

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 228 of 2021

Tuesday, this the 11th day of July, 2023

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Atul Kumar Jain, Member (A)

No. 15470616L Dfr Shiv Chand Singh Chauhan
S/o Late Badri Chandra
R/o 76 Armed Regiment
C/o 56 APO
(Retired)

.... Applicant

Ld. Counsel for the Applicant: **Shri Prabhat Kumar Tripathi**, Advocate
(Not Present)

Versus

1. Union of India through Secretary, Ministry of Defence, Government of India, New Delhi.
2. Chief of the Army Staff (Army), South Block, New Delhi.
3. Commanding Officer, 76 Armed Regiment, PIN 912676, C/o 56 APO.

... Respondents

Ld. Counsel for the Respondents : **Shri Yogesh Kesarwani**,
Central Govt Counsel

ORDER

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

“(a). Issue an order, direction and command to the respondents to promote the applicant on the post of Naib Subedar as he has passed the written examination and practical test as would be evident from Annexure No. 1 &

2 from due date as persons junior to him has been considered and promoted on 01.11.18 the said post with all benefits of service including arrears of salary and interest thereon @ 12% per annum from the date of its due till the date of actual payment.

- (b) Issue such other order/direction which may be deemed just and proper in the circumstances of the case.
- (c) Allow the Original Application with cost against the respondents in view of the facts and circumstances, legal provisions and grounds raised in the Application.”

2. Brief facts of the case are that the applicant was enrolled in the Army on 24.10.1996. He was promoted to the rank of Lance Dafadar (LD) on 03.03.2007 and Dafadar (Dfr) on 11.07.2011. The applicant passed promotion test from Dafadar to Naib Risaldar on 18.04.2018 and Part II Order No. 76AR/408/001/2018 in this regard was published. The Departmental Promotion Committee (DPC) for promotion to the rank of Naib Risaldar in the case of the applicant for the period from 01.10.2018 to 30.09.2019 was held and DPC proceedings were prepared by 76 Armoured Regiment and forwarded to Records for approval where it was observed that applicant was lacking mandatory Annual Confidential Report (ACR) criteria as required vide para 6 of IHQ of MoD (Army) letter dated 10.10.1997. The applicant had earned two ‘Above Average’ and three ‘High Average’ ACRs in the last five years for the period from the year 2014 to 2018 which were taken into consideration by the DPC. Since, as per IHQ of MoD (Army) promotion policy letter dated 10.10.1997, minimum three ‘Above Average’ reports are mandatory in the last five ACRs taken into consideration for promotion, hence, applicant was

found lacking one 'Above Average' report. Thus, the applicant could not be promoted to the rank of Naib Risaldar due to lack of 'Above Average' report in the rank of Dafadar. The applicant has filed the present Original Application against his supersession/denial of promotion to the post of Naib Risaldar without submitting any representation/appeal to the respondents.

3. Learned counsel for the applicant pleaded that applicant was initially appointed as Sepoy and thereafter, he was promoted to the post of Lance Naik, Naik and lastly as Havildar. The work and conduct of the applicant has always been appreciated and there was no complaint regarding his work and conduct from any corner including the red ink entry. The ACRs of the applicant has also been excellent and no adverse entry has been communicated to the applicant. The competitive examination for the post of Naib Subedar was held in the month of April, 2018 and the applicant passed the test successfully. In the Statement of Account for the month of October, 2018, the applicant has been shown to have been declared qualified for the post of Naib Subedar but despite the formal order of the promotion, he has not yet been given promotion to the post of Naib Subedar.

4. Learned counsel for the applicant further pleaded that it is pertinent to mention that Sri Tej Ram, Rajesh G.K., Shiv Chand Singh Chauhan (applicant), Swaran Chand, Geej Raj and Amit Kumar have been selected for the post of Naib Subedar but no promotion order has been issued in favour of the applicant whereas all others have

been promoted. The action of the respondents is wholly arbitrary and illegal in denial of promotion to the applicant. He further submitted that it is worthwhile to mention that physical test (practical test) was again held between the period from 03.11.2018 to 06.11.2018 in which applicant was forced to appear in which he has been declared 'Fail' and Sri Swarn Singh who was on leave during that period, has been granted promotion to the post of Naib Subedar. Thus, persons junior to the applicant (Swarn Singh, Geej Raj and Satish Kumar) have been considered and promoted to the post of Naib Subedar and applicant has been denied promotion in an arbitrary and illegal manner.

5. It is pleaded that respondents have acted arbitrary and illegally in not promoting the applicant to the post of Naib Subedar despite he has been declared passed in the written examination and practical test which is in utter disregard of the rules on the subject. He pleaded for grant of promotion to the applicant from the date his juniors have been promoted.

6. On the other hand, Ld. Counsel for the respondents submitted that applicant was enrolled in the Army on 24.10.1996. He was promoted to the rank of Lance Dafadar (LD) on 03.03.2007 and Dafadar (Dfr) on 11.07.2011. The applicant passed promotion test from Dafadar to Naib Risaldar on 18.04.2018 and Part II Order No. 76AR/408/001/2018 in this regard was published. The Departmental Promotion Committee (DPC) for promotion to the rank of Naib Risaldar in Armoured Fighting Vehicle (AFV) category is held annually

in the Regiments for filling up the vacancies from 1st October to 30 September and finalised DPCs are forwarded to Armoured Corps Records for checking and its correctness. Accordingly, in the case of the applicant, DPC for the period from 01.10.2018 to 30.09.2019, was prepared by 76 Armoured Regiment and forwarded to Records for approval where it was observed that applicant was lacking mandatory Annual Confidential Report (ACR) criteria as required vide para 6 of IHQ of MoD (Army) letter dated 10.10.1997.

7. Learned counsel for the respondents further submitted that in the instant case, applicant had earned two 'Above Average' and three 'High Average' ACRs in the last five years for the period from the year 2014 to 2018. Since, as per promotion policy letter dated 10.10.1997, minimum three 'Above Average' reports are mandatory in the last five ACRs taken into consideration for promotion, hence, applicant was found lacking one 'Above Average' report and thus, he superseded by his immediate juniors for further promotion. Therefore, the applicant could not be promoted to the rank of Naib Risaldar due to lack of one 'Above Average' report in the rank of Dafadar.

8. The mandatory ACR criteria for promotion to the rank of Naib Risaldar as per IHQ of MoD (Army) policy letter No. B/33513/AG/PS-2(c) dated 10.10.1997 is reproduced as under :-

- (a) Only last five reports will be considered, out of which minimum three reports must be in the rank of Havildar and in case of shortfall rest may be in the rank of Naik.

- (b) At least three out of last five reports should be “Above Average” with a minimum of two in the rank of Dafadar/Havildar and remaining should not be less than “High Average”.
- (c) The individual must have a minimum of two reports on Regimental Duty or as an instruction in an Army School of Instructions, including IMA, NDA, OTA and Armoured Corps Centre and School (ACC&S) out of which at least one should be ‘Above Average’. One of the Regimental Report should have been earned in the rank of Dafadar/Havildar.
- (d) The individual should have been recommended for promotion in all the five reports.

9. Learned counsel for the respondents further submitted that para 3 of Army Order 12/2009/MT states that *‘while the successful completion of a cadre course will qualify a Non Commissioned Officer (NCO) for promotion, it will not however, automatically entitled him to such elevation in rank’*. Therefore, only qualifying the promotion test without meeting the other mandatory requirement for promotion as per policy letter dated 10.10.1997 cannot be considered as a right to promotion to the rank of Naib Risaldar. Accordingly, promotion order in respect of Dafadar Tej Ram, Dafadar Rajesh K and Dafadar Swarn Singh was issued by the Armoured Records as they were meeting all the mandatory promotion criteria as per policy and the applicant was not meeting the ACR criteria thereby superseded to his juniors and

became ineligible for promotion to the post of Naib Risaldar. He pleaded for dismissal of Original Application.

10. We have heard learned counsel for the respondents and perused the material placed on record.

11. We have perused the record and we find that in ACR grading for the last five years from the year 2014 to 2018 which were taken into consideration for promotion to the rank of Naib Risaldar for the upcoming vacancies, applicant was lacking one 'Above Average' report as he has earned two 'Above Average' and three 'High Average' reports during the last five years against the mandatory requirement of three 'Above Average' reports as per IHQ of MoD (Army) policy letter dated 10.10.1997. Hence, applicant was superseded to his juniors in promotion and juniors who were meeting all mandatory requirements as per policy letter were promoted to the post of Naib Risaldar as per rules.

12. In view of above, we find that there is no illegality or prejudice neither in ACR grading nor in DPC proceedings and applicant superseded for promotion due to lack of one 'Above Average' report against the mandatory requirement of three 'Above Average' ACRs in the last five years in the rank of Naik/Dafadar. The applicant was lacking mandatory ACR grading criteria as per extant policy which is applied universally to all similarly placed individuals, hence, no injustice has been done to the applicant as alleged by the applicant that he has earned excellent reports (though no such grading of excellent is awarded in the ACRs). Hence, the only reason for non

