

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 465 of 2020**Thursday, this the 31<sup>st</sup> day of March, 2022**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**Baban Prasad Tiwari (No. 13860333X Ex-Hav)  
S/o Late Lal Mohan Tiwari  
Presently residing at Village and Post Office – Matethu, Tehsil –  
Gyanpur, District – Bhadohi (U.P.) -221404.**.... Applicant**Ld. Counsel for the Applicant : **Shri Yashpal Singh**, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, New Delhi.
2. Chief of the Army Staff, Army Headquarters, New Delhi.
3. Officer-in-Charge, A.S.C. Records (South) Bangalore-560007.
4. Principal Controller of Defence Accounts (Pension), Allahabad.

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

- “a) Issuing/pass of an order or direction setting aside the order dated 18.05.2017 passed by the Officer-in-Charge A.S.C. Records (South), Bangalore vide which the representation/petition dated 15.12.2016 preferred in the matter of promotion in terms of the judgment and order

dated 23.11.2016 passed by this Hon'ble Tribunal in the Transferred Application No. 13 of 2011 has been rejected.

- b) Issuing/pass of an order directing the respondents to reconsider the representation of the applicant and provide details of the annual confidential report entries which were taken into account while considering his case for promotion to the rank of Naib Subedar.
- c) Issue of any other order of direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.
- d) Allow this original application with cost.”

2. Brief facts of the case are that the applicant was enrolled in the Army on 14.04.1977. The applicant was qualified for promotion to the rank of Naib Subedar and his promotion was due w.e.f. 14.02.2001, however, he was not promoted in the rank of Naib Subedar by DPC held on 10.01.2001 due to lacking of 'Above Average' ACR criteria. The applicant submitted representations/applications to the respondents praying for seniority and promotion in the rank of Naib Subedar but no action was taken by the respondents. The applicant crossed the upper age limit of 44 years on 16.02.2001 as per his date of birth, his case was not considered for further promotion to the rank of Naib Subedar. The statutory complaint submitted by the applicant on 23.05.2002 to Chief of the Army Staff against supersession was considered and was rejected. Being aggrieved by non grant of promotion to the rank of Naib Subedar, the applicant has filed the present Original Application.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Army on 14.04.1977. The applicant was fully qualified

for promotion to the rank of Naib Subedar and his promotion was due w.e.f. 14.02.2001, however, the persons junior to the applicant were promoted in the rank of Naib Subedar superseding the applicant. The applicant submitted a representation/application dated 16.07.2001 to the Commanding Officer of the unit praying for seniority and promotion in the rank of Naib Subedar w.e.f. 14.02.2001 but no action was taken by the respondents. The applicant again submitted a petition dated 19.09.2001 before the Commander-in-Chief praying to grant him seniority and promotion in the rank of Naib Subedar which kept pending before the respondents.

4. Learned counsel for the applicant further submitted that having failed to get any response from the respondents, the applicant filed a Writ Petition No. 30357 of 2002 before the Hon'ble High Court of Judicature at Allahabad. During the pendency of Writ Petition, the applicant submitted a statutory complaint dated 23.05.2002 which was rejected by Chief of the Army Staff vide order dated 17.07.2004. The Writ Petition of the applicant was transferred to this Tribunal and registered as T.A. No. 13 of 2011 which was disposed of vide order dated 23.11.2016 directing the respondents to attend fresh representation of the applicant in accordance with rules. The applicant's representation dated 15.12.2016 was also rejected by the respondents vide order dated 18.05.2017 stating that relevant ACRs of the applicant have been destroyed after five years of retention in terms of the DSR. Thus, respondents failed to communicate ACR entries of the relevant period to the applicant as per Tribunal's order

dated 23.11.2016. He also submitted that order dated 18.05.2017 is illegal, arbitrary and non speaking and appears to be passed with ulterior motive to deny the applicant his right to assail illegality and arbitrariness committed in initiating ACRs. He pleaded to grant promotion to the rank of Naib Subedar 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 14.04.1977. He was promoted to the rank of Havildar w.e.f. 14.04.1995 with ante date seniority from 30.11.1994. The applicant was granted two years extension of service from 14.04.2001 to 13.04.2003. He was discharged from service on 30.04.2003 after rendering 26 years and 16 days of service. As per seniority, the applicant was initially considered for promotion to the next rank of Naib Subedar in Jan. 2001. Accordingly, the applicant was screened by DPC held on 10.01.2001 but he was found unfit due to lacking of ACR criteria. The applicant had earned only one 'Above Average' ACR against the requirement of three, out of five ACRs considered by the DPC 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'. Therefore, applicant could not be promoted to the rank of Naib Subedar due to lack of 'Above Average' ACR criteria.

6. Ld. Counsel for the respondents further submitted that as per Govt. of India, Ministry of Defence letter dated 03.09.1998 and 18.09.1998, “*an individual is eligible for promotion to the rank of Naib Subedar only up to age of 44 years.*” The applicant crossed the upper age limit of 44 years on 16.02.2001 as per his date of birth, his case was not reviewed/considered further for promotion to the rank of Naib Subedar. The statutory complaint submitted by the applicant on 23.05.2002 to Chief of the Army Staff against supersession was considered and was rejected. Thereafter, applicant submitted an application dated 16.12.2016 which was disposed off with speaking order dated 18.05.2017. The ACR of the applicant have been destroyed as per para 592 to 596 of Regulations for the Army, 1987 after mandatory retention period of five years by the board of officers on 22.11.2009, hence, it is not feasible to produce ACRs of the applicant at this belated stage. In view of aforesaid facts and legal position the O.A. is misconceived and devoid of merits and is liable to be dismissed.

7. We have heard learned counsel for the parties 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 Subedar in Jan. 2001 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 for promotion to the rank of Naib Subedar. Thereafter, applicant became over age crossing upper age limit of 44 years for grant of promotion from Havildar to Naib Subedar, hence, applicant became ineligible for promotion. Therefore, applicant's prayer for grant of promotion to the rank of Naib Subedar has rightly been rejected by the respondents as per promotion policy and rules and regulations on the subject.

9. In view of the above, we do not find any irregularity or illegality neither in ACR gradings/DPC proceedings nor upper age limit of 44 years in the rank of Havildar to grant promotion to the rank of Naib Subedar 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**.

10. No order as to costs.

11. 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

SB