

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 590 of 2022

Thursday, this the 2nd day of February, 2023

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

No. 15427128P Naik (Musician) Kishan Kumar
S/o Kumar Pal (Alias Mohan)
Presently posted in Administrative Battalion (Pipe Band)
Army Medical Corps Centre and College
Lucknow

.... Applicant

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

Versus

1. Chief of Army Staff, DHQ PO, New Delhi – 110011.
2. Commandant cum Chief Records Officer, Army Medical Corps Centre and College Lucknow – 226002.
3. Union of India, through Secretary, Ministry of Defence, DHQ PO, New Delhi-110011.

... Respondents

Ld. Counsel for the Respondents : **Shri Yogesh Kesarwani**,
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) To quash the rejection order of the Chief of the Army Staff bearing no. Nk Kishan Kumar AMC/CAB Regn. No. S-119021 dated 09 Mar 2022 with all the consequential benefits to the applicant.

- (b) To direct the respondents not to promote any one junior than the applicant during the pendency of the present original application with all the consequential benefits to the applicant.
- (c) To direct the respondents to grant promotions when were deemed to have become due to the applicant with original batch seniority, with all the consequential benefits to the applicant.
- (d) Any other relief(s) which this Hon'ble Tribunal may deem appropriate, just and proper in the interest of the justice and in the facts and circumstances of the case also be granted to the applicant.
- (e) Award cost."

2. Brief facts of the case are that the applicant was enrolled in the Army (AMC) on 22.04.2008. The applicant during his stay at Administrative Battalion (Adm Bn), applied for remustering in 2013 but he failed and thereafter, he again applied for remustering which was rejected being shortage in his House Keeper trade. Thereafter, applicant submitted a statutory complaint which was not decided by the respondents. The applicant approached to this Tribunal and filed case which was disposed off with direction to the respondents to decide statutory complaint of the applicant. The statutory complaint of the applicant was rejected by the Chief of the Army Staff. The applicant filed another case before this Tribunal which was also disposed off with direction to the respondents to conduct fresh test of the applicant in which applicant passed the test and he was accordingly remustered in Musician trade w.e.f. 19.03.2019. The applicant was promoted to the rank of Naik on 01.11.2019 and he will

be due for discharge from service in the present rank on 30.04.2030. Being aggrieved with delay in remustering and fixation of his seniority, the applicant has filed the present Original Application to fix his seniority from 2013 in Musician trade and grant further promotions as per revised seniority.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Army on 22.04.2008 in the trade of House Keeper. The applicant being interested to perform as Musician and Bandman was retained in AMC Centre. During his stay at Adm Bn of AMC Centre, he participated as part of AMC Centre Band in Army Day parade in Jan. 2009 and Jan. 2011, Republic Day parade and DG NCC parade. The applicant applied for remustering in Musician trade but failed in test held on 23.07.2012. The applicant again applied/participated in the test but his candidature was cancelled due to shortage of staff in House Keeper trade. Thereafter, applicant submitted an application for redressal of his grievance on 01.10.2013 but nothing was done by the respondents. Thereafter, applicant filed OA No. 255 of 2015 which was allowed in favour of the applicant vide order dated 08.12.2017. Thereafter, applicant appeared in test and qualified and accordingly, he was remustered in Musician Trade w.e.f. 19.03.2019. The applicant was promoted to the rank of Naik on 01.11.2019. The applicant submitted a statutory complaint dated 30.10.2020 for fixing of his correct seniority but no action was taken by the respondents. Thereafter, applicant filed another OA No. 525 of 2021 before this Tribunal which was disposed of by this Tribunal vide

order dated 01.10.2021 directing the respondents to dispose off statutory complaint of the applicant within six weeks. However, statutory complaint of the applicant was rejected by the COAS. He pleaded that present Original Application be allowed for fixing of his seniority from the date he applied for remustering in Musician trade in 2013 and to give him further promotions as due with original batch seniority with all consequential benefits.

4. On the other hand, Ld. Counsel for the respondents submitted that applicant was enrolled in the Army on 22.04.2008 in the trade of House Keeper. During the period of stay at Administrative Battalion (Adm Bn), AMC Centre, the applicant shown interest in Pipes and Drums Band and was retained in Adm Bn. The applicant applied for remustering from House Keeper to Musician trade for which sanction was accorded vide IHQ of MoD (Army) letter dated 31.05.2012, however, the applicant was failed to qualify the test, hence, his remustering in musician trade could not be carried out. The applicant again applied for remustering vide AMC Centre letter dated 03.04.2013 but remustering could not be done due to deficiency in House Keeper trade as per AMC ROI 20/2009. Subsequently, the applicant was posted out to 153 General Hospital. The applicant submitted a personal application dated 10.10.2013 to Commanding Officer 153 General Hospital regarding his grievance of remustering in Musician trade which was further forwarded to AMC Records but nothing was done. In the meantime, the applicant filed OA No. 92 of 2014 before this Tribunal and this Tribunal disposed off the case

directing the respondents to decide applicant's representation dated 10.10.2013 within a period of three months. However, the representation of the applicant was rejected by the competent authority vide order dated 14.07.2015. The applicant again submitted a representation dated 10.08.2015 which was suitably replied by AMC Centre vide letter dated 03.09.2015. The applicant again filed OA No. 255 of 2015 before this Tribunal which was decided by this Tribunal on 08.12.2017 with direction to the respondents to carry out a fresh remustering test of the applicant. Accordingly, applicant appeared in test and passed the said examination vide result dated 06.09.2018. Subsequently, applicant was detailed to undergo Class-III Musician technical trade test and was accordingly remustered to Musician trade on 19.03.2019.

5. Learned counsel for the respondents further submitted that as per AMC ROI 10/2014, applicant's seniority on remustering from one category in the rank of Sepoy to another was fixed according to the date of enrolment and applicant's seniority was fixed from the date of enrolment, w.e.f. 22.04.2008 in the trade of Musician Pipe. As per Corps seniority, applicant was promoted to the rank of Naik on 01.11.2019 vide AMC Records order dated 17.09.2019. The applicant through his civil advocate submitted a complaint regarding grant of promotion to the rank of Havildar by fixing his seniority w.e.f. 2013, the year in which his remustering was rejected by the competent authority which was suitably replied by AMC Records vide letter dated 17.11.2020 stating the reason as per AO 13/2006/PS. The applicant

instead of submitting complaint in terms of AO 13/2006/PS, he again filed OA No. 525 of 2021 before this Tribunal which was disposed off with direction that *"In the meantime, respondents shall not promote any person junior to the post of Havildar in AMC Musician trade"*. Accordingly, promotion to the rank of Havildar w.e.f. 01.03.2022 in respect of Naik Manindra Kumar Chaubey was kept in abeyance till further order. Being aggrieved, Naik Mainindra Kumar Chaubey filed OA No. 243 of 2022 before this Tribunal to promote him to the rank of Havildar w.e.f. 01.03.2022 as ordered by the Records. Subsequently, statutory complaint of the applicant was rejected by the competent authority and applicant filed present OA before this Tribunal for quashing of COAS order dated 09.03.2022, fixing of his seniority from 2013 and to grant further promotion to the rank of Havildar to the applicant with all consequential benefits.

6. Learned counsel for the respondents finally submitted that since the applicant has been remustered in Musician trade w.e.f. 19.03.2019 on passing the required examination and his seniority has been fixed correctly from the date of enrolment as per AMC ROI 10/2014, no injustice has been done to him. The applicant has been promoted to the rank of Naik as per Corps seniority w.e.f. 01.11.2019 and his further promotion to the rank of Havildar will be granted subject to availability of vacancies and meeting the mandated qualitative requirements viz ACR grading criteria, medical category, promotion cadre etc. in his own turn as per Corps seniority of his

trade. As there is no infirmity of law in action of the respondents, the Original Application is liable to be dismissed being devoid of merit.

7. We have heard learned counsel for both sides and perused the material placed on record.

8. We find that though applicant was enrolled in the trade of House Keeper and applied for remustering from House Keeper to Musician trade but he failed to qualify the test and second time, his remustering could not be done due to deficiency in his trade of House Keeper as per AMC ROI 20/2009. Subsequently, the applicant appeared in test as directed by this Tribunal vide order dated 08.12.2017 and he passed the said examination vide result dated 06.09.2018. Accordingly, applicant was remustered in Musician trade on 19.03.2019 and his seniority on remustering was fixed as per AMC ROI 10/2014 from the date of enrolment w.e.f. 22.04.2008. The applicant was promoted to the rank of Naik on 01.11.2019 as per his seniority and will be considered for further promotion to the rank of Havildar as per his seniority on meeting requisite criteria for promotion.

9. In view of the above, we do not find any irregularity or illegality on the part of respondents neither in remustering and fixation of seniority in Musician trade nor with regard to consideration of his further promotion. Therefore, applicant's prayer for fixation of his seniority on remustering w.e.f. 2013 and consideration of his further promotion to the rank of Havildar against the Corps seniority has

rightly been rejected by the respondents as per AMC ROI and rules on fixation of seniority on re-mustering from one trade to another and promotion policy. The Original Application deserves to be dismissed and is accordingly **dismissed**.

10. No order as to costs.

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

(Vice Admiral Atul Kumar Jain) (Justice Umesh Chandra Srivastava)

Member (A)

Member (J)

Dated: 2nd February, 2023

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