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

OA 1610/2018

WITH

MA 1704/2018

Nb Sub Anil Kumar ..... Applicant
Versus
Union of India and Ors. ..... Respondents

For Applicant : Mr. Ajit Kakkar, Advocate

For Respondents : Mr. Anil Gautam, Sr. CGSC

CORAM

HON'BLE MS. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE MS. RASIKA CHAUBE, MEMBER (A)

Dated:19th January, 2026

O R D E R

MA 1704/2018

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay in filing the present OA. In view of the judgment of the Hon'ble Supreme Court in the matter of ***Union of India and Ors.*** Vs. ***Tarsem Singh*** [(2008) 8 SCC 648] and the reasons mentioned in the application, the delay in filing the OA is condoned.

2. The MA is disposed of accordingly.

3. Aggrieved with the decision of the respondents in not granting promotion, the applicant by way of present OA filed under Section 14 of the Armed Forces Tribunal Act, 2007 seeks a direction to the respondents to promote him to the rank of Subedar. The reliefs claimed read thus:

> *"(a) That the non applicant may kindly be directed to promote the applicant on the post of Subedar being eligible for the post of Subedar.*
>
> *(b) That the non applicant may kindly be directed to set aside any promotion process for the post of Subedar which has been initiated by passing the eligibility of the applicant like any other orders due to just and proper in the interest of justice."*

4. The facts germane to the filing of this OA are that the applicant was enrolled in the Indian Army in April 1996 in the trade of Gunner and after undertaking PFC and Army English Certificate and Map Reading Course during the period from 1996 to 2012 reached up to the rank of Nb Subedar. In the year 2016, the applicant qualified the Junior Leader Proficiency Test, for short 'the JLPT', a mandatory condition for the promotion to the next rank of Subedar and thus became eligible for promotion to the rank of Subedar as per seniority and availability of vacancy. The Annual Unit Promotion Board (AUPB) to consider the eligible Nb Subs for promotion to the rank of Subedar is held every year between 1st to 31st August and remains valid till 31st August of

the next year, i.e., for one year and if the penal drawn by the AUPB is exhausted before conduct of the next AUPB, a Supplementary Unit Promotion Board (SUPB) is held every year between 1st to 28/29th February which will also be valid till 31st August of the same year in which the SUPB is held. The AUPB for promotion of Nb Subedar to Subedar was conducted on 26th August, 2017. However, in spite of his being eligible and qualified, the applicant's name was not considered and names of two personnel Naib Subedar Ashutosh Kumar Singh and Nb Sub Surendra Kumar Chauhan were considered and placed before the Committee despite the fact that Surendra Kumar Chauhan had not passed the JLPT. In the SUPB held on 27th February, 2018 again the name of the applicant was not proposed and name of Nb Sub Hardeep Singh, who was on Extra Regimental Employment (ERE) duties, was recommended for promotion. Yet again in July 2018, the name of the applicant was not proposed for promotion in spite of his meeting all requisite conditions for promotion.

5. For non consideration of his name for the post of Subedar, the applicant submitted a representation to the respondents seeking clarification and reasons for not considering his name for

promotion to the rank of Subedar despite the fact that he met all the qualifications and conditions necessary.

6. Learned counsel for the applicant has contended that in the AUPB held on 26th August, 2017, the name of Nb Sub Ashutosh Kumar along with Nb Sub Surendra Kumar Chauhan, who has not cleared the JLPT and was thus not eligible for being promoted to the rank of Sub, were proposed arbitrarily and with mala fides. The further grievance of the applicant's counsel is that just to curtail the applicant's promotion, in the SUPB the name of one Nb Sub who was not in the consideration zone or whose name was not in picture in the AUPB held on 26th August, 2017 was placed for promotion which shows mala fides of the respondents. It is also his contention that the applicant is competent and most eligible for promotion to the rank of Sub from the date the AUPB was held but for the reasons best known to the respondents and in order to give undue advantage and with mala fide intentions in place of the applicant the names of individuals who were either not eligible or junior to him were placed in AUPB or SUPB. It is further contended that even for the vacancy that was to occur on 1st July, 2018, the applicant's name was not proposed.

7. Finally the contention of the applicant is that since he is the most eligible candidate and meets all prescribed standards for

promotion to the rank of Sub (G), his OA may be allowed and he be granted all consequential benefits attached to the post of Sub (G) from the day he became eligible.

8. Learned counsel for the respondents by way of the counter affidavit and in reply to the representation submitted by the applicant, has submitted that Nb Sub (G) Ashutosh Kumar Singh, being senior most on the retirement of Sub (G) Devendra Kumar Tomar and shifting of Sub (G) Pramod Kumar from CO's Pool to his trade vacancy, was promoted as Sub against CO's Pool vacancy (**Annexure R-2**). In the meantime Sub (G) Pramod Kumar also sought premature retirement and against that vacancy Nb Sub (G) Hardeep Singh at Sl No.3 in the seniority of Nb Sub (G), whose name was placed through SUPB, was promoted as Sub (G) from 1st July 2018 against CO's Pool vacancy of Sub (G) Pramod Kumar as Nb Sub (G) Surendra Singh Chauhan, who was at No.2 in the seniority had cleared the JLPT in June 2018. Further contention of the respondents is that in the event of absorption of Sub (G) Hardeep Singh at Artillery Centre, Hyderabad, the senior most Nb Sub (G) Surinder Singh Chauhan, who was qualified and also approved by the Annual Unit Promotion Board was to be promoted subject to meeting laid down promotional criteria. It is further stated that on occurrence

of vacancy on 1st July 2018, after retirement of Nb Sub Pramod Kumar, Nb Sub Surendera Singh Chauhan, who cleared the JLPT prior to August 2018, was considered for promotion to the rank of Sub because of which the applicant could not be promoted. Learned counsel for the respondents contended that since there was no vacancy of Sub (G) allotted to 81 Field Regiment, name of Nb Sub (G) Anil Kumar could not be sent for consideration, though he was qualified even after implementation of Third Cadre Review (Phase I) w.e.f. 1st January, 2018. Therefore, it is crystal clear that neither the applicant had been deprived of his promotion nor is he superseded by any of his juniors. It is further pleaded that in view of the above explanation the OA calls for no interference and be dismissed.

A N A L Y S I S

9. We have heard learned counsel for the parties, perused the documents and records made available or referred to during the course of arguments.

10. This is a case for promotion of the applicant to the rank of Sub in his Unit 81 Field Regiment. As can be seen from the records a vacancy in the rank of Subedar was to occur from 1st March 2018 at the time of retirement of Sub (G) Devendra Singh Tomar. AUPB had assembled

on 26th August 2017 and prepared a list of JCOs who were eligible for promotion to the rank of Sub in the said Unit. The particulars of the eligible JCOs (Nb Subedars) for being considered for promotion to Subedars and qualified or otherwise are given in the tabular form as under:

No	Particulars of JCOs	Date of promotion to Nb Sub rank	Remarks
(a)	JC-282074H Nb Sub (Gnr) Ashutosh Kumar Singh	01 Apr 2015	Qualified
(b)	JC-282451N Nb Sub (Gnr) Surendra Singh Chauhan	01 Aug 2015	Lacking Junior Leadership Proficiency Test (JLPT) (Now passed on 26 Jun 2018)
(c)	JC-282452W Nb Sub (Gnr) Hardeep Singh	01 Aug 2015	Qualified
(d)	JC-282628W Nb Sub (Gnr) Anil Kumar	01 Sep 2015	Qualified
(e)	JC-283349X Nb Sub (Gnr) Rakesh Kumar	17 Feb 2016	Qualified

11. The panel which was drawn by the AUPB held on 26th August, 2017 was to be valid till 31st August 2018. In case of exhaustion of the names in the panel recommended by AUPB, due to various reasons including utilisation of names due to occurrence of fresh vacancy etc. then a SUPB can be held between 1st February to 28/29th February every year which will

also remain valid till 31st August of the same year, in this case till 31st August 2018.

12. Because there was only one clear vacancy, i.e., of Sub (G) Devendra Singh Tomar - retirement date 1st March, 2018 on completion of his terms of engagement, hence two names were required to be proposed against the same (one against retirement of Sub (G) Devendra Singh Tomar and one against 10% reserve) by the AUPB. As per seniority the AUPB recommended the names of Sl (a) Nb Sub (G) Ashutosh Kumar Singh and Sl (b) Nb Sub (G) Surendra Singh Chauhan.

13. Since candidate at Sl (b) of the table above had not passed the JLPT, he was not qualified/eligible for promotion and therefore his name should not have been sent as a reserve candidate. However, the Unit erred by sending the name of Nb Sub (G) Surendra Singh Chauhan along with Nb Sub (G) Ashutosh Kumar Singh, at Sl (a) of the table at para 10 above. Had the correct procedure been adopted, the name of Sl (c) Nb Sub (G) Hardeep Singh should have been sent in place of Nb Sub (G) Surendra Singh Chauhan as per the AUPB compiled list on 26th August 2017.

14. This error of the AUPB was noticed by the Artillery Record Office and vide their letter dated 12th September, 2017 they

directed the Unit to forward the name of next senior through an Addendum. The Unit, in keeping with the direction of Artillery Records letter dated 12th September 2017 proposed only one name, i.e., the name of Sl (c) Nb Sub (G) Hardeep Singh through the SUPB held on 27th February 2018. An error was committed by the Unit once again at this stage, the Unit forwarded the name of Nb Sub (G) Hardeep Singh on 27th February 2018 when he was no longer on the strength of the 81 Field Regiment and had moved on ERE posting with Artillery Centre, Hyderabad as an instructor on 10th January 2018.

15. In the mean time another vacancy was to arise on 1st July 2018 because of the premature retirement sought by Subedar (G) Pramod Kumar of the same Unit. Though it is not very clear from the presented documents, but probably this fact was known at the time of the SUPB held in February 2018, because of which an attempt was made to rectify this error by holding an Addendum to the SUPB on 9th June 2018 as stated at running page 20/21 of the paper book **(Annexure A-2)** in which the name of the applicant was added.

16. Whether two names were required to be sent through the SUPBs in the light of the fresh vacancy also arising on 1st July 2018 (premature retirement of Subedar Pramod

Kumar) along with the earlier known vacancy occurring on 1st March 2018 (Subedar Devendra Singh Tomar) or only one name was to be proposed; in both circumstances name of the applicant should have been forwarded by the SUPBs held on 27th Feb 2018 (which was not done) and Addendum to SUPB held on 9th June 2018(which was done but the same was not accepted by the Artillery Records vide their letter dated 29th June 2018). Hence, the applicant was denied the opportunity of consideration for promotion to Subedar by the SUPB which was held on 27th Feb 2018 and in its Addendum dated 9th June 2018.

17. The fact that Sl (c) Nb Sub (G) Hardeep Singh was on ERE posting with Artillery Centre, Hyderabad as an instructor with effect from 9th January, 2018 and thus was not available for consideration by the SUPB held on 27th February 2018 is not denied by the respondents and is also validated by the fact that a need for holding an Addendum to the SUPB arose in the unit; the same was held on 9th June 2018 and the name of the applicant was forwarded to Artillery Records. When inclusion of the applicant's name was not accepted and the Artillery Records moved ahead with only the name of Sl (c) i.e. Nb Subedar Hardeep Singh, the unit clearly brought to the notice of the

Artillery Records as stated in para (e) of **Annexure A-2** that it could lead to legal complications. However the Unit's plea was disregarded and it was directed that the applicant's name be placed in the AUPB Nb Sub to Sub 2018.

18. Thus the fact remains that since Sl (c) was on ERE duties names of next 2 candidates i.e. Sl (d) applicant and Sl (e)Nb Subedar (G) Rakesh Kumar should have been sent if two names were to be sent due to the additional vacancy which was to arise on 1st July 2018 due to the premature retirement of Subedar (G) Pramod Kumar. Even if it is assumed that only one name was to be sent then it should have been that of the applicant since as confirmed Sl (c) the immediate senior to the applicant had left the Unit on ERE on 9th January 2018 much before the SUPB was held on 27th February 2018 and the Addendum to SUPB which was held on 9th June 2018.

19. The contention of the applicant that his name should have been recommended by the SUPB/Addendum to SUPB and promotion granted to him is validated by the fact that when promotion was granted to Nb Subedar Hardeep Singh who was at that time on ERE he had to be temporarily taken back on the strength of 81 Field Regiment to assume promotion and thereafter was reverted back to the Artillery Centre, Hyderabad

on permanent absorption after he got his promotion against the 81 field Regiment vacancy. Further the Unit 81 Field Regiment was assured that the next available vacancy of Sub in Artillery Centre, Hyderabad will be utilised by 81 Field Regiment as and when it arises.

20. It is further seen that by the time the name of the applicant could be placed at No. 1 position in the AUPB of August 2018, for preparing a list of eligible candidates for promotion from Nb Subedar to Subedar utilising the chain vacancy of Sub in Artillery Centre, Hyderabad by 81 Field Regiment, Nb Sub (G) Surendra Singh Chauhan Sl (b) in the original list prepared (para 10 above) had also cleared the JLPT on 28th June, 2018, hence in the AUPB which was held in August 2018, the names of Nb Sub (G) Surendra Singh Chauhan and the applicant were sent at Sl 1 and Sl 2 respectively because of which the applicant was denied promotion to Subedar once again despite the fact that he could have been promoted on 1st July 2018 itself when Subedar Pramod Kumar went on premature retirement.

21. It is not disputed that qualification in JLPT is the essential criterion for promotion to Subedar (G) and that the applicant had passed JLPT in 2016. He was also clear on all other fronts otherwise he would not have been declared as qualified for

empanelment by the AUPB. Delay in his consideration and promotion was due to acts of commission and omission on the part of the Unit and Artillery Records. In such circumstances, equity demands that applicant's seniority should not be made to suffer because of no fault of his. Therefore, the applicant is entitled to the benefit of promotion, w.e.f 1st July 2018 – the date on which Subedar Promod Kumar went on premature retirement with all consequential benefits

22. In view of the foregoing discussions, the OA is allowed. It is directed that the applicant be granted promotion to the rank of Sub (G) with effect from 1st July, 2018, the date when in the normal course, based on the seniority, he would have been considered had his name been there in the SUPB of 27th February, 2018 and thereafter in the SUPB of 9th June, 2018. As the analysis made by us in this order clearly shows that the applicant was denied promotion in spite of his entitlement, he is deemed to have been promoted to the post of Sub(G) with effect from 1st July, 2018 and the same shall count for all purposes related to seniority and further career progression.

23. Even though the applicant has actually not discharged duties on the higher post but considering the fact that he is still in

service and without any justification or reasonable cause he has been denied promotion to the rank to which he is legally entitled, we direct for payment of all arrears of salaries and other monetary benefits attached to the rank of Sub (G) treating him to have been promoted with effect from 1st July, 2018. Necessary orders/compliance shall be issued by the respondents within three months from receipt of a copy of this judgment.

24. No order as to costs.

25. Pending miscellaneous application(s), if any, stands closed.

Pronounced in Open Court on this 19th day of January, 2026.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

(RASIKA CHAUBE)
MEMBER (A)

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