

COURT No.1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA 1350/2020

Nb Sub Kiratwad Dnyanoba Manika **Applicant**
Versus
Union of India and Ors. **Respondents**

For Applicant : Mr. Ajit Kakkar, Advocate
For Respondents : Mr. Neeraj, Sr. CGSC

CORAM

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

ORDER

This application has been filed under Section 14 of the Armed Forces Tribunal Act, 2008 by the applicant who is a Naib Subedar (Nb Sub) and is aggrieved on not being promoted to the rank of Subedar (Sub). He has prayed for the following:

- (a) To direct the respondents to bring all service records regarding promotion and policy on record with advance copy to the applicant.
- (b) To set aside the order dated 12.03.2020 and the communication letter dated 03.07.2019,
- (c) To set aside the CR from 01.06.2018 till 31.05.2019.

(d) To direct the Respondents for considering the applicant for the promotion to the next rank of Sub on the due date of promotion with consequential benefits.

(e) To grant such other relief appropriate to the facts and circumstances of the case as deemed fit and proper.

Brief Facts of the Case

2. The applicant was enrolled in the Army Medical Corps (AMC) on 28.10.1993. He was promoted to the rank of Naik on 18.10.2010, and was again promoted to the rank of Havildar on 01.04.2015. The applicant was further promoted to rank of Nb Sub on 26.03.2018 with ante date on 18.03.2018, and later retired from service on 31.10.2021 as a Nb Sub on not being promoted to the rank of Sub.

3. From 18.08.2018 to 05.04.2019, the applicant was attached with 37 Army Medical Service Depot (AMSD) and functioned as the Adm JCO. On 14.02.2019, with the unfortunate incident of Pulwama attack, the station was put on high alert. During that period, on 20.02.2019, in order to ensure requisite security at the main gate, the applicant withdrew manpower from another section and deployed them on security duty. The action of the applicant was however, faulted by his CO and vide letter dated 21.02.2019,

the applicant was asked to explain his conduct of reassigning personnel from other sections for security duty without seeking permission, thus disrupting the work in the other section. The applicant vide letter dated 24.02.2019, rendered an explanation justifying his actions. The applicant's CR for the year 2019 was then initiated wherein he was assessed as 'High Average' by his IO and 'Average' by the RO. The applicant was not intimated by the RO as required by Para 44 of AO 01/2001/MP, that he had been assessed as 'Average' and was only later intimated vide letter dated 03.07.2019 that he had been awarded 'Average' grading in the ACR for the year 2018-19. Aggrieved by the aforesaid assessment, the applicant submitted a non-statutory complaint dated 16.08.2019 impugning this CR. The complaint was examined by the chain of command and was finally rejected by the competent authority, GOC-in-C, Western Command, vide his directions dated 05.07.2020. It is the applicant's case that that AMC Records vide letter dated 26.08.2019 had held that the 'Average' grading had not been communicated to the applicant and directed the CO to communicate the grading to the ratee, obtain his signature confirming the intimation, and thereafter initiate a fresh CR of the applicant, without changing the figurative

assessments already given. The CO vide letter dated 03.10.2019 forwarded the copy of the corrected CR for the signature of the applicant to Base Hospital, Delhi Cantt (BHDC), the new unit of the applicant. AMC Records had also intimated BHDC to get a fresh CR form prepared by the applicant and have it forwarded to CO 37 AMSD for further action. In the meanwhile, in Nov 2019, the applicant was provisionally approved for promotion to the rank of Sub, subject to his CR for 2019 being 'High Average' at the minimum. However, since the CR for 2019 was 'Average', the applicant was not promoted, and he later retired on 31.10.2021 in the rank of Nb Sub. Aggrieved by this, the applicant filed the instant OA.

Arguments by the Counsel for the Applicant

4. The counsel for the applicant recapitulated the service profile of the applicant and stated that due to unjustified assessment in his CR for the period 2018-2019, while he was attached with 37 AMSD, he was not promoted to the rank of Sub.

5. The counsel argued that the applicant's ACR was unfairly downgraded due to his action done in good faith to ensure the security of the unit, which was his responsibility as the Adm JCO. The counsel then elaborated that consequent to the Pulwama

attack, the station was on heightened security with 'Orange Alert' in place. During this period, on 20.02.2019, the applicant who was the Adm JCO and in-charge of security, made a reasonable decision to withdraw manpower from another section to enhance the security at the main gate. The counsel further added that despite the applicant's diligent efforts, the applicant's superiors had unjustly faulted his actions. The counsel further added that an explanation had been sought for his actions, which had been replied by the applicant. However, this finally resulted in the unwarranted downgrading of his ACR for 2019, wherein he was assessed as 'High Average' by the IO and as 'Average' by the RO. However, the 'Average' grading was not communicated to the applicant by the RO as required by the policy on the subject.

6. The counsel then drew our attention to various correspondence from AMC Records and the reply by 37 AMSD regarding the non-intimation of the 'Average' grading to the applicant as per AO 1/2002/MP, and the need to rectify this issue (Annexure A-1 Colly). The counsel then took us through the relevant portions of the AO 1/2002/MP. The counsel then drew our attention to the non-statutory complaint dated 16.08.2019 (Annexure A-2) filed by the applicant, where in the applicant had impugned the Early

CR 2018-2019 earned at 37 AMSD. He further added that this was however rejected by the competent authority vide letter dated 05.07.2020.

7. The counsel then emphasised that the actions of the respondents directing that a fresh CR form be signed and forwarded to the IO was entirely contrary to the policy on rendition of CRs, and that the respondents had failed to address the grievances against the unjustified assessment by the IO and RO in the CR. He further emphasised that there has never been any verbal or written counselling appraising the applicant of his deficiencies and areas that he had to improve, and then giving him adequate opportunity to improve himself. Thus, aggrieved on not being granted promotion to the rank of Sub due to the arbitrary assessment of 'Average' in his ACR of the year 2018-19, the applicant preferred the instant OA.

8. The counsel placed reliance upon the following judgements of the Hon'ble Supreme Court:

(a) **State of Gujrat** Vs. **Suryakant Chunnilal Shah**
[1999(1) SCC 529].

(b) **Ajit Singh and Ors.** Vs. **State of Punjab and Ors.**
[(1999) 7 SCC 209].

(c) **A.K. Karipak** Vs. **Union of India** [AIR 1970 SC 150].

Arguments by the Counsel for the Respondents

9. The counsel stated that the applicant had approached the Tribunal without exhausting all statutory remedies available to him, in that he had not availed the remedy of a statutory complaint, and thus the OA was liable to be dismissed on this ground alone. He then took us through the service and posting profile of the applicant and stated that applicant's Early CR was received by AMC Records vide 37 AMSD letter dated 08.07.2019. He further stated that the applicants CR of 2019 was returned to the unit for rectification of certain observations vide AMC Records letter dated 26.08.2019 (Annexure R-2). Apart from the date covered by the report being incorrectly mentioned, the 'Average' grading by the RO had not been communicated to the applicant as required under the provisions of AO 1/2002/MP. The RO then resubmitted the CR vide 37 AMSD letter dated 16.11.2019 (Annexure R-3) without communicating the 'Average' grading to the applicant, along with a copy of the counselling letter dated 21.02.2019 and the applicant's reply dated 24.02.2019 (Annexures R-4 Colly). The counsel further added that AMC Records once again intimated 37 AMSD vide letter dated 26.11.2019 (Annexure R-5) to communicate the assessment and obtain the signatures of the JCO on the copy of

the CR OMR Sheet which was also forwarded. The counsel then stated that the CR was forwarded by 37 AMSD to BHDC, the then current unit of the applicant for obtaining the signatures vide 37 AMSD letter dated 14.12.2019 (Annexure R-6). However, the JCO refused to sign the CR vide his application dated 02.01.2020 (Annexure R-6) and the CR was returned to 37 AMSD vide BHDC letter dated 06.01.2020 (Annexure R-8). The RO vide his letter dated 15.02.2020 (Annexure R-9) then forwarded copy of his letter dated 03.07.2019 given to the applicant intimating him that he had been graded 'Average' and the applicant's acknowledgement dated 05.08.2019 (Annexure A-10 & 11). The counsel emphasised that notwithstanding the correspondence, it was clearly established that the RO had intimated to the applicant that he had been assessed as 'Average'. This was accepted by AMC Records and the CR assessed as 'Average' being technically valid in accordance with Para 47 of Army Order 1/2002/MP.

10. The counsel then took us through the details of the non-statutory complaint dated 16.08.2019 filed by the applicant and its disposal vide competent authority's letter dated 05.07.2020 (Annexure R-12/Page No.65). He then emphasised that CRs rendered on JCOs/NCOs reflect their overall performance throughout

the year. In the instant case, the IO and RO of the applicant had rendered an objective assessment of the applicant and his employability and potential for higher ranks, as observed during the period covered by the report. Thus, the applicant was not promoted since he did not meet the CR criteria for promotion to the rank of Sub as per the provisions of Para 7 of MoD letter dated 10.10.1997. The counsel prayed that the OA be dismissed.

Consideration of the Case

11. Having heard both the parties, the issue for consideration is whether the Early CR 2018-2019 merits any interference. We have examined the CR dossier of the JCO and the file connected with the examination of his non statutory complaint.

12. Based on the documents placed on the record, available in the files, the following facts are undisputed:

(a) The JCO was promoted to the rank of Nb Sub on 26.03.2018 with ante date seniority of 18.03.2018.

(b) The JCO was posted to Comd Hospital (Northern Command), Udampur on 01.10.2015, from where he was attached to 37 AMSD from 18.08.2018 to 05.04.2019. He was then posted to BHDC w.e.f. 01.04.2019.

(c) For the year 2018, he got an NIR covering the period 01.06.2017 to 31.05.2018.

(d) On his posting to BHDC in Apr 2019, he earned a early CR for the year 2019 covering the period from 01.06.2018 to 31.05.2019 in which the applicant was rated 'High Average' by the IO and was rated 'Average' by the RO in the box grading and figurative assessment in many of the attributes in PQs/DPs. As per Para 45 and 46 of AO 1/2002/MP, this was required to be communicated to the ratee. The CR was dispatched to AMC Records vide 37 AMSD letter dated 08.07.2019.

(e) On internal scrutiny of the CR at AMC Records, the non communication of 'Average' grading was noticed. The observation was intimated to 37 AMSD for rectification. The RO resubmitted the CR, after rectification of observation vide letter dated 16.11.2019.

(f) Again the AMC Records held that the grading had not been communicated vide letter dated 26.09.2019. In this letter, BHDC was also directed to forward a blank Early CR form for the year 2019 on the revised OMR sheet in respect of the applicant duly completed in all respects with particulars of IO and RO, directly to the IO for fresh initiation and review.

(g) Vide AMC Records letter dated 26.09.2019, 37 AMSD was instructed to also forward copies of periodical warning(s)/performance counselling given to the applicant in terms of Para 45 and 46 of AO 1/2002/MP.

(h) 37 AMSD forwarded the extract of the CR communicating the 'Average' grading to the BHDC for obtaining the signature of the JCO vide their letter dated 14.12.2019.

(i) However, the JCO vide his letter dated 02.01.2020 addressed to 37 AMSD, declined to sign the OMR sheet forwarded stating that he had not done any mistake and had performed his duties diligently and that he had never been given any counselling letter or warning. Thus, BHDC returned the OMR sheet back to 37 AMSD vide their letter dated 06.01.2020.

(j) In the meanwhile, the RO who had since been posted to 418 Fd Hosp, vide his letter dated 15.02.2020 intimated AMC Records that the ratee had been intimated about the 'Average' assessment vide 37 AMSD letter dated 03.07.2019 and that it had been duly acknowledged by the applicant vide his letter dated 05.08.2019. That refusal to sign on the CR invited invocation of action as per Para 47 of OA 1/2002/MP.

The RO, therefore, recommended that the decision to declare the CR as technically invalid be reviewed.

(k) The letter dated 03.07.2019 and the applicant's reply dated 05.08.2019 have since been placed on record by the Respondents. The letter of 03.07.2019 cryptically stated that the applicant has been rated 'Average'. The applicant has stated that he had worked diligently and doesn't know why he has been assessed 'Average'. Further, referring to the incident during 'Orange Alert' when the JCO had relocated a soldier for security duty, he stated that he had already given his explanation.

(l) The JCO had submitted a non-statutory complaint dated 16.08.2019 against the 'Average' assessment by the IO and RO in the Early CR of 2018-2019. However, GOC-in-C Western Command vide his order dated 05.07.2020 rejected the complaint on the ground that the applicant had been assessed as per his demonstrated performance and that the 'Average' assessment by the RO had been correctly intimated to the applicant, and that it was therefore devoid of any merit.

(m) As per the Note dated 27.02.2020 in AMC Records File 356006-J/Pron/AA/SUB/1/20, the applicant was approved

on 07.11.2019 for promotion for the vacancy of 01.01.2020 and the promulgation was withheld subject to receipt of ACR for 2019 with minimum of 'High Average' grading.

(n) Since the CR for 2019 had been received as an 'Average' report, it did not meet the CR criteria for promotion. Thus the vacancy provisionally allotted to the applicant was withdrawn and allotted to the next eligible JCO. This was approved by OI/C Records on 05.03.2020.

13. In this case, the applicant was considered for promotion to the rank of Nb Sub in Nov 2019. As per the criteria laid down by AG's Branch/ PS letter dated 10.10.1997, for promotion to the rank of Sub, the last three reports are to be considered. Out of the three, at least one needs to be in the rank of Nb Sub and all reports have to be minimum 'High Average'. Since the applicant got a NIR for 2018, his two reports in the rank of Hav for the years 2016 and 2017 and the existing CR of 2019 in the rank of Nb Sub were considered. The summary of CR gradings from 2011 to 2021 is tabulated below:

Ser	CR Period	Rank	Grading		Recommendation for Promotion IO/RO	Final Grading
			IO	RO		
(a)	2011	Nk	8	8	R/R	8 - Above average
(b)	2012	Nk	6	6	R/R	

(c)	2013	Nk	9	8	R/R	8 - Above average
(d)	2014	Nk	8	7	R/R	7 - Above average
(e)	2015	Hav	7	7	R/R	7 - Above average
(f)	2016	Hav	7	7	R/R	7 - Above average
(g)	2017	Hav	8	8	R/R	8 - Above average
(h)	2018	Nb Sub	NIR - promoted Nb Sub 26.03.2018			-
(i)	2019	Nb Sub	5	4	R/R	4 - Average
(j)	2020	Nb Sub	9	8	R/R	8 - Above average
(k)	2021	Nb Sub	9	9	R/R	9 - Outstanding SRO-9/R Laudatory pen picture for exceptional performance during Covid duties

9 - Outstanding, 8/7 - Above average, 6/5 - High average, 4 - Average

14. As seen from the records, one incident which has been pivotal during the period of the report was that on 20.02.2019, when there was 'Orange Alert' in the garrison, and the applicant had moved a jawan from the Receipt & Dispatch section for security duties in the unit. An explanation was sought from the applicant vide 37 AMSD letter dated 21.02.2019. This was replied to by the applicant vide his letter dated 24.02.2019. Both the letters are reproduced below:

Letter 21.02.2019

*37 Aggrim Chikitsa Saman Depot
37 Advance Medical Stores Depot
PIN-003037
c/o 50 APO*

431/Coy/2018

21 Feb 2019

*OA 1350/2020
Nb Sub Kiratwad Dnyanoba Manika*

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JC-703506W
Rank: Nb Sub (Amb Asst)
Name: Kirtwad Dnyanoba Manika

EXPLANATION LETTER

1. It has been obs by the undersigned on 20 Feb 2019 during round at R & D sec that. No 15435966Y Sep (Amb Asst) PJ Kumar who had been detailed specifically to function under despatch section, was instead removed by you and detailed as RP of Gate No 1, thus a violation of orders of CO. No approval of Sr JCO/Adm Offr/CO was taken by you.
2. This violation led to confusion during checking of stores as issued from Gp IV (52 RR) and Gp 1 (310 Fd Hosp).
3. In view of the above, you are hereby asked for explanation in writing to undersigned by 25 Feb 2019.

Abhay Singh
Lt Col
Adm & Stores Officer
for CO

Letter dated 24.02.2019

JC-70356-W
Nb Sub
Kiratwad Dnyanoba Manika
Dated 24.02.2019

Respected Sir,
Adm & Stores Officer
37 AMSD

Sir,

1, Nb/sub Kiratwad Dnyanoba Manika have been appointed in this unit by you and doing duty as ADM JCO. As per letter 431/04/2018 dated 21.02.2019. I have been granted extension by you. With regard to that I am pressing my submission before you.

Sir, from 18.02.2019 I have been working in the manpower and with regard to that I spoke to senior JCO. Senior inform me that the permission was granted to implement RP duty, one by one from the group.

Sir on 20.02.2019 keeping in view the security of unit (D.P), orange plus (alert) and it was ordered to be very alert and vigilant, keeping in the view of the security.

As there was no manpower on gate no. 9 for RP duty then duty of no. 15435966 SEP/AA PJ Kumar on gate 9 for RP was required. Hence, sir as

*there is shortage of manpower, I will allot the duty as per your advice.
Hence, sir please forgive him.*

*Your sincerely
Kiratwad Dnyanoba Manika
Nb/Sub
ADM JCO*

15. In the CR covering the period 18/08/2018 to 05/04/2019, the applicant was assessed as 'High Average' by the IO and 'Average' by the RO. In addition, it is seen that the RO has given '4(Average)' figurative assessment in 11 out of 15 attributes in the CR. Notwithstanding the High Average/Average assessment, both IO and RO have recommended the applicant for promotion. It is also mentioned that the applicant is 'orderly' and 'sincere'. In the column '*Status of Communication to Ratee*', the IO has endorsed it as NA (Not applicable), while the RO has endorsed as 'NA' for '*Weak/Adverse Remarks*' and 'Yes' for '*Award of average or lower grading*'. AMC Records on scrutinizing this CR had returned it to 37 AMSD vide letter 26.08.2019 as the 'Average' grading had not been intimated to the ratee. The CR duly rectified was resubmitted vide 37 AMSD letter dated 16.11.2019. However, there was no mention of the fact that the applicant had been informed and that he had acknowledged it. This fact was

intimated to AMC Records only in Feb 2020 vide the RO's letter dated 15.02.2020.

16. The CR was once again returned by AMC Records vide the letter dated 26.11.2019 on the ground that the assessment had not yet been intimated. The RO even at that juncture, forwarded the extract of CR for signature vide 37 AMSD letter dated 14.12.2019 to BHDC. It is only in Feb 2020 that the RO vide his letter dated 15.02.2020 stated that the 'Average' assessment had been intimated vide letter 03.07.2019 and was acknowledged by ratee vide his letter dated 05.08.2019. While both these letters are on record, this issue was never intimated by the Unit in the earlier letters regarding the observation of not having intimated 'Average' grading, for reasons best known only to the Unit and the RO. In our opinion, at the first instance, if the applicant had declined to sign the CRs, it should have been endorsed by the RO as per Para 4 of AO 1/2002/MP.

17. On scrutiny of the files connected with the examination of the non-statutory complaint dated 16.08.2019, it is seen that the comments of both the IO and RO have been obtained. The IO's comments stated that though the CO had taken a firm view and an explanation was sought, on receipt of the reply, the IO had verbally

warned the applicant not to make such mistakes in future. The comments are reproduced below:-

"Comments to Para c and d; Yes, he was performing the duty of ADM JCO. The statement against CO has made by Nb Sub/AA Kirtwad Dnyanoba Manika was false and it was their misconception. After the Pulwama attack i.e. on 14 Feb 19 there was an orange alert declared in the Garrison and all the security order and duties were passed by undersign and publish in unit Part-1 order after the concurrence of the CO, so there was no question to put or exchange person who was already detailed in Receipt and Dispatch section. R&D section play very important role in depot functioning. It was also clear direction by the CO that the Sep/AA PJ Kumar who was detailed in R&D section will not detail anywhere without prior permission of Adm Offr/CO but the JCO did the same mistake as he did earlier. Also. The matter has been seriously taken by CO and asked him to give written explanation. On receipt of their reply dt 24 Feb 19 the undersign verbally warn the JCO not to do this kind of mistake in future".

18. The RO in his comments on the complaint while giving the details of additional manpower attached to 37 AMSD for security, stated the following in reply to Para 1 vis-à-vis

"It is pertinent to mention here that certain AAs have been selected based on their aptitude to work in a particular Gp to ensure and enhance Ops efficiency of this depot. Sep/Amb Asst PJ Kumar was selected to function in Despatch Section of this depot and arbitrary removal of the indi had led to discrepancies in the issued medicines to 52 RR & 310 Fd Hosp, a testimony of overall average performance of the JCO.

It is evident that there was a feeble attempt to eclipse own's average performance and prejudices on the pretext of less manpower, where actually none exists, and in the process cascading and paralyzing efficient functioning of other departments also.

Hence the individual has been assessed objectively based on the performance of the indi vis-à-vis his trade, seniority and rank in the organization. All aspects of man management, without any partisan approach, have been implemented and accordingly endorsed in letter and in spirit. Indl was repeatedly guided, exhorted to be motivated at all times and in consonance with his average performance during the period was appropriately rated."

19. As seen from the summary of CR gradings mentioned earlier, the applicant had been assessed as 'Above Average/High Average' in seven CRs from 2011-18. His subsequent CRs in 2020 and 2021 too have been Above Average/Outstanding. Thus the 'Average' assessment by the RO in 2019, resulting in a final grading of 'Average' is certainly inconsistent with the applicant's overall profile, and is therefore seen as an aberration. The only counselling to the applicant in this period was the explanation sought on the incident of 20.02.2019 and based on the explanation; the IO had warned the applicant not to repeat the mistake again. At this juncture, we do not wish to enter into whether the actions of the applicant to enhance security arrangements, by moving a soldier from the receipt and dispatch section had caused such a disruption. However, there is no other counselling given by the RO or the IO to the applicant, wherein it justifies the RO's assessment of 'Average', and the fact that he also graded him 'Average' in 11 out of the 15 attributes. Also, the entire process of rectification of the observation by AMC Records that the assessment had not been not been intimated to the rate, does not indicate a clear process having been followed.

20. In view of the above consideration, we are of the opinion that the ends of justice would be met if the complete assessment of the RO in the CR of 2019 earned in 37 AMSD is set aside on grounds of inconsistency, and the applicant is reconsidered for promotion to the rank of Sub with his changed profile at the relevant time when he was originally considered and provisionally approved for promotion. And if found fit, be notionally promoted to the rank of Sub and be granted all pensionary benefits in the rank of Sub on his superannuation on 31.10.2021 (AN). The applicant will, however, be not entitled to any back wages for this period.

21. The OA is therefore, allowed and we direct the following:-

- (a) The complete RO's assessment in the Early CR of 2019 earned by the applicant in 37 AMSD be set aside on grounds of inconsistency.
- (b) The JCO be considered afresh for promotion to the rank of Sub with his changed profile as at the relevant time of his original consideration.
- (c) If found fit for promotion, notionally promote the applicant to the rank of Sub.
- (d) Grant all pensionary benefits in the rank of Sub on his superannuation on 31.10.2021. Pension and all retiral benefits

be then accordingly re-fixed. The applicant will, however, not be not entitled to any back wages for this period.

(e) Necessary documentation including issue of a fresh PPO and payment of arrears be completed within a period of three months from the time of receipt of a copy of this order failing which the applicant will be entitled to 6% interest per annum till payment.

22. No order as to costs.

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

Pronounced in open Court on this 23rd day of August, 2024.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

(LT GEN P.M. HARIZ)
MEMBER (A)

Neha