

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No 475 of 2021**Friday, this the 17th day of March, 2023**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Maj. Gen. Sanjay Singh, Member (A)

Gagan Chand (JC-811817N Sub/Int GD)
 S/o Dil Bahadur Chand
 R/o Quarter No.537/2, MAP-II, near Golden Key Primary School,
 Claimtown, Dehradun – 248001
 (Lastly posted at 14 RAPID/Infantry Division, Filed Security Section,
 PIN – 908414, C/o 56 APO).

..... Applicant

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

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, New Delhi.
2. Chief of the Army Staff, Army Headquarters, South Block, DHQ PO, New Delhi-110011.
3. Officer-in-charge Records, Intelligence Corps, PIN 908793, C/o 56 APO.
4. Commanding Officer, 14 RAPID/Infantry Division, Filed Security Section, PIN – 908414, C/o 56 APO.
5. Lt Col Raj Kumar Chachara, the then Officer Commanding 14 RAPID/Infantry Division, Filed Security Section, PIN – 908414, C/o 56 APO (Presently posted at Headquarters 1 Corps Filed Security Section, PIN-908501, C/o 56 APO).

..... Respondents

Ld. Counsel for the Respondents : **Shri Rajesh Shukla**,
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:-

- “(a) Issue/pass an order setting aside suppression of the applicant and directing the respondents to consider and grant him promotion in the rank of Subedar Major with effect from 01.05.2021, i.e. the date on which his batch mates and juniors have been given promotion in the said rank, with all consequential service benefits including reinstatement and continuity of service.
- (b) Issue/pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.
- (c) Allow this Original Application with cost.”

2. The factual matrix on record is that the applicant was enrolled in the Indian Army on 27.06.1991 and was discharged from service in the rank of Subedar w.e.f. 30.06.2021. The applicant was promoted to the rank of Subedar on 01.07.2017. The applicant was screened for promotion to the rank of Subedar Major by Departmental Promotion Committee (DPC) for the year 2020 as per Govt. policy letter dated 10.10.1997 but could not come in the selected merit list for promotion to the rank of Subedar Major, hence he was not granted promotion to the rank of Subedar Major. The applicant was considered for grant of Honorary Commission (first Chance) as Honorary Lieutenant on the occasion of Independence Day 2020 and second chance on Republic Day 2021 and his Master Sheet was prepared and forwarded to higher Headquarters for consideration, however, the applicant could not come up in the merit list for grant of honorary commission on both the occasions of Independence Day 2020 and Republic Day 2021 as per merit list finalised based on allotted vacancies. The applicant submitted a statutory complaint in May 2021 which was suitably

replied by the Record Office after due consideration as per AO 1/2002/MP. The applicant being aggrieved by denial of promotion to the rank of Subedar Major including honorary rank filed Original Application before this Tribunal.

3. Learned counsel for the applicant submitted that the applicant served in various places including field, high altitude and counter insurgency operational areas. He also participated in Operation Rakshak and Operation Parakram. He was also awarded GOC-in-C Southern Command Commendation Card in 2019. Due to some personal enmity of Officer Commanding of applicant's unit, i.e. 14 RAPID, his ACR was presumably downgraded and applicant could not get further promotion though he was having earlier ACRs of Outstanding grading. The applicant was due for promotion to the post of Subedar Major w.e.f. 01.05.2021 alongwith his batch-mates but he was superseded by his batch mates and his juniors were promoted to the rank of Subedar Major. The applicant submitted a statutory complaint to the higher authorities against his supersession in May 2021 which was further forwarded to the higher authorities vide letters dated 04.05.2021 and 07.05.2021 but no intimation received on decision taken by the competent authority on his statutory complaint.

4. Learned counsel for the applicant further submitted that applicant was fulfilling all the required criteria for promotion to the rank of Subedar Major but his non empanelment and denial of promotion is illegal and arbitrary exercise of power of the respondents which is also violation of Articles 14, 16 & 21 of the Constitution of India. The applicant has also not been granted honorary rank of

Lieutenant (Lt.) though he was meeting requisite criteria for consideration of honorary commission to the rank of Lt. He pleaded for grant of promotion to the rank of Subedar Major alongwith his batch mates with all consequential benefits.

5. In reply, submission of learned counsel for the respondents is that applicant was enrolled in the Indian Army on 27.06.1991. He was promoted to the rank of Subedar on 01.07.2017. The applicant raised his grievance against his non empanelment in the selected panel of Subedar Major in DPC 2020 and grant of honorary commission due to adverse grading in ACR during the period he served in his last unit, 14 RAPID, however, the ACR profile of the applicant is robust. Out of last five ACRs considered for DPC 2020, last four ACRs were outstanding and one ACR of 2016 was above average with no adverse remarks. The applicant was considered in DPC 2020 based on Over All Performance (OAP) selection system, considering Annual Confidential Report (ACR) profile of the applicant for five years in the rank of Junior Commissioned Officer (JCO), attendance of courses, honours & awards in entire service, service in Field Area/High Altitude Area/Operations (during last 15 years) award of punishment if any are given minus marks and depending on the availability of vacancies for the year 2020 in terms of IHQ of MoD (Army) letters dated 10.10.1997. The applicant scored 3.17 out of 5 points in field service and 1.5 points out of 5 points in courses. Hence, applicant was not considered along with his batch-mates for DPC 2020 as he stood at 39th position out of 18 vacancies and thus, the applicant could not come in the selected merit list for promotion to the rank of Subedar

Major. The applicant was also considered twice for grant of honorary commission on Independence Day 2020 in first chance and on Republic Day 2021 in second chance, but he could not come in the merit list as per availability of vacancies.

6. Learned counsel for the respondents further submitted that as per policy letter dated 10.10.1997, the applicant was considered in the DPC 2020 for the vacancies of Subedar Majors, however, he did not qualify in the selected list of DPC 2020 being lower in merit in accordance with the number of available vacancies of Subedar Major rank. Since the applicant has scored maximum points for ACRs in PQ/DP, i.e. 70.48 out of 72 and 17.70 points out of 18 in box grading, the reason behind his being lower in merit in the selected panel for DPC 2020 is due to lesser points in Course and Field Service and not otherwise as presumed by the applicant against his Officer Commanding of 14 RAPID.

7. Learned counsel for the respondents further submitted that applicant submitted a statutory complaint on 07.05.2021 which was suitably replied by the Record Office after due consideration as per AO 1/2002/MP. The applicant was due for retirement on 30.06.2021 on completion of 30 years of service as per his terms and engagement of service as per discharge order dated 11.05.2020 and accordingly, he was discharged from service in the rank of Subedar on 30.06.2021. He pleaded for dismissal of O.A being devoid of merit.

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

9. We observe that there is nothing wrong/personal enmity with initiation of applicant's ACR, initiated by Officer Commanding 14 RAPID, rather it was an outstanding Confidential Report. Out of five ACRs taken into consideration, one ACR for the year 2016 was above average report. The applicant was considered in DPC 2020 based on Over All Performance (OAP) selection system, however, applicant scored lesser points in field service and courses in comparison to his batch mates, hence, applicant was not considered along with his batch-mates for DPC 2020 as he stood at 39th position. Since, there were 18 vacancies only and applicant was low in merit and thus, the applicant could not come in the selected merit list for promotion to the rank of Subedar Major.

10. We also observe that applicant was considered twice for grant of honorary commission on Independence Day 2020 in first chance and on Republic Day 2021 in second chance, but he could not make place in the merit list as per availability/allotted vacancies and therefore, he was not granted honorary commission on Independence Day 2020 and Republic Day 2021 as per policy on the subject.

11. In view of above guiding factors and policy letters, we hold that the claim of applicant for grant of promotion to the rank of Subedar Major and subsequent grant of honorary commission to the rank of Lt. has rightly been rejected by the respondents as per rules which needs no interference. We also do not find any personal enmity/difference of opinion as assumed by the applicant against his Officer Commanding with regard to adverse grading in his Confidential Report, the same is baseless and unsubstantial. By and

large, we do not find any illegality or arbitrariness in denial of promotion to the rank of Subedar Major and grant of honorary commission.

12. Resultantly, Original Application is **dismissed**.

13. No order as to costs.

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

(Maj. Gen. Sanjay Singh)
Member (A)

Dated: 17th March, 2023
SB

(Justice Umesh Chandra Srivastava)
Member (J)