

**COURT NO.1**

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**

**ORIGINAL APPLICATION No. 339 of 2018**

**Tuesday, this the 24<sup>th</sup> day of May, 2022**

**"Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)  
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)"**

Ex Subedar Radhey Shyam, S/o Sri Ram Gopal, R/o 592G/155,  
Panchayat Bhawan, Kharika, Telibagh, Lucknow.

..... Applicant

Ld. Counsel for the : **Shri KK Misra**, Advocate  
Applicant

Versus

1. Union of India, through its Secretary, Min of Defence, New Delhi.
2. Chief of Army Staff, Army Headquarters, New Delhi.
3. Director General, Army Medical Services (Army).
4. Officer-in-Charge, Records, Army Medical Corps (AMC), Lucknow.

...Respondents

Ld. Counsel for the: None.

Respondents

**Maj Sini Thomas**, Departmental  
Representative for the respondents.

**ORDER (Oral)**

1. Present O.A has been preferred under section 14 of the Armed Forces Tribunal Act, 2007 by the Applicant for the following reliefs.

“(a) Quash the board proceedings of DPC, held on 16 Dec 2016 (Annexure A-2 to OA).

(b) To direct the respondents to hold fresh DPC, for considering the name of the applicant for promotion to the rank of Subedar Major after including the ACR of the applicant for the year 2012, which was outstanding.

(c) Any other relief which the Hon’ble Tribunal may consider appropriate may be granted in favour of the applicant.

(d) Cost of the application be awarded to the applicant.”

2. Shorn of unnecessary details, the facts of the case are that the applicant was enrolled in the Indian Army on 28.09.1982. During the course of his service, he was promoted to the rank of Subedar w.e.f. 01.11.2008 and was posted to Army Medical Corps Centre and College, Lucknow on 24.12.2010. During the reporting year 2010-2011 (ACR period-01 June to 31 May), his ACR was initiated by an officer who was not his IO. The applicant submitted representation to quash the report but it was rejected. In the year 2012, applicant’s Departmental Promotion Committee (DPC) was held in which his Annual Confidential Report (ACR) for the year 2010-11 was also included, however, his name did not figure in the selected panel of Subedar Major. The applicant was

discharged from service on 30.09.2012 (AN) on completion of terms of engagement. Thereafter, during July, 2015 he approached this Tribunal and filed O.A. No. 170/2015 for quashing the ACR for the year 2010-11. This Tribunal vide order dated 25.05.2016 allowed the O.A. in favour of the applicant directing the respondents to quash the ACR for the year 2010-11 and hold a fresh DPC on the basis of fresh career profile. Accordingly, in compliance of order dated 25.05.2016 applicant's ACR for the period 01.06.2010 to 31.05.2011 was quashed and fresh DPC was held for his selection to the rank of Subedar Major. While holding fresh DPC on 16.12.2016, ACRs for the years 2005 (as Havildar), 2007, 2008, 2009 and 2010 (as JCO) were included and considered. In the fresh DPC applicant scored 76.73 marks whereas the cut off marks was 84.56 and thus, he was not selected for promotion to the rank of Subedar Major. Applicant has filed this O.A. to quash the DPC held on 16.12.2016, and issue directions to respondents to hold DPC afresh, for his selection to the rank of Subedar Major after including the ACR for the year 2012 which as per him is outstanding.

3. Learned counsel for the applicant submitted that his three DPCs for selection to the rank of Subedar Major were held in the years 2010, 2011 and 2012 but in the last two DPCs, ACR for the year 2011, which being quashed vide this Tribunal's order dated 25.05.2016, should not have been included in fresh DPC held on 16.12.2016, rather ACR for the year 2010 should have been

included and considered. His further submission is that DPC held on 16.12.2016 should be quashed as ACR for the year 2012 was not included for the selection of Subedar Major.

4. On the other hand, learned counsel for the respondents submitted that the applicant was screened for promotion to the rank of Subedar Major by DPC for the year 2011, 2012 (increased vacancy) and 2012 (vacancies for 2013). He was screened by the above three DPCs on the basis of his overall performance selection system, considering his ACRs for the last five years in the rank of JCO, courses, honours and awards during the entire service, Field/HAA service during the last fifteen years and seniority-cum-merit depending on the availability of vacancies in terms of IHQ of MoD (Army) policy letter dated 10.10.1997. However, he could not come up in the selected panel of Subedar Major (seniority-cum-merit list) drawn out of the merit list prepared by the DPC against the vacancies for the three chances and was permanently superseded upto the date of his retirement i.e. 30.09.2012. He further submitted that the applicant was considered thrice by the DPCs but he was not selected for promotion to the rank of Subedar Major due to not fulfilling the overall performance criteria. He pleaded for dismissal of O.A.

5. We have heard learned counsel for the parties and perused the material placed on record including proceedings of fresh DPC held on 16.12.2016 conducted vide this Tribunal's order dated 25.05.2016.

6. The DPC for selection to the rank of Subedar Major is normally assembled once in a year during the month of October to consider Subedars for the vacancies occurring during the next year for promotion to the rank of Subedar Major. A merit list is prepared according to the points scored by the candidates to select against the anticipated vacancies. The promotions to the rank of Subedar Major of selected candidates are made strictly based on the original seniority of the candidates included in the select panel. A Subedar may be given a maximum of three chances/looks for his consideration by the DPC for promotion to the rank of Subedar Major from the time he comes up for consideration by the DPC initially, however, to avail second and third chance/look, he should continue to remain in service. As a guideline, double the number of candidates, vis-à-vis vacancies for complete batch whichever is more may be considered for the DPC. All Subedars promoted in a calendar year from 01 January to 31 December of a year are regarded as a batch. The batch of Subedars to be considered in the panel is strictly as per seniority. In addition to above, it is mandatory that a Subedar should meet ACR, medical and disciplinary criteria for further promotion.

7. The applicant was considered by three DPCs in the years 2011, 2012 (supplementary DPC due to increased vacancy) and 2012 (vacancies for the year 2013). However, the applicant could not come up in the selected panel of Subedar Major drawn out of the merit list prepared by DPC against vacancies for the three

years and he retired on 30.09.2012. In the ACR for the year 2011 the applicant was awarded 05 (five) points (high average) by the IO and 07 (seven) points (above average) by the RO and in the year 2012 he was awarded 08 (eight) points (above average) by the IO and 09 (nine) points (outstanding) by the RO.

8. The applicant was discharged from service on 30.09.2012 on completion of terms of engagement. In the year 2015 he filed O.A. No. 170 for quashing of ACR for the year 2011 which was allowed and special DPC was held on 16.12.2016 for the vacancies falling in the year 2012 along with his batch mates for promotion to the rank of Subedar Major. In this DPC the applicant scored 76.73 points whereas the cut off marks for selection to the rank of Subedar Major in DPC 2011 was 84.56, hence he was not selected to the rank of Subedar Major. Earlier, in DPC 2011 the applicant had scored 73.05 marks whereas after expunging the ACR for the year 2011 the applicant could score 76.73 marks which is far below the cut off marks i.e. 84.56, hence he could not be selected to the rank of Subedar Major for vacancies of the year 2012.

9. The DPC is held for vacancies arising in the coming year. Applicant's contention is that his outstanding ACR for the year 2012 should have been included in the fresh DPC held on 16.12.2016. In this regard we observe that since the special DPC (for 2011) was held on 16.12.2016, therefore his ACR for the year 2012 was not included being later year's ACR as per rules.

10. In view of the above, the O.A is devoid of merit and deserves to be dismissed.

11. As a result of the foregoing discussion, the O.A. fails and is accordingly **dismissed**.

12. No order as to costs.

13. Miscellaneous application(s), pending if any, stand disposed of.

(Vice Admiral Abhay Raghunath Karve)  
Member (A)

(Justice Umesh Chandra Srivastava)  
Member (J)

Dated : 24.05.2022

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