

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

**ORIGINAL APPLICATION No. 574 of 2019**

Monday, this the 11<sup>th</sup> day of October, 2021

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

No. 4197087-F Naik Chatur Singh, 'D' Coy 8 Kumaon (attached with 15 Kumaon), C/O 56 APO, son of Shri Vikram Singh, resident of house No 34/1, Sanjog Chhetri Vihar, Lucknow Cantt, District-Lucknow, Pincode-226002 (U.P.).

..... Applicant

Ld. Counsel for the : **Shri KKS Bisht**, Advocate.  
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarters of the Ministry of Defence (Army), South Block, New Delhi-110011.
3. Commanding Officer, 8 Kumaon Regiment, PIN-911308, C/O 56 APO.
4. Officer-in-Charge Records, The Kumaon Regiment Ranikhet, PIN-900473, C/O 56 APO.
5. Commanding Officer, 15 Kumaon Regiment, PIN-911315, C/O 56 APO.

.....Respondents

Ld. Counsel for the  
Respondents.

**Shri Ashish Kumar Singh**,  
Central Govt. Standing Counsel

**ORDER**

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

(a) Issue/pass an order or direction to the respondents to quash/set aside the arbitrary and illegal order passed by CO 8 Kumaon, respondent No. 3 vide letter No. 154/NTHC/A2 dated 16 September 2019 (Annexure No A-1 (iii)) rejecting the claim of the applicant to attend the promotion cadre from the rank of Naik to Havildar.

(b) Issue/pass an order or direction of appropriate nature to the respondents to detail him for promotion cadre from the rank of Naik to Havildar at 15 Kumaon Regiment where he is presently attached.

(c) Issue/pass an order or direction of appropriate nature to the respondents to promote the applicant to the rank of Havildar at par with his colleagues whose promotion cadre was conducted from 02 September 2019 to 02 November 2019 with all consequential benefits.

(d) Issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.

(e) Allow this application with costs.

2. Brief facts of the case giving rise to this application are that applicant was enrolled in the Army on 08.09.2001 and after completion of military training he was posted to 8 Kumaon w.e.f. 20.07.2002. In the year 2010 while serving with 60 Rashtriya Rifles (Operational Area) he sustained splinter injury

in skull on 30.03.2010 and was admitted to Command Hospital, Northern Command. After prolonged treatment he was discharged from hospital in low medical category S1H1A1P3(T-24)E1 w.e.f. 10.09.2011 for disability 'Splinter Injury Brain (Optd)' and S1H2(T-24)A1P1E1 for disability 'Bilateral Sensorinerual Hearing Loss (ICD-H90.0)'. The aforesaid disabilities were declared as battle casualties and notified vide Part-II Order No. 1/002/02/2010 dated 16.04.2010 (Annexure CA-1). Later, he was placed in permanent low medical category S1H2(P)A1P3(P)E1 w.e.f. 14.02.2011 due to disabilities 'Splinter Injury Brain (Optd)', 'Bilateral Sensorinerual Hearing Loss (ICD-H90.0)' and S3(T-24)H1A1P1E1 due to disability 'Other Mental and Behavioural Disorder due to Brain Damage and Dysfunction (ICD-F06)' w.e.f. 24.04.2012. The aforesaid disabilities were reviewed from time to time and he is presently serving in low medical category S2H3(P)A1P3(P)E1 w.e.f. 24.02.2019. A promotion cadre from Naik to Havildar was conducted in his unit i.e. 8 Kumaon (CI Ops-High Altitude Area) from 02.09.2019 to 02.11.2019 in which applicant (being attached to 15 Kumaon for his disabilities) could not participate on account of his disabilities. Accordingly, unit did not include his name in Naik to Havildar promotion cadre and he was not promoted to the rank of Havildar alongwith his colleagues. This O.A. has been filed for inclusion of his name in promotion cadre from Naik to

Havildar and grant him regular promotion to the rank of Havildar by conducting promotion cadre in 15 Kumaon where he is presently attached.

3. Submission of learned counsel for the applicant is that applicant is a case of battle casualty and since his unit is deployed in High Altitude Area and he being attached to 15 Kumaon (peace area), his name be included in promotion cadre being conducted in present unit. His further submission is that despite being placed in low medical category, he was allowed to undergo in promotion cadre for Sep to Naik in the year 2016 and was promoted to the rank of Naik in the year 2017. His other submission is that despite being placed in low medical category, permission was also accorded to participate in Map Reading Course-I which he passed successfully in the month of June, 2019. Applicant had submitted representations on 09.09.2019, 20.09.2019 and 24.10.2019 for his promotion to the rank of Havildar but nothing tangible could be achieved so far. Applicant's learned counsel submitted that due to lacking of promotion cadre applicant's juniors have been promoted to the rank of Havildar and he was not allowed to take part in promotion cadre due to being placed in low medical category which happened due to battle casualty. His submission is that he be allowed to take part in promotion cadre being conducted in 15 Kumaon and promoted to the rank of Havildar alongwith his coursemates.

4. On the other hand, submission of learned counsel for the respondents is that applicant, who is serving in low medical categories viz. S2H3(P)A1P3(P)E1 and attached with 15 Kumaon (Peace Area) and his unit being deployed in High Altitude Area, was not permitted to attend promotion cadre on account of following restrictions imposed vide AFMSF-15:-

- (a) Unfit to handle weapons.
- (b) Unfit for remote posts or details and for combat conditions.
- (c) to work under supervision.
- (d) Review monthly at the nearest Medical/Psychiatric OPD.
- (e) Excuse strenuous physical activity exercises.

5. His further submission is that applicant's unit is deployed in High Altitude Area since 20.02.2018 and he is attached with 15 Kumaon (Peace Station) with an attendant due to his unstable condition. Applicant had submitted that he cannot reach Udhampur for cadre due to following reasons (Annexure-III to CA):-

- (a) His brain does not function properly.
- (b) He alone cannot perform any duty/work.
- (c) He cannot even rake his medicines from time to time.
- (d) Cannot undertake long journey as his Lt hand and leg are weak.
- (e) Cannot proceed on leave alone.

6. Learned counsel for the respondents further submitted that as per para 11 of Army Order 12/2009/MT/Promotion Test, NCOs in medical category SHAPE-I are only eligible to attend the cadre course. He submitted that since applicant was placed in low medical category, he was not allowed to attend the cadre course.

7. We have heard learned counsel of both the sides and perused the material placed on record.

8. It is not in dispute that applicant is serving in low medical category for aforesaid disabilities which occurred due to terrorist attack in J&K while serving in Field Area. The disabilities were declared battle casualty vide Part-II Order No. 1/002/02/2010 dated 16.04.2010 (Annexure CA-1) and a certificate dated 20.04.2019 to this effect is also on record (page 21 of O.A.). We find that applicant was promoted from Sep to Naik in the year 2017 while he was serving in low medical category as the disability with which he suffered occurred in the year 2010 on account of battle casualty.

9. Applicant's contention, that he was given permission for Map Reading-I course and Sep to Naik promotion cadre during his low medical category, is confirmed from the pleadings on record. We also take note of para 9 of the counter affidavit in which respondents have conceded that in case of war wounded NCOs, who are placed in low medical category, the Officer

Commanding is authorized to grant partial or total exemption from attending a cadre course on recommendation of medical officer.

10. In view of the above, we are of the view that since the applicant is a war wounded NCO, he could be allowed to undergo promotion cadre from Naik to Havildar by exempting his physical appearance.

11. A conspectus of aforesaid observation is that applicant deserves promotion from Naik to Havildar alongwith his batchmates. Respondents are directed to include his name in the promotion cadre conducted for the period 02.09.2019 to 02.11.2019 and promote the applicant from the post of Naik to Havildar alongwith his batchmates and grant consequential benefits accordingly.

12. In view of the above, O.A. is **allowed**.

13. No order as to costs.

14. Pending miscellaneous applications, if any, shall stand disposed off. 02.09.2019 to 02.11.2019

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

Dated:11.10.2021  
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