

ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW

Court No 3

T.A. No. 5 of 2011

Tuesday, the 01st September, 2015

**“Hon’ble Mr. Justice D.P. Singh, Judicial Member
Hon’ble Air Marshal Anil Chopra, Administrative Member”**

**Ram Krishna son of Dwarika Prasad, 14378719 Hav
(Store Keeper Technical) 109 Light Air Defence
Regiment (S.P.) Babina, District - Jhansi**

.....Petitioner

Ld. Counsel for the Petitioner - **Shri R. Chandra, Advocate**

Versus

1. Union of India through Secretary (Defence), New Delhi.
2. Army Headquarters Air Defence, through Director Air Defence, Army – 5, New Delhi
3. Army Air Defence Records, Nasik
4. 614 Independent Mech A.D. Brigade, Jhansi
5. 109, Light Air Defence Regiment (S.P.) through Commanding Officer.
6. JC-298724Y Nb Sub (SKT) Ram Kewal, 45 AD Regt
7. JC-29880Y Nb Sub (SKT) Amal Kumar Mandal, 436 AD Msl Regt (SP)
8. JC-298991W Nb Sub Vijay Chandra Singh, 668 R & O Sqn.
9. JC-298975Y Nb Sub (SKT) Narain Singh Jina, 405 Lt AD Regt.

....Respondents

Ld. Counsel for the
Respondents

- **Shri D.K. Pandey,
Central Govt. Counsel
Assisted by Lt Col Subodh
Verma, Departmental
Representative for the
Respondents**

ORDER**(Passed in Court)**

1. After hearing Ld. Counsels for the parties we admit the Transfer Application and proceed to decide finally with the consent of Ld. Counsels for the parties.

2. A Havildar of Indian Army has approached this Tribunal under Section 14 (2). His grievance is that in January 2006. He was graded above average and recommended for promotion by both I.O. and R.O. in the year 2006 and vacancy was available but he was not considered for promotion to the rank of Nb Sub. The petitioner was to become overage on 31.12.2006 for promotion to the rank of Nb Sub, subsequently he was discharged as Havildar on 01.01.2008. It is admitted fact that his Annual Departmental Promotion Board was convened in the month of January each year from 2003 to 2006. Shri A.K. Singh, Ld. Counsel for the Applicant admits that on 01 Jan 2007, the applicant became overage hence the petitioner became ineligible for promotion to the rank of Nb Sub. It is admitted fact that the individual's maximum qualifying age for promotion is 46 years and on 01 January 2007, he crossed the age of 46 years and entered in 47 year. Age relaxation for promotion is granted only to those persons who have outstanding achievement which bring credit to the army as a whole or a rare qualification provided that the retention of an individual by virtue of that qualification is an inescapable requirement.

3. Keeping admitted fact on record, that the applicant became overage on 01 January 2007, there is no occasion on part of the Respondents to consider his case for promotion to the rank of Nb Sub. The petitioner did not fall in the category of outstanding achievements. Admittedly the applicant retired on 01 January 2008. The writ petition was submitted by Ld.

Counsel for the petitioner to consider for promotion to the rank of Nb Sub with retrospective date.

4. As per rule "to be considered for promotion is fundamental right but to claim promotion is not right. The petitioner was considered for promotion each year from 2003 to 2006 but he could not make the grade due to non meeting ACR criteria for promotion and he was not found fit for promotion in January 2006. In the next year, he became over age, hence no order may be passed to grant him promotion from the rank of Hav to Nb Sub. It is well settled proposition of law, opinion of the board cannot be interfere by the Tribunal or any court in prevention of statutory provision. Accordingly, no order can be passed by this Tribunal after the gap of 8 years. More so, he was not eligible for promotion in Jan 2006.

5. Thus, in the result, Transfer Application is devoid of merit and has no force.

6. Dismissed.

7. No order as to cost.

(Air Marshal Anil Chopra)
Member (A)

ukt/-

(Justice D.P Singh)
Member (J)