

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 182 of 2020**Thursday, this the 31st day of March, 2022**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Jai Prakash
 S/o Pratap Ram
 R/o Village & Post – Kelawa, Kelva Kallan,
 District – Jodhpur (Rajasthan)
 Presently posted at Unit No. 86 Armoured Regt., C/o 56 APO,
 Pin – 912686, District – Patiala (Punjab)

.... Applicant

Ld. Counsel for the Applicant : **Shri Vinod Kumar &**
Shri Satya Man Singh, Advocate
(Not Present)

Versus

1. Union of India, through Secretary, Ministry of Defence, IHQ of MoD, New Delhi.
2. The Commandant 86 Armoured Regiment, Pin – 912686, C/o 56 APO.
3. The Director of Armoured Corps Records, Ahmednagar (Maharashtra).
4. Sri Dharmveer Army No. 15473684K.
5. Sri Virendra Singh, Army No. 15474277N.
Both are working as “Nb Ris” in Armoured Regiment, Pin – 912686, C/o 56 APO.

... Respondents

Ld. Counsel for the Respondents : **Ms. Appoli Srivastava,**
 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, whereby the applicant has sought following reliefs:-

- “i. To issue an order or direction in the suitable nature quashing the impugned order/information letter dated 24.02.2020 passed by respondent no. 2 (Annexure No. 1 to this original application with Compilation No. 1).
- ii. To issue an order or direction in the suitable nature directing the respondents department to consider the promotion of applicant from the date of his juniors were promoted to the post as “Nb Ris” with all consequential benefit alongwith arrears of salary to the promotional post.
- iii. To issue any order or direction, which this Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the case.
- iv. To award the cost of the application to the applicant.”

2. Brief facts of the case are that the applicant was enrolled in the Army on 30.07.1998. He was promoted to the rank of Dafadar on 17.06.2011. As per seniority maintained by unit of the applicant, i.e. 86 Armoured Regiment, the applicant came up in seniority for promotion to the rank of Naib Risaldar w.e.f. 13.12.2019. Accordingly, his name was included in the DPC conducted for the period from 01.10.2019 to 30.09.2020 but during the scrutiny of DPC proceedings, it was found that the applicant was lacking ACR criteria in terms of IHQ of MOD (Army) policy letter dated 10.10.1997, hence, not promoted to the rank of Naib Risaldar. The applicant’s name was again included in DPC conducted for the period from 01.10.2020 to 30.09.2021 but the applicant was again lacking two ‘Above Average’ reports and thereby not meeting ACR criteria for promotion to the rank of Naib Risaldar. Thus, the applicant could not be promoted to the rank of Naib Risaldar due to lack of ‘Above Average’ reports. The

applicant submitted an application dated 24.02.2020 seeking reason of his supersession which was suitably replied vide 86 Armoured Regiment letter dated 24.02.2020. Being not satisfied with the reply of respondent No. 2 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 the post of Dafedar on 30.07.1998 and Army No. 15473684K Dharmveer enrolled on 31.07.1998 and No. 15474277N, Virendra Singh enrolled on 07.10.1998 and both were juniors in enrolment. Almost after 21 years, a departmental promotion test J.C.O. has been conducted on 30.03.2019 in which applicant had participated and has been declared as successful. Even after passing the JCO test, respondent No. 2 and 3 are adamant to declare unfit for promotion to the applicant, while two juniors have been promoted without rhyme and reason on the post of Naib Risaldar. The applicant submitted an application dated 24.02.2020 before the respondent No. 2 to know the reason for non grant of promotion to him being senior which was replied by respondent No. 2 on the same day stating that *“you are lacking annual confidential report criteria for promotion to the rank of Naib Risaldar.”*

4. Learned counsel for the applicant further submitted that the principle of natural justice has been violated by the respondents and as such the impugned order is liable to be quashed. On the subject matter, the Hon'ble Apex Court has already laid down law in case of **Dev Dutt vs. Union of India & Ors**, Civil Appeal No. 7631 of 2002,

decided on 12.05.2008 by which it has been held that entry of below benchmark in ACR must be communicated to the employee and if not communicated then no adverse effect can be drawn during consideration of promotion of an employee. He pleaded to grant promotion to the rank of Naib Risaldar to the applicant from the date his juniors were promoted with all consequential benefits.

5. On the other hand, Ld. Counsel for the respondents submitted that applicant was enrolled in the Army on 30.07.1998. He was promoted to the rank of Dafadar on 17.06.2011. As per seniority maintained by unit of the applicant, i.e. 86 Armoured Regiment, the applicant was coming up in seniority for promotion to the rank of Naib Risaldar w.e.f. 13.12.2019. Accordingly, his name was included in the DPC conducted for the period from 01.10.2019 to 30.09.2020. On scrutiny of DPC proceedings, it was found that the applicant was lacking ACR criteria in terms of IHQ of MOD (Army) policy letter dated 10.10.1997, which specified that the individual must have a minimum of three 'Above Average' reports in last five ACRs and remaining two reports should not be less than 'High Average'. The applicant was lacking one 'Above Average' report and thereby not meeting ACR criteria for promotion to the rank of Naib Risaldar. The applicant's ACR profile of last five years from 2015 to 2019 are as under :-

- (a) 2015 - Above Average (7 points/gradings)
- (b) 2016 - Above Average (8 points/gradings)
- (c) 2017 - High Average (6 points/gradings)
- (d) 2018 - High Average (5 points/gradings)
- (e) 2019 - High Average (5 points/gradings)

The applicant's name was again included in DPC conducted for the period from 01.10.2020 to 30.09.2021 by 86 Armoured Regiment. On scrutiny of DPC proceedings, it was again found that applicant is still lacking ACR criteria as required by policy letter dated 10.10.1997. The applicant was lacking two 'Above Average' reports and thereby not meeting ACR criteria for promotion to the rank of Naib Risaldar. Thus, applicant could not be promoted to the rank of Naib Risaldar due to lack of 'Above Average' reports. Though, the applicant was granted 3rd MACP (Naib Risaldar grade) w.e.f. 01.07.2019.

6. Ld. Counsel for the respondents further submitted that being aggrieved by non promotion to the rank of Naib Risaldar, the applicant submitted an application dated 24.02.2020 seeking reason of his supersession which was suitably replied vide 86 Armoured Regiment letter dated 24.02.2020. Hence, allegations made by the applicant with regard to juniors have been promoted and applicant has been superseded are baseless and incorrect and she pleaded for dismissal of O.A.

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

8. We have perused the record of the applicant and we find that in ACR gradings for the last five years which were taken into consideration for promotion to the rank of Naib Risaldar in both DPC proceedings, there is no illegality, bias or prejudice neither in ACR gradings nor in DPC proceedings. 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 good reports throughout his service and has completed ACR criteria for promotion to the rank of Naib Risaldar. The applicant was lacking 'Above Average' reports, hence, the only reason for non consideration for promotion in both DPC proceedings is lack of 'Above Average' reports and not otherwise.

9. We find that applicant was not fulfilling eligibility criteria required for promotion to the rank of Naib Risaldar and therefore, he was not selected by all DPCs due to lack of 'Above Average' ACRs. Hence, his prayer for grant of promotion to the rank of Naib Risaldar has rightly been rejected by the respondents as per promotion policy and rules and regulations on the subject.

10. In view of the above, we do not find any irregularity or illegality neither in ACR gradings nor in DPC proceedings to grant promotion to the rank of Naib Risaldar and hence, there is no violation of principle of natural justice. The O.A. is devoid of merit and deserves to be dismissed. It is accordingly **dismissed**.

11. No order as to costs.

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

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: March, 2022

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