

**Reserved****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No.711 of 2020**

-----,this the.....day of July,2023

**“Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”****“Hon’ble Maj Gen Sanjay Singh, Member (A)”**

No. 15365548-K Ex - Naik (TER) Harish Chadra Singh Rautela, of  
108 Mountain Brigade, Signal Company, C/o 99 APO, Son of  
LateNS Rautela, Village: Batgal Reutela, Post Office: Sitlakheth,  
District - Almora (Uttarakhand), Pincode - 263678

**..... Applicant**

Ld. Counsel for the : Shri KKS Bisht, Advocate  
Applicant

**Versus**

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi - 110011.
2. Chief of the Army Staff, Integrated Headquarters of the Ministry of Defence(Army), South Block, New Delhi - 110011.
3. Additional Directorate General Discipline and Vigilance (DV-5B) Adjutant General’s Branch, Integrated HQ of MoD(Army), New Delhi - 110011.
4. Directorate General of Signals (Sigs 4 (b)) General Staff Branch, Integrated HQ of MoD (Army), DHQ PO, New Delhi - 110011.
5. Officer-In-Charge Records, Signal Records, PIN - 908770, C/o 56 APO.

**.....Respondents**

Ld. Counsel for the :Shri Shailendra Sharma Atal  
Respondents. Central Government Counsel.

## ORDER

### “Per Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”

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

*“(a) Issue / pass an order or direction to the respondents to quash / set - aside the arbitrary and illegal order passed by OIC Records, respondent No. 5, vide letter No. P/15365548/LC/T-2/PC-120 dated 05 November 2019 (Annexure No. A-1(i) rejecting consequential benefits to the applicant.*

*(b) Issue / pass an order or direction of appropriate nature to the respondents to reinstate and promote the applicant along with his service colleagues to the rank of Subedar Major with all consequential benefits in terms of service, pay and allowances, seniority, promotion and revised service pension along with interest.*

*(c) Issue / pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.*

*(d) Allow this application with cost.”*

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 28.06.1988. He was tried by Summary Court Martial (SCM) and was dismissed from service w.e.f. 13.07.2002 against which he preferred a writ petition before the Hon’ble High Court Allahabad which was transferred to this Tribunal and re-

numbered as TA No. 572/2010. The Transfer application was allowed by this Tribunal vide its order dated 11.01.2018.

3. Ld. Counsel for the applicant submitted that vide the order dated 11.01.2018 applicant was granted all consequential benefits. It was directed that the applicant shall be deemed notionally in service on the rank which he was holding at the time of dismissal from service and shall be entitled for continuity of service of the rank which he was holding with all consequential benefits, including pension, arrears of salary and wages. However, arrears of salary were confined to 50% but applicant was entitled for full pension.

4. Ld. Counsel for the applicant further submitted that the applicant notionally reinstated in service w.e.f 13.07.2002 (date of dismissal) and notionally discharged on 30.06.2010 on completion of 22 years of service. He urged that the service colleagues of the applicant have been promoted to the rank of Subedar and Subedar Major but due to the illegal punishment by SCM, applicant was deprived of his entitled service and consequential benefits at par with his colleagues. He submitted that at the time of SCM, applicant was holding the rank of Naik and was due for promotion but due to punishment awarded by SCM, applicant had lost promotional avenues and suffered irreparable loss. He urged that the applicant be also promoted alongwith his service colleagues to

the rank of Subedar Major with all consequential benefits. Applicant preferred representation dated 24.01.2020 which has not been decided by the respondents. The applicant has been arbitrarily and illegally denied the consequential benefits. Hence, this O.A.

5. Per contra, Id. Counsel for the respondents vehemently opposed the prayer of the applicant and submitted that as per order of this Tribunal dated 11.01.2018, applicant was notionally reinstated in service w.e.f. 13.07.2002 and he was notionally discharged from service on 30.06.2010. PPO has been issued and all the admissible payments have been remitted to the applicant. Request of promotion to the rank of Subedar Major has been replied suitably to the applicant vide letter dated 05.11.2019.

6. Ld. Counsel for the respondents further submitted that the applicant was holding rank of Naik at the time of dismissal, hence, he was granted all the terminal pensionary benefits for the rank of Naik on his notionally reinstatement. He was notionally discharged from service in the rank of Naik on 30.06.2010, hence, there is no question of grant of promotion to the rank of Subedar Major. Moreover, applicant was not physically reinstated into service. If he would have been physically reinstated into service, he would have undergone all mandatory courses/ cadres required for promotion. Since, he was notionally reinstated for monetary benefits,

therefore, his eligibility for further promotion is completely ruled out due to lack of physical service and not meeting qualitative requirement for promotion. Ld. Counsel for the respondents submitted that applicant was notionally reinstated on the rank which he was holding at the time of dismissal and it is nowhere provided in the order of the Tribunal that in case applicant being notionally reinstated to the rank of Naik, he will be allowed to notional promotion to the post of Sub Major also. Reinstatement being notional for the purpose of fixation of pension from the date of discharge, applicant cannot claim for promotion to the post Sub. Major. Learned counsel for the respondents submits that instant O.A. has no merit and is liable to be out rightly rejected.

7. Upon hearing the submissions of learned counsels of both sides and having gone through order dated 11.01.2018 passed by this Tribunal in T.A. No 572 of 2010, we notice that O.A. was filed for issuing directions to respondents to reinstate applicant in service. While allowing this application this Tribunal directed respondents to reinstate the applicant notionally in service with all consequential benefits. Applicant shall be deemed notionally in service on the rank which he was holding at the time of dismissal and shall be entitled for continuity of service of the rank which he was holding with all consequential benefits, including pension, arrears of salary and wages. We have noticed that in pursuance to

order of this Tribunal, respondents have notionally reinstated him to the post of Naik for the purpose of pensionary benefits as directed in the order. It is nowhere provided in the order that in the event of applicant being notionally reinstated to the post of Naik, he would be entitled to get notional promotion to the post Sub Major. It has been specifically mentioned in the order that applicant's re-instatement to the post of Naik shall be notional only with effect from the date of discharge. Taking a note of the order passed by this Tribunal, we find that applicant's re-instatement to the post of Naik is purely notional for the pensionary benefits only, it does not give any right to him to claim promotion to the post of Sub Maj and to get salary and other perks of this post. In addition to above, for promotion to the rank of Sub Maj, applicant should have passed Junior Leader Proficiency Test (JLPT) which was only possible when he was in active service.

8. We further note that all reliefs flowing from a cause of action can be claimed in one O.A., no separate O.A. could be filed for relief(s) flowing from the same cause of action.

9. In view of the above, applicant is not entitled for promotion to the rank of Sub Maj which is granted on attaining certain qualitative requirements which applicant did not possess being notionally reinstated in service. Applicant's claim being based on imagination is not sustainable and is liable to be dismissed as such.

10. In view of the above, O.A. deserves to be dismissed. It is accordingly, **dismissed**.

11. No order as to costs.

**(Maj Gen Sanjay Singh)**  
**Member (A)**

**(Justice Ravindra Nath Kakkar)**  
**Member (J)**

Dated : Jul, 2023

Ukt/-