

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No 52 of 2018**Friday, this the 25th day of March, 2022**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)Mahtab Singh
S/o Late Thakur Das
R/o Village – Aniladpur, Post Office – Mudiya, Ahmad Nagar,
District - Bareilly (UP), Pin – 243122

..... Applicant

Ld. Counsel for the Applicant: **Shri P.K. Khare &**
Shri R.K. Saxena, Advocate

Versus

1. The Union of India, through Secretary, Ministry of Defence Government of India, New Delhi.
2. The Chief of Army Staff, New Delhi.
3. The Directorate General, Ordnance Services, Master General of Ordnance Branch, Army Headquarters, DHQ PO, New Delhi – 110001.
4. Senior Record Officer, APO Records, PO – Trimulgherry Secunderabad (AP)-500015.

..... Respondents

Ld. Counsel for the Respondents : **Shri Amit Jaiswal,**
Central Govt Counsel**ORDER (Oral)**

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. This Hon'ble Tribunal may kindly be pleased to issue an order, rule or direction directing the respondents authorities to consider the claim of the applicant for promotion on the post of Subedar, Subedar Major,

Honorary Lieutenant and Honorary Captain on account of his having been acquitted in criminal case by the Judge Special (CBI) Court Siligudi, District Darjeeling dated 31.12.2016 in special (CBI) Case No. 4 of 2012 State (CBI) versus Arun Kumar Sinha and others and further pay monetary benefits of salary/difference of pay in accordance with his promotion and payment of gratuity amount.

- ii. This Hon'ble Tribunal may further be pleased to set aside the impugned order dated 31.08.2017 with specific direction to the authorities concerned to consider the claim of the applicant for further promotion.
- iii. This Hon'ble Tribunal may further be pleased to pass such other and/or further orders as deem fit, proper and necessary in the circumstances of this case.
- iv. Award costs to this applicant."

2. The factual matrix on record is that the applicant was enrolled in the Army on 18.06.1977 and was discharged from service on 30.06.2005 under Army Rule 13 (3) I (i) (a) on completion of his terms of engagement. The applicant was promoted to the rank of Naib Subedar on 01.01.1997. The applicant while serving with 5 FOD was found involved in misappropriation of condemned military goods. As a consequence of which, disciplinary proceedings were initiated against the applicant and other army officials. The matter was referred to CBI for detailed investigations. After investigations, CBI registered the case and filed charge sheet against the applicant and other accused persons in the Special (CBI) Court, Siliguri and numbered as Case No. 4 of 2012, titled State vs. Arun Kumar and 07

others. Taking cognizance of the charge sheet filed by CBI, the Additional Directorate General Discipline and Vigilance, AG's Branch, Army Headquarters enforced ban on promotions as well as premature retirement of the applicant without clearance from them. During pendency of the criminal case, the applicant was screened in the month of Aug. 2001 for promotion to the rank of Subedar w.e.f. 01.09.2001 but was found to be ineligible for further promotion due to his involvement in the said criminal case and also being placed under discipline and vigilance ban for further promotion. Consequently, the applicant could not get promoted to the rank of Subedar on 01.09.2001. The applicant submitted a petition dated 18.08.2017 to release outstanding payments against the lapsed promotions as he has been acquitted of the charges framed against him by Special (CBI) Court, Siliguri vide order No. 112 dated 31.12.2016 but it was rejected by AOC Records vide letter dated 31.08.2017 stating that *"you have simply been acquitted of the charges by the court without any other benefits, therefore, the relief sought vide your ibid application is not tenable."* Being aggrieved, the applicant has filed the present original Application for grant of promotions to the rank of Subedar, Subedar Major and honorary ranks of Lt. and Capt.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Army on 18.06.1977. The applicant was promoted to the rank of Naib Subedar on 01.01.1977. The applicant on attaining the age of superannuation has been discharged from service on 30.06.2005 in the rank of Nb Sub. The applicant when he was posted as Havildar at 5 FOD, Salvage Sub Depot, Bengdubi Military Station

in District Darjeeling, in a conspiracy alongwith other Army officials was said to have misappropriated condemned military goods. As a consequence of which, disciplinary proceedings were initiated against the applicant and other Army officials. The matter was further referred to CBI for investigation. After completion of investigation, CBI submitted a charge sheet against the applicant and other officials under Section 403/465/467/471/477A/120B/201 of I.P.C. and under Section 13 (2) of the Prevention of Corruption Act, 1988. In pursuance to aforesaid charge sheet, CBI after obtaining the necessary sanction for prosecution submitted Special (CBI) Court Case No. 4 of 2012 in the Court of the Judge, Special (CBI) Court, Siliguri, District Darjeeling.

4. Learned counsel for the applicant further submitted that since the criminal prosecution of the applicant was pending, therefore, Additional Directorate General Discipline and Vigilance vide letter dated 29.06.1992 imposed ban on the promotion and premature retirement of the applicant without clearance from their office. The said order was conveyed to the applicant vide letter dated 24.10.1997. The applicant during the pendency of aforesaid Criminal Case submitted a representation on 27.09.2001 before the Commanding Officer 6 Mountain DOU for his promotion from the post of Naib Subedar to Subedar but the authority concerned did not take any action on the aforesaid representation of the applicant. During the pendency of the aforesaid criminal case the applicant attained the age of superannuation in the rank of Nb Sub and was discharged from service on 30.06.2005.

5. Learned counsel for the applicant further respectfully submitted that after completion of trial the Judge, Special (CBI) Court Siligudi vide judgment and order dated 31.12.2016 acquitted the applicant and other defence officials in the aforesaid criminal case. The applicant having been acquitted in the criminal case submitted his representation dated 20.07.2017 to respondent No. 4 claiming monetary benefits on account of lapsed promotions due to ban imposed by the respondents on the promotions to the applicant. Since, no reply received from respondent No. 4, the applicant submitted a fresh representation dated 18.08.2017 claiming his promotion to the post of Subedar w.e.f. 01.09.2001 and further promotions to the rank of Subedar Major, Honorary Lieutenant and Honorary Captain alongwith monetary benefits of salary which was rejected by respondent No. 4 vide order dated 31.08.2017 stating that claim of the applicant for promotion and other monetary benefits inter-alia on the ground that the CBI Court has simply acquitted the applicant in regard to the charge levelled against him without giving any other benefit. Thus, the applicant has been denied his next promotions for no fault of his own. He pleaded to grant further promotions to the applicant having been acquitted from the criminal case.

6. Learned counsel for the respondents submitted that applicant was enrolled in the Army on 18.06.1977 and was discharged from service on 30.06.2005 under Army Rule 13 (3) I (i) (a) on completion of his terms of engagement. The applicant was promoted to the rank of Havildar on 01.01.1987 and Naib Subedar on 01.01.1997. The

applicant while serving with 5 FOD was found involved in misappropriation of condemned military goods such as old blankets, tentage, cover waterproof, mosquito net, overall combination, havre sack etc. As a consequence of which, disciplinary proceedings were initiated against the applicant and other army officials. The matter was referred to CBI for detailed investigations. After investigations, CBI registered the case and filed charge sheet against the applicant and other accused persons under Section 403/465/467/471/477A/120B/201 of I.P.C. and under Section 13 (2) of the prevention of Corruption Act, 1988 in the Special (CBI) Court, Siliguri and numbered as Case No. 4 of 2012, titled State vs. Arun Kumar and 07 others.

7. Learned counsel for the respondents further submitted that taking cognizance of the charge sheet filed by CBI, the Additional Directorate General Discipline and Vigilance, AG's Branch, Army Headquarters vide their letter dated 29.06.1982 enforced ban on promotions as well as premature retirement of the applicant without clearance from them. During pendency of the criminal case, the applicant was screened in the month of Aug. 2001 for promotion to the rank of Subedar w.e.f. 01.09.2001 but was found to be ineligible for further promotion due to his involvement in the said criminal case and also being placed under discipline and vigilance ban for further promotion. Consequently, the applicant could not get promoted to the rank of Subedar on 01.09.2001. As per Govt. of India, Ministry of Defence letter dated 03.09.1998, service/age/tenure limits for retirement in the rank of Naib Subedar is 26 years of pensionable service extendable by 2 years by screening or 52 years of age,

whichever is earlier. The applicant was completing the service/age/tenure limits for retirement in the rank of Naib Subedar on 30.06.2005, accordingly, he was discharged from service w.e.f. 30.06.2005 under Army Rule 13 (3) I (i) (a) after fulfilment of his terms of engagement of service/age limits.

8. Learned counsel for the respondents further submitted that applicant submitted a petition dated 18.08.2017 after expiry of 12 years to release outstanding payments against the lapsed promotions as he has been acquitted of the charges framed against him by Special (CBI) Court, Siliguri vide order No. 112 dated 31.12.2016. Accordingly, AOC Records analysed/examined the case of the applicant and informed the applicant vide letter dated 31.08.2017 that *“you have simply been acquitted of the charges by the court without any other benefits, therefore, the relief sought vide your ibid application is not tenable.”* He also submitted that further promotion to the rank of Subedar Major and award of honorary commission is based on merit and availability of vacancies, hence applicant is not entitled to any relief, as prayed in Original Application, as such, O.A. is liable to be dismissed.

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

10. We find that applicant was found involved in misappropriation of condemned military goods and as a consequence of which, disciplinary proceedings were initiated against the applicant and other army officials. The matter was referred to CBI for detailed investigations and after investigations, CBI registered the case and

filed charge sheet against the applicant and other accused persons under Section 403/465/467/471/477A/ 120B/201 of I.P.C. and under Section 13 (2) of the Prevention of Corruption Act, 1988 before Special (CBI) Court, Siliguri. After taking cognizance of the charge sheet filed by CBI, the Additional Directorate General Discipline and Vigilance, AG's Branch, Army Headquarters enforced ban on promotions as well as premature retirement of the applicant without clearance from them. During pendency of the criminal case, the applicant was screened for promotion to the rank of Subedar w.e.f. 01.09.2001 but was found to be ineligible by the respondents for further promotion due to his involvement in the said criminal case and also being placed under discipline and vigilance ban for further promotion. Later on, the applicant has been acquitted of the charges framed against him by Special (CBI) Court, Siliguri vide order No. 112 dated 31.12.2016 but he was not considered for promotion to the rank of Subedar by the respondents.

11. In view of above, we are of the view that applicant lost out his promotion of Subedar on due date w.e.f 01.09.2001 due to pendency of criminal case though he was later on acquitted by CBI Court. Since, the applicant was completing the service/age/tenure limits for retirement in the rank of Naib Subedar on 30.06.2005, accordingly, he was discharged from service w.e.f. 30.06.2005 after fulfilment of his terms of engagement of service/age limits. Therefore, we feel that applicant's case for promotion to the rank of Subedar after being acquitted from criminal case needs consideration.

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 Subedar to the applicant from due date, i.e. 01.09.2001 and thus, applicant will retire on 30.06.2007 after serving two years in the rank of Subedar (total 30 years of service in the rank of Subedar as per terms of service). There will be no consideration for further promotions and date of discharge of the applicant will be 30.06.2007 in the rank of Subedar. The applicant shall not be entitled for any arrears of back wages with regard to his promotion to the rank of Subedar from due date (01.09.2001). However, he will be granted regular increments due to him w.e.f 01.09.2001 (due date of promotion) to 30.06.2007 (date of retirement in the rank of Subedar) 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 pensionary benefits in the rank of Subedar. However, due to law of limitations settled by the Hon'ble Supreme Court in the case of ***Shiv Dass v. Union of India and others*** (2007 (3) SLR 445), the arrear of service pension in the rank of Subedar will be restricted to three years preceding the date of filing of the instant O.A. The date of filing of this O.A is 12.01.2018. 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 Subedar granting arrears accordingly. 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 of.

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

Dated: March, 2022
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