

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

OA 571/2017 WITH MA 487/2017

Hav Dwarka Nath ... Applicant
Versus
Union of India & Ors. ... Respondents
For Applicant : Ms. Archana Ramesh, Advocate
For Respondents : Gp Capt Karan Singh Bhati, Sr. CGSC

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

ORDER

MA 487/2017

Keeping in view the averments made in the application and in the light of the decision in Union of India and others Vs. Tarsem Singh [(2008) 8 SCC 648], the delay in filing the OA is condoned.

2. MA stands disposed of.

OA 571/2017

3. This application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant who is serving as a Havildar, being aggrieved by his non-consideration for the Senior NCO Promotion Cadre and hence, prays for the following reliefs:-

(a) Issue directions to the Respondents to call for the official records to assess the general performance of the Applicant in the AEC Senior NCO Promotion Cadre Serial No C-180/181 and if satisfied, declare his results as

'Qualified' by waiving off failure in BPET which in any case is exempted officially in terms of Army Order 03/2001 on the subject being a low medical category personnel or subject the Applicant for the next AEC Senior NCO Promotion Cadre less the BPET and PPT to meet the ends of justice.

(b) Issue directions to the Respondents to grant promotion to the Applicant after qualification but with ante date seniority on 05 Dec 2016 at par with his batch mates who got promoted to the rank of Naib Subedar so as to maintain seniority at par with his batch mates to meet the ends of justice.

4. It is the case of the applicant that he was enrolled on 01.03.2004 in the Army Education Corps, and his performance in military duties has been excellent. However, while being posted at Pune, he suffered from a disability of 'Wedge Compression in the Backbone' while playing an organised game of basketball on 04.07.2014 and the same has been declared as attributable to military service and he has been downgraded to medical category 'P2' permanently right from 26.08.2015 till date.

5. The applicant submits that he was detailed for the AEC Senior NCOs Promotion Cadre C-180 commencing from 13.09.2016 and the applicant was returned back to his unit (RTU) on 24.09.2016. The applicant was again detailed for Senior NCOs Promotion Cadre C-181 conducted from 05.12.2016 in which also the applicant was returned

back to his unit (RTU) on 13.12.2016 on the ground of failure in the Battle Performance Endurance Test.

6. It is further submitted by the applicant that the Army HQ Policy Letter dated 10.12.1997 is the final Mother Policy Letter which permits the low medical personnel A2 or P2 or H2 etc to be promoted even up to the highest rank of Subedar Major and therefore, failing the applicant and that too on the grounds of failure of BPET is illogical by all standards as the applicant is officially exempted by an Army Order on the subject being a LMC.

7. Per Contra, it is submitted by the Respondents that as per Para 11 of the Army Order 12/2009/MT, NCOs in medical category SHAPE-I only will be detailed to attend the promotion cadre course, and if a Formation or Unit Commander details an NCO of a lower medical category to attend a particular cadre course, he will furnish a certificate to the Record Office concerned that the NCO is capable of undergoing the cadre course, and that such certificate will be endorsed by the Unit Medical Officer to the effect that the cadre course will not have an adverse effect on the health of the NCO.

8. Elaborating further, learned counsel submits that the only exception is in case of war wounded NCOs who are

placed in low medical category, the officer commanding is authorized to grant partial or total exemption from attending a cadre course, on the recommendation of the medical officer, and that it is pertinent to note that the applicant is neither a war wounded NCO nor the disability sustained by the NCO is classified as Battle Casualty and he is only a Low Medical Category with injury being attributable to military service.

9. Learned counsel further submits that as per Army Order 12/2009/MT, certain tests are mandatory to be passed for passing the promotion cadre, and the individual is not in a position to clear the mandatory physical tests due to restrictions placed on him on being in LMC, and thus, being unable to pass the mandatory promotion cadre, he is not eligible for promotion as well.

10. We have heard both the parties and have perused the material placed on record including the documents relied upon by the parties. The only consideration which remains to be adjudicated herein is whether the applicant is entitled to be exempted from the physical test in order to pass the mandatory Sr NCOs Promotion Cadre Test and subsequently, eligible for promotion to the rank of Nb Sub or not ?

11. Before advertent to adjudication, we find it pertinent to refer to Para 11 of the AO 12/2009/MT, which is relevant policy in vogue on this issue, and the same is reproduced as under:

“11. NCOs in Medical Category SHAPE-I only will be detailed to attend the cadre course. If a formation or unit commander details an NCO of a lower medical category, to attend a particular cadre course, he will furnish a certificate to the Record Office concerned, that the NCO is capable of undergoing that cadre course. This certificate will be endorsed by the Unit Medical Officer, to the effect that the cadre course will not have an adverse effect on the health of the NCO. However, in case of war wounded NCOs, who are placed in the low medical category, the Officer Commanding is authorized to grant partial or total exemption from attending a cadre course, on the recommendation of the Medical Officer.”

12. A cursory look at the aforesaid paragraph shows that if any unit commander details an NCO of a lower medical category to attend the cadre course, he will furnish a certificate endorsed by the Unit Medical Officer, to the effect that the cadre course will not adversely affect the health of the NCO, which we find that the certificate has been issued to the applicant by the Unit Medical Officer for both the Promotion Cadres C-180 and C-181. However, this paragraph limits itself only to the aspect that it has to be ensured that there shall not be any adverse effect on the

health of the NCO, and nowhere portrays to the effect that NCO in LMC is exempted from passing the BPET or any other physical test as a part of the promotion cadre.

13. At this point, we find it important to refer to Para 19(a) of the aforesaid Army Order, which specifies that for the purpose of clearing/passing the Sr. NCO Promotion Cadre, the applicant has to pass in under mentioned tests:

19. The syllabus for the cadre course will include the following subjects:

(a) Part I: General Military Subjects

(i) Drill

(ii) Physical Training and organized sports.

(iii) Weapon training

(iv) Field craft and battle drill

(v)....(xi)

xxx

xxx

xxx

xxx

14. On a perusal of the medical records of the applicant, we find that the applicant is suffering from the disability of 'Wedge Compression' and he is restricted from performing physical activities, such as those which have been mandated vide Para 19(a) above, to be cleared for passing the Promotion Cadre. In our considered opinion, even if the applicant has been given a fitness certificate by the Regimental Medical officer (RMO) of the unit, we can not but take note of the medical examination conducted at Military Hospital, Pachmarhi prior to the commencement of the course wherein the higher medical authorities than the RMO

of the unit have addressed a communication to Faculty of Military Training, Army Education Corps Training College and Centre which is the conducting institution of the promotion cadre that the applicant is "Unfit for Promotion Cadre". Hence, the decision of the respondent to declare him unfit for the Senior NCO Promotion Cadre does not suffer from any illegality. Consequently, in view of the applicant unfit for the mandatory Promotion Cadre, he is not entitled for the promotion to the rank of Naib Subedar.

15. Therefore, we are of the opinion that the O.A. being misconceived and devoid of merit is liable to be dismissed. It is accordingly dismissed.


16. No order as to costs.

17. Miscellaneous application(s), pending if any, stand disposed of.

Pronounced in the open Court on 18 day of September, 2024.



(JUSTICE RAJENDRA MENON)
CHAIRPERSON


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

/Akcc/