

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 51 of 2021**Wednesday, this the 13th day of July, 2022**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)No. 13980594F Ex ACP Nb Sub Vishun Dayal
S/o Sri Hori Lal
R/o House No. 52GA/403, Moharibag Kharika, Telibag,
Lucknow-226002 (UP).... **Applicant**Ld. Counsel for the Applicant : **Shri K.P. Datta**, Advocate

Versus

1. Unin of India, through Secretary, Ministry of Defence, New Delhi – 110011.
2. The Chief of Army Staff, Integrated HQ of MoD (Army) South Block, New Delhi – 110011.
3. Officer in Charge, AMC Records, Lucknow-226002.
4. PCDA (P), Draupadi Ghat, Allahabad-211014 (UP).

... **Respondents**Ld. Counsel for the Respondents : **Shri Arun Kumar Sahu**,
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. To issue/pass an order or directions to set aside/quash AMC Records rejection letter No. 356002-J/Promotion/Clk SD/Sups date4d 11.06.2019.
- B. To issue/pass an order or directions to re-instate the applicant in Army Service notionally and grant him

promotion to the rank of regular Nb Sub, Subedr and Sub Major as per the seniority similar to his batchmates during the same periods of service with all consequential monetary benefits (Pay & Allowances) alongwith arrears and interest @ 18% p.a. from the date of discharge wef 31.10.2015.

- C. To issue/pass any other order or directions as this Hon'ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant.”

2. Brief facts of the case are that the applicant was enrolled in the Army (AMC) on 25.10.1989 and was discharged from service on 31.10.2015 after rendering more than 26 years of service. The applicant was promoted to the rank of Havildar on 24.12.2002 and was granted MACP-III (Nb Sub Grade) w.e.f. 26.12.2010. The applicant is in receipt of service pension of MACP-III (Nb Sub Grade). The applicant was screened for detailment in Senior Cadre Course (SCC) as per Corps seniority alongwith his batch-mates but found ineligible being crossed upper age limit of 46 years on 15.07.2013 and became over age and superseded due to overage/unqualified. Thus, he could not be promoted to the rank of Nb Sub and was discharged in the rank of Havildar (ACP-1) on completion of extended service limit. The applicant submitted an application dated 16.05.2019 for non detailment in SCC and NCO Clerk Course which was suitably replied by AMC Records vide letter dated 11.06.2019. Being aggrieved, the applicant has filed the present Original Application to grant promotion to the rank of regular Naib Subedar and subsequent promotions of Subedar and Subedar Major.

3. Learned counsel for the applicant submitted that applicant was enrolled in AMC on 25.10.1989. The applicant was promoted to the rank of Naik on 25.04.1995 and Havildar on 24.12.2002 and financial upgradation to the rank of ACP Naib Subedar was granted on 12.12.2010. The applicant has been discharged from service on 31.10.2015 after rendering more than 26 years of service in the rank of ACP Naib Subedar. The applicant has not been detailed for SCC and NCO Clerk Course while in service and subsequently has not been promoted to the rank of regular Nb Sub. However, his juniors Sub (Hony Capt) Lalta Prasad and Sub S. Dalai have got the opportunity for promotion to the rank of regular Nb Sub, Subedar and Sub Major. The applicant submitted an application dated 19.04.2019 regarding his non detailment for cadre and non promotion to the rank of Nb Sub which was rejected vide AMC Records vide letter dated 24.04.2019. Thereafter, applicant preferred a detailed appeal to the competent authority on 16.05.2019 against his non detailment in SCC and NCOs Clerk Course and subsequent promotion to the rank of regular Nb Sub but no reply has been received till date. Thus, the applicant has been unjustly and arbitrarily not detailed for SCC and NCOs Clerk Course and subsequently he has not been promoted to the rank of regular Nb Sub, Subedar and Sub Major while in service. He pleaded that applicant be granted appropriate justice by reinstating him in service and promoting him to the rank of regular Naib Subedar, Subedar and Subedar Major as per seniority to his batch mates.

4. On the other hand, Ld. Counsel for the respondents submitted that applicant was enrolled in the Army (AMC) on 25.10.1989 and was discharged from service on 31.10.2015 (AN) under Rule 13 (3) III (i) of Army Rules 1954 after rendering 26 years and 07 days of service. The applicant was promoted to the rank of Havildar on 24.12.2002 and was granted MACP-III (Nb Sub Grade) w.e.f. 26.12.2010. The applicant is in receipt of service pension of MACP-III (Nb Sub Grade). The applicant was screened for detailment in SCC commencing from 23.07.2013 to 23.09.2013 as per Corps seniority alongwith his batch-mates but found ineligible being crossed upper age limit of 46 years on 15.07.2013 and became over age. The applicant was considered for promotion to the rank of Nb Sub alongwith his batch mates against the vacancy of 01.07.2014 but superseded due to overage/unqualified. Thus, he could not be promoted to the rank of Nb Sub and was discharged in the rank of Havildar (ACP-1) on completion of extended service limit.

5. Learned counsel for the respondents further submitted that applicant submitted an application dated 16.05.2019 for non detailment in SCC and NCO Clerk Course which was suitably replied by AMC Records vide letter dated 11.06.2019. He further submitted that consequent to change in policy of the seniority of AMC clerks on remustering as per IHQ of MoD (Army) letter dated 11.09.2009, anomaly between the normal entry clerks and remustered clerks was reconciled and the seniority on remustering for whole Army clerks was considered based on IHQ of MoD (Army) letter dated 06.02.1960

which says that seniority of clerks on remustering is to be considered from the date of enrolment. However, in AMC, it was being considered from the date of remustering with ante date seniority based on Para 23 of AMC ROI 10/2000. Therefore, said anomaly was removed and seniority of AMC clerks was also brought at par with other Arms/Service of Army.

6. Learned counsel for the respondents further submitted that applicant in O.A. has alleged that Sub (Hony Capt) Lalta Prasad Sharma and Sub Simhanchal Dalai, juniors to the applicant have been promoted to the rank of Nb Sub on the following grounds :-

- (a) Sub (Hony Capt) Lalta Prasad Sharma was enrolled in AMC as Ambulance Assistant on 26.04.1986 and later on remustered in clerk on 31.08.1991 and his seniority was re-fixed in clerk category from the date of enrolment as per IHQ of MoD (Army) letter dated 11.09.2009 and 29.09.2009, thus, he is senior to the applicant (date of enrolment 25.10.1989). He was promoted to the rank of Nb Sub in his turn and was granted further promotions accordingly.
- (b) Sub Simhanchal Dalai was enrolled as a clerk on 26.02.1990 and was granted notional seniority on passing Promotion Foundation Course-1 (PFC) alongwith his batch mates on implementation of direction of COAS dated 02.09.2017 received vide IHQ of MoD (Army) letter dated 11.09.2017. He was promoted to the rank of Nb

Sub on 01.08.2014 as per seniority whereas applicant became overage well before occurrence of vacancy on 15.07.2013.

7. Learned counsel for the respondents further submitted that as per Para 2(b) of Govt. of India, Ministry of Defence letter dated 04.05.1999, NCOs of clerk category will not be promoted to JCOs if over 46 years of age. Para 149 of Regulations for the Army, 1987 also speaks that age and service limit for retirement of Havildars in clerk category is 46 years/26 years respectively. In the instant case, the applicant had crossed the upper age limit of promotion, i.e. 46 years on 15.07.2013 well before his batch mates were considered for promotion against the vacancy of 01.07.2014, hence, the applicant became ineligible for promotion as per existing rules/policies on the subject. He pleaded for dismissal of O.A.

8. We have heard learned counsel for the parties and perused the material placed on record.

9. We find that though applicant was fulfilling eligibility criteria for promotion to the rank of Naib Subedar but due to lack of SCC and NCO Clerk Course, he was superseded and thereafter, applicant became over age crossing upper age limit of 46 years for grant of promotion from Havildar to Naib Subedar, hence, applicant became ineligible for promotion to regular Naib Subedar. The other two JCOs, Sub (Hony Capt) Lalta Prasad Sharma and Sub Simhanchal Dalai, to whom applicant has alleged granting of promotion being juniors is baseless and misconceived as both the JCOs were promoted as per

