

**RESERVED****ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW****Original Application No 629 of 2022**Tuesday, this the 11<sup>th</sup> day of July, 2023**“Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”**  
**“Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**Sepoy Jatinder Kumar 7431474X S/o Gandarv Singh Village  
:Karampur Post Office: Palakwah, District: Una, Himachal  
Pradesh PIN 177220 currently posted at Central Command  
Intelligence Battalion at Lucknow.

-----Applicant

Ld. Counsel for the Applicant: **Shri Pawan Bishtand**  
**Ms. Priyanka Chaudhary,**  
**Advocate**

Versus

1. Union of India through the Secretary, Ministry of Defence,  
New Delhi.
2. Chief of the Army Staff, Army Headquarters, New Delhi.
3. Adjutant General, Army Headquarters, New Delhi.
4. Military Intelligence training School & depot having its  
center at Pune PIN - 9087093, C/o 56 APO.
5. Record office, Intelligence Corps, C/o Military Intelligence  
Training School & Depot, Pune PIN - 9087093, C/o 56  
APO

..... Respondents

Ld. Counsel for the Respondents : **Shri Sunil Sharma,**  
**Central Govt. Counsel.**

**ORDER**

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

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:-

- “8.1- To direct the respondent to bring the record of seniority roll of Sepoy clerk for the year 2007-2008 of Intelligence Corps.*
- 8.2- To direct the respondent to restore the original seniority of applicant from the date of joining the opposite party.*
- 8.3- To issue, an order in the favour of applicant to direct respondent grant for the periodical promotion of the applicant from the rank of Sepoy to appropriate rank as per promotion policy.*
- 8.4- To issue, or pass an order to pay the salary perks & other dues of Naik in the form of arrear from the date when promotion of applicant’s counterparts were granted i.e. April 2008 or pass.*
- 8.5- Any other relief which this Hon’ble Court/ Tribunal may find fit to grant in the favour of applicant.*
- 8.6- To allow this instant application with cost.”*

2. The factual matrix of the case is that the applicant was enrolled in the Indian Army in the Corps of Intelligence on 26.09.2003 and served peace stations and Field and High Altitude stations. During his entire service, he was absent from duty for 678 days and awarded six punishments including one punishment for consuming Alcoholic and remaining five punishments for absent without leave. His colleagues even juniors have been promoted from Sepoy to Naik and even Havildar. At present applicant is serving in Central Command Intelligence unit. He raised his grievances with his higher authority regarding grant of promotion which was rejected. Being aggrieved, applicant has filed this Original Application for promotion from Sepoy to Naik and Havildar.

3. Ld. Counsel for the applicant submitted that applicant was enrolled in the Indian Army on 26.09.2003. At present, he had completed about 19 years of service & he is still serving as Sepoy. During service applicant had served in various parts of country including field & high altitude stations. However, he was punished for various offences under section 38 of Army Act, which bared him for promotion only for three years. From the date of enrolment till the year 2009, he was having clean service

record. Applicant never got any promotion during his 19 years of service, whereas his annual confidential report is clean and there is no fresh red entry since 2016. In the year 2021, he was awarded Long Service Medal for completing 18 years of service. Applicant was appointed as Sepoy clerk and even after completion of 19 years of service, he is still serving as Sepoy in Indian Army, However, his counterpart as well as his subordinates have been promoted to the rank of Naik on Apr 2008 and now they have been promoted upto the rank of Havildar. Due to not being promoted, applicant is undergoing heavy financial loss and mental agony. Promotion is prime concern for Army Personnel and a social stigma is also attached with it. He should have been promoted to the rank of Naik in his 5<sup>th</sup> year of service and thereafter, as Havildar in his 15 years of service. He is in medical category SHAPE-1. Learned counsel for the applicant submitted that as per promotion policy for promotion from Sepoy to Naik for personnel below officer rank, applicant must have completed minimum four years of service, he should have been mustered in class III permanent, should have obtained minimum 'High Average' grading and recommended for promotion in performance report. Applicant fulfils all the criteria as he was enrolled in the

year 2003 and completed five years of service in the year 2008 when his counterpart got promoted. Army personnel can only be debarred from promotion for three years if charged under Section 38 of Army Act. Applicant is serving in Indian Army as Sepoy and he shall be retiring from service very soon. Learned counsel for the applicant submitted that except desertion, he has excellent service record hence, respondents be directed to promote the applicant to the rank of Naik and Havildar so that he can serve the nation upto 24 years.

4. Per contra, Ld. Counsel for the respondents submitted that at present applicant is posted at Central Command Intelligence Unit. He has alleged that his counterparts/batchmates have been promoted from Sepoy to Naik and Havildar. He has also alleged that he raised his grievances with regard of his promotion with higher authorities which went unanswered. During his entire service he was absent from duty for 678 days and was awarded 06 punishments for various offences. Applicant was posted in different locations as per posting order issued by Intelligence Record Office as per policy i.e. one field and one peace station and completed 18 years, 10 months and 06 days of service

(including his absent period of service of 678 days) till the date of filing of his present application.

5. Learned counsel for the respondents further submitted that for promotion from Sepoy to Naik, there are certain criteria such as disciplinary and ACR criteria as promulgated in the Record Office Instructions:

- (a) Minimum four (04) years of service.
- (b) Passed in Map Reading Examination Three and mustered in Technical Trade Class Three.
- (c) Minimum High Average (05-06 points) grading in Performance Report and 'Recommended' for Promotion.
- (d) **Discipline Criteria.**
  - (i) Not more than three red ink entries in entire service.
  - (ii) Not more than one red ink entry in last five (05) years.
  - (iii) Not to be considered for promotion within one year of the award of red ink entry/recordable censure, as the case may be.
  - (iv) Not be convicted for any offence.

(v) Non involvement in any civil/ military case.

6. As per the policy in vogue, the following ACR criteria is considered for promotion to the rank of Naik:-

(a) Performance Report (PR). The Individual should have obtained minimum 'High Average (05 – 06 points)' grading and recommended for promotion in Performance Report.

7. Learned counsel for the respondents pleaded that applicant was not meeting promotion criteria hence, he was not promoted from Sepoy to Naik. Instant O.A. has no substance and is liable to be dismissed.

8. We have heard learned counsel of both the parties and perused the documents available on record.

9. In the instant case, applicant was considered for promotion from Sepoy to Naik but he was not meeting ACR criteria for promotion. He was awarded 04 points in his ACR by Initiating Officer and Reviewing Officer. He was not fulfilling ACR criteria prescribed for promotion to the rank of Naik. As per policy regarding Performance Report, if any Sepoy has obtained less than High Average (i.e. 5 points) grading or Not Recommended for promotion in performance report, it will be

reviewed after six months from the date of initiation of last report submitted to Intelligence Records.

10. On perusal of document, it appears that on receipt of Performance Report on 16 Nov 2009, the applicant was screened for promotion to the rank of Naik on 21 November 2009 and it was intimated to 8 Mountain division Field Security Section (where the applicant was posted at that time) vide letter Number 1110/97/CA dated 21 November 2009 that promotion of the applicant is held up due to observation in Performance Report as applicant was awarded average grading (04 points) both by IO and RO. Minimum High Average (05 – 6 points) grading in Performance Report and 'Recommendation' for Promotion is mandatory for promotion to the rank of Naik.

11. The applicant was due for review of his performance Report on 27.04.2010. However, the applicant got himself absent from duty for 37 days and was awarded 28 days Rigorous Imprisonment (RI) on 25.03.2010 under section 39 (a) of the Army Act. As such he was banned for promotion for the duration of one year, ie. Upto 24.03.2011.

12. The applicant is a habitual offender. He is an alcoholic. He was not at all punctual to his duties. He absented himself without leave from his duty for 678 days. He has been punished once for being Alcoholic and five times he was punished due to Absent without leave. Hence, the applicant was not be promoted like his counterparts and colleagues and subordinates. The applicant is an undesirable and inefficient soldier as he has been awarded five Red Ink Entries in his service carrier due to Over staying Leave (OSL) and was a deserter under Section 38 and 39 of the Army Act for absenting himself for 678 days. Eligibility criteria for promotion and award of Long Service & Good Conduct Medal are entirely different. Claim of the applicant for grant of promotion based on award of Long Service & Good Conduct medal is incorrect. Promotion policies are different from the policies of awarding medals. There is no link between award of Long Service & Good Conduct Medal and promotion. Hence, the applicant has rightly not been promoted to the rank of Naik and Havildar.

13. In view of the above, we do not find any irregularity or illegality in not promoting the applicant to the rank of Naik and hence, there is no violation of Article of the Constitution of India. The applicant's contention that he should be promoted to the

rank of Naik is unreasonable, irrelevant and against the promotion policy, therefore, his prayer to promote him to the rank of Naik and further promotion to the post of Havildar are unsubstantiated which requires no further interference.

14. Resultantly, the Original Application is devoid of merit and deserves to be dismissed. It is accordingly **dismissed**.

15. No order as to costs.

**(Vice Admiral Atul Kumar Jain) (Justice Ravindra Nath Kakkar)**  
**Member (A) Member (J)**

Dated: 11 July, 2023  
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