

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No 775 of 2020**Friday, this the 20th day of January, 2023**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Maj. Gen. Sanjay Singh, Member (A)

Sub (STA) Arvind Kumar Thakur (JC 699477M),
 S/o Sri H P Thakur
 R/o Village – Mishrouliya, Post – Chiraya, Dist – East Champaran –
 845415
 Presently posted in Dermatology Department,
 Military Hospital, Meerut

..... Applicant

Ld. Counsel for the Applicant: **Col A.K. Srivastava (Retd)**, Advocate

Versus

1. The Secretary, Govt. of India (MoD), South Block, DHQ PO, New Delhi – 110001.
2. The Chief of the Army Staff, IHQ of MoD (Army), South Block, DHQ PO, New Delhi-110001.
3. AG Branch (MP-3), Integrated HQ of MoD (Army), South Block, DHQ PO, New Delhi – 110001.
4. Officer Commanding, AMC Records, Lucknow
5. Sub Maj R K Yadav (STA), presently posted in BH, Barrackpur.

..... Respondents

Ld. Counsel for the Respondents : **Shri Amit Jaiswal**,
No. 1 to 4 Central Govt CounselLd. Counsel for the Respondent : **Shri Shailendra Kumar Singh**,
No. 5 Advocate**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 or direction of appropriate nature to the respondents to set aside AG (MP-3) IHQ of MoD letter dated 30/11/2015 directing AMC Records to revert w.e.f. 01/03/2016, the additional vacancy allotted to promote Sub R K Yadav (Annexure No. A-1).
- (b) Issue/pass an order or direction of appropriate nature to set aside AMC Records letter, after summoning, vide which vacancy dated 01/02/2018 was adjusted, against the additional vacancy allotted to promote Sub R K Yadav, due to which no DPC was held in 2017 to screen the applicant and promote him on 01/02/2017. (Annexure No. A-2).
- (c) Issue/pass any other order or direction appropriate nature to the respondents to allow Sub Maj R K Yadav to continue on the additional vacancy allotted to promote him on 30/11/2015 till he retires on 30/11/2019 to avoid adverse effect on promotion of other Subedars awaiting their promotion to the rank of Sub Maj.
- (d) Issue/pass any other order or direction appropriate nature to the respondents to consider and promote the applicant to the rank of a Sub Maj w.e.f. 01/02/2018 with all consequential benefits.
- (e) Issue/pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.
- (f) Allow this application with costs.”

2. The factual matrix on record is that the applicant was enrolled in the Army (Army Medical Corps (AMC)) on 25.08.1989. The applicant was promoted to the rank of Subedar on 01.04.2014 and was due for superannuation from service in the present rank on 01.09.2019 (FN).

In the year 2015, an additional vacancy of Subedar Major was released by IHQ of MoD vide letter dated 30.11.2015 which was allotted to Sub Maj Rajesh Kumar Yadav on 30.11.2015 as per directions of IHQ of MoD (Army) on his non statutory complaint dated 08.09.2015 alleging that he was selected by the DPC for the year 2015 for the vacancy of 2016 expecting his promotion by 01.11.2015 against the vacancy of Sub Maj Arun Kumar Singh. However, vacancy which he expected on 01.11.2015 was delayed due to delay in assumption of the rank of Subedar Major by Arun Kumar Singh as he was due for promotion of Subedar Major w.e.f. 01.11.2011 but he assumed the rank on 08.12.2011. Accordingly, Sub R K Yadav was promoted to the rank of Sub Maj on 30.11.2015. Sub Maj U C Singh superannuated from service on 01.02.2018 and subject vacancy had been adjusted against the additional vacancy released in 2015, so, effectively there was no vacancy on 01.02.2018. However, the applicant and his batch mates were not considered for DPC in the year 2017 as vacancy of Sub Maj in STA category was occurring on 01.12.2019 after applicant's date of superannuation (01.09.2019). The applicant submitted many applications for not considering him in DPC 2017 for the vacancy of 2018 but nothing was done by the respondents in this regard. The applicant being aggrieved by denial of promotion to the rank of Sub Maj has filed the present Original Application.

3. Learned counsel for the applicant submitted that the applicant was promoted to the rank of Subedar w.e.f. 01.04.2014 and being senior most eligible Subedar (STA) for promotion to the rank of

Subedar Major w.e.f. 01.02.2018 was illegally not promoted as neither the applicant nor any other Subedar (STA) were included for screening by DPC 2017 for vacancies occurring in 2018. AG's Branch has illegally released an additional vacancy for promotion of Sub R K Yadav to the rank of Sub Maj on 30.11.2015 whereas Sub R K Yadav was retiring on the same day at 1200 hours and thus vacancy being not reverted back w.e.f. 01.03.2016, entailed that Subedar Santhil Kumar D, who was approved by the DPC 2015, could not be promoted to the rank of Sub Maj since out of 2 vacancies in 2016, one was evidently adjusted against additional vacancy on 01.03.2016 and against the other vacancy Sub Chandra Gowda Patil had already been promoted to the rank of Sub Maj on 01.01.2016. Hence, the action of the respondents for not conducting DPC in 2017 was arbitrary and illegal. Though, a vacancy was due on 01.02.2018 after retirement of Sub Maj U C Singh on 31.01.2018 but no screening was carried out by DPC scheduled in 2017 and therefore, applicant has been arbitrarily and against natural justice denied his deserving promotion to the rank of Sub Maj w.e.f. 01.02.2018.

4. Learned counsel for the applicant further submitted that Sub R K Yadav was due to retire on 30.11.2015 but his name was illegally included at serial No. 1 in the DPC which resulted that applicant being selected by the DPC could not be promoted to the rank of Sub Maj as Sub R K Yadav was illegally promoted to the rank of Sub Maj in the late evening on 30.11.2015, the day on which he was to be struck off strength at 1200 hours. The applicant submitted many applications against the illegal promotion of Sub Maj R K Yadav and denial to him

being senior most Subedar in STA category but no suitable reply received from the respondents to redress his grievance and applicant was compelled to retire from service in the rank of Subedar only. Therefore, denial of promotion to the applicant being senior most eligible Subedar is violation of Articles 14 and 16 of the Constitution of India. The action of respondents for not reverting back additional vacancy allotted to promote Sub R K Yadav after three months w.e.f. 01.03.2016 is illegal and therefore, order of IHQ of MoD (Army) releasing additional vacancy is liable to be set aside and applicant be granted suitable relief to promote him to the rank of Sub Maj as due to him w.e.f. 01.02.2018 with all consequential benefits.

5. Learned counsel for the respondents No. 1 to 4 submitted that applicant was enrolled in the Army (Army Medical Corps (AMC) on 25.08.1989. The applicant was promoted to the rank of Subedar on 01.04.2014 and was due to be superannuating from service in the present rank on 01.09.2019 (FN). As per PE (Peace Establishment) / WE (War Establishment) of AMC 3 x Subedar Majors are authorised in Special Treatment Assistant category (STA) and these Subedar Majors are authorised in the PE of BH Barrackpore, MH Agra and BH Lucknow. At present no vacancy exists for the rank of Subedar Major in STA category. The details of promotion and retirement of Subedar Majors of STA category for the last 5 years is as under :-

| S. No. | JC No. Rank, Trade & Name | Date of Enrolment | Date of Promotion to the rank of Subedar Major | Date of retirement | Remarks |
|--------|--------------------------------------|-------------------|--|------------------------|--|
| (a) | JC-696388H Ex Sub Maj (STA) UC Singh | 03 Feb 1984 | 01 Feb 2014 | 01 Feb 2018 (Forenoon) | Superannuated from service on 01 Feb 18 (FN) |
| (b) | JC-697668H Sub Maj (STA) Rajesh | 20 Nov 1985 | 30 Nov 2015 | 01 Dec 2019 (Forenoon) | (i) Promoted on the basis of |

| | | | | | |
|-----|--|-------------|-------------|------------------------|--|
| | Kumar Yadav | | | | additional vac allotted by IHQ of MoD (Army) AG/MP-3. (ii) Posted at BH Barrackpore |
| (c) | JC-698018F Sub Maj (STA) Chandra Gouda Patil | 06 May 1986 | 01 Jan 2016 | 01 Jan 2020 (Forenoon) | Posted at BH Lucknow |
| (d) | JC-698434I Sub Maj (STA) Senthil Kumar D | 16 Feb 1987 | 01 Aug 2016 | 01 Aug 2020 (Forenoon) | Posted at MH Agra |

6. Learned counsel for the respondents further submitted that in the year 2015, an additional vacancy of Subedar Major was released by IHQ of MoD vide letter dated 30.11.2015 which was allotted to Sub (now Sub Maj) Rajesh Kumar Yadav on 30.11.2015 on his non statutory complaint dated 08.09.2015 sent by him to the higher authorities for grant of promotion to the rank of Subedar Major alleging that he was selected by the DPC for the year 2015 for the vacancy of 2016 expecting his promotion by 01.11.2015 against the vacancy of Sub Maj Arun Kumar Singh. However, vacancy which he expected on 01.11.2015 did not occur due to delay in assumption of the rank of Subedar Major by Arun Kumar Singh as he was due for promotion of Subedar Major w.e.f. 01.11.2011 but he assumed the rank on 08.12.2011, i.e. after 37 days. Since there is no rule for cut-off date for counting 4 years tenure of Subedar Major from the date of vacancy, therefore, tenure of Arun Kumar Singh was extended upto 01.01.2016. Accordingly, Sub R K Yadav was promoted to the rank of Sub Maj on 30.11.2015. In this regard, IHQ of MoD (Army) and AMC Records vide letter dated 14.09.2016 directed that '*an additional vac of Sub Maj (STA) may be adjusted with in Corps auth from other cat*

on rotation basis at your end'. Hence, there were 04 x Sub Maj's in STA category from 30.11.2015 to 01.02.2018.

7. Learned counsel for the respondents further submitted that as per promotion policy, Sub Chandra Gouda Patil was promoted to the rank of Sub Maj on 01.01.2016 against the vacancy of Sub Maj Arun Kumar Singh as approved by DPC-2015 for the vacancy of 2016. Sub Maj U C Singh superannuated from service on 01.02.2018 and subject vacancy had been adjusted against the additional vacancy released in 2015, so, effectively there was no vacancy on 01.02.2018. The applicant is asking for the said vacancy, which does not exist. However, the applicant and his batch mates were not considered for DPC in the year 2017 as vacancy of Sub Maj in STA category was occurring on 01.12.2019 after applicant's date of superannuation (01.09.2019). The applicant submitted a personal application for not considering him in DPC 2017 for the vacancy of 2018 which was suitably replied by AMC Records vide letter dated 19.10.2017 stating that *'the vacancy of Sub Maj (STA) for the year of 2018 has been adjusted as per direction of higher HQ'*. Thereafter, applicant submitted many applications/complaints dated 11.12.2017, 19.01.2018 and 21.01.2018 which were suitably replied by the respondents.

8. Learned counsel for the respondents further submitted that para 8 (d) of IHQ of MoD (Army) letter dated 10.10.1997 and Appx B of AMC ROI No. 10/2014 lay down that, *'Merely qualifying for consideration by DPC does not entitle a Sub for promotion to the rank of Sub Maj. Selection will be based on seniority-cum-merit depending*

upon the vacancies available'. Hence, it is evident from the above mentioned facts that vacancy occurred on 01.02.2018 after superannuation of Sub Maj UC Singh has been adjusted against additional vacancy released in the year 2015 in which Sub R K Yadav were promoted to the rank of Sub Maj. The applicant including his batch-mates have not been considered for DPC in the year 2017 as next vacancy of Sub Maj in STA category was occurring on 01.12.2019. He pleaded for dismissal of O.A. being bereft of merit, lacking substance.

9. Learned counsel for the respondent No. 5 submitted that Sub R K Yadav was selected for the rank of Subedar Major by DPC 2015 for the vacancy of 01.01.2016. An additional vacancy of Sub Maj was released by IHQ of MoD (Army) on consideration of his non statutory complaint and thus Sub R K Yadav was promoted to the rank of Sub Maj on 30.11.2015 as approved by the competent authority as per rules and not otherwise.

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

11. We find that an additional vacancy of Subedar Major was released by IHQ of MoD which was allotted to Sub Rajesh Kumar Yadav on 30.11.2015 on consideration of his non statutory complaint for grant of promotion to the rank of Subedar Major alleging that he was already selected by the DPC 2015 for the vacancy of 2016 and promotion was expected by 01.11.2015 against the vacancy of Sub Maj Arun Kumar Singh. However, vacancy did not occur on due date, i.e. 01.11.2015 as Subedar Major Arun Kumar Singh assumed the

rank w.e.f. 08.12.2011 instead of w.e.f. 01.11.2011. Since, there is no rule for cut-off date for counting 4 years tenure of Subedar Major from the date of vacancy, therefore, tenure of Arun Kumar Singh was extended upto 01.01.2016 and accordingly, Sub R K Yadav was promoted to the rank of Sub Maj on 30.11.2015 as per vacancy allotted by IHQ of MoD (Army) and was discharged from service on completion of his tenure as per rules/policy on the subject.

12. We also find that vacancy of one Subedar Major occurred on 01.02.2018 after superannuation of Sub Maj UC Singh but the same has been adjusted against additional vacancy released in the year 2015 in which Sub R K Yadav was promoted to the rank of Sub Maj. The applicant including his batch-mates have not been considered for DPC in the year 2017 as next vacancy of Subedar Major in STA category was occurring on 01.12.2019. Though, the applicant was in seniority No. 1 for upcoming promotion of Subedar Major but before it was due, applicant was discharged from service on 01.09.2019 (FN) on completion of his terms of engagement in the rank of Subedar after rendering 30 years of service. Hence, his prayer for grant of promotion to the rank of Sub Maj after quashing IHQ of MoD (Army) order releasing additional vacancy for Sub Maj R K Yadav and for not considering the applicant for DPC in the year 2017 has rightly been rejected by the respondents as per promotion policy, ROI and rules and regulations on the subject.

13. In view of the above, we do not find any irregularity or illegality neither in allotting one additional vacancy for promotion to Sub Maj R K Yadav nor in holding of DPC and hence, there is no violation of any

Article of the Constitution of India. The O.A. is devoid of merit and deserves to be dismissed. It is accordingly **dismissed**.

14. No order as to costs.

15. Pending Misc. Applications, if any, stand disposed off.

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

Dated: 20th January, 2023
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(Justice Umesh Chandra Srivastava)
Member (J)