<i>Sr No.</i>	<i>Army Number Rank(Trade) &amp; Name</i>	<i>Description</i>	<i>From date to Date</i>	<i>Amount/Rate</i>	<i>Period</i>	<i>Other Allowances Details</i>	<i>Reference Part II Order Number</i>	<i>Remarks</i>
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07. 2298634M    CANCEL    01062015    *PROMOT 0/0245/0002015 Cancelled due to wrong pub as obs vide Records office letter No A-4462 dt 19 Oct 2015*  
*Hav(Sol GD)*  
*Nagendra Kumar*  
*Singh*

11. It is also observed that the applicant was promoted to the rank of Havildar on 01.06.2015 and he proceeded on discharge as Havildar and in the discharge certificate, the rank of the applicant is mentioned as Havildar whereas the PPO has been issued in the rank of a Naik. The respondents have not been able to produce any documents or evidence to show that there was any notice or warning given to the applicant about reduction in his rank from Havildar to Naik. His rank has been brought down from Havildar to Naik without any notice or warning and he has been granted pension of a Naik arbitrarily, which is against the principles of natural justice and is legally not tenable. Infact, it is also observed that PPO in the rank of Naik has been issued

on 13.08.2015 whereas Part II Order for cancellation of Promotion to the rank of Havildar has been issued on 20.10.2015.

12. A plain reading of order dated 19.01.2016 also indicates that if premature discharge from service is due to domestic/other compulsion that propels the applicant to seek the same and if the applicant before being discharged completes the mandatory service in which he automatically is authorized MACP and otherwise qualifies for MACP it should be made available to him since he has served for that period. The respondents have also conceded that as per clarification received from Integrated Headquarters of MoD(Army), New Delhi, the applicant is entitled to the rank of Havildar and that reduction of his rank from Havildar to Naik is not as per policy on the subject.

13. Even otherwise, when the applicant has been promoted to the rank of Havildar with effect from 01.06.2015 and has been discharged from service in the rank of Havildar as such he cannot be given pension of Naik without issuance of any notice/warning. The action by the concerned authority is against the principles of natural justice and is totally arbitrary, illegal and not as per law.

14. In view of the above, we are of the considered view that the action of the Respondents in granting pension of Naik to the applicant, who was promoted to the rank of Havildar and discharged from service in the rank of Havildar, is arbitrary, illegal and not as per law.



Respondents have also conceded that this was a mistake committed by them.

15. Accordingly, the Original Application, No 195 of 2016 is allowed. The respondents are directed to grant pension to the Applicant in the rank of Havildar with effect from his date of discharge i.e. 01.11.2015 within four months from the date of receipt of a certified copy of this order.

16. No order as to costs.

**(Lt Gen Gyan Bhushan)**  
**Member (A)**  
rpm/-

**(Justice D.P. Singh)**  
**Member (J)**