

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 114 of 2018**Tuesday, this the 12th day of July, 2022**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)Hav (Chef Hosp) Uday Narayan Singh
(No. 13985460M)
S/o Shri Ram Balak Yadav
R/o Village – Bandha, PO – Amrian Nawada,
District – Ara (Bhojpur)**.... Applicant**Ld. Counsel for the Applicant : **Col A.K. Srivastava (Retd),**
Shri Dharam Raj Singh &
Shri Shyam Sunder Bajpai, Advocate

Versus

1. The Secretary, Government of India (MoD), South Block, DHQ PO New Delhi-110011.
2. The Chief of Army Staff, Integrated HQ of MoD (Army) South Block, DHQ PO, new Delhi – 110011.
3. Officer Commanding AMC Records, Lucknow.
4. Principal Controller of Defence Accounts PCDA (P), Draupadi Ghat, Allahabad-211014.

... RespondentsLd. Counsel for the Respondents : **Shri Ashish Kumar Singh,**
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, whereby the applicant has sought following reliefs:-

- “(a) Issue/pass an order or direction of appropriate nature to the respondents to quash/set-aside the arbitrary and

illegal trial of the applicant dated 09/02/2016 awarding him a sentence of Severe Reprimand.

- (b) Issue/pass an order or direction of appropriate nature to the respondents to quash/set-aside the order of permanent supersession in respect of the applicant passed vide AMC Record letter dated 29/10/2016 and thereby direct the respondents to promote the applicant as per his seniority with all consequential benefits w.e.f. Oct. 2016.
- (c) Issue/pass an order or direction of appropriate nature to the respondents to quash/set-aside the order passed vide AMC Records letter dated 29/10/2016 stating that applicant was permanently superseded being over age on 01/01/2017 and thereby direct the respondents to promote the applicant w.e.f. 09/02/2017 by when the affect of Severe Reprimand restricting his age would get over and promote him to the rank of a Nb Sub w.e.f. 09/02/2017.
- (d) Issue/pass an order or direction of appropriate nature as this Hon'ble Tribunal deems appropriate in favour of the applicant.
- (e) Allow this application with costs and interest."

2. Brief facts of the case are that the applicant was enrolled in the Army on 11.12.1992. The applicant was promoted to the rank of Naik on 01.02.2012 and Havildar on 22.02.2014 with seniority w.e.f. 01.01.2014. The applicant was initially superseded in the rank of Nb Sub due to lack of ACR of 'Above Average' grading in the rank of Havildar and thereafter superseded for promotion to the rank of Nb Sub due to award of punishment of Severe Reprimand on 09.02.2016 under Section 63 of Army Act 1950 and applicant became overage on 01.01.2017 attaining the age of 44 years vide AMC Records letter dated 29.10.2016. Thus, applicant was not promoted to the rank of

Nb Sub and was discharged from service in the rank of Havildar on 01.01.2019. Being aggrieved, the applicant has filed the present Original Application to grant promotion to the rank of Naib Subedar and consequential benefits.

3. Learned counsel for the applicant submitted that applicant was temporarily superseded for promotion to the rank of Nb Sub due to lack of ACR grading criteria but such lack of a minor criteria in case of a tradesman, performing menial nature of duty could be waived off by the competent authorities because their nature of job will remain same even on promotion to the rank of a Nb Sub. Thereafter, AMC Records vide letter dated 29.10.2016 intimated that applicant was permanently superseded for promotion to the rank of Nb Sub due to award of Severe Reprimand punishment on 09.02.2016 and being overage on 01.01.2017.

4. Learned counsel for the applicant further submitted that applicant has been awarded punishment of Severe Reprimand without hearing charge and trial so it is illegal, arbitrary and against the nature justice and therefore, this disproportionate punishment should be set aside and applicant's shortfall of 39 days in becoming overage be condoned as has been done by this Tribunal in many cases to enable the applicant for promotion to the rank of Nb Sub. He also said though the applicant is already getting ACP benefits, however this promotion would help improving his and his family status and pensionary benefits.

5. On the other hand, Ld. Counsel for the respondents submitted that applicant was promoted to the rank of Naik on 01.02.2012 and Havildar on 22.02.2014 with seniority w.e.f. 01.01.2014. The applicant was initially superseded in the rank of Nb Sub due to lack of ACR vide AMC Records letter dated 29.01.2016. There being requirement of five ACRs, applicant was short of one ACR which was though relaxed by the competent authority at IHQ of MoD (Army) and applicant's four ACRs for the period from 2012 to 2015 were considered for promotion but out of four ACRs, only one ACR was 'Above Average' in the rank of Havildar against the requirement of two. Therefore, applicant was superseded due to short of one ACR of 'Above Average' grading. Thereafter, applicant was again considered for promotion but superseded for promotion to the rank of Nb Sub due to award of punishment of Severe Reprimand on 09.02.2016 under Section 63 of Army Act 1950 for an offence "*An Act Prejudicial to Good Order and Military Discipline*" which debarred for promotion for a period of one year upto 08.02.2017 in terms of para 3(f) of IHQ of MoD (Army) promotion policy letter dated 10.10.1997. The applicant became overage on 01.01.2017 attaining the age of 44 years vide AMC Records letter dated 29.10.2016 in terms of para 2 of IHQ of MoD (Army) promotion policy letter dated 18.09.1998. Thus, applicant was not promoted to the rank of Nb Sub and was discharged from service in the rank of Havildar on 01.01.2019 as per rules and policies on the subject.

6. Learned counsel for the respondents further submitted that applicant himself is responsible for his punishment by committing offence under Army Act Sec 63 and became ineligible for his promotion upto one year and subsequently, he became overage as per promotion policy, hence, the applicant was discharged from service on 01.01.2019 as per Govt. policy.

7. Learned counsel for the respondents also submitted that as per Para 3 of Army Order 1/2001, "***if an individual is reported to be involved in any disciplinary cases, a ban on his promotion will be imposed***". As per Para 3 (f) of promotion policy letter dated 10.10.1997, "***An individual will not be considered for promotion within one year of the award of red ink entry/recordable censure, as the case may be***". As per promotion policy/letter dated 18.09.1998, "the prescribed age limit for promotion to the rank of Havildar to Naib Subedar is upto 44 years". The applicant crossed the prescribed age limit of 44 years on 01.01.2017, hence he became permanently ineligible for promotion to the rank of Naib Subedar keeping in view IHQ of MoD (Army) promotion policy dated 10.10.1997, letter dated 18.09.1998 and Army Order 1/2001.

8. We have heard Col A.K. Srivastava (Retd), learned counsel for the applicant and Shri Ashish Kumar Singh, learned counsel for the respondents and perused the material placed on record.

9. We find that though applicant was fulfilling all the eligibility criteria for promotion to the rank of Naib Subedar but due to lack of one 'Above Average' grading ACR, he was superseded and on the

