

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No 478 of 2021**Monday, this the 21<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)**Anuj Kumar, MEI (Retd), No. 125912-R  
R/o Village and Post – Kundarakhi (Bhoor), Tehsil – Hasanpur,  
Distt – Amroha, Uttar Pradesh, Pin – 244242

..... Applicant

Ld. Counsel for the Applicant : **Shri Manish Kumar Rai**, Advocate  
Versus

1. Union of India, through Secretary, Ministry of Defence, New Delhi-110011.
2. The Chief of the Naval Staff, Ministry of Defence (Navy), Integrated Headquarters, Sena Bhawan, New Delhi – 110011.
3. The Commodore, Bureau of Sailors, INS Tana Ji, Sion – Trombay Road, Mankhurd, Mumbai – 400088.
4. The Commanding Officer, INS Nashak, Fleet Mail Office, Mumbai – 400005.
5. The Principal Controller of Defence Accounts (Navy), No. 1, Cooperage Road, Mumbai – 400001.

..... Respondents

Ld. Counsel for the Respondents : **Shri Arun Kumar Sahu**,  
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 for the following reliefs:-

- “(I) To issue pass an order or directions to set aside order dated 25.02.2011 passed by opposite party no. 3/Commodore, Bureau of Sailors, Mumbai.

- (II) To issue pass an order or directions to opposite parties to grant promotion to the applicant to the rank of LME wef 17 Aug 2005 and subsequently to grant 1<sup>st</sup> MACP (Modified Assured Career Progression) up gradation wef 17 Aug 2013 on completion of 8 years of regular service in rank of LME. Thereafter correct salary and pension to be computed and paid on the basis of proper pay fixation and to give all the pay & allowances pension with difference of Arrears & retiral benefits due to him along with bank interest rate @ 12%. The revised PPO shall also be issued.
- (III) Compensation for mental anguish and suffering arising from wrongful denial of promotion.
- (IV) Any other suitable relief this Hon'ble Court deems fit and proper may also be granted.”

2. The factual matrix on record is that the applicant was enrolled in the Indian Navy on 02.02.2000. The applicant was promoted to the rank of Mechanic Engineering I (ME-I) and retired from service on 28.02.2015 after 15 years and 27 days of service. The applicant's next level of promotion to the rank of Leading Mechanic Engineering (LME) was due on 17.08.2005 as per promotion order but applicant was not promoted by the Commanding Officer of the unit on due date as per promotion order issued by The Commodore Bureau of Sailors (CABS) and ultimately he retired in the rank of ME-I. Being aggrieved, the applicant has filed the present Original Application for promotion to the rank of LME and grant of 1<sup>st</sup> MACP alongwith arrears.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Indian Navy on 02.02.2000. The applicant was promoted to the rank of Mechanic Engineering I (ME-I) and retired

from service on 28.02.2015 after rendering 15 years and 27 days of service. The applicant's next level of promotion was to the rank of Leading Mechanic Engineering (LME). The applicant has passed all requisite promotional course/cadre/examination/test and was in medical category SHAPE-1. The promotion order (IN 52) dated 21.03.2005 for promotion to the rank of LME w.e.f. 17.08.2005 was issued and forwarded by Commodore Bureau of Sailors (CABS), Mankhurd, Mumbai to the Commanding Officer, INS NASHAK. The applicant on getting information about his promotion order approached the Commanding Officer through proper channel by making a general request for his promotion to the rank of LME on 25.10.2005. However, due to sheer negligence and carelessness on the part of Commanding Officer in implementation of promotion order, the applicant was denied his legitimate right of promotion on a proper time.

4. Learned counsel for the applicant further submitted that promotion of the applicant to the rank of LME was due on 17.08.2005 and his promotion order was issued by CABS on 21.03.2005 but INS Nashak failed in his duty to promote the applicant in due time and ultimately while playing in a Basketball match organised by K-22 (Killer) Squadron of Indian Navy, applicant got his hand fractured and his medical category was downgraded to S3A2 (Temporary) w.e.f. 13.04.2006. The promotion order of the applicant IN-52 was returned by the Commanding Officer of INS, NASHAK to CABS in June 2006 vide letter dated 06.06.2006. On 16.02.2011, while applicant was posted in Fleet Maintenance Unit, his case for promotion was pursued

but CABS vide its letter dated 25.02.2011 stated that as the sailor was placed in low medical category w.e.f. 13.04.2006 and presently in medical category S3A2 (P) for obesity, he cannot be promoted in accordance with para 12 of NO 14/2001.

5. Learned counsel for the applicant placed reliance on the judgments of the Hon'ble Apex Court in **Ajit Singh and Others (II) vs. State of Punjab and Others** (1999) 7 SCC 209 and **Nalini Kant Sinha vs. State of Bihar** 1993 AIR (SC) 1358 and submitted that applicant has suffered because of no fault of his nor there being any reason why he should have not been promoted at the first place by the Commanding Officer of the unit. He submitted that non implementation of promotion order on due date is wholly illegal, arbitrary, unreasonable and violation of the Articles 14, 16 and 21 of the Constitution of India. He pleaded that applicant is entitled for promotion to the rank of LME w.e.f. 17.08.2005 from due date and subsequently to grant 1<sup>st</sup> MACP w.e.f. 17.08.2013 fixing his seniority and consequential pensionary benefits from due date of promotion alongwith arrears.

6. Learned counsel for the respondents submitted that applicant was promoted as ME-I on 02.01.2003. The applicant was released from service on 28.02.2015 on completion of 15 years and 27 days of service in low medical category S3A2 (Permanent). The Commodore Bureau of Sailors (CABS) had issued promotion order (IN-52) of the applicant for his promotion to Ag. LME on 21.03.2005, well before the due date of promotion vide CABS promotion order dated 21.03.2005. The promotion order of the applicant was returned by the

Commanding Officer, INS Nashak stating that applicant was on leave, temporary duty and subsequently placed in non promotable low medical category. As the applicant was not promoted to the rank of Ag. LME, his contention that he should have been awarded MACP in the year 2013 in the rank of LME (i.e. eight years from 2005) is not tenable.

7. Learned counsel for the respondents further submitted that CABS is responsible for issuance of promotion order, while the actual promotion is to be carried out by the unit Commanding Officer subject to fulfilment of certain requirements in accordance with para 8 of Chapter-1 of Navy Instruction (NI) 02/96. He also submitted that present O.A. is liable to be dismissed as the same is barred by delay and laches. He pleaded for dismissal of O.A.

8. We have heard learned counsel for the parties and have perused the material on record.

9. We find that applicant was fulfilling all requisite criteria for his promotion to the rank of LME. The promotion order (IN 52) dated 21.03.2005 for promotion to the rank of LME with due date w.e.f. 17.08.2005 was issued by CABS, Mankhurd, Mumbai to the Commanding Officer, INS NASHAK but the Commanding Officer of the applicant withheld promotion of the applicant for so many months and later on it was returned to issuing authority, i.e. CABS stating that applicant was on leave, temporary duty and subsequently placed in non promotable low medical category.

10. We also find that action of the Commanding Officer of the unit of the applicant shows that applicant was deliberately not promoted to

the rank of LME on due date, i.e. 17.08.2005 and later on when the applicant was downgraded to low medical category in April 2006 due to an incident while playing a Basketball match organised by a Squadron of Indian Navy, applicant got his hand fractured and his medical category was downgraded to S3A2 (Temporary) w. e.f. 13.04.2006. Thereafter, Commanding Officer of the unit returned the promotion order of the applicant to CABS vide letter dated 06.06.2006.

11. In view of above, we are of the opinion that if the applicant would have been promoted to the rank of LME on his due date, i.e. 17.08.2005, then his low medical category would not have come in his way of promotion. Thus, he lost out timely promotion to the rank of LME for no fault of his, which otherwise he would have duly got on 17.08.2005 as per promotion order issued by CABS. In the light of the unfair circumstances presented as a fait accompli to the applicant it is highly unjust on the part of the respondents (Commanding Officer, INS Nashak) for not promoting him on due date. We, therefore, consider that the date of notional promotion of the applicant to the rank of LME be deemed to be on his rightfully due date i.e. on 17.08.2005 as per promotion order issued by CABS.

12. In the result, the Original Application deserves to be allowed, hence, allowed. The impugned order passed by the respondents is set aside. The respondents are directed to grant notional promotion to the rank of LME from due date i.e. w.e.f. 17.08.2005 as per his seniority/promotion order issued by CABS. There will be no consideration for further promotion and date of discharge of the

applicant will be the same on which he was discharged from service i.e. on 28.02.2015. The applicant shall be entitled for arrears with regard to his promotion to the rank of LME from due date of promotion after granting regular increments due to him w.e.f 17.08.2005 (due date of promotion) to 28.02.2015 (date of discharge) and accordingly, his pension will be calculated on last basic pay (including increments) on the date of discharge from service and consequently, applicant will be entitled for arrears and pensionary benefits in the rank of LME. The respondents are directed to comply with the order within four months from the date of production of a certified copy of this order and issue Corrigendum PPO to the applicant in the rank of LME granting arrears as applicable to him. Delay shall invite interest @ 8% per annum till actual payment.

13. No order as to costs.

14. Pending Misc. Application(s), if any, shall stand disposed off.

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

Dated: March, 2022  
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