

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

**O.A. No. 220 of 2019**

**Hav/SKT Singh Manoj Kumar Shri Narayan**  
 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>15.09.2022</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 style="text-align: center;">O.A. No. 220 of 2019 is <b>dismissed</b>.</p> <p style="text-align: center;">For order, see our judgment passed on separate sheets.</p> <p style="text-align: center;">Misc. Applications, pending if any, shall be treated as disposed of accordingly.</p> <p style="text-align: center;">(Vice Admiral Abhay Raghunath Karve)  <b>Member (A)</b></p> <p style="text-align: center;">(Justice Umesh Chandra Srivastava)  <b>Member (J)</b></p> <p>rathore</p>

**COURT No.1****ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW****ORIGINAL APPLICATION No. 220 of 2019**

Thursday, this the 15<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)**

13991967K Hav/SKT Singh Manoj Kumar Shri Narayan son of Shri Narayan Singh, resident of Village Dhandhari, Post-Kaoudia, District-Azamgarh, State-UP, Pin-276141.

..... Applicant

Learned counsel for the : None  
Applicant

Versus

1. Union of India, through the Secretary (Min of Defence), Government of India, New Delhi.
2. The Chief of Army Staff, Army Head Quarters, New DHQ, Post Office-New Delhi.
3. In-Charge Army Medical Corps Office, Promotion Section, PIN-900450, C/o 56 APO.
4. Officer-in-Charge, AMC Records Lucknow, PIN-226002.

.....Respondents

Learned counsel for the : **Shri Anurag Mishra, 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) *To quash the order dated 02.02.2019 up to it impacts over the promotion of the applicant.*
- (b) *To direct the respondents to decide the representation dated 12.02.2019 and award promotion of the applicant on the post of Naib Subedar with retrospective effect.*
- (c) *To pass any other order which this Hon'ble Tribunal deems fit under the circumstances of the case.*
- (d) *To award cost of the original application to the applicant*

2. Brief facts of the case are that the applicant was enrolled in the Army Medical Corps (AMC) on 22.06.1995. During the course of his service he was promoted to the rank of Naik on 09.06.2003 with seniority w.e.f. 01.04.2003 and Havildar on 04.09.2009 with seniority w.e.f. 17.08.2009. As per applicant he earned good reports throughout his service especially in the last five years as he was never communicated any adverse remarks in his confidential reports. His promotion to the rank of Naib Subedar was due on 01.03.2019 along with his colleagues but he was found ineligible for promotion for the reason of 'temporarily superseded due to ACR grading criteria'. Letter dated 02.02.2019 intimating his supersession

was forwarded to Military Hospital, Alwar for communication to the applicant. Against supersession applicant submitted representation dated 12.02.2019 which was rejected vide order dated 16.02.2019 and this was conveyed to him through letter dated 22.02.2019. This O.A. has been filed to quash impugned order dated 02.02.2019 passed by AMC Records, Lucknow and promote him to the rank of Naib Subedar alongwith his course mates.

3. Submission of the applicant is that due to his honesty, loyalty and hard work he was promoted to the rank of Havildar and during his entire service nothing adverse was reported against him. He further submitted that his course mates were promoted to the rank of Naib Subedar on 02.02.2019 but he was temporarily superseded on the ground of low CR gradings best known to the respondents. It was further submitted that he was granted timely promotions up to the rank of Havildar and there were no counselling/warnings from any Initiating/Reviewing Officer during his service. He further submitted that the applicant had successfully qualified Senior Cadre Course even though he was not promoted to the rank of Naib Subedar. Further submission of the learned counsel for the applicant is that the applicant was having all the basic criterion for promotion to the rank of Naib Subedar and had also successfully completed the Promotion Cadre

Course, as such, he was entitled for promotion to the rank of Naib Subedar. The applicant vehemently argued that the applicant was never informed the ground for his non-consideration of promotion to the rank of Naib Subedar and only through the letter dated 02.02.2019 he came to know that he was superseded on the ground of CR criteria. He pleaded for grant of promotion to the rank of Naib Subedar along with his course mates who have already been promoted to such rank.

4. Per contra, learned counsel for the respondents emphatically submitted that the applicant lacked the required ACR criteria for promotion to the rank of Naib Subedar. Further, it was submitted that as per norms fixed for promotion, last five ACRs are considered for promotion from Havildar to Naib Subedar in which at least three reports should be 'Above Average' and the residual two reports should not be less than 'High Average'. The applicant was screened for promotion to the rank of Naib Subedar against the vacancy of 01.03.2019 as per Corps seniority in his own turn but he was temporarily superseded due to lack of ACR grading criteria in terms of para 6 (b) of policy letter dated 10.10.1997. He submitted that since the applicant was not fulfilling the ACR grading criteria, he was not recommended by the Board of Officers and was superseded by his eligible and

qualified juniors. In para-4 of the counter affidavit, the respondents have mentioned the last five years report grading given to the applicant as under:-

<u>"Year</u>	<u>Grading</u>
2014	High average.
2015	High average.
2016	High average.
2017	High average.
2018	Above average."

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 Naib Subedar.

6. Heard Shri Anurag Mishra, learned counsel for the respondents and perused the material placed on record.

7. A short question involved in this case is whether a person, who is lacking ACR criteria, can be promoted to the rank of Naib Subedar?

8. Applicant was enrolled in the Army on 22.06.1995 and in due course of time he was promoted to the rank of Havildar. While serving with Military Hospital, Alwar he was screened for promotion to the rank of Naib Subedar against the vacancy of 01.03.2019 as per corps seniority in his own turn, but he was temporarily superseded due to lack of ACR grading criteria in terms of para 6 (b) of policy letter dated 10.10.1997.

9. Five confidential reports are taken into account for consideration of promotion to the rank of Naib Subedar. We find that the applicant had earned 01x above average ACR and 04x high average ACRs out of last 05xACRs, whereas the requirement was at least 03x above average ACRs out of last five reports and remaining should not be less than high average as per para 6 (b) of policy letter dated 10.10.1997 which for convenience sake is reproduced as under:-

*"(a) Only last five reports will be considered, out of which minimum three reports must be in the rank of Hav and in case of shortfall rest may be in the rank of Naik.*

*(b) At least three out of last five reports should be 'above average' with a minimum of two in the rank of Dfr/Hav and remaining should be not less than 'high average'.*

*(c) The individual must have a minimum of two reports on Regimental Duty or as an instructor in any Army School of Instructions, individual IMA, NDA, OTA and ACC, out of which at least one should be 'above average' one of the Regimental Reports should have been earned in the rank of Dfr/Hav.*

*(d) The individual should have been recommended for promotion in all the five reports."*

10. Thus, as per para 8 above, it is abundantly clear that the applicant was required to possess three above average CR entries in rank of Havildar to enable him to get next rank but since the applicant was having only one 'Above Average' entry in the rank of Havildar, he is not eligible to be considered for promotion to the next rank which he is claiming.

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

12. No order as to costs.

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

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

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

Dated: 15.09.2022  
*rathore*