

COURT NO. 1  
ARMED FORCES TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

34.

MA 939/2023 in OA 1804/2021

Hav Madhawendra Mishra	.....	Applicant
Versus		
Union of India & Ors.	.....	Respondents

WITH

35.

MA 3581/2024 in OA 1804/2021

Hav Madhawendra Mishra	.....	Applicant
Versus		
Union of India & Ors.	.....	Respondents

For Applicant : Mr. Rajiv Manglik, Advocate

For Respondents : Mr. Rajeev Kumar, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON  
HON'BLE LT GEN C. P. MOHANTY, MEMBER (A)

O R D E R  
17.09.2024

In pursuance to the order passed in the matter of implementation of the order passed by us on 2<sup>nd</sup> January, 2023 in OA 1804/2021 respondents have brought to our notice the communication received by the OIC, Legal Cell on 14<sup>th</sup> September, 2024 wherein in Para 5 of the order the following averments are made:-

“ Apropos, the pervious discharge order was cancelled and promotion to the rank of Nb Sub with effect from 01 Jan 2021 in respect of applicant was issued & promulgated in ASG Records (South) Corps Order No 1/1510/0001/2024 dt 07 Aug 2024

(Ann XIV). As the applicant was found to have completed terms of engagement (26 yrs service) of Nb Sub rank on 31 Aug 2021, hence, was reinstated notionally. Further, extension of service by 02 yrs was not permissible to him as he was in low medical category which also led to his reinstatement notionally only. Consequently discharge in respect of re-promulgated from service on 31 Aug 2021 vide Part-II order No 0/0346/2024 dt 04 Sep 2024 (Annx-XV). The applicant had already been granted pay scale of Nb Sub rank under MACP Scheme wef 30 Apr 2019. However, LPC was forwarded to PAO (OR) ASC (South), Bangalore to refix pay, if any. The LPC was received from PAO (OR) ASC (South), Bangalore with an intimation that there is no change in pay status due to grant of MACP Nb Sub. Only rank needs to be updated in PPO. Accordingly documents have been fwd to PCDA (P), Prayagraj for notification of PPO for change of rank vide this office letter No JC678082X/PCDA/ Claim/FP dt 30 Aug 2024 (Annx-XVI). Notification of PPO from PCDA (P), Prayagraj is awaited.”

2. Mr. Subramaniam submits that based on the aforesaid communication received by the OIC, Legal Cell a detailed affidavit is to be filed. However, on a copy of the communication dated 14<sup>th</sup> September, 2024 being handed over to Mr. Manglik, learned counsel for the applicant, he submits that while allowing the OA 1804/2021

on 2<sup>nd</sup> January, 2023, the operative part of the directions in Para 10 and 11 reads as under:-

“10. Keeping in view the fact that the applicant has been acquitted in the criminal case, a right accrued to him to put the clock back and consider his case for grant of promotion on the due date and in case found eligible for promotion on the due date and in case found eligible for promotion to retrospective grant him the promotion and other consequential benefits granting thereof. Keeping in view the aforesaid, we direct that the in the light of acquittal of the applicant, now in the criminal case, his case for grant of promotion be reviewed and consider as per the entitlement on the date he was due for promotion and after considering the same in accordance with all the rules and regulations applicable, to grant promotion or otherwise to him and in case, he is found eligible for grant of promotion in accordance with the rules applicable. The same be granted to him retrospectively with all consequential benefits. Exercise for reconsideration of the case for promotion as directed herein above be concluded within a period of two months from the date of receipt of copy of this order.

11. If promotion to the post of Nb Sub is granted all consequential benefits attached to the post of Nb Sub should be granted to the applicant. The order be implemented and necessary directions be issued within two months. However, the same shall be

**subject to any orders being passed or any appeal filed against the order of acquittal.”**

3. It is his contention that even though the applicant is notionally deemed to have been reinstated on the post of Hav and then retired as a Hav on completion of terms of engagement (26 years) on 31<sup>st</sup> August, 2021, this does not reflect the correct position. According to Mr. Manglik, the applicant when he invoked the jurisdiction of this Tribunal in OA 1804/2021, was already empanelled and directed to be promoted to the post of Nb Sub in January, 2021. However, the said promotion was denied to him on account of his involvement in a criminal case. The said criminal case having resulted in his acquittal this Tribunal had allowed his application granting him promotion to the post of Nb Sub which was withheld on account of pendency of the criminal case and the consequent reliefs which have to be granted to the applicant are; treat the applicant to have been promoted as Nb Sub in January, 2021 automatically subject to fulfilling of the medical conditions, consequently deemed to have an extended tenure up to 2023, thereafter in between i.e., from January 2021 to his completion of terms of engagement in 2023. The applicant was further entitled to be considered for

promotion to the post of Subedar and on such consideration being found fit for promotion of post of Sub, the applicant would get two further years' extension and in that case he has to be reinstated as Nb Sub and permitted to complete his tenure till 2025.

4. Accordingly, it is the case of the applicant now that the applicant should have been reinstated as Nb Sub and in its turn consider for grant of promotion to the post of Subedar and permitted to complete his term of engagement to the post of Subedar, if found fit for such promotion. It is the contention of the learned counsel for the applicant that without undertaking the aforesaid process the complete consequential benefits as directed by this Tribunal would not be granted.

5. We are prima facie convinced with the arguments made by Mr. Manglik and direct the respondents to show cause as to why the aforesaid consequential relief should not be granted to the applicant. They are granted a month's time either to implement the order in the manner indicated hereinabove or to show cause as to why it should not be done. We make it clear that in case we find that the respondents are deliberately without any just cause or reason

denying the benefits to the applicant, we will take consequential coercive action against the respondents and we will not permit them to come out with claims as they have done in the communication dated 14<sup>th</sup> September, 2024 which on the face of it if accepted in the backdrop of the arguments advanced by Mr. Manglik seems to be nothing but a device to somehow prevent the implementation of our order in letter and spirit. We grant one month's time to file a complete the compliance report on affidavit of a competent officer.

6. List again on 18<sup>th</sup> October, 2024.

7. Let a copy of this order be provided *DASTI* to learned counsel for the parties.

[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

[LT GEN C. P. MOHANTY]  
MEMBER (A)

/Priya/