

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW****ORIGINAL APPLICATION No. 332 of 2020**Wednesday, this the 23<sup>rd</sup> day of March, 2022**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**Rakesh Kumar Singh (JC/Army No. JC-701010L Sub/NAsst).  
S/o Tanik Prasad Singh, R/o Ward No.24, new Colony Baghi,  
Begusarai, Bihar-851218 and posted at MH, Jhansi Pin-  
900225, C/o 56 APO.**..... Applicant**Learned counsel for the :**Shri Gyan Singh Chauhan** Advocate  
Applicant **Shri Ajeet Pratap Singh**, Advocate

Versus

1. Union of India through Chief of the Army Staff, Army Headquarters, Ministry of Defence, New Delhi.
2. Commanding Officer, MH Jhansi Pin -900225, C/o 56 APO.
3. Sr. Record Officer, OIC Records, Army Medical Corps Records Office (Promotions Sec). Pin-900450, C/o 56 APO.

**.....Respondents**Learned counsel for the :**Dr. Shailendra Sharma Atal**,  
Respondents. Central Govt. Standing Counsel

## **ORDER (Oral)**

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

- (a) *To quash the letter No. 356005J / Sub Maj (NA)/Prom/20 dated 26/02/2020 i.e. Annexure No.1 in the interest of justice.*
- (b) *Direct respondents to consider the case of applicant benefits to applicant, in the interest of justice.*
- (c) *Costs and expenses of the application in favour of the applicant against the Opposite Parties.*
- (e) *Any other relief or reliefs which this Hon'ble Tribunal deems fit and proper in the circumstances of the case may also be granted.*

2. Brief facts of the case giving rise to this application are that the applicant was enrolled in the Army Medical Corps (AMC) on 30.10.1991. During the course of his service he was promoted to the rank of Subedar w.e.f. 01.02.2018 with seniority w.e.f. 08.01.2018. The applicant was due to retire from service w.e.f. 31.10.2021 but he filed this O.A. on 14.10.2020 against his non selection to the rank of Subedar Major. After rendering 30 years of service he retired as a Subedar on superannuation w.e.f. 31.10.2021.

3. The grievance of the applicant is that he was not considered for promotion to the rank of Subedar Major by the Departmental Promotion Committee (DPC)-2019 due to lack of mandatory number of confidential reports required in the rank of JCO. Against the DPC he submitted a statutory complaint dated 14.02.2020 (Annexure A-2) but it was rejected vide letter dated 26.02.2020 (Annexure A-1). The applicant has filed this O.A. to set aside letter dated 26.02.2020 and issue directions to respondents to consider his name in the DPC for the year 2019 as he

feels he was deprived of being considered for promotion to the next higher rank of Subedar Major.

4. The respondents in their written statement brought out that the applicant was enrolled in the Army on 30.10.1991 and discharged from service w.e.f. 31.10.2021 on completion of his terms and conditions under item I (i) (a) of table annexed to Rule 13 (3) of Army Rules, 1954.

During his service, he was granted the following promotions:-

(a) Havildar	-01.02.2011
(b) Naib Subedar	-01.02.2016
(c) Subedar	-01.02.2018 (with seniority w.e.f.08.01.2018)

5. With regard to grant of promotion to the rank of Subedar Major, he had come up in seniority along with his batch mates for consideration for selection/promotion of Sub Maj during DPC-2019 against the vacancies occurring during 2020. The applicant was screened for promotion to the rank of Subedar Major by DPC-2019 held at AMC Records w.e.f. 29.08.2019 to 30.08.2019 on the basis of policy letter dated 10.10.1997 and 23.12.1997 but since he had earned only 03 confidential reports in the rank of junior commissioned officer, he was found ineligible due to lack of mandatory number of confidential reports. Learned counsel for the respondents pleaded for dismissal of O.A.

5. We have heard the learned counsel for the parties and have gone through the record of the case.

6. It is an admitted fact of the parties that the applicant was enrolled in the Army on 30.10.1991 and he was promoted to the rank of Subedar w.e.f. 01.02.2018 with seniority w.e.f. 08.01.2018. The JCO had earned four reports in the rank of JCO which are as under:-

<u>Ser No</u>	<u>Rank</u>	<u>Year</u>	<u>Type of Report</u>	<u>Grading</u>
(a)	Nb Sub	2016	NIR	-
(b)	Sub	2017	CR	Outstanding
(c)	Sub	2018	CR	Above Average
(d)	Sub	2019	CR	Outstanding

7. The applicant had earned 03 confidential reports in the rank of JCO whereas there is a requirement of 05 confidential reports in the rank of JCO as per policy letter dated 10.10.1997 which stipulates as under:-

(i) Last five reports in the rank of JCO will be counted. Out of which at least three reports should be 'Above Average' and remaining two 'High Average'.

(ii) Two out of the last five reports should be on Regimental duty/or as an instructor in an Army School of Instructions including IMA, NDA, OTA and ACC, one of these two reports must be Above Average.

(iii) The individual should have been recommended for promotion in the last five reports in the rank of JCO.

(iv) Merely qualifying for consideration by DPC does not entitle a Sub for promotion to the rank of Sub Maj. Selection will be based on seniority-cum-merit depending upon the vacancies available.

8. Keeping in view of aforesaid policy the petitioner was screened for promotion to the rank of Subedar Major by DPC-2019. The applicant had earned only 03 confidential reports in the rank of junior commissioned officer whereas there was a requirement of 05 confidential reports in the rank of junior commissioned officer. Therefore, due to the aforementioned lacking the DPC-2019 declared the applicant ineligible for consideration to the rank of Subedar Major, which for convenience sake is reproduced as under:-

*"ineligible due to lack of mandatory No of CR in JCO rank. Look will not be counted as per para 11 of IHQ of MoD (Army) letter No B/33513/AG/PS2(D) dated 10 Oct 1997."*

9. In para 6 of rejoinder affidavit learned counsel for the applicant submitted that since confidential report of the applicant could not be initiated in the year 2016, therefore the applicant is lacking mandatory criteria to be considered for promotion in the DPC-2019. In this regard it may be seen that even if the report for the year 2016 is presumed to be initiated, the applicant would not be able to complete mandatory 05 confidential reports in the rank of JCO as he was promoted to the rank of Naib Subedar in January, 2018.

10. Applicant's contention that there was a vacancy of Subedar Major and he ought to have been considered and promoted to the said rank as his batch mate Subodh Kumar was promoted to the rank of Subedar Major. In regard to this it is trite law that mere existence of vacancy does not confer any right on an employee to claim promotion to the next higher post as held in the Hon'ble Apex Court judgment in **Syndicate Bank & Ors vs S Paul**, reported in AIR 1977 SC 3091.

11. In view of the above since the applicant was lacking confidential report criteria, he was not considered for promotion to the rank of Subedar Major.

12. The O.A. lacks merits and is accordingly, dismissed.

13. No order as to costs.

14. Miscellaneous applications, pending if any, shall stand disposed of.

(Vice Admiral Abhay Raghunath Karve)  
Member (A)

(Justice Umesh Chandra Srivastava)  
Member (J)

Dated: 23<sup>rd</sup> March, 2022.

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