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

C.

OA 99/2022

Nk Balbir Singh ... Applicant
Versus
Union of India & Ors. ... Respondents

For Applicant : Mr. Rajesh Nandal, Advocate
For Respondents : Mr. Vijendra Singh Mahndiyan R-1 to R-3, Advocate

CORAM :

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

ORDER
18.10.2023

Vide separate detailed order passed today. OA stands allowed.

Learned counsel appearing for the respondents makes an oral prayer for grant of leave to appeal for impugning the aforesaid order before the Hon'ble Supreme Court. However, there being no point of law, much less any point of law of general public importance involved in the order, which warrants grant of leave to appeal, the oral prayer is declined.

[RAJENDRA MENON]
CHAIRPERSON

[C. P. MOHANTY]
MEMBER (A)

/sm/

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**For Applicant** : Mr. Rajesh Nandal, Advocate
**For Respondents** : Dr. V.S. Mahndiyan, Advocate

**CORAM :**
**HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON**
**HON'BLE LT GEN CP MOHANTY, MEMBER (A)**

**ORDER**

This OA has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 with following prayers:

(a) Declare the action of the respondents in non promoting applicant is unjust, arbitrary and illegal.

(b) Direct the respondent to promote the applicant to the Havildar rank immediately before the date when person junior to him was promoted.

(c) Direct the Respondent to grant benefit of promotion at the earliest and to ensure it is carried out in a time bound manner and before his discharge from service.

2. The applicant was enrolled in the Army as Musician in Military Band of Mahar Regiment Centre on 19.02.2001. During the course of his service the applicant acquired various qualifications for promotion to higher rank as per the policy in vogue. The applicant was promoted from Sepoy to Lance Naik on 25.07.2007 and from Lance Naik to Naik on 01.03.2012. The applicant was denied promotion for Naik to Havildar on occurrence of vacancy on 21.09.2017 on the ground of lacking course qualification of Young Bandsmen Course as per Policy laid down vide IHQ of MoD (Army) letter No A/78042/V/GS/Mt-14 dated 28.05.1998 and amendment thereof issued vide letter dated 07.12.2006. When the applicant had come up in seniority for promotion from Naik to Havildar, based on a representation from one Naik Kajal Mandal who was junior to him that the applicant was not qualified in mandatory course for promotion, he was denied promotion to the rank of Havildar. The applicant then appealed against his rejection for promotion to his Commanding Officer through a personal application which was

not responded to. The applicant then preferred a legal notice dated 21.05.2021 which was replied to by the respondents advising him to follow the prescribed channel of correspondence as applicable to serving soldier as per Para 552 of Regulation from the Army 1987 vide their letter No 1351/Musn/RA dated 19.06.2021 and hence this OA has been filed by the applicant.

3. Ld Counsel for applicant submits that the applicant was eligible for promotion to the rank of Havildar on occurrence of vacancy and yet he was illegally denied promotion in spite of being qualified in all mandatory courses and technical proficiency tests as also being within permissible medical category. Ld Counsel further argues that denial of promotion after 21 years of service despite meeting all service criteria's for promotion is discriminatory as per Article 14 of Constitution and therefore illegal and arbitrary.

4. Per contra, Ld Counsel for the respondents argues that the applicant is responsible for denial of promotion to him as he had submitted an application dated 22.08.2007 to forego

Young Bandsmen Course as he was not prepared for the course and had stated that he has no objection if someone else was detailed to attend the course and accordingly the applicant was denied promotion from Naik to Havildar due to lack of qualification in Young Bandsmen Course.

5. Ld Counsel further argues that when the name of the applicant came up for promotion on 01.09.2017, an observation was raised by a Junior Naik (Musician) Kajal Mandal that the applicant was ineligible for promotion to rank of Havildar in Military Band as he had been qualified in Buglers Course and therefore eligible for promotion in Pipes Bank only. Ld Counsel elucidates that a clarification was sought from IHQ of MoD (Army) (Mt-14) vide letter dated 07.10.2017 which was responded to by the IHQ of MoD (Army) vide their letter dated 23.11.2017 that the applicant was eligible for promotion only in Pipers and Drums band only and not for Military band as he lacked the mandatory course qualification criteria as thus he was superseded for promotion.

6. Having heard submission on behalf of the parties we have perused the records the records and the policy letters placed before us. During the course of hearing on 06.02.2023 we had sought certain additional documents from the respondents which have been brought on record through MA 3843/2023 and have also been seen by us. The only question that requires to be answered in this case is whether the denial of promotion to the applicant by the respondents is legally justified?

7. Before going into the contents and provision of various policy letters it is prudent to note the service particulars of the applicant based on information provided by the respondents. The applicant was enrolled as a musician in "Military Band" of Mahar Regiment on 19.02.2006 and posted to Military Band platoon of the Mahar Regiment. He was qualified on the Buglers Course on 15.07.2006 and appointed as Lance Naik on 25.07.2007. Having qualified in the promotion cadre for Lance Naik to Naik on 01.05.2011 and meeting all other criteria,

he was promoted to rank of Naik on 01.03.2012. He also later passed the Promotion Cadre from Naik to Havildar on 02.10.2016. As it has been confirmed from the Counter Affidavit and averments made on behalf of the respondents, he meets all criteria for promotion to rank of Havildar other than the trade specific music course as justified by the respondents.

8. The technical qualifications for promotion of musician is covered by the letter of IHQ of MoD (Army) (MT-14) No A/78042/GS/MT-14 dated 28.05.1998 which is extracted as under:-

*Tele : 23019897*

*Dte Gen of Military Training (MT-14)*
*General Staff Branch*
*Army Headquarters*
*DHQ PO New Delhi-110011*

*A/78042/GS/MT-14*

*28 May 98*

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*All Records Office)*

***TECHNICAL QR OR PROMOTION OF MUSICIANS***

*"1. Reference this Headquarters letter No A/78002/GS/MT-14 dated 20 Dec 94 and all subsequent correspondence on the subject.*

*2. The music courses run at Military Music Wing AEC Training College and Centre, Pachmarhi are mandatory for promotion within musician trade. The details of the Technical QRs are as under :-*

| ***Rank*** | | ***Technical QR*** |
|---|---|---|
| *(a) For Sepoy to Naik* | - | *Young Bandsmen (YB) or Pipers OR Pipe Drummer (PD) Course.* |

*(b) For Naik to Hav - Regimental Musicians (RM) Course OR Pipers Course OR Pipe Drummer Course.*

*(c) For Hav to Nb Sub*
*(d) Nb Sub to Sub*
*(e) Sub to Sub Maj*
*- Pipe Major Course OR Drum Major Course OR awarded Licentiate in Military Music Exam (LMME) Diploma In Potential Band Masters Course.*

*3. All further promotions of musicians would be governed by these technical QR".*

*PARA 4 to 8 XXXX XXXX XXX*

*Sd/-xxxxx*

*(Victor Duraisami)*
*Lt Col*
*Advisor in Mil Music*
*For DCOAS (T&C)*

9. The letter above was amended by IHQ of MoD (Army) (MT-14) vide their letter dated 07.12.2006 which further clarifies the mandatory courses for promotion to the rank of Sepoy to Naik and Naik to Havildar:-

*"Tele : 23019966*

*Dte Gen of Mil Trg/MT-14*
*General Staff Branch*
*Integrated HQ of MoD (Army)*
*DHQ PO New Delhi-110011*

*A/78042/V/GS/MT-14* *07 Dec 06*

*(All Concerned)*

***TECHNICAL QR OR PROMOTION OF MUSICIANS***

*"1. Reference this HQ letter of even No date 28 May 98.*

*2. The following amendment to Para 2(a) and (b) in the above letter may please be carried out :-*

***For*** *- Existing entries*

*Read - (a) For Sepoy to Naik - Young Bandsmen (YB) OR Pipers OR Pipe Drummer (PD) OR OR Trumpeter Course.*

*(b) For Naik to Hav - Regimental Musicians (RM) course OR Pipers course OR Pipe Drummer course OR Bugler OR Trumpeter course.*

*3. All other contents of the letter remain unchanged.*

*Sd/-xxxxxxxxx*

*(P Chakraborty)*
*Col*
*Dir MT-14*
*For DCOAS (IS &T)*

*Copy to :-*

| | | |
|---|---|---|
| *AG/CW-1* | *- for info& necessary action please* | |
| *AEC Trg College & Centre Pachmarhi* | *-* | *-do-* |
| *AEC Records Pacharhi* | *-* | *-do-* |
| *Remount & Veterinay Corps Records PIN-900468 C/o 56 APO* | | *For info wrt their letters No R/2058/CA3 dt 29 Sep 06 & 20 Nov 06"* |

10. It is noteworthy here that there has been no distinction made in the policy with respect to separate courses

for separate categories of musicians for military band or pipers and drums until the clarification sought by the Records The Mahar Regiment from IHQ of MoD (Army) (MT-14) vide their letter dated 07.10.2017 with regards to promotion of the applicant. This correspondence is well after the occurrence of vacancy for promotion to Havildar on 01.09.2017 based on a representation from Naik (Musician) Kajal Mandal, who was junior to the applicant and had alleged that the applicant ***"is not eligible for promotion since he has not passed Young Bandsman IYB) Course (44 weeks) and Regimental Musicians (RM) Course (44 weeks) whereas his sr has done only Bugler Course (22 weeks) and become eligible for promotion to the rank of Hav".***

11. We haves also noted from the letter of Records The Mahar Regiment addressed to IHQ of MoD (Army) (MT-14) dated 11.04.2018 where the organization have expressed the similar sentiments that there is "no specific course laid down for

separate categories of musicians from Sepoy to Naik". It is pertinent to extract Para 3 of letter here:-

> ***"3. No 4573582P Nk (Musn) Balbir Singh attended the Bugler Course at AEC Trg College & Centre, Pachmarhi wef 13 Feb 2006 to 15 Jul 2006. Accordingly, occurrence of the same was published vide The Mahar Regt Centre Part II Order No 3/0741/004/2006. Therefore, he was promoted to the rk of Nk on fulfilling the requisite QR as laid down vide IHQ of MoD (Army) letter ref at Para 2 above. It is pertinent to mention here that no specific course has been laid down for promotions for Sep to Nk promotion as can seen from Para 2 of IHQ of MoD (Army) letter No A/78042/G/Mt-14 dt 28 May 1998 and a/78042/V/GS/MT-14 dt 07 Dec 2006."***

12. In response to above queries the IHQ of MoD (Army) have responded vide their letter of 08.05.2018 referring to their policy letter dated 23.11.2017 regarding different courses for different categories of musicians. However, it is noted that the respondents have not produced before us any policy legislating specific courses for different specializations of musicians on or before the allocation of vacancy for which the application was to be considered for promotion. Therefore, these pleas do not help

the respondents in justification of their decision to deny promotion to the applicant since as per extant policy as existing on the day of vacancy, the applicant was qualified for promotion to the rank of Havildar.

13. Further dwelling into the unwillingness of the applicant for doing Young Bandsmen Course in 2007 as stated in the application rendered by him on 22.08.2007, it is our considered opinion that the some principle of non-demarcation of specialization courses applies hereto and it is not denied by the respondents that the applicant qualified in the Buglers Course on 15.07.2006, which adequately qualifies him for promotion to Naik to Havildar as per policy in vogue at the time of occurrence of vacancy.

14. In light of the aforesaid discussions we do not find any merit in the justifications offered by the respondents to deny legitimate claim of the applicant for promotion. Therefore, the impugned Board of Officers dated 31.12.2018 superseding the applicant is set aside with following directions:-

(a) The applicant shall be promoted to the rank of Havildar with effect from 01.09.2017 with restoration of his original seniority.

(b) All other financial and promotion benefits entitled to him shall be awarded to him within two months of receipt of this order failing which it shall earn interest @8% p.a till the actual date of payment.

15. No Order as to costs.

16. Pending miscellaneous application, if any, stands disposed of.

Pronounced in the open Court on 18 day of October, 2023.

**[JUSTICE RAJENDRA MENON]**
**CHAIRPERSON**

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

*Akc/*