

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

OA 1406/2018

Ex Sub Maj Ram Niwas ... Applicant
Versus
Union of India and Ors. ... Respondents

For Applicant : Mr. Virender Singh Kadian, Advocate
For Respondents : Mr. Anil Kumar Gautam, Sr. CGSC

CORAM

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

ORDER

Invoking the jurisdiction of this Tribunal under Section 14 of The Armed Forces Tribunal Act, 2007, the instant OA has been filed praying for the following reliefs :-

(a) Quash and set aside the impugned letter No B/43445/AG/CW-2 dated 10.10.2017. And/Or,

(b) Direct respondent to consider the applicant for grant of Honorary Commission of Lieutenant on the Independence Day 2017 and Lieutenant/Captain on the occasion Republic day 2018. and/or.

(c) Direct respondent to call for the entire records pertaining to allotment of vacancies and consideration boards of Honorary Commission of the said period.

(d) Direct respondents to fix the revised pay and allowances including retiral and pensionary benefits and to pay the due arrears and consequential benefits with interest @ 12% per annum if the applicant is make up in the merit for award of Honorary Commission.

(e) Pass any other order as this Hon'ble Tribunal may deem fit and

proper in the facts and circumstances of the case.

2. The brief facts of the case are that the applicant was enrolled in the Army Postal Service (APS) Corps on 24.11.1985 in the rank of Sepoy Clerk (Sep/Clk) and was discharged from service with effect from 31.01.2018 in the rank of Subedar Major (Sub Maj) on completion of service limits in accordance with Army Rule 13(3)(I)(i)(a). The applicant was considered for honorary commission on two occasions while he was still in service and he was not granted honorary commission on both occasions.

3. Learned counsel for the applicant submits that before discharge from service, the applicant was due to grant of honorary rank for two chances i.e on Independence Day 2017 and Republic Day 2018 however the applicant was not granted the commission of Honorary Lieutenant and Captain.

4. The learned counsel further submits that on 28.08.2017 the applicant forwarded a personal application to Director APS, South Western Command seeking the reason for non-grant of honorary commission despite his exceptional service record and requisite ACR profile for promotion to honorary rank. The Ceremonial & Welfare Directorate/CW-2, IHQ of MoD (Army) vide letter No. B/43445/AG/CW-2 dated 10.10.2017 intimated that the vacancy for Honorary Lieutenant are calculated based on

authorised strength and no vacancy was generated in two chance category for APS.

5. It was also submitted by the learned counsel that on the basis of RTI submitted by the applicant, CW-2, AG's Branch, IHQ of MoD (Army) intimated vide letter No B/43449/AG/CW-2 dated 10.11.2017 that two JCOs of APS were considered on the occasion of Independence Day 2017 and the applicant did not make it to the merit for promotion to the Hony rank of Lt/Capt.

6. Learned Counsel further submits that as per letter dated 10.11.2017 the vacancy were calculated based on authorised strength of JCOs for Honorary Lieutenant i.e 12 for every 1000 JCOs and authorised strength of JCOs in APS is 167 which comes to 02 vacancy being available for grant of honorary commission of Lieutenant to the applicant. The applicant was considered by the respondent for the both chances category on the occasion of Independence Day 2017 and the applicant did not make the merit and on the other hand the reply dated 10.10.2017 mentioned that vacancy was calculated based on authorised strength and no vacancy was generated in two chance category for APS which creates doubt for manipulation of vacancy for honorary rank of Lieutenant.

7. Learned counsel for the respondents submits that IHQ of MoD (Army) had replied the RTI application dated 14.09.2017 submitted by the applicant that calculation of vacancy for APS on the occasion of Independence Day 2017 (two chance category) and Republic Day 2018 based on the authorised strength of JCOs in APS. The applicant could not be granted Honorary Commission in the year 2017 as no vacancy was created and one vacancy was created in the year 2018 but the applicant could not make it to list based on his position in merit.

8. Learned counsel further submits that APS Records had strictly adhered to the policies and guidelines issued by IHQ of MoD (Army) and role of Record Office is to prepare the data sheet, recommendation form of the JCOs for Honorary Commission in the last year of colour service of the JCOs in two chance category on active list and despatch to respective Command HQs under whose jurisdiction the JCOs are posted. The Command HQs scrutinise the list according to prescribed yardstick and submit the nominal roll to the IHQ of MoD (Army)/CW2.

9. Placing reliance on the CW Dte letter No B/43445/AG/CW-2 dated 26.10.2018, learned counsel submits that the case of applicant was considered for two chance category on the occasion of Independence Day 2017 and in last chance category on the

occasion Republic Day 2018; however the applicant could not be granted Honorary commission by the CW-2, IHQ of MoD (Army) due to limitation of vacancies & merit of the applicant.

10. We have heard learned counsels for the parties and perused the records placed before us by the respondents with a view to answer the prayers of the applicant regarding his consideration promotion to Honorary rank of Lt on Independence Day 2017 and Republic Day 2018.

11. Having given our careful consideration to the contents of the policy letter governing the selection of the eligible candidates for Honorary Rank we find it appropriate to reproduce relevant Paras of AG's Branch (C&W-2), IHQ of MoD letter No. B/43435/policy/AG/CW2 dated 16.05.2008 which reads as follows:-

PART-I HONORARY COMMISSIONS To JCOs ON ACTIVE LIST

Consideration and Chances

3. *All Ris Maj/Sub Maj and Ris/Sub of the Regular Army including those of Defence Security Corps and Territorial Army will not only be considered for grant of honorary commissions on the active list in the last year of their colour service in two chances.*

4. *Those who have been decorated twice- one of which should be for gallantry including Mention-in-Dispatches will be considered in the last two years of their colour service and will be accorded four chances. (COAS commendation card will not be counted towards this consideration.*

5. *JCOs who proceed on premature retirement on any ground without completion of their colour service or enhanced*

tenure (after having opted for it) are not eligible for grant of Honorary Commission.

6. JCOs who have availed once chances to two chances in the rank of Ris/Sub and get promoted to the rank of Ris Maj/Sub Maj will be eligible for consideration again for the grant of Honorary Commission in the last year of their colour service (ie before retirement) in the rank of Ris Maj/Sub Maj and shall be accorded two chances.

PART-II-HONORARY RANKS TO JCOs ON RETIREMENT

18. JCOs of the regular army including those of Defence Security Corps and Territorial Army, who fulfil the following eligibility conditions will be considered for grant of Honorary Ranks, a step higher than the rank held by them at the time of retirement, within one year of their becoming non-effective. JCOs who proceed on premature retirement on any ground without completion of their colour service or enhance tenure (after having opted for it) are not eligible for Honorary rank on retirement.

Eligibility Conditions

19. Eligibility conditions for grant of Honorary Rank to JCOs will be as under:-

(a) ACR Criteria.

(i) Should have atleast three Above Average ACRs for Ris Maj/Sub Maj and Ris/Sub and three High Average ACRs in case of Naib Ris/Naib Sub in the last five years at the time of initiation of their recommendations forms for the awards. The ACRs can be earned by the JCO in any appointment. No report in the last five years should be less than Average.

(ii) Should have been recommended by their respective OsC Units for the grant of Honorary Commissions/Ranks in at least three out of their last five ACRs including the last two.

(b) Medical Criteria. As given in Para 7 (a) above.

(c) Discipline Criteria. As given in Para 7 (c) above.

Procedure for Processing Recommendation Forms

20. **Preparation for processing Recommendation Form.** Based on Para 18 and 19 above, Record Offices will draw up a panel of names of all eligible JCOs for the grant of honorary ranks and forward the names to their respective OsC Units at least one year before the occasion on which the JCOs are considered. OC unit will

recommend/not recommend the JCOs and also indicate anything adverse concerning the JCO has come to his notice since the initiation of the last ACR as a result of which the JCO is now not recommended for the award.

21. Despatch of Recommendation Forms to HQ Command.

Based on the recommendations of the OsC units and Master Sheet signed by the JCO, the respective Record office will fill up the recommendation forms and forward them, in original, direct to respective HQ Command in whose jurisdiction the units(s) of the JCO (s) is/are located, by 10Sep and 15 Mar for Republic Day and Independence Day awards respectively.

22. Despatch of Nominal Roll to integrated HQ of MoD(Army). HQ Command will scrutinizing these recommendation forms and allots marks according to the prescribed yardstick. Thereafter, a separate nominal roll of each honorary rank in Reg/Corps wise of all eligible JCOs who have obtained minimum qualifying marks as per yardstick will be drawn and forwarded to integrated HQ of MoD (Army) (AG/CW-2) by 30 Sep and 10 April for Republic Day and Independence Day awards respectively.

23. The recommendation forms in respect of JCOs belonging to Defence Security Corps and Territorial Army will be forwarded to integrated HQ of MoD (Army) GS/DSC-1 and GS/TA-3 respectively by the due dates as mentioned in Para 22 above.

24. As regards JCOs employed in Indian Missions abroad (not of units deployed under UN Mission), PBG and HQ 22 Establishment respective Record Offices will send the recommendation forms direct to Integrated HQ of MoD (Army) (AG/CW-2) by due dates as mentioned in Para 22 above.

25. Nominal roll for Honorary Rank in respect of recommendations forms received after the schedule mentioned in Para 22 above should be forwarded to integrated HQ of MoD (Army) (AG/CW-2) in one lot by HQ Command by 31 Dec and 20 Jul for Republic Day and Independence Day respectively.

26. Despatch of Amendments/Additions. As in the case for Honorary Commissions in active list, any amendments/additions to recommendation forms should be forwarded by Record offices to HQ Command in two lots as per schedule given in Para 15 above. However, HQ Command will not forward any amendments/additions to integrated HQ of MoD (Army) (AG/CW-2) in respect of Honorary Rank cases. Only cancellation details are required by integrate HQ of MoD (Army) (AG/CW-2).

27. ***Despatch of Cancellations.*** Any cancellations of Honorary Rank case will be consolidated by the Record office and forwarded to HQ Command in one lot duly countersigned by OIC Records as per schedule given in Para 16 above with a copy to integrated HQ of MoD (Army) (AG/CW-2). HQ Command will consolidate all cancellations alongwith the cancellations of Honorary Commission in active list and forward to integrated HQ of MoD (Army) (AG/CW-2).

And have no hesitation in holding that the applicant was eligible for consideration to the Honorary Rank of Lt/Capt on both the occasions; subject to availability of vacancies within his corps, i.e., Army Postal Corps and his position in the merit list prepared by the respondents for the above purpose.

12. Having now given a deliberate examination to the DPC proceedings we have come to a conclusion that the applicant was considered for grant of Hony Commission in "Two Chance" category on the occasion of Independence Day 2017 and "Last Chance" category on Republic Day 2018. While the applicant's name was in the merit list at Merit Position 02, due to there being no vacancy for his corps of APS, no candidates was granted promotion which also included candidates placed above him at merit list-01, namely, Sub Maj Radhey Shyam. Later on when the applicant was considered in the "Last Chance" category on Republic Day 2018, he was once again placed at Merit Position- 02; behind Sub Maj Radhey Shyam at Merit Position- 01. There being only one vacancy for APS on occasion of

Republic Day 2018, Sub Maj Radhey Shyam was promoted to the Honorary Rank of Lieutenant being ahead of applicant in the merit list.

13. We have also deliberated upon the method of calculations of vacancy as presented by the respondents though the DPC proceedings and we are satisfied that the calculations of the vacancy for APS Independence Day 2017 & Republic Day 2018 has been done as per policy provisions of AG's Branch (CW2). Thus in conclusion, we do not find any illegality or arbitrariness or bias against the applicant during his consideration for promotion to the Honorary Rank of Lt/Capt by the respondents.

14. Accordingly, the OA is dismissed being bereft of merit.

15. No order as to costs.

16. Pending miscellaneous application, if any, stand closed.

Pronounced in the open Court on 30th day of August, 2024.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

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

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