

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

**OA 1673/2016**

**Ex Hav Chettarpal** ... **Applicant**  
**Versus**  
**Union of India and Ors.** ... **Respondents**

**For Applicant** : Mr. Ajit Kakkar, Advocate  
**For Respondents** : Mr. Shayam Narayan, Advocate

**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, 2007 by the applicant, a ret'd Hav of the Army, who is aggrieved on not being promoted to the rank of Nb Sub (Nb Sub) and has made the following prayers:

- (a) To call for records and list of seniority which shows the retirement and promotion of various personnel including the applicant.
- (b) To further direct the Respondents to grant the vacancy of Nb Sub to the applicant since the applicant was first in order of seniority to be promoted to the rank of Nb Sub.
- (c) The applicant is fit to hold the promotion of Nb Sub and he may be reinstated in service after granting the rank of Nb

Sub. The applicant becomes eligible for the extension of service after promotion to the rank of Nb Sub.

(d) 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 on 01.11.1990 and was later transferred to the Army Ordnance Corps (AOC) on 19.12.1992 in the category of Sepoy/Painter Decorator (Ptr Dctr) and has since been discharged from Army w.e.f. 31.10.2016 (AN) under Army Rule 13 (3) (iii) (i). He was promoted from time to time and was promoted to the rank of Hav on 01.02.2011. Subsequently, the applicant was detailed to attend the Hav to Nb Sub promotion cadre from 05.11.2012 to 05.01.2013 which he attended and qualified.

3. The applicant had earlier filed an OA No.194/2015 before the Tribunal seeking directions to the respondents to release a vacancy of Nb Sub as the applicant was the first in order of seniority to be promoted to the rank of Nb Sub. The Tribunal vide order dated 13.08.2015 disposed of the aforesaid OA with the directions that no cause of action had arisen so far and also that the applicant had not exhausted all the remedies available to him as he

had not preferred a representation to the concerned authorities. The applicant was also directed to make a representation of his grievances in accordance with law and, the same was to be decided by the respondents within a period of three months from the date of receipt. The applicant was further directed that in the event of rejection of his representation, he was at liberty to file a fresh OA. The applicant filed OA No.755/2015 stating that the respondents had promoted a person junior to him and thus he had a fresh cause of action. In the meanwhile, pursuant to the orders of the Tribunal in OA No.194/2015 the applicant had submitted an application in August 2015 to the respondents seeking promotion to the rank of Nb Sub. This was however, rejected by the respondents vide letter No A/13982210/LC/CA-2 dated 10.11.2015. Therefore, the Tribunal vide its order, dated 24.11.2016 in OA No.755/2015 directed that the applicant file a fresh OA. Hence, the OA.

#### **Arguments by the Counsel for the Applicant**

4. The counsel stated that the Record Office maintained a seniority list for promotion which was updated from time to time. As per the list dated 18.02.2014, the applicant was at Serial No.21 and was the senior-most Hav eligible for promotion. He further added that in the list dated 27.01.2015, the applicant

was at Serial No.19 due to the retirement of Sub Harinder Rai on 30.11.2014 and the promotion of Nb Sub Nagender Sah to Sub, which resulted in a vacancy of Nb Sub as on 01.12.2014 and that the next eligible candidate for promotion was the applicant.

5. The counsel vehemently asserted that the applicant's unit, aware of his eligibility and promotion status, sent a signal to AOC Records vide signal No.C/6004/PROM/ASW dated 31.01.2015, requesting the Record Office to intimate the likely date of promotion of the applicant. The Record Office replied that there was no vacancy until July 2015, by which time the applicant would become overage. The counsel asserted that the Record Office intentionally ignored the vacancy created by the promotion of Nb Sub Nagender Sah, thereby depriving the applicant of his lawful entitlement and acting with malicious intent. The counsel then stated that the respondents should produce all records related to the promotion released on 29.07.2015 and the details be verified by the Tribunal. The counsel emphasized that the respondents had waited for the applicant to become overage before releasing the promotion vacancy and that this was carried out with a capricious and arbitrary mindset, intending to deprive the applicant of his promotion. Thus,

the vacancy was not released when the applicant was eligible and was only released after he was declared overage.

6. The counsel then stated that the applicant made a representation dated 23.08.2016, but the respondents declared him overage for promotion while promoting his junior on 01.10.2015, as per their order dated 29.07.2015. The counsel stated that the respondents had failed to provide a valid reason for withholding the vacancy and releasing it only after the applicant was overage, resulting in the applicant being discharged in the rank of Hav, thus denying him two-years of service and subsequent extension. The counsel concluded stating that the Tribunal call for the records pertaining to the use of vacancy and details be verified, and necessary orders be passed to promote the applicant.

#### **Arguments by the Counsel for the Respondents**

7. The counsel for the respondents stated that 24 Infantry Division Ordnance Unit, the applicant's unit vide their signal No.C/6004/Prom/ASW dated 31.01.2015, had inquired about the possibilities of further promotion of the applicant to the rank of Nb Sub. In response, AOC Records, vide Signal No.31243/PROM.CA-2 dated 07.02.2015, had intimated that the applicant would become over-aged on 05.07.2015 upon attaining the age of 44 years. The

counsel added that this information from the AOC Records was not a denial of promotion but merely a statement of the factual position at the relevant time. The counsel emphasized that the applicant had misinterpreted the letter.

8. The counsel further contended that during his service, the applicant had the option to exercise remedies available under Section 26 of the Army Act 1950 and Para 364 of the Regulations for the Army 1987 (Revised), but he did not do so and had instead filed the OA, violating Section 21 of the Army Force Tribunal Act, 2007.

9. The counsel further contended that as per the chain of promotion, Nb Sub Nagender Sah was promoted to the rank of Sub on 01.12.2014, creating a vacancy for Nb Sub in that trade. However, due to rationalization of FADs and changes in WE/PE, one Nb Sub vacancy in the trade Ptr & Dctr was decreased from 01.07.2014.

10. The counsel further elaborated that the increase and decrease of vacancies in trades were carried out as per organizational requirements duly approved by the competent authority, and not by the Record Office. He further added that AOC Record was responsible for implementing the rationalization, and that the

allegation of shifting the vacancy to favor someone was, therefore, baseless. The counsel for the respondents contended that the seniority of the applicant as of 01.12.2014 was at Serial No.05 and not Serial No.21 or 19. The counsel further stated that Nb Sub Nagender Sah was promoted to the rank of Sub, creating a vacancy for Nb Sub in that particular trade. However, CA-5 (statics section) of Army Ordnance Corps Records had intimated via Service Note 28846/Gen/CA-5 dated 27.06.2014 that one vacancy in the Ptr Dctr trade had been decreased effective 01.07.2014, resulting in one Nb Sub becoming surplus against the authorized four Nb Subs. Thus, even as one Nb Sub was promoted, that vacancy could not be utilised as this vacancy was part of the rationalization scheme.

11. The counsel further emphasised that the applicant had neither reached the seniority for promotion to the rank of Nb Sub nor was he screened for promotion in his own turn until 05.07.2015. Despite this, the applicant's unit had inquired about the likely date of promotion to Nb Sub, in response to which AOC Records, had informed the unit that there would be no wastage for the Ptr & Dctr trade until Jul 2015, making it impossible to predict an exact date of promotion. The counsel emphasized that this reply was not an order

denying promotion. The counsel further stated that in Jan 2015, the Adm Offr of the applicant's unit had discussed the issue with the Sec Offr of AOC Records, who briefed the Adm Offr of the complete facts for the applicant's information. The authorization for Nb Sub in the particular trade had been decreased from five to four with effect from 01.07.2014, making one Nb Sub surplus from Jul 2014 until 01.12.2014 when Sub Harinder Rai retired from service on 30.11.2014, and Nb Sub Nagender Sahi was promoted to Sub. However, this did not create a vacancy for promoting a Hav to the rank of Nb Sub as this vacancy had to be reduced as part of the rationalization. Thus the applicant could not be promoted due to the non-availability of a vacancy for actual utilization.

### **Consideration**

12. Having heard both sides, there is no dispute of the fact that the applicant had passed the promotion cadre and was eligible to be promoted, subject to availability of vacancy, medical category and remaining within the permissible age limit for promotion. Thus, the issue to be checked and decided is whether vacancies which accrued had been correctly utilized and that there was no mala fide in this process. The Respondents have produced the case files pertaining to the rationalization of manpower, promotion of

JCOs/NCOs and the Seniority Roll of JCOs/NCOs and these have been examined in detail by us.

### **Age Criteria for Promotion.**

13. In addition to the provisions contained in AO 45/80, Army HQ letter No.A/16010/GS/MIS 2 dated 14.03.2003, Army HQ letter No.B/ 33513/ AG/ PS (c) dated 18.04.2000 and SAO 8/S/78, criteria in discipline, medical standards and ACRs for the purpose of promotion to the ranks of Dfr/Hav and JCOs, as laid down vide AG's Branch/PS-2 letter dated 10.12.1997 as amended from time to time are to be adopted. While these are the common promotion criteria, respective Arms and Services are permitted to issue instructions specific to that Arm/Service. The age criteria for tenure/ promotion are, however, governed by Para 149 of Regulations for the Army 1987 and MoD letters of 03.09.1998, 18.09.1998, 04.05.1999 and 28.01.2011, all of which are reproduced below:

### **Para 149, Regulations for the Army 1987**

*149. Promotions —JCOs.—(a) NCOs except those given in sub para (b) below will not normally be promoted to the rank of JCO if over 40 years of age or with more than twenty- two years' service.*

*(b) NCOs of the under mentioned categories will not be promoted to JCO rank if over 44 years of age or with more than 25 years of service :—*

*(i) Clerks GD, GD (SD) and Store.*

*(ii) Storekeeper (Storeman Technical).*

*(iii) Ammunition (Technicians) Examiners.*

*(iv) Personal Assistants (ASC).*

(v) Instructors AEC.

(c) The age and service limits given in sub-paras (a) and (b) above may be waived in very exceptional cases with the permission of the COAS.

(d) Before a NCO is promoted to Junior Commissioned Officer rank, or a probationary JCO is confirmed in his rank he must successfully complete the prescribed cadre course laid down by the COAS from time to time.

(e) The recommending authority for the grant of commission in each case will be as under :— xxxxxx

(f) Recommendations for Promotions.—

(i) Except in the case of the ASC, AOC, EME and RVC, recommendations for promotion to JCO rank will be submitted along with a draft gazette notification to Army Headquarters.

(ii) In case of the ASC, AOC, EME and RVC, recommendations for promotion to JCO rank will be submitted on IAFY-1925, along with a draft gazette notification, by the Central Recrd Office to the Director concerned at Army Headquarters.

### **MoD Letter dated 03.09.1998**

No.F.14(3)/98/D(AG)  
Bharat Sarkar/Government of India  
Raksha Mantralaya Ministry of Defence  
NEW DELHI-110011

3<sup>RD</sup> September, 1998

To  
The Chief of Army Staff,  
New Delhi

Sub: RETIREMENT – JCOs/NCOs

Sir,

I am directed to refer to paragraph 6 of Ministry of Personnel, Public Grievances and Pension (Department of Training) OM No.25012/2/97-Est(A) dated 13.5.1998 and this Ministry's letter No.14(3)/98/D(AG) dated 30<sup>th</sup> May 1998 and to convey the sanction of the President to the laying down of the following revised terms of service/tenure and age limits for retirement in their respect with effect from 30<sup>th</sup> May 1998 in partial modification of the existing rules as contained in paragraph 163 of the Regulations for the Army (1987) as amended, and Government of India, Ministry of Defence letter No.A/16099/Policy/AG/PS-2(c)/2085/S/D9AG) dated 16<sup>th</sup> December, 1976, governing terms of service/tenure limits for retirement of JCOs and NCOs:

	Rank	Service/Age /tenure limits for retirement
(a)	Naik	On completion of 22 years service with colours extendable by 2 years by screening or 49 ears of age, whichever is earlier.
(b)	Dafadar/ Havildar	On completion of 24 years service with colours extendable by 2 years by screening or 49 years of age, whichever is earlier.
(c)	Naib Risaldar/	26 years of pensionable service extendable by 2

	<i>Naib Subedar</i>	<i>years by screening or 52 years of age, whichever is earlier.</i>
(d)	<i>Risaldar/Subedar</i>	<i>28 years of pensionable service extendable by 2 years by screening or 52 years of age, which is earlier.</i>
(e)	<i>Risaldar Major/ Subedar Major</i>	<i>32 years of pensionable service extendable by 2 years by screening or four-year tenure or 54 years of age, whichever is earlier.</i>

*Note:1 The retention of NCOs beyond their contractual period of engagement as per the Enrolment Form will be regulated under the provisions of paragraphs 144 to of the Regulations of the Army (1987). Reserve liability will be regulated under the provisions of A1/2/S/76 keeping in view the extended age of retirement.*

*Note:2 (i) Reserve liability for NCOs will be 51 years of age or 2 years after retirement, whichever is earlier.  
(ii) Reserve liability of JCOs will be 54 years of age or 5 years after retirement, whichever is earlier.*

*Note 3: All JCOs who are holding Honorary Commission will continue holding the Honorary rank till the age/ service of retirement and they will not be eligible for further promotion.*

*2. As the service limit for retirement of Dafadar/Havildar has now been increased to 26 years, the age and service limits laid down for promotion to JCOs rank in paragraph 149(a) of the Regulations for the Army (1987) are consequently raised to 42 years and 24 years respectively to enable them to be eligible for promotion to JCO rank during the revised service limit.*

*3. (a) All JCOs and NCOs shall be screened 3 years in advance of the date of superannuation by a Screening Board to be held at Unit/ Regiment/ Corps basis as applicable, to assess their suitability for retention as a result of screening, shall be retired as per rules.*

*(b) The initial screening by the Screening Board will be completed latest by 31<sup>st</sup> March 1999 in respect of all such cases as would become due for retirement within the screening period.*

*4. These orders will come into effect from 30<sup>th</sup> May 1998. These orders are not applicable to PBPR who are on extension beyond the existing prescribed maximum compulsory age of retirement.*

*5. Except otherwise provided specifically, every JCO/NCO shall retire from service on the afternoon of the last day of the month in which he attains the age/service of retirement. However, UJCOs/NCOs whose date of birth is the first of a month, shall retire from service on the afternoon of the last day of the preceding month on attaining the age/service of retirement.*

*6. Necessary administrative instructions will be issued by COAS.*

*7. This issues with the concurrence of the Ministry of Defence (Finance) vide their UO No.924/Dir(Fin)/AG/98, dated 2.9.1998.*

*Yours sincerely,  
Sd/-  
(B. Brahma)  
Director(AG)*

**MoD Letter dated 18.09.1998**

No F 14(3)/98/D(AG)  
Bharat Sarkar/Government of India  
Raksha Mantralaya/Ministry of Defence  
New Delhi - 110 011

18 Sep 98

To  
The Chief of the Army Staff  
New Delhi

RETIREMENT: JCOs/NCOs

Sir,

The following amendment is hereby authorised to the Govt of India, Min of Def letter no F.14(3)/98/D(AG) dated 03 September 1998.

2. Para 2 may be reconstructed as under :-

As the service limit for retirement of Dafadar/Havildar has now been increased to 26 years, the age and service limits laid down for promotion to JCOs rank in Paragraph 149(a) of the Defence Services Regulations for the Army (1937) are consequently raised to 44 years and 26 years respectively to enable them to be eligible for promotion to JCO rank during the revised service limit.

3. This issues with the concurrence of the Ministry of Defence (Finance) vide their UO No 1069/AG/PD dated 16 Sep 98.

Yours faithfully  
Sd xxxxxx  
(B Brahma)  
Director (AG)

**MoD Letter dated 04.05.1999**

No.F.14(3)/98/D(AG)  
Bharat Sarkar/Government of  
India  
Raksha Mantralaya Ministry of  
Defence  
NEW DELHI-110011

04 May, 1999

To

The Chief of Army Staff,  
New Delhi

Sub: RETIREMENT – JCOs/NCOs

Sir,

Reference Govt. of India, Min of Def letter No.F.14(3)/98/D(AG) dated 03 Sep 98 and No.F.14(3)/98/D(AG) dated 18 Sep 98.

2. In supersession of the amendment issued vide letter dated 18 Sep 98 mentioned above, Para 2 of the letter dated 3rd Sep, 1998 may be re-constructed as under:

Promotions – JCOs:-

(a) NCOs except those given in Sub Para (b) below will not normally be promoted to the rank of JCO if over 44 years of age or with more than twenty six years' service.

(b) NCOs of the undermentioned categories will not be promoted to JCOs rank of over 46 years of age or with more than 27 years of service:-

- (i) Clerks GD, GD(SD) and store
- (ii) Storekeeper (Storeman Technical)
- (iii) Ammunition (Technicians) Examiners
- (iv) Personal Assistants (ASC)
- (v) Instructors AEC

3. All other entries remain unchanged.

4. Para 149(a) and (b) of Defence Service Regulation for the Army (1987) will be amended in due course.

7. This issues with the concurrence of the Ministry of Defence (Finance) vide their UO No.541/AG/PD, dated 03 May 1999.

Yours sincerely,  
Sd/-  
(B. Brahma)  
Director(AG)

14. The above age criteria has also been promulgated vide AOC Record Office Instruction M/99/2007 in that the age limit for promotion to the rank of Nb Sub is 44 years of age. Thus NCOs with the exception as mentioned in Para 2(b) of MoD letter dated 04.05.1999 *will not normally be promoted to the rank of JCO if over 44 years of age or with more than twenty six years' service.* Since the date of birth of the applicant is 05.07.1971, he will attain the age of 44 on 05.07.2015 and therefore can be promoted

to the rank of Nb Sub only if the promotion is carried out prior to 05.07.2015.

### **Utilisation of Vacancy**

15. From the records produced for perusal, it is seen that MoD vide their letter No.A/26539/Rationalization/OS-20/362/D(GS-III) dated 03.07.2013 had laid down the policy for "Standardisation of WE For All ADs, FADs (Except 21 FAD) And Upgradation of 27 Amn Coy To FAD", which necessitated an overall rationalization of manpower in AOC. The rationalization was carried out in Jul 2014 and it entailed a reduction of 163 PBOR across various trades in the AOC. This included the reduction of 43 PBOR in the trade of Ptr & Dctr. On a proportional basis, the rank wise reduction of the 43 PBOR was 1 x Sub, 1 x Nb Sub, 6 x Hav, 9 x Nk, 9 x L/Nk and 17 x Sep. The overall state in the Ptr & Dctr trade is tabulated below:

Ser	Cat	Total Auth	Rank wise authorisation						
			Sub Maj	Sub	Nb Sub	Hav	Nk	L/Nk	Sep
(a)	Strength before rationalisation	245	02	04	05	29	45	62	98
(b)	Reduction in rationalisation	43	-	01	01	06	09	09	17
(c)	Strength after rationalisation	202	02	03	04	23	36	53	81
(d)	Actual holding as in Jul 2014	274	02	03	05	29	45	62	130

16. As seen from the table above, in the JCO ranks there is a surplus of one Nb Sub and therefore, the first vacancy occurring in the rank of Nb Sub is to be surrendered as part of the rationalization. The first Nb Sub became eligible to be promoted only on 01.12.2014 on the retirement of Sub Harender Rai. Accordingly Nb Sub Nagendra Sah was promoted to the rank of Sub. With this, the strength of Nb Sub became 04 and since this was the rationalized strength, no Hav could be promoted based on the promotion of Nb Sub Nagender Sah. The next promotion chain came up on 15.10.2015 when a Sub Maj proceeded to pension establishment for pre-discharge formalities. With this, one Sub became eligible to be promoted to the rank of Sub Maj and Sub Narsingh Rao was promoted to the rank of Sub Maj on 01.12.2014. Based on the promotion of Sub Narsingh Rao as Sub Maj, one Nb Sub was eligible to be promoted to the rank of Sub on 15.10.2015, thus creating a vacancy to promote an eligible Hav to the rank of Nb Sub. Accordingly, Nb Sub Desh Raj was promoted to the rank of Sub on 15.10.2015.

17. The consideration for promoting an eligible Hav to the rank of Nb Sub in Oct 2015 was carried out in Jul 2015, where in 09 Havs were considered. The first eight Havs including the applicant were

ineligible for promotion as they were all over age by then. Accordingly, the 9<sup>th</sup> Hav was approved for promotion to the rank of Nb Sub on 15.10.2015. The results were promulgated vide AOC Records letter dated 29.07.2015. Appendix B to this letter had the details of the Havs who were ineligible for promotion being overage. Thus, the applicant with his date of birth as 05.07.1971 completed 44 years of age as on 05.07.2015. He was thus eligible for promotion for any vacancy arising prior to 05.07.2015. However, in this case, due to the rationalisation of manpower, reduction of a vacancy of Nb Sub, the vacancy was available only on 15.10.2015, by when the applicant was ineligible for promotion due to age criteria.

18. Moreover, according to Para 3 of Record Officer Instruction (ROI) M/99/2007, the service/age/tenure limit for retirement in the rank of Hav is 24 years of service, extendable by 02 years or 49 years of age, whichever is earlier. In the present case, since the applicant was enrolled on 01.11.1990, the applicant completed 24 years of color service extendable by two years on 01.11.2016 and was accordingly discharged. Furthermore, the age relaxation in the Army is neither given at the time of enrollment nor for promotion/retirement and merely acquiring the prerequisite

qualifications for promotion does not entitle an individual to the next higher rank as promotions are issued based on seniority, availability of vacancies, and other promotion criteria, including the prescribed age limit. Hence, the successful completion of the Hav to Nb Sub Cadre does not automatically entitle the applicant to the next promotion. In this case, the applicant could not be promoted only because there was no vacancy prior to him becoming overage. We, therefore, uphold the management of vacancies and the promotions carried out, and find no mala fide in the process.

19. The OA is accordingly dismissed.

20. No order as to costs.

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

Pronounced in open Court on this 9<sup>th</sup> day of August, 2024.

---

**(JUSTICE RAJENDRA MENON)  
CHAIRPERSON**

---

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

Neha