

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

**(Court No. 1)
List 'A'**

Original Application No. 492 of 2012

This the 20th day of March, 2017

**“Hon’ble Mr. Justice D.P. Singh, Member (J)
Hon’ble Air Marshal Anil Chopra, Member (A)”**

Bansh Raj Pal (Army No.1538347M) son of Shri Babu Lal Pal,
resident of village Pachkhara, Post Kotha-Newaria, District
Pratapgarh, Presently posted at 12 Rapid Signal Regiment (Aren)
C/o 56 APO.

.....Applicant

By **Sri Shrikant Mishra**, Ld. Counsel for the applicant.

Versus

1. Union of India through its Secretary,
Ministry of Defence, New Delhi.
2. O.I.C. Signal Records,
Jabalpur (M.P.)
3. Commanding Officer, Head Quarter,
Company 29, Rashtriya Rifle, C/O 56 APO.

.....Respondents.

By **Shri Yogesh Kesarwani**, Ld. Counsel for the respondents
assisted Major Soma John, Departmental Representative.

ORDER (ORAL)

1. This petition under Section 14 of the Armed Forces Tribunal Act, 2007 has been preferred being aggrieved with denial of promotion to the rank of Havildar in the year 2010.
2. We have heard Sri Shrikant Mishra, Ld. Counsel for the applicant and Sri Yogesh Kesarwani, Ld. Counsel for the respondents assisted by Maj Soma John, OIC, Legal Cell.
3. The applicant was enrolled in the Indian Army as a soldier on 25.04.1994 and was promoted to the rank of Naik on 01.11.2006 with seniority from 24.05.2006. The applicant passed the departmental examination for the post of Havildar in 2007, but he was not promoted to said rank till the year 2010. It is further pleaded that during the period 01.01.2009 to 31.12.2009 the applicant was posted in 29 Rashtriya Rifle, Baramula and for this period he has been graded as 'average'. The ACR entry was received by the Signals Records on 16.07.2010. On account of 'average' entry, the applicant could not be promoted to the post on Havildar in the year 2010.
4. Submission of Ld. Counsel for the applicant is that though 'average' grading was done on 16.07.2010, but it was not communicated to the applicant, which is a requirement under Para 9(a)(ii)(ab) of Army Order 1/2002/MP.
5. On the other hand, Ld. Counsel for the respondents assisted by OIC, Legal Cell submitted that, though belatedly, the 'average' entry was communicated to the applicant on 08.08.2010. After

due communication on 08.08.2010, the applicant submitted a representation which was decided by impugned order dated 01.03.2012, a copy of which has been filed as Annexure-2 to the O.A.

6. A perusal of order dated 01.03.2012 shows that on account of the fact that the applicant was posted in 12 RAPID Signal Regiment (Aren), the order could not be communicated within the stipulated period. The representation was not decided on merits, rather in the order it is indicated that the applicant has not submitted proper representation as per Army Order 13/2006/PS.

7. So far as question of promotion to the rank of Havildar is concerned, since admittedly the applicant was having 'average' grading, he was not promoted in the year 2010 along with his batch mates. But the fact remains that on account of posting in different Units of the Rashtriya Rifle, the appropriate authority could not communicate the 'average' entry in terms of Army Order (supra) as is evident from order dated 01.03.2012. Since the applicant was having 'average' entry no order can be passed by the Tribunal to consider him for promotion to the rank of Havildar along with his batch mates till the 'average' entry survives. Admittedly, the applicant was promoted to the post of Havildar in the year 2012. The question relating to retrospective promotion from the year 2010, keeping in view that there is no fault on the part of the applicant and the respondents failed to communicate the 'average' entry in terms of Army Order (supra) within the

stipulated period, as is evident from letter dated 01.03.2012, we direct the applicant to represent his case afresh in the required format within one month from today, and in case such a representation is made, then it shall be treated as statutory complaint and shall be decided on merits by passing a speaking and reasoned order within two months from the date of preferring such a representation with due communication to the applicant. Of course, in case the 'average' entry is set aside or upgraded, the applicant shall be provided retrospective promotion on the post of Havildar by the appropriate authority in accordance with Rules. We further direct that the representation, if made within the aforesaid period of one month from today, shall be considered on merits ignoring the delay.

8. We clarify that we have not entered into the merits of the controversy with regard to 'average' grading.

9. Subject to direction made hereinabove, the O.A. is disposed of finally.

No order as to costs.

(Air Marshal Anil Chopra)
Member (A)

(Justice D.P. Singh)
Member (J)

Dated: March 20, 2017

anb