

**Court No. 1**  
**RESERVED**

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

**Original Application No 402 of 2018**

Wednesday, this the 6<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)**

Ex Sub/SKT JC No. 699609 P Prasanth M Kurup  
S/o Shri KP Madhava Kurup  
R/o Prasanth Bhavan, Kudassanad (PO), Palamel (Vill), Mavelikara  
(Teh) Alappuzha (Distt), Kerala State, PIN-689512  
..... Applicant

Ld. Counsel for the Applicant: **Shri Pankaj Kumar Shukla &**  
**Shri Virat Anand Singh**, Advocate

Versus

1. Union of India and others, through the Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated HQ of MoD (Army), DHQ PO, New Delhi – 110011.
3. The OIC Records, AMC Records, Lucknow.

..... Respondents

Ld. Counsel for the Respondents : **Shri Yogesh Kesarwani**,  
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) To direct the respondents to notionally promote the Applicant to the post of Nb Sub from the date juniors were being promoted (dates as official records Exhibits).
- (ii) To direct the respondents to consider Applicant for promotion to the rank of Sub Maj from the dates his

juniors had been promoted, (dates as per official Records).

- (iii) To direct the respondents to pay arrears of salary and allowances with interest.
- (iv) To pass order which their lordships may deem fit and proper in the existing facts and circumstances of the case.
- (v) Allow this application with cost.”

2. The factual matrix on record is that the applicant was enrolled in the Army in Army Medical Corps on 20.01.1988. He was promoted to the rank of Naik on 09.12.1991 with notional seniority w.e.f. 01.11.1991 and promoted to the rank of Havildar on 01.09.1995. He was promoted to the rank of Naib Subedar on 03.08.2013 and promoted to the rank of Subedar w.e.f. 01.07.2015. He was discharged from service in the rank of Subedar w.e.f. 01.02.2018 on completion of extended service limit under Rule 13 (3) item I (i) (a) of Army Rules, 1954. While serving with Military Hospital Trivendrum, he was detailed for UN Mission and accordingly applicant proceeded to IHQ of MOD (Army). During completion of pre-dispatch formalities for deputation to UN Mission, applicant submitted his unwillingness to to for UN Mission but it was rejected by the respondents. As required, applicant also signed on an adverse career certificate prior to his induction to UN Mission. On de-induction from UN Mission the applicant completed his SCC and was reconsidered for promotion to the rank of Naib Subedar. Accordingly, applicant was promoted to the rank of Naib Subedar on 03.08.2013 with notional seniority w.e.f.

18.07.2013. The applicant has been promoted to the rank of Subedar on 01.07.2015 but due to lack of his seniority in Nb Sub rank, the applicant was not selected for the post of Sub Maj. The applicant has submitted a Non Statutory Complaint dated 09.10.2017 for non empanelment in DPC for the year 2016 and DPC 2017 for promotion to the rank of Sub Maj which was examined by the competent authority and was rejected being bereft of merit and substance vide order dated 11.05.2018 and the same was communicated to the applicant vide letter dated 05.06.2018. Being aggrieved, the applicant has filed the present original Application.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Army in Army Medical Corps on 20.01.1988 and had served for 29 years and 09 months. The applicant was detailed for UN Mission in April 2012 and was directed to report IHQ of MOD (Army) forthwith for proceeding on deputation to UN Mission vide INDARMY signal dated 04.04.2012. The applicant reported on 23.04.2012 as per directions of IHQ of MOD (Army) and further reported to 422 Field Hospital on 23.04.2012. However, his induction could take place by 14.10.2012 (after lapse of six months from date of reporting) vide 422 Field Hospital movement order dated 14.10.2012. Because of undue delay in Mission Area, applicant rendered his unwillingness to go for UN Mission, vide letter dated 05.09.2012 and IHQ of MoD (Army) refused applicant's request citing organizational necessity vide letter dated 20.09.2012. Thereafter, applicant was detailed to undergo Senior Cadre Course (SCC) for promotion to the rank of Naib Subedar (SKT) vide letter dated 24.09.2012 but applicant

could not attend the course as he was not spared for the same. On his de-induction, applicant reported back to 422 Field Hospital on 10.05.2013 and was detailed to undergo SCC w.e.f. 17.05.2013 to 18.07.2013. The applicant was promoted to the rank of Nb Sub (SKT) on 03.08.2013 vide letter dated 25.07.2013. The applicant was promoted to the rank of Subedar on 01.07.2015. The applicant was screened for DPC for the rank of Sub Maj for the year 2017, however he was not empanelled.

4. Learned counsel for the applicant further submitted that many juniors were considered and were also promoted to the rank of Sub Maj as per report of DPC. The applicant attended late in SCC for the rank of Nb Sub for no fault of his own. Subsequently in 2017 his juniors had been considered and promoted to the post of Sub Maj. Since, service status is a fundamental right of a serving person and the applicant was placed behind in seniority row as compared to his juniors, he should be given his correct seniority.

5. Learned counsel for the applicant further submitted that in ***Counsel of Scientific and Industrial Research vs. K.G.S. Bhatt***, AIR 1989 SC 1972 : 1989 Lab IC 2010 the Hon'ble Apex Court placed reliance on various writings of known authors and observed that *“every management must provide real opportunities for promoting employees to move upward. The organization that fails to develop a satisfactory procedure for promotion is bound to pay a severe penalty in terms of administrative cause, mis-allocation of personnel, low morale and ineffectual performance among both non-managerial employees and their supervisors. There cannot be any modern*

*management much less in career planning man power development, management development etc which is not related to a system of promotions*". He further said that similar nature of cases had been allowed by the this Tribunal in T.A. No. 473/2010 **Hav BP Mishra vs. Union of India and others**, decided on 18.03.2016 and OA No. 50 of 2013 Ex **Hav SKT SK Parida vs. Union of India and Others**, decided on 12.08.2016 and pleaded for notional promotion of the applicant to the post of Nb Sub from the date his juniors were promoted and to the post of Sub Maj from the dates his juniors have been promoted.

6. Learned counsel for the respondents submitted that applicant was enrolled in the Army in Army Medical Corps on 20.01.1988. He was promoted to the rank of Naik on 09.12.1991 with notional seniority w.e.f. 01.11.1991 and promoted to the rank of Havildar on 01.09.1995. He was promoted to the rank of Naib Subedar on 03.08.2013 and promoted to the rank of Subedar w.e.f. 01.07.2015. He was discharged from service in the rank of Subedar w.e.f. 01.02.2018 on completion of extended service limit under Rule 13 (3) item I (i) (a) of Army Rules, 1954. While serving with Military Hospital Trivendrum, applicant was detailed for UN Mission (Indian Field Hospital, Level-II, South Sudan) vide IHQ of MOD (Army) signal dated 04.04.2012. Accordingly, the applicant proceeded to IHQ of MOD (Army) vide MH Trivendrum movement order dated 14.04.2012. The applicant was directed to report to 422 Field Hospital for completing pre-dispatch formalities for deputation to UN Mission vide letter dated 23.04.2012. As per Para 635 of AMC ROI No. 26/2014, every

JCOs/ORs proceeding to UN Mission are required to submit an adverse career certificate prior to their induction to UN Mission, accordingly, the applicant has submitted an adverse career certificate dated 12.04.2012 declaring that

- “(a) I am willing to proceed on foreign assignment if selected.
- (b) I am aware that during my tenure of duty abroad I will not be permitted to attend any cadre or course. I am also aware that my promotion may be announced due to the occurrence of vacancies during the currency of my tenure abroad. I declare that in such an eventuality I will not request for premature repatriation for the purpose of promotion before completing my tenure. Any loss in seniority or promotion that may result will be acceptable to me.
- (c) I also understand that individuals junior to me will be promoted during the currency of my tenure abroad and I may be superseded.
- (d) I will not make any claim for any loss that may occur due to my foreign posting.”

7. Learned counsel for the respondents further submitted that during the attachment with 422 Field Hospital, the applicant had forwarded an application dated 05.09.2012 to IHQ of MOD (Army), DGMS-3E for unwillingness to proceed to UN Mission vide 422 Field Hospital letter dated 05.09.2012. The application of the applicant was examined by the competent authority and was not agreed to due to organizational necessity vide IHQ of MOD letter dated 20.09.2012. The applicant was inducted into South Sudan (UN Mission) w.e.f. 15.10.2012 to 09.05.2013. Meanwhile the applicant was detailed to undergo Senior Cadre Course (SCC) in accordance with Corps seniority w.e.f. 06.11.2012 to 07.01.2013 vide AMC Records letter dated 24.09.2012. The applicant could not attend the same as he was inducted into UN Mission w.e.f. 15.10.2012. Thereafter, applicant was considered for promotion to the rank of Naib Subedar (SKT) for the

vacancies of 01.04.2013 alongwith his batchmates as per Corps seniority vide AMC Records letter dated 18.02.2013. The applicant was recommended for promotion to the rank of Naib Subedar but due to deficiency of Senior Cadre Course, which is a mandatory qualification for the promotion to the rank of Naib Subedar as per Army Order No. 45/8, he was not promoted. On de-induction from UN Mission the applicant was immediately detailed for SCC w.e.f. 17.05.2013 to 18.07.2013 vide Records letter dated 29.04.2013. Subsequently, on successful completion of SCC, the applicant was reconsidered for promotion to the rank of Naib Subedar for the vacancies of 01.08.2013 with notional seniority w.e.f. 18.07.2013 i.e. date of passing of SCC. Accordingly, applicant was promoted to the rank of Naib Subedar on 03.08.2013 with notional seniority w.e.f. 18.07.2013. The applicant has been promoted to the rank of Subedar on 01.07.2015 with seniority w.e.f 01.07.2015.

8. Learned counsel for the respondents further submitted that Departmental Promotion Committee (DPC) for the year 2016 was held during the month of July 2016 against the vacancies for the year 2017. The applicant was also considered for screening in the DPC 2016 but as per Army HQ letter dated 10.10.1997, applicant was lacking five reports in the rank of JCO, hence, his name was not considered due to lack of number of CRs in JCO rank. The DPC for the year 2017 was held during the month of Aug. 2017 against the vacancies for the year 2018. The applicant was considered for screening in the DPC 2017, however, the applicant could not be promoted to the rank of Subedar Major being low in merit as per

availability of vacancies. The selection is based on Overall Performance (OAP) selection system considering ACRs for last five years in the rank of JCO, Courses, honours & awards, service in field units/tenure during last 15 years, award of punishments and availability of vacancies.

9. Learned counsel for the respondents also submitted that the applicant has submitted a Non Statutory Complaint dated 09.10.2017 for non empanelment in DPC for the year 2016 and DPC 2017 for promotion to the rank of Sub Maj which was examined by the competent authority and was rejected being bereft of merit and substance vide order dated 11.05.2018 and the same was communicated to the applicant vide letter dated 05.06.2018. He pleaded for dismissal of O.A.

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

11. We observe that after being detailed for UN Mission and before proceeding to UN Mission as required by Para 635 of AMC ROI No. 26/2014, the applicant has submitted an adverse career certificate prior to his induction to UN Mission. This adverse career certificate compelled the applicant to forego the cadre course (which is mandatory for promotion) should it fall during the period of his UN deputation. The applicant signed the certificate on 12.04.2012, when (as admitted by the respondents during hearing) there was no intimation or fore warning to the applicant of the possibility of the cadre course falling due in Nov. 2012. As it turned out the said course fell due in Nov. 2012 just one month after his deputation to UN

Mission in October 2012. Had he known in April 2012, when he was made to sign the adverse career certificate, that the said course was falling due in Nov. 2012, and that he was likely to be on UN deputation at that time, he would have had all facts before him and perhaps avoided taking that fateful decision of signing on the adverse career certificate, after weighing the consequences of the same. When he became aware of the said cadre course much later and expressed his unwillingness in Sept. 2012 to proceed on the UN Mission, it was too late and consequently he missed the course which was scheduled from 06.11.2012 to 07.01.2013, all for no fault of his. As a result he could be detailed only for the next course from 17.05.2013 to 18.07.2013 immediately upon his return from UN Mission.

12. The net result of the delay in undergoing the mandatory course was that he could be promoted to rank of Nb Sub during the DPC held in 2013 and consequently got promoted on 03.08.2013, after his juniors. Thus he lost out timely promotion, which otherwise he was cleared for, only on the grounds of non completion of the mandatory course, for no fault of his. 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 to delay his promotion. We, therefore, consider that the date of promotion of the applicant be deemed to be on his rightfully due date (assuming he attended the cadre course held from 06.11.2012 to 07.01.2013) and not 03.08.2013.

13. It is also on record that the applicant was considered for promotion to Subedar Major in the DPC of 2016 for vacancies of

2017, but was found ineligible for the same due to lack of adequate CRs in rank of Nb Sub. This we opine is perhaps a result of the delay in promotion to the rank of Nb Sub w.e.f. 03.08.2013 rather than from an earlier date alongwith his original batch-mates. We, are, therefore, of the opinion that the applicant needs to be considered for the DPC held in 2016, assuming his actual date of promotion to Nb Sub from an earlier date as directed above.

14. In the result, the Original Application deserves to be allowed. The impugned orders passed by the respondents are set aside. Original Application is disposed of with the direction to the respondents to grant notional promotion to the rank of Nb Sub from the date his batch was promoted (i.e. before 03.08.2013) and further he be considered for notional promotion to the post of Sub Maj in DPC held in 2016 with all consequential benefits, if found otherwise fit for such promotion. The respondents shall take appropriate decision expeditiously, preferably within four months from the date of receipt of certified copy of this order. Delay shall invite interest @ 8% per annum till actual payment.

15. No order as to costs.

	<b>(Vice Admiral Abhay Raghunath Karve)</b>	<b>(Justice Umesh Chandra Srivastava)</b>
	<b>Member (A)</b>	<b>Member (J)</b>
Dated:	October, 2021	
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