

Court No. 1
RESERVED

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No 262 of 2017

Wednesday, this the 29th day of March, 2023

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Atul Kumar Jain, Member (A)

JC-829573-N Sub (Clk) Sanjay Kumar Kushwaha,
S/o Shri (Late) Amarnath Kushwaha
R/o Village : Jaitpura, Post : Jaitpura, Tehsil : Ghazipur,
Dist : Ghazipur (UP) - 233001
Presently posted at No. 1816, PIONEER UNIT (Army),
PIN : 918516, C/o 56 APO.

..... Applicant

Ld. Counsel for the Applicant: **Shri Shailendra Kumar Singh,**
Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence (Army), South Block, New Delhi.
2. Chief of Army Staff, IHQ of MoD (Army), South Block-III, New Delhi-110011.
3. Deputy Directorate General of Pioneers, QMG Branch, Integrated HQ of MoD (Army), West Block III, RK Puram, New Delhi – 110066.
4. Officer-in-Charge, The Pioneer Corps, PIN 900493, C/o 56 APO.
5. Commanding Officer, No. 1816 Pioneer Unit (Army), PIN: 918516, C/o 56 APO.
6. JC-829497M Subedar Clk (GD) Asit Kumar Das, Records The Pioneer Corps, Pin : 900493, C/o 56 APO.

..... Respondents

Ld. Counsel for the Respondents : **Shri Amit Jaiswal,**
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:-

- “A. To quash the impugned order dated 23 May 2017 (Annexure A-1 of instant OA) wherein claim of the applicant for consideration of his case for promotion to the rank of Subedar Major has been wrongly denied.
- B. To issue suitable orders or directions to the Respondents for holding afresh DPC-2016 taking applicant’s case into the consideration for the promotion to the rank of Subedar Major.
- C. Any other relief as considered proper by the Hon’ble Tribunal be awarded in favour of the applicant.”

2. The factual matrix on record is that the applicant was enrolled in the Army on 13.11.1987. The applicant was promoted to the rank of Naib Subedar on 01.06.2012 and Subedar on 01.10.2014. The applicant was screened for promotion to the rank of Subedar Major alongwith 6 eligible Subedars by DPC-2016 against two vacancies which were occurring in the year 2017. Since, the applicant was promoted as JCO in the year 2012 and earned his first ACR in JCO rank in 2013, he has been deferred in the DPC-2016 due to not having earned five ACRs in JCO rank which is mandatory requirement for consideration of promotion to the rank of Subedar Major. DPC-2016 was finalised considering all mandatory aspects

and Subedar Asit Kumar Das having earned mandatory five ACRs and meeting all requisite criteria was selected in merit and approved for promotion to the rank of Subedar Major and accordingly, he was promoted to the rank of Subedar Major against the vacancy of 01.08.2017. There being a provision that if there is shortfall of one ACR that can be taken in the rank of Havildar for consideration of promotion to have five ACRs in DPC of Subedar Major, applicant submitted a representation to the respondents but the same was not considered by the respondents. Since the applicant has been deferred in DPC-2016 for not meeting the mandatory five ACRs in the rank of JCO, he was discharged from service on completion of his terms of service in the rank of Subedar. The applicant being aggrieved by denial of promotion to the rank of Subedar Major has filed the instant Original Application.

3. Learned counsel for the applicant submitted that the applicant was promoted to the rank of Subedar on 01.10.2014. The Pioneer Records vide letter dated 06.05.2016 sought ACRs of the year 2016 in respect of shortlisted 75 Subedars from its units by 10.06.2016 for consideration of their names in the selection panel of Departmental Promotion Committee 2016 (DPC-2016) for the promotion to the rank of Subedar Major against the vacancies of the year 2017. Thereafter, Pioneer Records vide letter dated 25.07.2016 informed that applicant has been deferred in DPC-2016 due to not having earned five ACRs in JCO rank. Thereafter, Pioneer Records issued retirement order of the applicant vide letter dated 14.09.2016 by which applicant was to

be retired from service w.e.f. 30.11.2017 on completion of his service in the rank of Subedar. The result of DPC-2016 was sent to the unit of the applicant vide Records letter dated 29.11.2016.

4. Learned counsel for the applicant further submitted that applicant came to know through IHQ of MOD (Army) letter dated 28.02.2017 that there is a policy dated 26.03.2010 wherein there is a provision that if there is shortfall of one ACR that can be taken in the rank of Havildar for consideration of promotion to have five ACRs in DPC but the same was not considered in the case of the applicant. Accordingly, in light of policy letter dated 26.03.2010 and 28.02.2017, applicant made a representation dated 15.05.2017 which was sent to OIC Pioneer records for consideration of his name in DPC-2016. The representation of the applicant was disposed off/rejected vide letter dated 23.05.2017 with advice to read policy on DPC. On 08.06.2017, the applicant again submitted a representation dated 08.06.2017 to respondent No. 3 in which applicant very categorically mentioned that two vacancies were to occur in the year 2017 but only 1 vacancy out of 4 Subedars cleared by the DPC-2016. The applicant also mentioned that he has been deferred wrongly in the DPC-2016 for not having been earned 5 ACRs in JCO Rank whereas provision exists to include one ACR of lower rank to make deficient/requirement of DPC. Thus, he prayed that his case be considered and re-examined for DPC 2016 before the promotion of Subedar Major is granted to Sub Asit Kumar Das (Respondent No. 6) who stands cleared in DPC 2016.

5. Learned counsel for the applicant further submitted that on 21.06.2017, respondent No. 3 issued a convening order for supplementary DPC-2016 in respect of the applicant and one more Subedar but respondent no. 5 raised objection against holding of supplementary DPC-2016. Thereafter, respondents no. 3 vide letter dated 30.06.2017 communicated to all other respondents that convening order dated 21.06.2017 for holding of supplementary DPC 2016 is treated as cancelled for the reasons best known to them. Thereafter, applicant approached to this Tribunal by filing OA No. 249 of 2017 which was rejected with liberty to file afresh vide order dated 19.07.2017.

6. Learned counsel for the applicant prayed that in view of facts and circumstances of the case, case of the applicant needs adjudication as his right for consideration in DPC 2016 has been infringed by the respondent No. 4 arbitrarily and therefore, applicant be promoted to the rank of Subedar Major by holding fresh DPC-2016.

7. Learned counsel for the respondents submitted that applicant was promoted to the rank of Subedar on 01.10.2014 according to his seniority. The applicant has earned four ACRs for the year 2013, 2014, 2015 & 2016 since his promotion as JCO (Naib Subedar). The applicant was screened for promotion to the rank of Subedar Major alongwith his 6 batch mates of Subedar rank by Departmental Promotion Committee (DPC) 2016 for the year 2017 for 2 vacancies which were to occur in next year as on 01.08.2017 and 01.12.2017.

The applicant as well as Subedar Ravi Shankar who were promoted as JCO in the year 2012 and their first ACR in JCO rank was due and initiated in 2013 have been deferred in the DPC-2016 due to not earning five ACRs in JCO rank which is mandatory for promotion to the rank of Subedar Major. The fact of deferment of both the JCOs was informed to their respective units vide Pioneer Records letter dated 25.07.2016.

8. Learned counsel for the respondents further submitted that as per existing procedures, no waiver of ACR has been given to JCOs of the Corps since 2011 and the same yardstick has been applied/implemented in the DPC-2016 as per IHQ of MoD (Army) letter dated 13.07.2011. Accordingly, DPC 2016 was finalised and Subedar Asit Kumar Das of 2013 batch having earned mandatory five ACRs was selected in merit and approved for promotion to the rank of Subedar Major by the competent authority against the vacancy of 01.08.2017. One more vacancy occurring on 01.12.2017 was left undecided/unfilled due to want of eligible Subedars. Thereafter, result of DPC-2016 was declassified and informed to affected units vide Pioneer Records letter dated 29.11.2016. The applicant has not asked clarification for waive off of one ACR in lower rank before conduct of DPC-2016 on 20-21 Oct. 2016 whereas his unit was intimated regarding his deferment in ACR criteria vide letter dated 25.07.2016. After declaration of result of DPC-2016, the applicant has approached for re-examination of the selection procedure and criteria of DPC-2016 for considering his promotion to the rank of Subedar

Major against the vacancy occurring on 01.08.2017, seeking an exception for consideration his lower rank ACR in NCO rank (Havildar) in DPC-2016.

9. Learned counsel for the respondents further submitted that Subedar Major is the highest rank of PBORs. This rank has a large number of responsibilities which requires a high level of capability and experience. A Subedar Major is to perform his duties which need adequate exposure as a JCO. The role of a JCO is distinct from the role of a NCO. Keeping in view the importance, job content and prestige attached to the rank of Subedar Major, grant of waiver for considering one ACR in lower rank (Havildar) to make up shortfall to enable applicant's eligibility for DPC-2016 was not considered in the Organisational interest. It is also reiterated that this policy has uniformly been applied in all the DPCs for promotion to the rank of Subedar Major in the Corps. Moreover, selection to the rank of Subedar Major is an OAP (Over All Performance) based system. The qualifying criteria for consideration by the DPC for promotion to the rank of Subedar Major under OAP based system is as follows :-

- (a) 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'.
- (b) Two out of the last five report 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'.

- (c) The individual should have been recommended for promotion in last five reports in the rank of JCO.
- (d) Merely qualifying for consideration by DPC does not entitle a Subedar for promotion to the rank of Subedar Major. Selection will be based on seniority-cum-merit depending upon the vacancies available.

10. Learned counsel for the respondents further submitted that as per IHQ of MoD (Army) letter dated 05.09.2008, inclusion of one additional ACR in the lower rank to make up the required mandatory ACRs is permissible where an ACR of a JCO is set aside or dispensed with. In the instant case, ACRs of both affected JCOs (including applicant) were neither set aside nor dispensed with, thus, waiver for inclusion of one additional ACR from lower rank was not warranted by the DPC. In terms of IHQ of MoD (Army) letters dated 19.11.2008, 26.03.2010 and 13.07.2011, waiver for ACR if set aside/dispensed with, has been permitted for inclusion of one ACR in lower rank to make up the mandatory ACRs due to organizational constraint. However, in the instant case, there was no organisational constraint to give waiver for inclusion of one lower rank ACR in Havildar rank to make the applicant eligible for DPC-2016.

11. Learned counsel for the respondents further submitted that a special DPC was planned on 31.08.2017 and 01.09.2017 for the vacancy occurring on 01.12.2017 in which seven Subedars including applicant were to be considered but it was later on cancelled due to unavoidable circumstances. The applicant has challenged the

administrative provisions/policies as formulated by the Govt. of India, Ministry of Defence regarding conduct of DPC of Subedar Major without any justifiable reasons, hence, Original Application filed by the applicant on hypothetical presumptions and misinterpretations of the ruling is liable to be dismissed.

12. Learned counsel for the respondents further clarified that respondent No. 6 (Subedar Asit Kumar Das) was meeting all the requisite criteria for DPC-2016 and accordingly, he was approved as per merit and promoted to the rank of Subedar Major against the vacancy of 01.08.2017. The applicant has been deferred in DPC-2016 for not meeting the mandatory five ACRs in the rank of JCO and not otherwise and therefore, no injustice has been done to the applicant as selection process is fair based on policies issued by IHQ of MoD (Army) from time to time. He pleaded for dismissal of O.A being devoid of merit and lack of substance.

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

14. We observe that that applicant was screened for promotion to the rank of Subedar Major alongwith 6 eligible Subedars by DPC-2016 against two vacancies which were occurring in the year 2017. The applicant as well as Subedar Ravi Shankar who were promoted as JCO in the year 2012 and earned their first ACR in JCO rank in 2013 have been deferred in the DPC-2016 due to not having earned five ACRs in JCO rank which is mandatory requirement for consideration of promotion to the rank of Subedar Major. The

deferment of both the JCOs was intimated to their respective units but no case was taken up for waiving off of one ACR being short in the rank of JCO.

15. We also observe that ACRs of both affected JCOs (including applicant) were neither set aside nor dispensed with, thus, waiver for inclusion of one additional ACR from lower rank was not warranted by the DPC in terms of IHQ of MoD (Army) letters dated 19.11.2008, 26.03.2010 and 13.07.2011. However, in the instant case, there was no organisational constraint to give waiver for inclusion of one lower rank ACR in Havildar rank to make the applicant eligible for DPC-2016. Being an important and prestigious post of Subedar Major, grant of waiver for considering one ACR in lower rank (Havildar) to make up shortfall to enable applicant's eligibility for DPC-2016 was not considered in the Organisational interest. The promotion policy based on OAP has uniformly been applied in the DPC for promotion to the rank of Subedar Major.

16. We find that DPC-2016 was finalised considering all mandatory aspects and Subedar Asit Kumar Das having earned mandatory five ACRs and meeting all requisite criteria was selected in merit and approved for promotion to the rank of Subedar Major by the competent authority and accordingly, he was promoted to the rank of Subedar Major against the vacancy of 01.08.2017.

17. Since the applicant has been deferred in DPC-2016 for not meeting the mandatory five ACRs in the rank of JCO and not otherwise and therefore, no injustice has been done to the applicant.

The applicant has been discharged from service on completion of his terms of service in the rank of Subedar having not been considered for promotion to the rank of Subedar Major. Hence, applicant's prayer to consider his name to hold a fresh DPC for the vacancies of the year 2017 is not substantial.

18. In view of above guiding factors and policy letters, we hold that the claim of applicant to hold fresh DPC and to grant promotion to the rank of Subedar Major has rightly been rejected by the respondents as per rules which needs no interference. Resultantly, O.A. is **dismissed**.

19. No order as to costs.

20. Pending Misc. Applications, if any, shall stand disposed off.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: March, 2023
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