

Court No. 1

Reserved

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 310 of 2020

Wednesday, this the 13th day of September, 2023

**“Hon’ble Mr. Justice Ravendra Nath Kakkar, Member (J)
Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

Nityanand Mondal (Army No. 15767587P), S/o Shri Gobind Mondal, R/o
Qtr No. 80/7, Punjab Niwas, Faizabad Cantt, Uttar Pradesh – 224001.

..... Applicant

Ld. Counsel for the : **Shri Gyan Singh, Advocate.**
Applicant

Versus

1. Union of India, through Chief of the Army, Staff Army
Headquarter, Ministry of Defence, New Delhi.
2. Commanding Officer, 325 LT AD Regt.(Comp), PIN – 926325, C/o
56 APO.
3. SRO for IOC Records, 325 Lt AD Regt.(Comp), PIN- 926325, C/o
56 APO.

.....Respondents

Ld. Counsel for the : **Mrs. Deepti Prasad Bajpai,**
Respondents. **Central Govt. Counsel**

ORDER

“Per Hon’ble Mr. Justice Ravendra Nath Kakkar, Member (J)”

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

- (a) *to expunge the illegal, arbitrary adverse entry in ACR of applicant in the interest of justice as the same is also against natural justice by not communicating to the applicant and further not providing opportunity to the applicant to give his explanation.*
- (b) *to provide promotion to Applicant according to his seniority in the interest of justice 01.01.19.*
- (c) *Direct Respondents to consider the case of applicant and provide promotion to applicant, in the interest of justice.*
- (d) *Costs and expenses of the application in favour of the applicant against the Opposite Parties.*
- (e) *Any other relief of reliefs which this Hon’ble Tribunal deems fit and proper in the circumstances of the case may also be granted.*

2. Briefly stated, applicant was enrolled in the Indian Army on 26.02.1998 and during course of his service he was promoted to the rank of Hav on 06.12.2012 with ante date seniority with effect from 21.11.2012. Regular Unit Promotion Board for promotion to the rank of

Nb Sub was held on 30.11.2019. He was considered for promotion but was not empaneled to the rank of Nb Sub. He was discharged from service on completion of terms of engagement in the rank of Hav w.e.f. 28.02.2022 (AN). Being aggrieved, applicant has filed this O.A. with the prayer to promote him to the rank of Nb Sub.

3. Learned counsel for the applicant submitted that applicant was promoted to the rank of Nk on 01.03.2008 and further promoted to the rank of Hav on 06.12.2012. He performed his duties without any complaint and he was awarded various awards/medals for his service. On 09.08.2019, he was issued a counselling letter without any fault for unacceptable attitude and behavior for which he was warned to show improvement. He was given adverse entry in his ACR which was not communicated to him. Due to adverse entry, he was not promoted and his juniors namely Ram Lakhan Singh, Shyamal Kumar Biswas were promoted to the rank of Nb Sub on 01.01.2019 and Chandra Harsh was promoted on 01.09.2019. Learned counsel for the applicant submitted that the applicant was not promoted to the rank of Naib Subedar on 01.01.2019 unjustly and arbitrarily without any valid reason. Applicant made Statutory Complaint dated 16.12.2019 which has not yet been decided by the respondents. Learned counsel for the applicant pleaded that instructions be issued to respondents to promote the applicant to the rank of Nb Sub according to his seniority with effect from 01.01.2019.

4. Per contra, learned counsel for the respondents contended that the applicant was serving with 325 Light Air Defence Regiment (Composite) with effect from 31.12.2016. He was promoted to the rank of Hav with effect from 06.12.2012 with ante date seniority from 21.11.2012. Promotion is based on meeting criteria of discipline, medical standard and ACR grading as per Integrated Headquarters of Min of Def (Army) letter No B/33513/AG/PS2(c) dated 10.10.1997. He was considered for promotion to the rank of Naib Subedar in Regular Unit Promotion Board held on 30.11.2019 at his own turn with his batch matches but was superseded by his eligible and qualified juniors as he did not fulfil the ACR grading criteria as per paragraph 6 of policy letter dated 10.10.1997. His junior Havs those who have been promoted to the rank of Nb Sub were meeting all promotion criteria including ACR grading as laid down in policy letter dated 10.10.1997, hence there was no discrimination against the applicant. In his last five years ACR for the period from 2015 to 2019, there is no adverse report, hence there is no need to communicate the same to the applicant in terms of para 42 of Army Order 1/2002/MP. Learned counsel for the respondents pleaded that instant O.S. has no substance and is liable to be dismissed.

5. We have heard learned counsel for the parties and perused original documents and policy letters available on the subject.

6. The facts necessary for adjudication of the present controversy are that the applicant was enrolled in the Army on 26.02.1998 and during the course of his service he was promoted to the rank of Naik and Havildar. His next promotion Regular Unit Promotion Board to the rank of Naib Subedar was held on 30.11.2019 and as per policy preceding five CRs in the rank of Havildar/Naik were considered. We have perused the Original documents and as per documents following five CRs were considered for his promotion to the rank of Nb Sub:-

Year	Grading	Recommendation for promotion	Rank	Remarks of Promotion Board
2015	8	R	Hav	Not Accepted Clause 1
2016	6	R	Hav	
2017	6	R	Hav	
2018	5	R	Hav	
2019	6	R	Hav	

7. Based on policy letter dated 10.10.1997, the following is the criteria for promotion to the rank of Nb Sub:-

- (i) Only last five reports will be considered out of which minimum three reports must be in the rank of Havildar and in case of shortfall rest may be in the rank of Naik.

(ii) At least three out of last five reports should be 'Above Average' with a minimum of two in the rank of Havildar and remaining should be not less than 'High Average'.

8. On perusal of aforesaid ACR Grading of the applicant, it is abundantly clear that the applicant was required to possess two CR entries of 'Above Average' gradings to enable him to get next rank but since the applicant was having only one 'Above Average' entry in the rank of Havildar, hence he was not empaneled for promotion to the next rank of Nb Sub which he is claiming.

9. On scrutiny of last five years ACR of the applicant from 2015 to 2019, it has also been found that there is no adverse report in it. Hence, there was no need to communicate the same to the applicant.

10. Para 42 of Army Order 1/2002/MP deals with communication of Pen Picture which states that the following aspects, wither endorsed in the Pen Picture, Figurative assessment or overall grading will be communicated to the rattee by the Initiating Officer (IO).

- (a) Week Points.
- (b) Adverse Remarks.
- (c) Advisory Remarks.
- (d) 'Low Average' or 'Below Average' assessment whether in figurative assessment or overall grading.

11. Having given our anxious consideration and keeping in view the policy in vogue, since the applicant was lacking the minimum entries in the relevant Annual Confidential Reports required for promotion to the rank of Nb Sub, we are of the considered view that the applicant has rightly been denied promotion to the rank of Nb Sub on 01.06.2014.
12. In view of the above, the O.A. is **dismissed** being devoid of merit.
13. No order as to costs.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Ravindra Nath Kakkar)
Member (J)

Dated: 13 September, 2023
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