

(Reserved)

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 67 of 2021

Tuesday, this the 11th day of July, 2023

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

“Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”

Sub Manohar Lal (JC-422169H), S/O Sri Desh Raj C/o Sri Ramesh Kumar, 591 Baldev Vihar Colony, Telibagh, Lucknow.

..... Applicant

Ld. Counsel for the Applicant : **Col AK Srivastava (Retd) and
Ms. Hemlata, Advocate.**

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi - 110011.
2. The Chief of the Army Staff, IHQ of MoD (Army), South Block, New Delhi - 110011.
3. The Commanding Officer, 2 Mech Inf, C/o 56 APO.
4. Commanding Officer (Jul 2016 to Jun 2019) 2 Mech Inf (1 JAT LI), C/o 56 APO
5. OC Records, Records the Mech Inf, Ahamadnagar
6. PCDA (P), Draupadi Ghat, Allahabad.

..... Respondents

Ld. Counsel for the Respondents : **Ms. Appoli Srivastava,
Central Govt Counsel.**

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

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

- “(a) That inconsistent and under rated ACRs in respect of the applicant between 2015 to 2019 be set aside and he be granted the rank of a Subedar Major on basis of consistent ACRs and other carrier achievements w.e.f. Jan 2020 i.e. prior to date of promotion of his juniors.*
- (b) That the applicant should be granted the rank of a Hony LT w.e.f. 26 Jan 2020 if found fit after setting aside his aforesaid inconsistent and under rated ACRs between 2015 to 2019.*
- (c) That the applicant should be granted the rank of a Hony Capt w.e.f. 15 Aug 2020, if in merit, after quashing inconsistencies.*
- (d) That necessary action as deemed appropriate in aforesaid facts and circumstances be taken in the interest of justice as well as in organizational interest.*
- (f) Allow this application with cost.”*

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 27.12.1990. He served various stations even Field

and High Altitude stations with utmost sincerity and dedication and satisfaction of the senior and in the interest of organisation during more than 29 years of service. He was promoted timely upto the rank of subedar in Nov 2016. In spite of good service record, neither he was promoted to the rank of Subedar Major (Sub Maj) nor he was granted Hony Rank of Lt and Capt. He represented his case for grant of promotion which was rejected. The instant original application has been filed against the denial of his promotion to the rank of Sub Maj and grant of Hony rank of a Lt and Capt.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Indian Army on 27.12.1990 and after having successfully completed his rigorous training he was posted to 2 Mech Inf (1 JAT LI). He served various stations even Field and High Altitude stations with utmost sincerity and dedication and satisfaction of the senior and in the interest of organisation during more than 29 years of service. He was timely promoted upto the rank of subedar in Nov 2016. The applicant was considered for promotion of Subedar Major through DPC 2020 in the month of Oct/Nov 2019 but was not empanelled for said promotion. Applicant was aware that he has earned two outstanding ACRs i.e. in 2017 and 2018 as he was never warned/ counselled for drop in performance. The ACRs preceding 2017 i.e. 2015 and 2016 must have been at least Above Average if not outstanding since an individual suddenly

can't improve his performance to outstanding from high average. Due to consistent and outstanding performance, the applicant was repeatedly selected to participate and train various teams between 2012 to 2018. The applicant cheerfully performed the duties of senior JCO and Platoon Cdr to the utmost satisfaction of Commanding Officer and Company Commander even after superseded in the present rank of a Sub Maj in early 2020. The applicant completed various significant tasks assigned to him during COVID-19. Unparalleled performance entailed not only outstanding ACRs but also warranted at least award of a commendation card which would have gone a long way in motivating other PBORs of the unit to achieve better results in organisational as well as in individual carrier interest besides giving weightage, in terms of promotions to the rank a Sub Maj, Hony ranks of a Lt/Capt.

4. Ld. Counsel for the applicant further pleaded that 22 persons of unit were awarded commendation cards in a short period between Jul 2016 to Jun 2019 and too in a peace station and leading to additional weightage points in respective DPCs. Further Subedars who were awarded commendation cards would have surely been graded comparatively much better in ACRs which ensured their promotion to the rank of Sub Maj and / or Honorary ranks. He alleged that Sub Krishna Kumar, Sub Om Singh and Sub Desh Raj were given additional weightage points while being considered for

promotion to the rank of Sub Maj in DPC 2019 due to being awarded commendation card in 2018. Commendation card in respect of Sub Krishan Kumar came late in Nov/Dec 2018 i.e. after he was not empanelled for promotion in DPC 2019. He represented against his supersession and he was empanelled for promotion by his 2ndDPC 2020 (held in Oct/Nov 2019) and was promoted to the rank of Sub Maj, just prior to his retirement on 31 Mar 2020 while Sub Deshraj was granted the rank of a Hony Lt before retirement on 15 Aug 2020 due to award of commendation cards and outstanding ACRs. There were few senior Subedars including applicant whose citations were not initiated for award of Commendation Card due to which neither they were given additional weightage nor given outstanding ACRs. The applicant has illegally and arbitrarily not been given commendation card leading to denial of his promotion to the rank of Sub Maj by DPC 2019 and subsequently not been promoted to the Hony Lt on 15 Aug 2020. Applicant submitted statutory complaint dated 13.10.2020 which has not been replied by the respondents. Learned counsel for the applicant pleaded that ACR of the applicant for the period from 2015 to 2019 be set aside and respondents be directed to promote the applicant to the rank of Sub Maj and grant Hony rank of Lt and Capt.

5. Per contra, Ld. Counsel for the respondents submitted that applicant was enrolled in the Army on 27 Dec 1990. He was

promoted to the rank of Sub with effect from 01 Nov 2016 & discharged from service on 31 Dec 2020 (AN) on completion of his terms and engagement. As per policy laid down in IHQ of MoD letter dated 10.10.1997, concerned Record Office decides the seniority / batch of Subedars to be considered for promotion to the rank of Sub Maj. Out of those Subedars who qualify for promotion by Departmental Promotion Committee (DPC) against anticipated vacancies are promoted to the rank of Sub Maj. Applicant was considered for promotion to the rank of Sub Maj by the DPC for the year 2020 held on 18 Nov 2019 but being low in merit in overall performance, he failed to get place in the selected panel of DPC 2020. He further stated that 04 Subs of 2012, 2013 & 2014 batches were screened but none of them could make the grade in Regimental select panel of DPC 2019. Hence, as per policy dated 10.10.1997, for selection of Battalion Sub Maj of 2 MECH INF was implemented in which Sub Om Singh was making the grade and therefore, was appropriately empanelled in DPC 2019. Rank of Subedar Major is a rank of selection grade in the Army and it is not given on the basis of seniority but it is purely on the basis of merit drawn by DPC.

6. Ld. Counsel for the respondents submitted that there was no drop in performance of the applicant and he was graded in the ACRs as per his performance. He was graded 'Outstanding' in his ACRs for

the year 2017 and 2018 but his ACRs preceding two years and succeeding two years were not as good i.e. outstanding. Applicant's claim to set aside the ACRs of the year 2015-16 and to consider him for promotion to the rank of Sub Maj & Hony Commission is not logical and is against the rules and regulations. He submitted that award of commendation card is based on specific performance of an individual in an event and relating it to certain caste is not reasonable. It is not possible to award Commendation Card to each and every person of army..

7. Learned counsel for the respondents pleaded that as per the policy of grant of honorary commission/rank, Records Office is responsible to provide the service records of all eligible individuals for grant of Honorary Commission/Rank to the IHQ. Records MIR of JCO submitted the service records of the applicant for first chance & second chance for grant of Hony Commission rank to IHQ of MOD through respective command HQ. Applicant could not make the grade and he was not promoted to the rank of Hony Lt. He submitted statutory compliant against denial of promotion to the Hony rank if Lt. & Capt on 13.10.2020 which was returned to the applicant as the same was not in correct format. He was given correct format and advised to submit the same duly rectified. Fresh statutory compliant dated 14.12.2020 was received but it was not ink signed. So it was returned to the applicant and questioned whether the complaint was

signed and submitted by him or someone else. It was informed that applicant had forwarded his complaint through his wife hence, complaint was not signed in ink.

8. We have perused the records and analysed the submissions of both the counsels and find that promotion to the rank of Sub Maj is a selection grade and purely on the basis of merit drawn by Departmental Promotion Committee (DPC) in Army and it is not given on the basis of seniority and only best of best can make through due to very less number of vacancies of Sub Maj. ACRs of the applicant of preceding and succeeding two years were not good i.e. outstanding. ACR grading were given on the performance of the applicant during those particular years. His claim to set aside his ACR for the year 2015 and 2016 and to consider him for promotion to the rank of Sub Maj and Hony commission is not logical and is against the rules and regulations. Award of commendation card is based on specific performance of an individual in an event. ACR is an exclusive right of an Initiating /Reviewing Officer on the basis of ratee's performance during the period of report and the applicant had performed his duties well, no adverse remarks were given to him in his ACR during the mentioned period but applicant could not be promoted to the rank of Sub Maj being not made the merit. Merely qualifying for consideration by DPC does not entitle a Sub for promotion to the rank of Sub Maj. Selection is based on seniority

cum merit depending upon the vacancies available. 4 Subedars of 2012, 2013 and 2014 batches were screened but none of them could make the grade in Regimental selection panel of DPC 2019. Hence, as per policy issued by IHQ of MOD (Army) vide para 15 of Appendix 'C' to IHQ of MOD (Army) letter dated 10.10.1997, for selection of Battalion Sub Maj of 2 Mech Inf was implemented in which Sub Om Singh was making the grade and therefore, was appropriately empanelled in DPC 2019. As per Policy issued vide IHQ of MoD (Army) letter No B/33513/AG/PS (c) dated 04.12.2000, recalling of Sub Maj from ERE is step III and can be only implemented when no Subedar from Separate panel makes the grade. Award of citation is based on specific performance of an individual during an event and it is not possible to award Commendation Card to each and every person of army. As per IHQ of MOD letter dated 10.10.1997 qualifying criteria for consideration by the DPC under Overall Performance (OAP) is last five reports in the rank of JCO will be counted. Out of which at least three reports should be Above Average and remaining two 'High Average'. Two out of last five report should be on Regimental duty/ or as an instructor in an Army School of Instructions including IMA, NDA, OTA and ACC, one of these two reports must be Above Average. The individual should have been recommended for promotion in the last five report in the rank of JCO. The applicant was not promoted to the rank of Sub Maj

as he was not found in merit. His statutory complaint was returned back as the same was not in correct format.

9. As far as grant of Hony Commission is concerned, after perusing of original extract of allotted marks (Confidential), placed before the Bench by the Departmental Representative, it is held that Sub Manohar Lal of Mech Inf Regt was considered for grant of Hony Commission in two chances, first on the occasion of Republic Day 2020 and last on Independence Day 2020. On Republic Day 2020 applicant had scored 29 marks against the cut off of 43 marks and stood at Ser No 1422 in merit list. Sub Shiva Nand who was the last person scored 43 marks and granted with Hony Commission as Lieutenant stood at Ser No 1385 in merit list. There are 36 persons in between the last person who was awarded Hony Commission and applicant who was not in the merit list. On Independence Day 2020 (last chance), Sub Manohar Lal scored 32 marks against the cut off of 37 marks and stood at Ser No 1227 in merit list. Sub Arvind Kumar Verma who was the last person scored 37 marks and granted with Hony Commission as Lieutenant stood at Ser No 1213 in merit list. There are 13 persons in between the last person who was awarded Hony Commission and the applicant who was not in the merit list. Thus, we find that applicant was fairly considered for grant of honorary commission as a first chance on Republic Day 2020 and as second chance on Independence Day

2020 but he did not make the merit against the vacancies allotted in both the chances.

10. In view of above, we do not find any illegality or illogicality in rejecting the claim of the applicant for promotion to the rank of Sub Maj as well as for grant of Hony Commission to the rank of Lt. The O.A. is devoid of merit and deserves to be dismissed.

11. In view of the above, the O.A. lacks merit and is accordingly **dismissed.**

12. No order as to costs.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Ravindra Nath Kakkar)

Member (J)

Dated: 11 July, 2023

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