

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

OA 1634/2023

Hav/PCR Jagmohan Singh ..... Applicant  
Versus  
Union of India & Ors. .... Respondents

For Applicant : Mr. Rajesh Nandal, Advocate  
For Respondents : Mr. K.K. Tyagi, 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 applicant has filed this application and the reliefs claimed in Para 8 read as under:

- (a) *To declare the action of the respondents as unjust, arbitrary and illegal; and*
- (b) *To direct the respondents to consider and promote him to the next Rank of Naib Subedar if he has just been left out due to some minor issue, and*
- (c) *To direct the respondents not to deny him his legitimate dues is pay and allowances when they were due and maintain his seniority over his juniors, and*
- (d) *To direct the respondents to take justified view to safeguard his service seniority when he has already put in dedicated service*

*of 22 years plus and not to use their vested power as a tool to settle score with him.*

2. The facts in nutshell indicate that the petitioner is serving in Bengal Engineers Group and Centre Roorkee of the Indian Army for 23 years. The grievance of the applicant is with regard to his non-promotion for the rank of Naib Subedar even after he had qualified in the promotion cadre held on 01.10.2022.

3. It is averred by the petitioner that as a 'Havildar' in Oct 2022 he had passed the promotion cadre to the next rank of 'Naib Subedar' and waiting for the promotion to the next rank. It is his contention that he was superseded for promotion on account of 'Not fulfilling the ACR criteria'; the required criteria prescribed under the promotion policy. It is said that for promotion from the post of Havildar to Naib Subedar, the promotion cadre was undertaken on 01.10.2022, wherein the applicant had participated and was awaiting promotion when the OIC Records intimated him about his non-promotion on the ground 'ACR criteria not fulfilling'.

4. The applicant approached the Record Office through RTI dated 24.02.2023 seeking reason for denial of his promotion

and promotion to candidates junior to him but Record office expressed their inability to provide the details; being the matter prohibited under RTI which was intimated vide letter No 23405/0058-23/Gen/RTI dated 07.03.2023.

5. The respondents have filed a counter affidavit, wherein it is pointed out that the ACR criteria for promotion to the rank of Nb Sub is prescribed in Para 6 of the IHQ of MoD (Army) AG's Branch letter dated 10.10.1997 and the criteria laid down therein.

6. It is the case of the respondents that out of five ACRs, the applicant had earned only two 'Above Average' and three 'High Average' and as he did not meet the required ACR criteria, he had not been promoted.

7. Learned Counsel for the respondent argued that successful completion of Promotion Cadre does not guarantee promotion to any individual to the higher rank. Promotion to the higher rank is based on availability of vacancy in the higher rank and subject to fulfilling of all eligibility criteria as laid down in existing policy including ACR and medical criteria at the time of promotion/occurrence of vacancy.

8. We have heard both the counsels and perused the documents that have been produced before us. The issue to be decided upon in this petition is whether the petitioner was entitled to be promoted to the rank of Naib Subedar or not consequent to passing the promotion cadre in Oct 2022.

9. The petitioner's contention is that he passed the promotion cadre on 01.10.2022 and was therefore awaiting for promotion. However he was disappointed to find that he has been overlooked for promotion for the reason of not fulfilling the ACR criteria.

10. The communication by the respondents vide letter No 4603/R/GS/0048/CA-1 dated 06 Feb 2023 at Para 5 regarding his supersession for promotion reads as follows :

*5. The fwg NCO's have been superseded from the junior due to the reason mentioned against each :-*

Ser No	Amy No, Rank & Name	Unit	Reason
(a)	15339067A CHM (FTR) BIJAY KUMAR CHADEL	Depot Bn BEG & Centre (ROORKEE)	Lacking ACR 2020
(b)	15339194P HAV (DVRSPLEH) BHUPENDRA SINGH	68 Engr Regt (BENG)	Lacking ACR 2022
(c)	15337353P HAV (ARTSNCONS) DHARAMBIR SINGH	61 Engr Regt	Lacking ACR 2022
(d)	15339041L HAV (PCR) JAGMOHAN SINGH	IHQ of MoD (Army) Camp	CRs criteria not fulfilling
(e)	15337715Y CHM (ARTSNCONS) SAILENDRA KUMAR SINGH	BEG & Centre Roorkee	Debarred for promotion
<b>TOTAL : 05 (Five only)</b>			

11. The ACR criteria for promotion to Naib Subedar as quoted in paragraph 6 (a) & (b) of the Policy letter No B/33513/AG/PS2(c) dated 10 October 1997 issued by AG's Branch, Army HQ read to the effect :-

6. For Promotion to Rank of Nb Ris/Nb Sub

(a) *Only last five reports will be considered, out of which minimum three reports must be in the rank of Havildar and in case of shortfall rest may be in the rank of Naik.*

(b) *At least three out of last five reports should be 'Above Average' with a minimum of two in the rank of Dafadar/Havildar and remaining should be not less than 'High Average'*

12. We have observed that Record office is only custodian of Annual Confidential Reports in r/o JCOs/NCOs after receiving the same from the units/establishments duly initiated and has no right to intimate any information related to Annual Confidential Report to 'ratee'; being confidential in nature.

13. Keeping in view the aforesaid, we find that the contention of the applicant that promotion has been denied to him illegally due to not fulfilling the ACR Criteria is not correct. Merely passing the promotion examination is not a guarantee for promotion to next rank. The respondents have considered the case of the applicant based on the relevant policy and the reckonable Annual Confidential Records available with them

and as the applicant did not fulfill the requisite criteria for promotion, he has been correctly denied promotion. We are, therefore, of the view that the OA is devoid of merits and is liable to be dismissed. The OA thus stands dismissed.

14. No order as to costs.

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

Pronounced in open court on this 3<sup>rd</sup> day of July 2024.

[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

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

Akc/