

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No 330 of 2021**Tuesday, this the 17<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)**No. JC-704528F Nb Sub Dharmendra Kumar Singh  
S/o Sri Ashok Kumar Singh  
R/o Vill – Nilmatha, PO – Dilkusha, Dist – Lucknow – 226002 (UP)  
Presently serving with Military Hospital, Mhow,  
PIN-900444, C/o 56 APO

..... Applicant

Ld. Counsel for the Applicant : **Shri K.P. Datta**, Advocate  
Versus

1. Union of India, through Secretary, Ministry of Defence, New Delhi-110011.
2. The Chief of Army Staff, Integrated HQ of MoD (Army), South Block, New Delhi – 110011.
3. Officer-in-charge, AMC Records, Lucknow Pin – 226002 (UP).
4. Commanding Officer, Military Hospital, Mhow (MP).
5. OIC, PAO (OR) AMC, Lucknow-2 (UP).

..... Respondents

Ld. Counsel for the Respondents : **Shri Ashish Kumar Singh**,  
Central Govt Counsel**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. To issue/pass an order or directions to set aside/quash AMC Records rejection letter No. 356007/LA LT/2020 dated 29.12.2020 in which the applicant has been

unjustly and arbitrarily denied for seniority of promotion to the rank of Nb Subedar wef 01.05.2018.

- B. To issue/pass any order or directions to grant his seniority of promotion to the rank of Nb Subedar (Lab Asst) wef 01.05.2018 as per Corps seniority with all consequential benefits and arrears, subsequently same seniority for further promotion to the rank of Subedar as per its own turn.
- C. To issue/pass any other order or directions as may deem just, fit and proper under the circumstances of the case in his favour.
- D. To allow this Original Application with costs.”

2. The factual matrix on record is that the applicant was enrolled in the Army in Army Medical Corps on 09.07.1998 and presently posted with Military Hospital, Mhow. The applicant was promoted to the rank of Naik on 26.07.2007 and Havildar on 01.08.2012 and subsequently to the rank of Naib Subedar on 06.09.2019. He was deputed to United Nations Mission from 09.07.2017 to 18.02.2018. The applicant submitted an application dated 09.10.2018 under RTI seeking information regarding promotion to the rank of Nb Sub which was replied by AMC Records vide letter dated 22.10.2018. The applicant also submitted an appeal dated 22.10.2020 for grant of promotion to the rank of Naib Subedar w.e.f. 01.05.2018 as per corps seniority which was replied by AMC Records vide letter dated 29.12.2020 rejecting the request of the applicant. Being aggrieved, the applicant has filed the present O.A. to grant him seniority of Nb Sub rank w.e.f. 01.05.2018.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Army in Army Medical Corps on 09.07.1998. The applicant was promoted to the rank of Naik and Havildar in time and attained the rank of Nb Sub on 06.06.2019 instead of 01.05.2018. The applicant has not been promoted to the rank of Nb Sub (Lab Asst) w.e.f. 01.05.2018 unjustly and arbitrarily due to his non detailment of SCC w.e.f. 13.02.2018 to 16.04.2018 which resulted promotion to two juniors, Hav Kuldip Singh Bisht on 01.05.2018 and Hav Vipin Kumar on 01.08.2018 against the existing vacancy of promotion.

4. Learned counsel for the applicant further submitted that applicant's name was considered for promotion to the rank of Naib Subedar (Lab Asst) as per Corps seniority in own turn against the vacancy of 01.04.2018 vide AMC Records order dated 24.03.2018 but he was temporary superseded due to short of SCC. The applicant being senior NCO as per seniority list was not detailed for SCC commencing w.e.f. 13.02.2018 to 16.04.2018 whereas his junior Hav Vipin Kumar and Hav Kuldip Singh Bisht have been detailed for SCC w.e.f. 13.02.2018 to 16.04.2018 and sidelined him in attending SCC which was unjust and arbitrary on the part of AMC Records being responsible for detailment in SCC. The applicant submitted an official letter from UN Mission to AMC Records for detailment of his name for SCC but no reply received from Records. However, name of his junior (Hav Vipin Kumar) who was posted with the same batch of UN Mission has been detailed for SCC for the period from 07.12.2017 to

07.02.2018 which was unjust and arbitrary on the part of AMC Records.

5. Learned counsel for the applicant further submitted that it is important to mention here that his juniors (Hav Vipin Kumar and Hav Kuldip Singh Bisht) have undergone SCC w.e.f. 13.02.2018 to 16.04.2018 immediately after de-induction from UN Mission on 19.02.2018 due to their timely detailment for SCC but his name was not considered and included in the AMC Records derailment letter. Due to delay in detailment of SCC, he has passed SCC on 16.07.2018 and thus, superseded in promotion to the rank of Nb sub without any fault. His junior Hav Vipin Kumar was promoted to the rank of Nb Sub with seniority w.e.f. 01.08.2018. Hence, it was against the principles of natural justice and a punishment to the applicant without any fault. He pleaded to grant his seniority of promotion to the rank of Nb Sub (Lab Asst) w.e.f. 01.05.2018 instead of 01.06.2019 (promoted on 06.06.2019) as per Corps seniority with all consequential benefits and subsequent promotion to the rank of Subedar with same seniority w.e.f 01.05.2018.

6. Learned counsel for the respondents submitted that applicant was promoted to the rank of Naik on 26.07.2007 and Havildar on 01.08.2012 and subsequently to the rank of Naib Subedar on 06.09.2019. He was deputed to United Nations Mission from 09.07.2017 to 18.02.2018. A NCO is required to qualify Senior Cadre Course (SCC) for further promotion to Nb sub as per AO 45/80. As per applicant's Corps seniority, he was detailed for SCC from 06.07.2017 to 06.09.2017 but in the meantime, applicant was

selected for UN Mission and was accordingly inducted w.e.f. 09.07.2017 and de-inducted from UN Mission w.e.f. 19.02.2018. AMC Records issued detailment order for SCC commencing from 13.02.2018 to 16.04.2018. As the applicant was in UN Mission abroad, his name was not included in the said cadre. The applicant was considered for promotion to the rank of Nb Sub (Laboratory Assistant) as per Corps seniority against the vacancy of 01.04.2018, however, he was temporarily superseded due to short of SCC in terms of para 2 of Army Order 45/1980 and para 286 (a) of Appendix 'A' to AMC ROI 10/2014. Subsequently, applicant was detailed for SCC from 15.05.2018 to 16.07.2018 vide AMC Record letter dated 12.04.2018. While the applicant was undergoing SCC, 01 unforeseen vacancy occurred on 16.06.2018 due to death of Subedar Nain Singh Bhandari on 15.06.2018 but the applicant was not eligible for the said vacancy as he was still undergoing his SCC and Havildar (Lab Asst) Vipin Kumar who was senior most eligible Havildar being already qualified in SCC was promoted to the rank of Naib Subedar on 04.09.2018 with seniority w.e.f. 01.07.2018.

7. Learned counsel for the respondents further submitted that applicant became eligible for promotion to the rank of Nb Sub on passing SCC on 16.07.2018 and first available vacancy was scheduled to occur on 01.06.2019. Accordingly, he was promoted to the rank of Naib Subedar w.e.f. 06.06.2019 with seniority w.e.f. 01.06.2019. The applicant submitted an application dated 09.10.2018 under RTI seeking information regarding promotion to the rank of Nb Sub which was replied by AMC Records vide letter dated 22.10.2018.

Being aggrieved, the applicant has filed the present O.A. to grant him seniority of Nb Sub rank w.e.f. 01.05.2018. The applicant also submitted an appeal dated 22.10.2020 for grant of promotion to the rank of Naib Subedar w.e.f. 01.05.2018 as per corps seniority which was replied by AMC Records vide letter dated 29.12.2020 rejecting the request of the applicant. He pleaded that prayer of the applicant is devoid of merit and lacks substance and therefore, Original Application is liable to be dismissed.

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

9. We observe that applicant was detailed to undergo SCC from 06.07.2017 to 06.09.2017 vide AMC Records Signal dated 26.06.2017, however applicant being selected for deputation for UN Mission w.e.f. 09.07.2017, he could not attend the said SCC. The applicant's name in subsequent SCC commencing from 13.02.2018 to 16.04.2018 was not considered by AMC Records though there was an official correspondence from UN Mission to include his name to undergo said SCC. In contrary his juniors, Hav Vipin Kumar and Hav Kuldip Singh Bisht have undergone SCC w.e.f. 13.02.2018 to 16.04.2018 immediately after de-induction from UN Mission on 19.02.2018 due to their timely detailment for SCC but applicant's name was not considered and included in the AMC Records derailment letter. Due to delay in detailment of SCC, he cleared the SCC on 16.07.2018 and thus, was superseded in promotion to the rank of Nb sub without any fault. If the applicant's name would have been considered for inclusion in SCC w.e.f. 13.02.2018 to

16.04.2018 alongwith Hav Vipin Kumar and Hav Kuldip Singh Bisht who were also in UN Mission during that period, then he would have been promoted to the rank of Nb Sub before Hav Kuldip Singh Bisht and Hav Vipin Kumar on 01.05.2018 and would have not have been superseded in promotion resulting in loss of his seniority and pay and allowances in the rank of Nb Sub.

10. The net result of the delay in promoting the applicant to the rank of Nb Sub was due to non detailment of his name to undergo SCC w.e.f. 13.02.2018 to 16.04.2018. Thus he lost out timely promotion to the rank of Naib Subedar for no fault of his, which otherwise he would have duly got on 01.05.2018. In the light of the unfair circumstances presented as a fait accompli to the applicant it is highly unjust on the part of the respondents for not detailing him to undergo SCC w.e.f. 13.02.2018 to 16.04.2018 and accordingly, not promoting him on due date i.e. on 01.05.2018 to the post of Naib Subedar. We, therefore, consider that the date of promotion of the applicant to the rank of Nb Sub be deemed to be on his rightfully due date i.e. on 01.05.2018 and not 06.06.2019 (with seniority w.e.f 01.06.2019).

11. In the result, the Original Application is allowed. The impugned orders passed by the respondents are set aside. The respondents are directed to grant ante date seniority of promotion to the rank of Naib Subedar from due date i.e. 01.05.2018 and subsequently, same seniority of Nb Sub rank w.e.f 01.05.2018 will be taken into account for his next promotion to the rank of Subedar. The applicant shall not be entitled for any arrears with regard to his promotion to the rank of Naib Subedar granting him seniority w.e.f. 01.05.2018.

However, he will be granted benefit of his ante date seniority of Nb Sub rank while being promoted to the rank of Subedar. The respondents are directed to comply with the order within four months from the date of production of a certified copy of this order.

12. No order as to costs.

13. 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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