

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 330 of 2020**Thursday, this the 18<sup>th</sup> day of May, 2023**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Atul Kumar Jain, Member (A)**No. 4054030K Ex Hav Gajendra Singh  
S/o Sri (Late) Surender Singh  
R/o House No. B/24, Raghav Vihar, Post : Prem Nagar,  
Dist : Dehradun – 248007 (Uttarakhand)**.... Applicant**Ld. Counsel for the Applicant : **Shri Virat Anand Singh,**  
**Shri Pankaj Kumar Shukla &**  
**Shri Ashish Kumar Singh, Advocate**  
**(Not Present)**

Versus

1. Union of India, through Secretary, Ministry of Defence (Army), South Block, New Delhi.
2. Chief of Army Staff, New Delhi – 110011.
3. DG of Inf, Gen Staff Br., IHQ of MoD (Army), PIN-900256, C/o 56 APO.
4. OIC, Records The Garhwal Rifles, PIN-900400, C/o 56 APO.
5. GARH Scouts, PIN-910700, C/o 56 APO.

**... Respondents**Ld. Counsel for the Respondents : **Ms. Anju Singh,**  
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:-

- “(A). To quash or set aside the respondent letter dated 15 Dec 2017 (Annexure A-1 of OA).
- (B). To issue order or directions to the respondents to grant promotion to next higher rank of Naib Subedar to the applicant with all consequential benefits.
- (C). To issue order or directions to quash ACR of year 1991, which is intentionally malafied is un-lawful.
- (D) Any other relief as considered proper by the Hon’ble Tribunal be awarded in favour of the applicant.
- (E) Allow this OA with heavy cost.”

2. Brief facts of the case are that the applicant was enrolled in the Army on 18.11.1973 and was discharged from service on 30.11.1997 on completion of terms of engagement. The applicant was superseded for promotion to the next rank of Naib Subedar due to lack of Annual Confidential Report (ACR) criteria. As such, he sent a statutory complaint on 24.01.1994 against his supersession for promotion which was processed to the competent authority, i.e. Chief of the Army Staff and after due consideration, it was rejected vide order dated 26.09.1997. The applicant was re-enrolled in DSC on 27.03.1999. The applicant filed Writ Petition No. 6544 of 1997 before the Hon’ble High Court of Judicature at Allahabad, which was transferred to this Tribunal and registered as T.A. No. 175 of 2009. This Tribunal vide its order dated 05.01.2017 directed the applicant to submit his grievance to the respondents through an application which was submitted by the applicant vide his application dated 19.06.2017 and was examined by the competent authority and subsequently

rejected vide order dated 13.12.2017 which was communicated to the applicant by the Record Office. The applicant being not satisfied with the speaking and reasoned order passed by the Chief of the Army Staff, has filed present O.A. before this Tribunal to issue directions to the respondents to grant promotion to the rank of Naib Subedar.

3. Learned counsel for the applicant pleaded that applicant was enrolled in the Army on 18.11.1973 and was discharged from service on 30.11.1997. The applicant was promoted to the rank of L/Naik in the year 1979, Naik in the year 1982 and Havildar in the year 1986. In the year 1990 and 1992, persons junior to the applicant were promoted to the rank of Naib Subedar but applicant was not promoted in both years. Being aggrieved, the applicant put up a statutory complaint on 24.01.1994 against his supersession for promotion to the next higher rank, but the same was rejected by the respondents vide order dated 26.09.1997. Thereafter, applicant filed a Writ Petition No. 6544/97 in the Hon'ble High Court of Allahabad, Lucknow Bench which was transferred to AFT (RB) Lucknow and registered as TA No. 175 of 2009. The applicant was given an option to represent his case to the respondents and his petition was partly allowed vide this Tribunal's order dated 05.01.2017. Thereafter, applicant sent a representation to the representations on 19.06.2017 but the respondents vide order dated 15.12.2017 rejected the representation unlawfully and arbitrary.

4. Learned counsel for the applicant further pleaded that action of the respondents in rejecting the representation of the applicant and not quashing ACR of 1990 to enable him to get promotion, is illegal and violative of Articles 14 and 21 of the Constitution of India. He placed reliance on the judgment of the Hon'ble Supreme Court in ***Associated Cement Companies Ltd. Vs. PN Sharma***, AIR 1965 SC 1595: (1965) 2 SCR 366: (1965) 1 LLJ 433 – 1964-65 (27) FLR 204, in which the Hon'ble Court has observed that “*Administrative Authorities or Bodies are mandated to act fairly and objectively and in many cases to comply with Principles of Natural Justice.*” Hence, he pleaded that applicant be granted promotion to the rank of Naib Subedar from the date his batch-mates have been promoted and pay arrears accordingly.

5. On the other hand, Ld. Counsel for the respondents submitted that applicant was enrolled in the Army on 18.11.1973 and was discharged from service on 30.11.1997 on completion of terms of engagement. The applicant was superseded for promotion to the next rank of Naib Subedar due to lack of Annual Confidential Report (ACR) criteria. As such, he sent a statutory complaint on 24.01.1994 against his supersession for promotion which was processed to the competent authority, i.e. Chief of the Army Staff and after due consideration, it was rejected vide order dated 26.09.1997. The applicant was re-enrolled in DSC on 27.03.1999. The applicant filed Writ Petition No. 6544 of 1997 before the Hon'ble High Court of Judicature at Allahabad, which was transferred to this Tribunal and

registered as T.A. No. 175 of 2009. This Tribunal vide its order dated 05.01.2017 directed the applicant to submit his grievance to the respondents through an application which was submitted by the applicant vide his application dated 19.06.2017 and was examined by the competent authority and subsequently rejected vide order dated 13.12.2017 which was communicated to the applicant by the Record Office. The applicant being not satisfied with the speaking and reasoned order passed by the Chief of the Army Staff, has filed present O.A. before this Tribunal to issue directions to the respondents to grant promotion to the rank of Naib Subedar.

6. Learned counsel further submitted that applicant was promoted to the rank of Naik on 05.01.1982 and Havildar on 30.05.1985. The applicant was considered for promotion to the rank of Naib Subedar in the year 1990 and 1992 but due to lack of requisite Above Average entries in ACRs, he was superseded in promotion to the next higher rank due to lacking of ACR grading criteria as per IHQ of MoD (Army) policy letter dated 10.10.1997. ACR/grading criteria for promotion to the rank of Naib Subedar as per policy letter dated 10.10.1997 is as under :-

- (a) Only last five reports will be considered, out of which minimum three reports must be in the rank of Hav and in case of shortfall rest may be in the rank of Nk.

- (b) At least three out of last five reports should be “Above Average” with a minimum of two in the rank of Dfr/Hav and remaining should not be less than “High Average”.

7. The details of Annual Confidential Reports grading earned by the applicant from the year 1986 to 1993 are as under :-

(a)	1986	- 3
(b)	1987	- 3
(c)	1988	- 4
(d)	1989	- 2
(e)	1990	- 2
(f)	1991	- 3
(g)	1992	- 4
(h)	1993	- 3

Since, the applicant was not meeting required criteria and not falling in the eligibility zone as per promotion policy, he was not granted promotion to the rank of Naib Subedar. She pleaded for dismissal of Original Application.

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

9. It is pertinent to mention here that judgment relied up by the applicant in Para 4 above is not relevant in this case being based on different facts and circumstances and therefore, applicant cannot be given the benefit of aforesaid judgment.

10. We have perused the record and we find that representation dated 19.06.2017 submitted by the applicant, mentioning his grievances regarding non detailment in promotion cadre and quashing of ACR report which led to his disqualification for detailment

in promotion cadre and non grant of honorary Naib Subedar rank, was considered by the competent authority, i.e. Chief of the Army Staff and was rejected considering facts and circumstances of the case.

11. We observe that ACR for the period from 1986 to 1990 does not consider any merit since the applicant did not come up in seniority in 1990 to set in the Havildar to Naib Subedar promotion cadre which was conducted in the unit from Oct. 1990 to Jan. 1991. The next promotion cadre for Havildar to Naib Subedar was conducted in 1992 in which the applicant came up in the seniority but lacked ACR criteria.

12. We also find that in ACR gradings for the last five years which were taken into consideration for promotion to the rank of Naib Subedar for the vacancies in the year 1990 and 1992, applicant was lacking required ACR criteria of Above Average reports for higher promotion as he earned 2 points (Average Report) in the year 1989 and 1990 and thus, he was superseded in promotion. Since, the applicant was lacking mandatory requirements of ACR criteria as per promotion policy, he was not granted promotion to the rank of Naib Subedar. The applicant, on completion of terms of engagement, was discharged from service on 30.11.1997 as per rules/policy.

13. In view of the above, we do not find any irregularity or illegality neither in detailment in promotion cadre from Havildar to Naib Subedar and nor in ACR gradings to consider for promotion to the

rank of Naib Subedar. Hence, his prayer for grant of promotion to the rank of Naib Subedar has rightly been rejected by the respondents as per promotion policy and rules and regulations on the subject.

14. The Original Application is devoid of merit, deserves to be dismissed and is accordingly **dismissed**.

15. No order as to costs.

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

**(Vice Admiral Atul Kumar Jain)**

Member (A)

Dated: 18<sup>th</sup> May, 2023

SB

**(Justice Umesh Chandra Srivastava)**

Member (J)