

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Transferred Application No 9 of 2021
(Diary No. 5030 of 2021, AFT(PB), New Delhi)****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)**

JC-761700W Sub (M Tech Comn) Ram Prawesh Mani
S/o Shri (Late) Ram Nath Mani
R/o Village : Barari, Post : Baitalpur,
Dist : Deoria (UP) – 274201
Presently posted at Unit : 365 (FRI)
PIN : 935008, C/o 56 APO (Bikaner, Rajasthan)

..... Applicant

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

Versus

1. Union of India, through the Secretary, Govt. of India, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarters of MoD (Army), Post DHQ, New Delhi-110011.
3. Dte Gen of EME (Pers), Master General of Ordinance Branch, IHQ of MoD (Army), New Delhi – 110011.
4. C-in-C, HQ Strategic Forces Command, PIN : 908547, C/o 56 APO.
5. OIC Records, EME Records, Pin : 900453, C/o 56 APO.
6. Cdr, Unit 745, PIN : 935015, C/o 56 APO.
7. CO, Unit 365, PIN : 935003, C/o 56 APO.

..... Respondents

Ld. Counsel for the Respondents : **Shri D.K. Pandey,**
Central Govt Counsel

ORDER (Oral)

1. The petitioner filed Case No. (Dy No. 5030 of 2021) before the Armed Forces Tribunal (PB), New Delhi under Section 14 of the Armed Forces Tribunal Act, 2007, which has been transferred to this Tribunal and has been registered as T.A. No. 9 of 2021, whereby the petitioner has sought the following reliefs:-

“(A) To quash or set aside the respondent No. 4 direction dated 18 Jun 2021.

(B) To issue order or directions to the respondents to consider applicant’s case afresh for grant promotional avenues to the rank of Sub Major or Honorary Rank by waiving the deficit criteria as the applicant is not responsible for the same rather his services have been utilized best by the respondents by retaining him in Extra Regimental duties for more than 14 years against ROI 2006.

(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 Indian Army on 30.04.1992 and was discharged from service in the rank of Subedar w.e.f. 01.05.2022 during the pendency of Original Application. The applicant was promoted to the rank of Subedar w.e.f. 01.08.2013. The applicant was screened for promotion to the rank of

Subedar Major by Departmental Promotion Committee (DPC) for the years 2018, 2019 and 2020 alongwith his batch-mates as per Govt. policy letter dated 10.10.1997 and awarded full numerical weightage to the applicant for his overall performance in all spheres but the applicant could not come in the selected merit list for promotion to the rank of Subedar Major as per availability of vacancies, hence he was not granted promotion to the rank of Subedar Major. The applicant was also considered for grant of Honorary Commission on both the chances of Independence Day and Republic Day, however, the applicant could not come up in the merit list for grant of honorary commission on both the occasions as per merit list prepared/based on the allotted vacancies of his Corps. The applicant submitted a non statutory complaint dated 23.09.2020 which was disposed of by the Commander-in-Chief, Strategic Forces Command vide directions dated 18.06.2021 without granting any relief to the applicant. 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 was promoted to the rank of Subedar w.e.f. 01.08.2013. The applicant was considered in DPC 2018 and 2019 for promotion to the rank of Subedar Major but could not be promoted due to low merit as per EME Records letter dated 29.02.2020. The applicant represented his case vide representation dated 11.01.2020 mentioning his grievances

that he has been posed in group posting for the last 13 years and he has not been detailed for any courses which has resulted in his low merit in DPC 2018 and 2019. Thereafter, applicant submitted a non statutory complaint dated 23.09.2020 which was disposed of by the Commander-in-Chief, Strategic Forces Command vide directions dated 18.06.2021 without granting any relief to the applicant as per policy.

4. Learned counsel for the applicant further submitted that since the applicant has been posted to Extra Regimental Duties for about 14 years against the posting policies as per ROI 2006 being skilled and trained manpower in maintenance of Prithvi Missile System which resulted in non posting to any field areas and non detailment for any courses. Thus, his high level efficiency and trade professionalism came in way for being low in merit, therefore, he should be allotted 5 marks each against courses and filed area tenure in weightage criteria for promotion and accordingly, his case should be treated afresh alongwith his batch-mates for consideration/grant of promotion to the rank of Subedar Major and honorary rank giving weightage of 5 marks each against courses and filed area tenures.

5. In reply, submission of learned counsel for the respondents is that applicant was enrolled in the Indian Army on 30.04.1992. He was promoted to the rank of Subedar w.e.f. 01.08.2013. The applicant raised his grievance against his non empanelment in the selected panel of Subedar Major in DPC 2018 & 2019 and grant of honorary

commission as he has been posed in group posting for the last 13 years and he has not been detailed for any courses and posting to field areas, which has resulted in his low merit in DPC 2018 and 2019. The applicant has correctly been considered for screening thrice during DPC 2018, 2019 and 2020 alongwith his batch mates and awarded full numerical weightage for his overall performance in all spheres, however, the applicant could not make the grade for promotion to the rank of Subedar Major due to low in merit in all three looks in DPC 2018, 2019 and 2020. The claim of the applicant that he could not come up in merit in DPCs purely due to not being posted in filed area and lack of courses is not correct, since the applicant has already done all the essential courses applicable to him and field posting is not the only criteria to arrive at merit in DPC. As per IHQ of MoD (Army) letter dated 10.10.1997, maximum weightage is given to last 5 ACRs (90 marks out of 105 marks) and 5 marks each to grading in courses, honours and awards and field postings. Moreover, the applicant was posted in filed areas in 2007, 2017, 2018 & 2019 for different periods and that period has already been considered in DPCs and awarded due weightage as per policy.

6. Learned counsel for the respondents further submitted that applicant has been given all due weightage as per his service profile but he could not come up in merit in all three chances he was considered in DPC 2018, 2019 and 2020 and therefore, his prayer for consideration of his case afresh alongwith his batch-mates for grant

of promotion to the rank of Subedar Major and honorary rank is not tenable as per policy on the subject. He pleaded for dismissal of Original Application being devoid of merit.

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

8. Having perused the record and policy letters on the subject, we observe that there is no such policy existing that if an individual is not posted in High Altitude Area/Operational Area/Field Area, then he will be granted 5 marks against field posting tenure for weightage while considering him for promotion to the rank of Subedar Major. Since, the applicant was trained on Group-IV Strategic Force Command equipment and placed under the Grouping Policy, hence, he was posted with the grouping units for a period of approx 14 years as per policy and not otherwise, therefore, to post him to field areas in a non grouping units was not possible due to policy constraints. Hence, applicant was awarded due weightage for his field tenures/postings of SCCIA for the period from 15.01.2017 to 30.04.2017 and 07.02.2018 to 16.05.2018 and CMFAA from 01.10.2005 to 10.02.2007 and 11.02.2019 to 14.07.2019. Therefore, applicant's contention that he was not given opportunity to be posted to field areas and to earn complete 5 marks against field posting/tenure is incorrect.

9. Perusal of original record of the applicant shows that marks obtained by the applicant in DPC 2018 were 85.90 against the cut off marks of 93.60, in DPC 2019, marks obtained by the applicant were

89.40 against the cut off marks of 93.07 and in DPC 2020, marks obtained by the applicant were 90.77 against the cut off marks of 96.18. Thus, marks obtained by the applicant in all DPCs were much lesser to the cut off marks, hence, the applicant could not come in the merit list for promotion to the rank of Subedar Major being low in merit and therefore, he could not be promoted to the rank of Subedar Major.

10. We also observe that applicant was considered twice for grant of honorary commission as per policy before his retirement from service, but he could not make place in the merit list as per availability/allotted vacancies to the Corps and therefore, he was not granted honorary commission on both the chances of Independence Day/Republic Day as per policy on the subject.

11. We also do not find any irregularity or violation of any policy for his posting in Extra Regimental Duties for a duration of 14 years under the Strategic Force Command equipment Grouping Policy as alleged by the applicant since applicant's posting was as per policy (Grouping Policy) and not otherwise.

12. 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. By and large, we do not find any illegality or

arbitrariness in non selection of the applicant for promotion to the rank of Subedar Major and grant of honorary commission.

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

14. No order as to costs.

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

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

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 17th March, 2023
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