

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No 320 of 2021**Wednesday, this the 4th day of May, 2022**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)JC-697051-M Nb Sub/Clk (Hony Sub/Clk (SD) Patil Ganapati
S/o Late Kaliappa Patil
R/o House No. 3121, Sarnarth Society, Laxmi Nagar,
Post – Hindalga, T&D Belgaum (Balagavi), Karnataka-591108
..... ApplicantLd. Counsel for the Applicant: **Shri R. Chandra**, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence, Government of India, New Delhi-110011.
2. Chief of the Army Staff, IHQ of MoD (Army), DHQ Post Office, New Delhi-110011.
3. Officer-in-Charge, Army Medical Corps Records, PIN-900450, C/o 56 APO
4. PCDA (Pension), Draupadi Ghat, Allaghabad-14 (UP).

..... Respondents

Ld. Counsel for the Respondents : **Shri Pushendra Mishra**,
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 for the following reliefs:-

“(I) The Hon'ble Tribunal may be pleased to set aside the order dated 23/02/2021 (Annexure A/1).

(II) The Hon'ble Tribunal may be pleased to direct the Respondents to examine the case of the petitioner in parity of JC-697232-X Nb Sub/Clk (SD) Surendra Singh

and JC-697233-A Nb Sub/Clk (SD) Brij Kishor Dwivedi for granting of pension for the rank of Subedar with all consequential benefits as given to JC-697232-X Naib Subedar/Clk (SD) Surendra Singh and JC-697233-A Nb Sub/Clk (SD) Brij Kishor Dwivedi.

- (III) Any other appropriate order or direction which the Hon'ble Tribunal may deem just and proper in the nature and circumstances of the case.”

2. The factual matrix on record is that the applicant was enrolled in the Indian Army on 07.01.1984 (Normal Entry Rate) and re-mustered into Clerk category (Matric Entry Rate) on his own request as per rules on vogue. The applicant was discharged from service in the rank of Naib Subedar on 31.01.2012 (AN) on completion of extended service limit after rendering 28 years and 25 days of qualifying service under Rule 13 (3) I (i) (a) of Army Rules, 1954. On passing of Class-III test of Clerk, the applicant's Corps seniority in clerk category was fixed w.e.f. 29.11.1986. The applicant was promoted to the rank of substantive Naik on 01.04.1993 and subsequently Havildar on 01.07.1995 with notional seniority w.e.f. 01.11.1993. The applicant had submitted a statutory complaint dated 25.10.2008 against alleged incorrect fixation of his seniority. The Chief of the Army Staff disposed of statutory complaint of the applicant vide order dated 20.05.2009 and accordingly, applicant's notional seniority in the rank of Havildar was re-fixed w.e.f. 01.01.1990 in place of 01.11.1993. As per directions of Chief of the Army Staff, applicant was promoted to the rank of Naib Subedar w.e.f. 12.08.2009 with notional seniority from 14.06.2009. The applicant again submitted a statutory complaint

dated 02.12.2010 asking seniority for promotion to the rank of Naib Subedar and further promotion to the rank of Subedar with ante date seniority w.e.f. 01.07.2009. The statutory complaint of the applicant was rejected by the COAS vide letter dated 06.06.2011. The applicant being aggrieved by denial of promotion to the rank of Subedar has filed present Original Application.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Army (Army Medical Corps) on 07.01.1984. The applicant was promoted to the rank of Naik with seniority w.e.f. 01.12.1989 and Havildar with seniority w.e.f. 01.11.1993. The applicant was promoted to the rank of Naib Subedar with seniority w.e.f. 14.06.2009. Applicant passed all requisite qualification for the post of Subedar but he could not be promoted due to loss of his original seniority. The applicant was given seniority from the date when he passed NCO Clerk Course on 14.06.2009. JC-695183-F Subedar/Clk (SD) Janemn Joy Mahto who is just junior to the applicant in enrolment was promoted to the rank of Naib Subedar on 04.10.2005 and was given notional seniority w.e.f. 01.10.2005 but applicant was promoted to the rank of Naib Subedar on 12.08.2009 with notional seniority w.e.f. 14.08.2009, hence, applicant lost 03 years, 10 months and 12 days of original seniority from his junior in the rank of Naib Subedar for promotion. The applicant was discharged from service on 31.01.2012 (AN) after completion of 28 years and 25 days of service.

4. Learned counsel for the applicant further submitted that on 10.12.2020, the applicant approached respondent No. 3 for pension

and consequential benefits in the rank of Subedar with parity with JC-697232-X Nb Sub/Clk (SD) Surendra Singh and JC-697233-A Nb Sub/Clk (SD) Brij Kishor Dwivedi which was rejected by the respondent No. 3 vide letter dated 23.02.2021. He pleaded for grant of pension in the rank of Subedar as granted to similarly situated Nb Sub Surendra Singh and Nb Sub Brij Kishor Dwivedi after retirement from service being juniors to the applicant on the basis of AFT (RB) Chandimandir and AFT (RB) Lucknow judgments.

5. Learned counsel for the respondents submitted that applicant was enrolled in the Indian Army on 07.01.1984 (Normal Entry Rate) and re-mustered into Clerk category (Matric Entry Rate) on his own request as per rules on vogue. The applicant was discharged from service in the rank of Naib Subedar on 31.01.2012 (AN) on completion of extended service limit after rendering 28 years and 25 days of qualifying service under Rule 13 (3) I (i) (a) of Army Rules, 1954. On passing of Class-III test of Clerk, the applicant's Corps seniority in clerk category was fixed w.e.f. 29.11.1986. The applicant was promoted to the rank of substantive Naik on 01.04.1993 and subsequently Havildar on 01.07.1995 with notional seniority w.e.f. 01.11.1993.

6. Learned counsel for the respondents further submitted that applicant had submitted a statutory complaint dated 25.10.2008 against alleged incorrect fixation of his seniority. The competent authority, i.e. Chief of the Army Staff disposed of statutory complaint of the applicant vide order dated 20.05.2009 and accordingly, applicant's notional seniority in the rank of Havildar was refixed w.e.f.

01.01.1990 in place of 01.11.1993. The applicant acquired his mandatory promotional qualitative requirement for promotion to the rank of Naib Subedar, i.e. Senior Cadre Course on 04.04.2009 and Non Commissioned Officer Clerk Course on 14.06.2009 respectively. In the meantime, the applicant became ineligible for promotion to the rank of Naib Subedar on 01.06.2009 having crossed the upper age limit i.e. 46 years in terms of para 398 of AMC ROI 2014. Hence, his case was referred to IHQ of MOD for clarification. As per directions of Chief of the Army Staff, order to promote the applicant to next higher rank of Naib Subedar w.e.f. 14.06.2009 was passed. Accordingly, applicant was promoted to the rank of Naib Subedar w.e.f. 12.08.2009 with notional seniority from 14.06.2009 from the date of acquiring requisite qualification waving of his upper age criteria. The applicant again submitted a statutory complaint dated 02.12.2010 asking seniority for promotion to the rank of Naib Subedar as per IHQ of MoD letter dated 26.05.2009 w.e.f. 01.10.2005 (date of batch-mates seniority) and be promoted to the rank of Subedar with ante date seniority w.e.f. 01.07.2009. The statutory complaint of the applicant was examined in detail and as per directions of COAS, statutory complaint of the applicant was rejected which was communicated to the applicant vide letter dated 06.06.2011.

7. Learned counsel for the respondents further submitted that subsequent promotion to the rank of Subedar was subject to fulfilling promotional qualification and availability of vacancy as applicable to any direct entry clerk as per policy in vogue. As such, his batch mate JC-696981F Ex Nb Sub (Clk) Ghadage Hindu Rao Parashram (in

terms of date of promotion to the rank of Naib Subedar), who was also promoted to the rank of Naib Subedar with notional seniority from 01.01.2009 could also not be promoted to the rank of Subedar due to non availability of vacancy in clerk category and subsequently, he too was discharged from service w.e.f. 30.09.2013 in the rank of Naib Subedar only. He also submitted that applicant is drawing parity with JC-697232-X Nb Sub/Clk (SD) Surendra Singh and JC-697233-A Nb Sub/Clk (SD) Brij Kishor Dwivedi whereas there is no similarity in these cases as applicant was discharged from service in the rank of Naib Subedar due to non availability of vacancy in the rank of Subedar rather for any other reason. Therefore, superannuation of the applicant in the rank of Naib Subedar is just and in conformity of the rules. He pleaded for dismissal of O.A being devoid of merits.

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

9. We find that applicant was promoted to the rank of Naib Subedar w.e.f. 12.08.2009 with notional seniority from 14.06.2009 but only after condonation of upper age limit i.e. 46 years in terms of para 398 of AMC ROI 2014 by Chief of the Army Staff. The applicant was not granted further promotion to the rank of Subedar due to non availability of vacancy in clerk category and not due to any other reason such as fixation of seniority or Corps seniority etc. and therefore, seeking parity with Nb Sub Surendra Singh and Nb Sub Brij Kishor Dwivedi for promotion to the rank of Subedar is not applicable being applicant's case is not similar in nature.

10. Resultantly, in view of AMC ROI and policy letters on the subject, we hold that the claim of applicant for grant of promotion to the rank of Subedar has rightly been rejected by the respondents as per rules which need no interference. Resultantly, O.A. is **dismissed**.

11. No order as to costs.

12. Pending Misc. Application(s), if any, shall stand disposed of.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: May, 2022
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