

**Form No. 4** **Court No 1**  
**{See rule 11(1)}**  
**ORDER SHEET**  
**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**

**O.A. No. 615 of 2017**

**Layak Singh**

By Legal Practitioner for the Applicant

Applicant

Versus

**Union of India & Others**

By Legal Practitioner for Respondents

Respondents

<b>Notes of the Registry</b>	<b>Orders of the Tribunal</b>
	<p><b><u>14.09.2022</u></b>  <b><u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u></b>  <b><u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></b></p> <p>O.A. No. 615 of 2017 is <b>dismissed</b>.</p> <p>For order, see our judgment passed on separate sheets.</p> <p>Misc. Applications, pending if any, shall be treated as disposed of accordingly.</p> <p style="text-align: center;">(Vice Admiral Abhay Raghunath Karve) Member (A)</p> <p style="text-align: center;">(Justice Umesh Chandra Srivastava) Member (J)</p> <p>rathore</p>

**COURT No.1****ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW****ORIGINAL APPLICATION No. 615 of 2017**

Wednesday, this the 14<sup>th</sup> day of September, 2022

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

JC-405178N Layak Singh, son of Late Shri Padam Singh, resident of village-Shishram, Post Office-Sonkh, Tehsil and District-Mathura-281123.

..... Applicant

Learned counsel for the : **Shri Isharaq Farooqui**, Advocate  
Applicant

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, New Delhi.
2. Commanding Officer, 11<sup>th</sup> Battalion, Brigade of the Guards, Pathankot-910911.
3. Company Commander (C Company), 11<sup>th</sup> Battalion, Brigade of the Guards, Pathankot-910911.
4. Records, Brigade of the Guards, PIN-900746, C/o 56 APO.

.....Respondents

Learned counsel for the : **Shri GS Sikarwar**, Advocate  
Respondents. Central Govt. Counsel

**ORDER (Oral)**

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

- (a) *Issue a suitable order or direction to the respondent authorities to forthwith promote the applicant on the post of Subedar from the date of his junior Iqbal Singh has been promoted with all consequential benefits of services including arrears of pay.*
- (b) *Issue suitable order or direction to the respondent authorities to reinstate the applicant in service and allow him to perform duty on the post of Subedar and pay him salary regularly as and when it falls due.*
- (c) *Pass any other suitable order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.*
- (d) *Allow the original application with costs in favour of the applicant.*

2. Brief facts of the case are that the applicant was enrolled in the Brigade of the Guards Regiment on 28.08.1991. He was promoted to the rank of Naib Subedar on 10.06.2014 as per his seniority in the Battalion and transferred to pension establishment on 31.08.2017 under Rule 13 (3) I (i) (a) of Army Rules, 1954 on fulfilling the terms of his engagement after rendering 26 years and 03 days service. He was granted service pension vide PPO No 8/31968/2017 (Army). While in service against his non promotion to the rank of Subedar, he preferred petition dated 05.01.2016 with regard to non consideration of his promotion to the rank of Subedar. He again preferred a petition dated 18.10.2016 regarding his adverse annual confidential report for the year 2016

to which the Record Office made submission vide letter dated 03.11.2016 intimating him technically validity of the report. Pursuant to this applicant has filed this O.A. for his re-instatement in service and grant of Subedar rank from the date his juniors were promoted.

3. Learned counsel for the applicant submitted that due to his loyalty and honesty the applicant was promoted to the rank of Naib Subedar. He further submitted that the applicant was due to be promoted to the rank of Subedar on 01.01.2016 but he was not promoted and in his place his immediate junior Shri Iqbal Singh was granted regular promotion ignoring the name of the applicant. It was further submitted that due to inaction on the part of the respondents the applicant has been denied promotion and he was discharged from service at the age of 46 years.

4. Learned counsel for the applicant further submitted that had there been any adverse remarks in his CR, it should have been communicated to the applicant as per para 44 of AO 1/2002/MP which being not communicated resulted in arbitrariness and malafide intention on the part of the respondents. He pleaded for grant of Subedar rank by re-instating him in service and grant pension to the rank of Subedar.

5. Per contra, learned counsel for the respondents emphatically submitted that the applicant lacked the required ACR criteria for promotion to the rank of Subedar. Further, it was submitted that as per norms fixed for promotion, last three ACRs are considered

for promotion from Naib Subedar to Subedar in which at least one report should be in the rank of Naib Subedar and the rest may be in the rank of Havildar. It was further submitted that in the year 2016 the applicant was graded 'low average JCO' in his CR therefore, he was not promoted to the rank of Subedar. He further submitted that in terms of para 6 of policy letter dated 10.10.1997 the applicant was not meeting the required CR criteria for promotion to the rank of Subedar, therefore, he could not be promoted to the next higher rank and he was superseded by his eligible and qualified juniors.

5. Learned counsel for the respondents pleaded for dismissal of O.A. stating that since the applicant did not fulfil the ACR criteria, hence he was not promoted to the rank of Subedar.

6. Heard Shri Isharaq Farooqui, learned counsel for the applicant and Shri GS Sikarwar, learned counsel for the respondents and perused the material placed on record.

7. Applicant was enrolled in the Army on 28.08.1991 and in due course of time he was promoted to the rank of Naib Subedar. He was due to be promoted to the next higher rank of Subedar on 01.01.2016 but he was superseded on account of his low average CR for the year 2016. As per promotion policy issued vide letter dated 10.10.1997, last three ACRs in the rank of Naib Subedar are required to be considered for next promotion and all these ACRs should be 'High Average' and above. The Applicant was considered by Departmental Promotion Committee and was not approved to

the rank of Subedar in view of his ACR for the year 2016 in which the Applicant was graded "Low Average". All three ACRs earned in the rank of Naib Subedar should have been High Average or Above Average but in the case of the Applicant, he was graded 'Low Average' in CR for the year 2016, as such he is lacking ACR criteria for promotion to the rank of Subedar. For convenience sake extract of the aforesaid policy is reproduced as under:-

"7. For Promotion to the rank of Ris/Sub

- (a) Last three reports will be considered out of which at least one should be in the rank of Nb Sub and two may be in the rank of Hav, in case of shortfall.  
 (b) All these reports should not be less than 'High Average'.  
 (c) The individual should be recommended for promotion in all the three reports".

8. The applicant earned 'low average' CR in the year 2016 in Naib Subedar rank and therefore, he was superseded by his juniors. Weak points and low figurative CR are intimated to the ratee as per Para 44 of AO 1/2002/MP but the applicant refused to sign the extract which was witnessed by Maj Rahul Gautam and Sub Maj Joga Singh of his unit. For convenience sake, communication slip is reproduced as under:-

"COMMUNICATION SLIP AS PER PARA 44 OF AO 1/2002/MP  
 IN RESPECT OF JC-405178N NB SUB (DVR) LALYAK SINGH

18. Reviewing Officer Pen Picture

A low average JCO

Overall Grading

97
3

Signature of Ratee: Refused to sign  
 Dated: 2016

Sd/- x x x x x  
 (Col Satyajir Pujari)  
 Appt : CO (RO)  
 Dated : 15.10.2016

Witness:-

Sd/- x x x x x x

(i) IC-77088P Maj Rahul Gautam

Sd/- x x x x x

(ii) JC-403938M Sub Maj Joga Singh"

9. Thus, from the aforesaid it is evidently clear that the applicant was not promoted to the rank of Subedar on his earning low average CR in the year 2016. Extracts were not accepted by the applicant as he did not sign the communication which was witnessed by two persons. We find that the CR for the year 2016 was accepted by the Records being technically valid.

10. In view of the above, the O.A. is **dismissed** being devoid of merit.

11. No order as to costs.

12. Pending application(s), if any, stand disposed off.

**(Vice Admiral Abhay Raghunath Karve)**  
**Member (A)**

**(Justice Umesh Chandra Srivastava)**  
**Member (J)**

Dated: 14.09.2022

*rathore*