

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

ORIGINAL APPLICATION No. 435 of 2020

Thursday, this the 07th day of July, 2022

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

No JC-819748X Ex Subedar Ombir Singh, S/o Shri Mahabir Singh, R/o Village-Bhojaka, P.O.-Pisawa, Distt-Aligarh, PIN-202155 (UP).

Learned counsel for: **Shri Om Prakash Kushwaha**, Advocate
the Applicant **Shri KP Datta**, Advocate

Versus

1. Union of India, through Secretary, Min of Defence, New Delhi-110011.
2. The Chief of Army Staff, IHQ of MoD (Army), South Block, New Delhi-110011.
3. Commandant CMP Centre & School, PIN-900493 C/o 56 APO.
4. Corps of Military Police Records, PIN-900493, C/o 56 APO.
5. PCDA (Pension), Draupadi Ghat, Allahabad (UP).

.....Respondents

Learned counsel for the : **Shri DK Pandey**, Advocate
Respondents. Central Govt. Counsel

ORDER (Oral)

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

(i) To issue/pass an order or direction to set aside/quash the rejection order passed by respondent No 4, which is annexed as Annexure No A-1 to the Original Application.

(ii) To issue/pass an order or direction to the respondents to consider the applicant for promotion to the rank of Subedar Major with arrears of pay & allowances and all consequential benefits alongwith interest @ 18% on it.

(iii) To issue/pass an order or direction to the respondents to consider the applicant for grant of Honorary rank of Lieutenant/Capt alongwith the arrears of pay & allowances and enhance rate of pension as per existing rules/policy in vogue with all consequential benefits alongwith interest @ 18% on it.

(iv) 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.

(v) To allow this Original Application with costs.

2. The salient facts in nutshell are that the applicant was enrolled in the Army (Corps of Military Police) on 19.04.1983 and he was notionally discharged from service on 30.04.2009 (AN) having rendered 26 years and 12 days service. The applicant was granted service pension vide PPO No S/082778/2008 (Army). During the year 1990 while in service he was not promoted to the rank of Havildar along with his batch-mates due to low ACR profile and non recommendation for further promotion in his ACR for the year 1989. He submitted a non statutory complaint dated 10.05.1990 which was redressed and the OIC Records revised the non-recommendation for promotion from 'NR' to 'R', with the result

he was promoted to the rank of Havildar on 01.01.1993 instead of 01.01.1990. The applicant had submitted a statutory complaint dated 07.08.1996 for grant of notional seniority alongwith his batch-mates i.e. 01.01.1990 which was later fixed w.e.f. 01.01.1993. On re-fixing his promotion/seniority w.e.f. 01.01.1993 the applicant filed CWP No 34 of 1998 in the Hon'ble High Court of Rajasthan for grant of notional seniority w.e.f. 01.01.1990 which was disposed of vide order dated 22.10.2005 with directions to the respondents to decide his complaint/representation within 60 days. Later it was rejected by the respondents. Being aggrieved the applicant filed WP No 18089 of 2006 in the Hon'ble Punjab and Haryana High Court at Chandigarh to set aside the gradings awarded to him in the Annual Confidential Report (ACR) for the year 1989 and grant seniority of Havildar rank w.e.f. 01.01.1990. This petition was dismissed on 05.09.2008. On 31.10.2009 he filed LPA No 69 of 2009 against single judge order dated 05.09.2008 which was allowed in favour of the applicant vide order dated 07.09.2010 with further directions that the adverse remarks recorded against the applicant in his ACR for the year 1989 are nullified and he is entitled to be considered for promotion from the date of promotion of his junior, and in case of promotion he would be entitled to all consequential benefits. Consequently, his seniority was re-fixed w.e.f. 01.01.1990. Thereafter, he was notionally re-instated in service w.e.f. 01.05.2009 and notionally discharged from service w.e.f. 30.04.2011 on

completion of terms of service applicable to the rank of Naib Subedar and service pension was made payable vide PPO No S/Corr/0536/2012. Thereafter, the applicant submitted application dated 05.04.2012 for his re-instatement in the rank of Subedar which was not considered due to not meeting CR criteria and also due to not passing Junior Leader Proficiency Test (JLPT) which is a mandatory course for promotion to the rank of Subedar in terms of Army Order 17/2003/GS. Being aggrieved the applicant filed Civil Original Contempt Petition No 2995 of 2013 before the Hon'ble High Court of Punjab and Haryana for non implementation of order dated 07.09.2010. The case came up for hearing on 19.07.2016 and on 08.12.2016 the respondents were directed to comply the orders within six weeks. A case was taken up with the competent authority at Army Headquarters. Accordingly, sanction of competent authority to notionally promote the applicant from Naib Subedar to Subedar was accorded vide order dated 13.01.2017 and the applicant was notionally discharged from service in the rank of Subedar w.e.f. 30.09.2012 and revised PPO was issued. Since order of the Hon'ble High Court was implemented, Civil Original Contempt Petition No 2995 of 2013 was dismissed vide order dated 31.07.2017. The applicant submitted application dated 24.08.2017 for his consideration to the Honorary rank which was rejected vide order dated 30.11.2017, hence this O.A.

3. Submission of learned counsel for the applicant is that the respondents have taken long time to implement the order dated 07.09.2010 of the Hon'ble High Court of Punjab & Haryana causing thereby his delayed notional promotion to the rank of Naib Subedar and Subedar. His other submission is that had he earned notional promotion to the rank of Subedar in time as per order dated 07.09.2010 he would have become eligible for consideration to the rank of Subedar Major and Honorary Lieutenant which the applicant could not be able to achieve due to inordinate delay in execution of order dated 07.09.2010 by the respondents. He pleaded for grant of promotion to the rank of Subedar Major and thereafter, Honorary rank of Lieutenant.

4. On the other hand, learned counsel for the respondents admitted that the applicant was granted seniority of Havildar rank w.e.f. 01.01.1990 alongwith his batchmates, but further submitted that after pronouncement of judgment dated 28.03.2016 by Hon'ble Punjab and Haryana High Court in Civil Original Contempt Petition No 69 of 2009 the applicant was first notionally promoted to the rank of Naib Subedar and thereafter, to the rank of Subedar and notionally discharged from service w.e.f. 30.09.2012 and revised corrigendum PPO No S/CORR/0102/2017 dated 10.02.2017 was issued granting pensionary and consequential benefits. He further submitted that on receipt of applicant's application dated 24.08.2017 with regard to grant of Honorary Rank it was denied on certain

grounds vide letter dated 30.11.2017. His other submission is that applicant's claim that he ought to be considered for promotion to the rank of Subedar Major, is not tenable as being on notional service he was lacking ACR criteria and overall performance. He pleaded for dismissal of O.A. on the ground that there are no specific rules as per which a notionally re-instated and promoted individual is entitled to be promoted to the rank of Subedar Major and Honorary Lieutenant/Capt.

5. Heard Shri Om Prakash Kushwaha and Shri KP Datta, learned counsel for the applicant and Shri DK Pandey, learned counsel for the respondents and perused the material placed on record.

6. Applicant was physically discharged from service on 30.04.2009 (AN) on completion of service in the rank of Havildar. Based on Hon'ble High Court order he was notionally re-instated in service w.e.f. 01.05.2009 and notionally discharged from service w.e.f. 30.09.2012 (AN) on completion of service limits as applicable to the rank of Subedar and granted service pension and consequential benefits accordingly.

7. Applicant has filed this O.A. for grant of promotion to the rank of Subedar Major and Honorary Lieutenant. In accordance with IHQ of MoD (Army) policy letter dated 10.10.1997 and 23.12.1997 and in view of the importance, job content and prestige attached to the rank of Subedar Major, an overall performance based system of selection is followed for

consideration by the Departmental Promotion Committee (DPC) based on following system:-

- (i) Last five Annual Confidential Reports in the rank of JCO are counted out of which at least three reports should be 'Above Average' and remaining two 'High Average'.
- (ii) Two out of the last five reports should be on Regimental Duty/or as an instructor in an Army School of Instructions including IMA, NDA, OTA and ACC in which one of these two reports should be 'Above Average'.
- (iii) The individual should have been recommended for promotion in the last five reports in the rank of JCO.
- (iv) Merely qualifying for consideration by DPC does not entitle a Subedar for promotion to the rank of Subedar Major and selection is based on seniority-cum-merit depending upon the vacancies available.

8. Thus, from the aforesaid policy it is clear that all Subedars considered by the DPC do not get promoted to the rank of Subedar Major as the promotion is based on overall performance, ACR and seniority-cum-merit depending upon vacancies available. As per policy letter, for promotion to the rank of Subedar Major, five Annual Confidential Reports in the rank of JCO are mandatory which the applicant does not possess as he was physically discharged from service on 30.04.2009 on completion of service in the rank of Havildar and notionally discharged from service w.e.f. 30.09.2012 on completion of service limits as applicable to the rank of

Subedar. Further, neither the applicant earned any Annual Confidential Report in the rank of JCO nor was he recommended for promotion to the rank of Subedar Major due to not meeting qualifying criteria as policy in vogue. In view of the above applicant does not deserve to be promoted to the rank of Subedar Major.

9. Applicant's second prayer is for grant of Honorary Rank. In this regard policy letter dated 16.05.2008 stipulates as under:-

"All Risaldar Majors/Subedar Majors and Risaldar/Subedars of the Regular Army including those of Defence Security Corps will only be considered for grant of honorary commission in the active list in their last year of their colour service in two chances based on eligibility conditions as laid down in ibid policy letter, Record Offices will draw a panel of names of all eligible JCOs for grant of honorary commissions on the active list and forward the names to their respective OsC Units at least one year before the occasion on which the JCOs are considered. OC units will recommend/not recommend the JCO and also indicate anything adverse concerning the JCO has come to his notice since the initiation of the last ACR (Annual Confidential Report) as a result of which the JCO is now not recommended for the award. Based on the recommendations of the OsC Units, the respective Record Offices will fill up the recommendation forms and forward them, in duplicate, direct to respective Headquarters Command in whose jurisdiction the unit(s) of the JCO(s) is/are located, by 10 August and 10 February for two chance and 10 September and 15 March got last chance for Republic Day and Independence Day award respectively. Headquarters Command will consolidate these Recommendation Forms, allot marks as per the prescribed yardsticks and forward the original recommendation forms alongwith date sheets of only eligible JCOs duly recommended by the General Officer Commanding-in-Chief Command to Integrated Headquarters of Ministry of Defence (Army) by 31 August and 01 March for two chances and 30 September and 10 April for last chance for Republic Day and Independence Day awards respectively".

10. From the aforesaid it is clear that entire service profile and performance of a JCO during his complete service is taken into account while preparing recommendation form and relative merit is drawn for deserving cases and as per merit Honorary

Commission is granted. The system of Honorary Commission is based on the merit and the number of vacancies available as fixed by the Integrated Headquarters of Ministry of Defence (Army). In the instant case, applicant was physically discharged from service on 30.04.2009 (AN) on completion of service in the rank of Havildar. Later based on Hon'ble High Court orders he was notionally re-instated in service w.e.f. 01.05.2009 and notionally discharged from service w.e.f. 30.09.2012 on completion of service limits as applicable to the rank of Subedar.

11. As per policy letter for grant of Honorary Commission/ranks to the JCOs, last five years Annual Confidential Reports in the rank of JCO are mandatory and counted, out of which at least three reports should be 'Above Average', remaining two 'High Average' and the individual should have been recommended by their Officer Commanding Units for grant of Honorary Commission. Since the applicant was physically discharged from service on 30.04.2009 on completion of service in the rank of Havildar and notionally discharged from service w.e.f. 30.09.2012 on completion of service limits as applicable to the rank of Subedar and neither earned any Annual Confidential Report in the rank of JCO nor recommended for grant of award for Honorary Commission/rank, accordingly recommendation form in respect of the applicant for grant of Honorary Commission/rank was not processed due to not meeting qualifying criteria. We further

find that there is no such specific rule or provision which provides grant Honorary Commission/rank to JCOs who have been notionally re-instated and notionally discharged from the rank of Subedar on completion of service limits.

12. With the aforesaid observation, applicant does not seem to be entitled for promotion to the rank of Subedar Major as well as Honorary Lieutenant.

13. In view of the above, O.A. is devoid of merit and deserves to be dismissed. The O.A. is accordingly, **dismissed**.

14. No order as to costs.

15. Miscellaneous applications, pending if any, stand disposed of.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 07.07.2022

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