

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 448 of 2021

Tuesday, this the 18th day of July, 2023

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

No. 13989865P, Havildar (ACP Nb Sub) Sujay Kumar
R/o Village and Post – Hazipurbillor,
District – Patna (Bihar)

.... Applicant

Ld. Counsel for the Applicant : **Shri Vinay Pandey**, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, New Delhi.
2. Officer in Charge, The Records, Army Medical Corps, Lucknow-02.
3. Commanding Officer, 323 Field Hospital, C/o 56 APO.

... Respondents

Ld. Counsel for the Respondents : **Shri Rajesh Shukla**,
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:-

“(i) To pass an order/direction directing the respondent to reinstate the applicant from the date of discharge, i.e. 31.12.2020 after expunging the ACR for the corresponding years and he may kindly be granted promotion for the substantive rank of next higher rank.

(ii) To pass an order or direction to the respondent to grant the promotion of substantive rank of Naib Subedar and to continue the color service in the rank of Naib Subedar with all financial and other service benefit.

(iii) To pass any other relief as this Hon'ble Tribunal considers in the peculiar facts and circumstance of the case in favour of the applicant.

(iv) The Hon'ble Tribunal may also graciously be pleased to award exemplary cost of Rs. 1,00,000/- in favour of the applicant, for unnecessary litigation.”

2. Brief facts of the case are that the applicant was enrolled in the Army on 24.12.1994. He was promoted to the rank of Naik on 01.10.2013 and Havildar on 08.01.2018. The applicant was discharged from service in the rank of ACP Naib Subedar on 31.12.2020 after rendering 26 years and 07 days of service. The applicant passed promotion cadre course from Havildar to Naib Subedar. The applicant was screened for promotion to the rank of Naib Subedar as per Corps seniority on his own turn against the vacancy of 01.01.2020 but he was found ineligible due to lack of ACR grading criteria in terms of para 6 (a) to (d) of IHQ of MoD (Army) letter dated 10.10.1997. Thus, the applicant could not be promoted to the rank of Naib Subedar due to lack of one 'Above Average' report in the rank of Havildar. The applicant submitted representation to promote him in the rank of Naib Subedar which was suitably replied by the respondents stating reasons for supersession/denial of

promotion. Being not satisfied with the reply of respondents and aggrieved by non grant of promotion, the applicant has filed the present Original Application.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Army on 24.12.1994. He was promoted to the rank of Naik on 01.10.2013 and Havildar on 08.01.2018. The applicant was discharged from service in the rank of ACP Naib Subedar on 31.12.2020 after rendering 26 years and 07 days of service. The applicant passed promotion cadre course from Havildar to Naib Subedar which was conducted w.e.f. 07.01.2019. The applicant was qualified for promotion after passing promotion cadre being in fit medical condition but he was not granted promotion to the rank of Naib Subedar and his juniors were granted promotion to the acting rank of Naib Subedar w.e.f. 01.01.2020. The applicant raised his grievance and submitted a non statutory complaint dated 25.01.2020 but the same being not on proper format was not processed and applicant was issued a show cause notice dated 10.09.2020 for not following the correct procedure of correspondence. The applicant replied to show cause notice vide his reply dated 13.09.2020 and ultimately he could not submitted non statutory petition in correct format and thus, his grievance was not redressed and applicant was discharged from service without getting promotion to the post of Naib Subedar.

4. Learned counsel for the applicant further submitted that applicant has been denied his fundamental right as enshrined under

Articles 14 and 16 of the Constitution of India as well as several Supreme Court's pronouncement on the subject. He pleaded that applicant having passed promotion cadre and in fit medical condition SHAPE-1, he should be granted promotion to the post of regular Naib Subedar from the date his juniors have been promoted.

5. On the other hand, Ld. Counsel for the respondents submitted that applicant was promoted to the rank of Havildar on 30.01.2018. He was discharged from service on 31.12.2020 after rendering 26 years and 07 days of service. The applicant was screened for promotion to the rank of Naib Subedar as per Corps seniority in his own turn against the vacancy of 01.01.2020, however, he was found ineligible due to lack of ACR grading criteria as per IHQ of MoD (Army) policy letter dated 10.10.1997. ACR/grading criteria for promotion to the rank of Naib Subedar as per policy letter dated 10.10.1997 is as under :-

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

(b) At least three out of last five reports should be "Above Average" with a minimum of two in the rank of Dfr/Hav and remaining should not be less than "High Average".

6. As per IHQ of MoD (Army) letter dated 17.01.2019, even if an individual is given consideration of one confidential report in lower rank, he still has to meet Qualitative Requirement of minimum two 'Above Average' confidential reports in Havildar rank. The details of

the ACR/grading earned by the applicant which were considered for promotion for the years from 2015 to 2019 are as under :-

Ser No.	Year	Rank	Grading
1.	2015	Naik	7 (Above Average)
2.	2016	Naik	7 (Above Average)
3.	2017	Naik	7 (Above Average)
4.	2018	Havildar	7 (Above Average)
5.	2019	Havildar	6 (High Average)

7. Learned counsel for the respondents further submitted that applicant was screened for promotion to the rank of Naib Subedar against the vacancy of 01.01.2020 and his last five ACRs (3 ACRs in the rank of Naik and 2 ACRs in Havildar rank) were taken into consideration. The applicant earned 3 x Above Average ACRs in the year 2015, 2016 & 2017 in the rank of Naik and 1 x Above Average ACR for the year 2018 and 1 x High Average ACR for the year 2019 in the rank of Havildar. The applicant should have earned 2 x Above Average ACRs in the rank of Havildar and thus, applicant was not meeting the mandatory requirement of minimum two 'Above Average' ACRs in the rank of Havildar and was superseded due to lack of ACR grading criteria which was conveyed to the applicant vide AMC Records letter dated 23.12.2019. In ACRs for the period from 2015 to 2019, no weak points, adverse and advisory remarks were given by the IO/RO/SRO and 'High Average' assessment is not required to be communicated to the ratee (applicant), hence, there is no inconsistency of reporting of ACR in the instant case.

8. Learned counsel for the respondents further submitted that applicant submitted a non statutory complaint dated 25.01.2020 which

was addressed to the GOC-in-C, Central Command but the same could not be processed being not in proper format. The applicant was not promoted to the rank of Naib Subedar. On completion of applicant's extended service limit, he was discharged from service on 31.12.2020 after rendering 26 years of service. Hence, applicant's discharge from service in the rank of Havildar (ACP Naib Subedar) was carried out as per policy in vogue and no injustice has been done to him. He pleaded for dismissal of Original Application.

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

10. We have perused the record and we find that in ACR grading for the last five years which were taken into consideration for promotion to the rank of Naib Subedar for the vacancy as on 01.01.2020, applicant was graded Above Average in the ACR of 2018 and High Average in the ACR of 2019 in the rank of Havildar. Hence, against the requirement of two Above Average reports in the rank of Havildar, applicant got only one ACR grading of 'Above Average' report, therefore, applicant was superseded in promotion due to lack of ACR grading criteria and thus, he was not promoted to the rank of Naib Subedar. On completion of extended service limit in the rank of Havildar, he was discharged from service on 31.12.2020 after rendering 26 years of service as per rules/policy.

11. In view of the above, we do not find any irregularity or illegality neither in ACR grading nor in DPC proceedings to grant promotion to the rank of Naib Subedar. The applicant superseded for promotion

due to mandatory requirement of minimum two 'Above Average' ACRs in the rank of Havildar. The applicant was lacking mandatory ACR grading criteria as per extant policy dated 10.10.1997 which is applied universally to all similarly placed individuals, hence, no injustice has been done to the applicant. The applicant was lacking 'Above Average' report, hence, the only reason for non consideration for promotion in the DPC is lack of one 'Above Average' report and therefore, applicant was denied promotion to the rank of Naib Subedar as per promotion policy and rules and regulations on the subject. He was discharged from service on 31.12.2020 in the rank of Havildar (ACP Naib Subedar) as per rules.

12. The Original Application is devoid of merit, deserves to be dismissed and is accordingly **dismissed**.

13. No order as to costs.

14. Pending Misc. Application(s), if any, shall stand disposed of.

(Vice Admiral Atul Kumar Jain) **(Justice Umesh Chandra Srivastava)**
Member (A) **Member (J)**

Dated: 18th July, 2023

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