

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

OA 2133/2023

Sub (Clk/SD) Thakur Akhileshwar Singh Parmar ... Applicant  
Versus  
Union of India & Ors. ... Respondents

For Applicant : Mr. S.S. Pandey, 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

This application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant who is serving as a Subedar, being aggrieved by his non-empanelment for the rank of Sub Maj Promotion and hence, prays for the following reliefs: -

*(a) Call for the entire records including any policy based on which the Respondents have taken the decision to use the punishment of severe reprimand to draw the merit of the Applicant for the DPC-2022 in which the applicant was considered as a Second chance despite the fact that the setting aside of the said punishment had already attained finality as on the date when such DPC was held as well as the records based on which the Respondents have issued any order to cancel the earlier orders of setting aside of the said punishment by reviving the same retrospectively to deny promotion to the Applicant to the Rank of Sub Maj vide impugned order dated 21.04.2023 and thereafter quash the same.*

*(b) Direct the respondents to determine the merit of the Applicant without punishment if not already done for the DPC-2022 (Clk) and in case he is above the merit of the last JCO as per the merit approved for such promotion as Sub Maj issue further direction for his promotion to the Rank of Subedar Major ahead of any JCO junior to him with all consequential benefits.*

*(c) Direct the Respondent to give all consequential benefits from the date of accrual of vacancy.*

*(d) Issue such other order/direction as may be deemed appropriate in the facts and circumstances of the case.*

## Submissions on behalf of the Applicant

2. It is the case of the applicant that he is aggrieved by the illegal, arbitrary and discriminatory action of the Respondents of not according a fair consideration to the Applicant for the Rank of Sub Maj in Dec 2022 DPC by not determining his merit without any red ink punishment, consequent to setting aside of the red ink entry punishment and thereafter, illegally cancelling the order passed by the competent authority of setting aside of the said punishment, to revive the said punishment without any opportunity to the Applicant, to present his side resulting in non-approval of the Applicant for such promotion in terms of the impugned order dated 21.04.2023 despite Applicant having fulfilled all the criteria and comparative merit amongst the empanelled JCOs.

3. Elaborating on factual background to the award of aforesaid punishment, it is submitted by the applicant that he was posted in 16 MADRAS (TRAVANCORE) which was deployed at that time in High Altitude Area in Glacier in 2005-06 when he was sent on Temporary Duty to Leh for the renewal of the Liquor Licence from Excise Office, Leh and was attached at Transit Camp, Leh. The Applicant after completion of the work sought leave from the, then CO, who was incidentally available at that time at the Leh Transit Camp approved his leave verbally, based on which the Applicant made preparation for proceeding

on leave which he duly informed to the Head Clk of the Unit. But due to poor communication network could not speak to the, then SM, of the Unit for entering his name on the records and due to oversight even the Head Clk did not intimate him the same. As a result of which the name of the Applicant was included in defaulter and once the Applicant came back from leave, he was surprised to find his name in the list of defaulters when he tried to reason out the same with the, then CO, it infuriated him as probably he did not recall the event and he punished the Applicant by way of summary trial and awarding him 'Severe Reprimand'. The Applicant had no idea at that time of the impact of such punishment and the fact that he was promoted thereafter from time to time to the Rank of Naib Sub and Sub reinforced his belief that the punishment has no effect on his future career progression.

4. Drawing our attention to DPC proceedings, it is submitted by the applicant that non-selection of the Applicant to rank of Subedar Major is presumably due to Red Ink Entry Punishment of 'Severe Reprimand' against the name of the applicant in 2006 which has been taken into consideration by DPC 2021. The applicant while posted at the Regimental Centre submitted an application dated 19.02.2022 duly recommended by chain in command and forwarded the same to Officer-in-Charge, Records The Madras Regiment for setting aside the punishment.

5. Elaborating further, it is submitted by the applicant that a Statement of Case was prepared and floated to The Centre Commandant through Quarter Master and Dy Commandant of the Regimental Centre with their remarks on noting sheet. In Note 4 of the note sheet, Chief Records Officer in his comments mentioned that the Applicant was awarded punishment due to mis-communication with Battalion Subedar Major. The JCO will be considered for promotion to next rank during DPC 2022 as a second chance and the said punishment will fetch negative marks, i.e minus three (-3). As per Para 442 of Defence Service Regulations (DSR), said punishment be reviewed if it appears illegal, unjust or excessive by an Officer superior in Command or by an Officer-in-Charge, Records. The Commandant and Officer-in-Charge, Records after speaking with CRO, on 25.02.2022, based on which approval was granted to set aside the punishment as per Para 442 of DSR and accordingly vide Part II Order dated 02.03.2022 the punishment was set aside.

6. With respect to his consideration for DPC-2022, it is submitted by the applicant that the Madras Regimental Centre letter dated 18.07.2022 forwarded Master Sheet of DPC 2022 in respect of the Applicant wherein no punishment has been mentioned in Ser No 15 which shows that the punishment had been set aside and the Applicant was once again eligible for

consideration for promotion to rank of Sub Maj by the DPC 2022 (CLK) conducted from 26 to 28 Dec 2022 wherein the Applicant was considered as a 'Second Chance' case and he was quite hopeful that he will make the grade for such promotion. However, the Records, Madras Regiment vide letter dated 21.04.2023 declared the result of DPC 2022 (CLK) conducted during 26-28 Dec. 2022 wherein the Applicant was again not empanelled for promotion.

7. The applicant submits that the Master sheet dated 25.04.2023 for DPC Sub Maj for the year 2023 (Third Chance) was forwarded to the Applicant wherein punishment mentioned at Ser No. 15 which had already been set aside once again resurfaced. Therefore, it is quite evident that the Respondents have acted behind the back of the Applicant by reviving the punishment without any intimation to the Applicant by probably cancelling the Part II Order dated 02.03.2022 of setting aside the punishment by the competent authority; despite there being no provision to review the administrative order.

#### **Submissions on behalf of the Respondents**

8. Per Contra, it is submitted by the respondents that while serving with 16 MADRAS at Siachen Glacier (OP MEGHDOOT) on 15 September 2005, the applicant was found to be Absent without Leave from Leh & Karu Transit Camp. As per policy in

vogue, an apprehension roll was issued to The Superintendent of Police, Gaya District, Bihar vide 16 MADRAS letter No. 2165/HQ dated 19 September 2005. A Court of Inquiry was also ordered by the Officiating Commanding Officer, 16 MADRAS to investigate the circumstances under which the applicant was Absent Without Leave. As per the Findings of the Court of Inquiry, the applicant was sent for Temporary duty to Leh to deposit money in the bank on 10 September 2005. The applicant handed over the documents to No 2599760X Nk P Dharmaraj of 16 MADRAS at Leh Transit Camp and Absented without Leave from Highly Active Operational Area. The duly constituted court opined that the applicant had been Absent without Leave with effect from 15 September 2005 without sufficient cause and was declared as a deserter from Highly Active Operational Area. The applicant voluntarily rejoined on 29 December 2005 after an absence of 106 days. He was tried Summarily on 14 February 2006 by the, then Commanding Officer, 16 MADRAS, now Lt Gen Tarun Kumar Aich, AVSM under Army Act Sec 39 (a) for the offence of being Absent Without Leave for 106 days and awarded the punishment of Severe Reprimand.

9. Setting the factual background, it is submitted by the respondents that after non-empanelment in DPC-2021, the applicant submitted an application to Commandant, The Madras

Regimental Centre on 19 February 2022 for setting aside of his punishment of Severe Reprimand. In his application, the applicant stated that he had taken verbal sanction of the then Commanding Officer, 16 MADRAS, now Lt Gen Tarun Kumar Aich, AVSM to proceed on leave and had informed the Battalion Head Clerk of the same. He did not mention that he was Absent Without Leave for a period of 106 days from Active Operational Area (OP MEGHDOOT). The same was recommended by the then Deputy Commandant to Commandant, The Madras Regimental Centre & Officer-in-Charge, Records, The Madras Regiment to set-aside the punishment awarded to the applicant under Army Act Section 30 (a) for absenting himself without leave in the year 2005 within 07 days from the date of application received from the applicant. Accordingly, the whole punishment was set-aside and the same was published vide Part II Order 3/0096/0001/2022 dated 03 March 2022.

10. Learned counsel for the respondents brings out that in the second chance, the applicant was screened during the Departmental Promotion Committee-2022 along with his batch mates for vacancies occurring during the year 2023. The Departmental Promotion Committee assembled on 26-28 December 2022 and scrutinised the service profiles, Annual Confidential Reports and OAPs of all effected Subedars (Clk) in accordance with Army Headquarters letter

No. B/33513/AG/PS-2(c) dated 10 October 1997. During the Departmental Promotion Committee the following observations were raised by the Board of Officers of Departmental Promotion Committee 2022 in respect of the applicant: -

- (a) That the applicant of 9 MADRAS presently posted in Madras Regimental Centre with effect from 02 December 2020 was considered for promotion to Sub Maj (Clk) Departmental Promotion Committee as his second attempt (chance) in December 2022.
- (b) That the applicant had made it in merit to No I after he was given redressal by the then Commandant, Madras Regimental Centre, for an offence committed in operational in 2005 under Army Act 39 (a) for which individual was awarded 'Severe Reprimand' by the then Commanding Officer, 16 MADRAS, now Lt Gen Tarun Kumar Aich, AVSM.
- (c) It is important to note that the applicant was screened for his first attempt in the Departmental Promotion Committee in December 2021 where the then Commandant Madras Regimental Centre was a member representative of the Departmental Promotion Committee being Commandant of Madras Regimental Centre.
- (d) That the personal application of the applicant signed on 19 February 2022 for redressal was moved on high priority

and complete redressal was granted on 25 February 2022 by setting aside the existing award of punishment by the competent authority under the provision of Paragraph 442 of Defence Service Regulations.

e) The board for Departmental Promotion Committee 2022 feels that JCO has been unduly favoured granting him complete redressal for a serious offence there by making him eligible for promotion to the rank of Sub Maj.

11. It is further submitted by the respondents that subsequent to the observations, Board of Officers of the DPC made several recommendations elaborated as under:

(a) Redressal granted by the then Commandant, Madras Regimental Centre on 25 February 2022 needs to be reviewed by his higher Competent Authority/Legal Advisor as it appears to be biased in favour of a particular applicant.

(b) Considering the merit of 2017-2019 batch for Departmental Promotion Committee 2022 has recommended a reserve JCO Clk (SD) in case the redressal granted to that the applicant overruled by the Competent Authority/Legal Opinion.

(c) Provisions of grant of redressal as per DSR para 442 by Competent Authority needs to be reviewed to avoid misuse

by individual and chain of command to benefit particular individual.

(d) Though the record of applicant was checked and compiled during Departmental Promotion Committee 2021, application for redressal in February 2022 and grant of same post conduct of Departmental Promotion Committee 2021 hints at misuse of power vested in Centre Commandant.

12. Elaborating the chain of events, learned counsel submits that accordingly, a case was taken up with Headquarters Dakshin Bharat Area for review of redressal granted by the then Commandant, Madras Regimental Centre on 25 February 2022 for setting aside existing punishment awarded to the applicant vide this office letter No 01350/DPC/RA (Prom) dated 11 January 2023. In reply Headquarters Dakshin Bharat Area vide their letter No. 213007/Discp/SM DPC/MRC/DV dated 17 January 2023 directed to re-submit the case along with detailed parawise comments of the then Commanding Officer of the concerned unit/Formation Headquarters where "Cause of Action" occurred, along with recommendations of the redressal sought by the applicant. Parawise comments and recommendations of the then Commanding Officer, 16 MADRAS now Lt Gen Tarun Kumar Aich, AVSM was

sought vide this office letter No 01350/DPC/RA (Prom) dated 20 January 2023.

13. It is further submitted by the learned counsel that the parawise comments and recommendations of the, then Commanding Officer, now a serving Lt Gen were received by this office vide Integrated Headquarters of Ministry Defence (Army) letter No A/75070/M1-23 dated 31 January 2023. The, then Commanding Officer, recommended that the punishment awarded to the applicant should not be set aside and no redressal to be granted, since the applicant was absent without leave when the unit was deployed in OP MEGHDOOT (Siachen Glacier) which is a very highly active operational area and the individual did not take any prior permission from any reporting channels. A fresh case for review of redressal granted by the, then Commandant Madras Regimental Centre, on 25 February 2022 for setting aside punishment awarded to the applicant was taken up with Headquarters Dakshin Bharat Area (DV) vide this office letter No 01350/DPC/RA (Prom) dated 06 February 2023. General Officer Commanding, Dakshin Bharat Area vide order dated 11 February 2023 directed that the redressal sought by the applicant be rejected, being devoid of merit and substance. The same was published in Part II Order by Madras Regimental Centre vide their Part II Order No 3/0177/0001/2023.

14. Since the redressal granted by the then Commandant, Madras Regimental Centre was reviewed, the points for the punishment was deducted and the applicant couldn't make it in the first two merit in the Departmental Promotion Committee 2022, hence he was not granted the next promotion to the rank of Subedar Major in Departmental Promotion Committee-2022, and therefore, the present OA is misconceived.

**Consideration**

15. We have heard both the parties and have perused the material placed on record including the documents relied upon by the parties. The limited consideration which remains to be adjudicated herein is whether the subsequent revival of the punishment of 'Severe Reprimand' awarded to the applicant was legal or not and subsequently, whether the applicant is entitled to be promoted to the rank of Sub Maj or not?

16. At the outset it is essential for us to take note of the punishment awarded to the applicant for which the Offence Report is reproduced below:-

*"In lieu of IAFD-901*

**FORM FOR USE AT SUMMARY TRIALS OF NCO'S AND OTHER RANKS UNDER SEC 80-82 OF THE ARMY ACT-1950**

***OFFENCE REPORT***

***HQ' COMPANY, 16 MADRAS (TRAVANCORE)***

***SER NO : 02***

***For the week ending : 18 Feb 2006***

***Last report submitted on : 07 Jan 2006***

***Charges against No 2598177W Rank (HAV(CLK) Name : THAKUR AKHILESHWAR SINGH PARMAR***

Place and Date of Offence	Offence	Plea	Name of Witness	Punishment awarded	Signature, Rank and designation of officer by whom awarded by and date of award	Date of entry in conduct sheet	Remarks
1	2	3	4	5	6	7	8
Sep 2005	AA SECT - 39(a)- <u>ABSENTING HIMSELF WITHOUT LEAVE</u> In that he, at field (J&K) absented himself without leave from 15 Sep 2005 (AN) and remained, so absent till he voluntarily rejoined at 255 TC on 29 Dec 2005 at 0530hrs. Total period of absence is 106 days from (15 Sep 2005 to 29 Dec 2005)	GUILTY/NOT GUILTY	JC- 439019H Sub KV Kutty No 2694644L Hav B Murugan	SEVERE REPRIMAND	SD/- Col Commanding Officer 16 <sup>th</sup> Bn the Madras Regiment	14 Feb 06	

KEPT UNDER OPEN/CLOSE ARREST

Sd/-xxx

Remanded to CO

Maj  
OC HQ Coy"

The applicant while in the rank of Hav as per above Summary Trial for absence from Field Area (J&K) for a duration of 106 days was awarded "Severe Reprimand" by Commanding Officer of 16<sup>th</sup> Battalion The Madras Regiment on 14 February 2006.

17. We have considered the submissions on behalf of the applicant that he sought leave from then CO after completion of Temporary Duty at Transit Camp, Leh who was available at that time at Transit Camp and his leave was verbally approved by the CO and that, the applicant informed the Head Clk of the unit but could not speak to the then Subedar Major of the unit. In

the backdrop of above we have perused Court of Inquiry conducted by his unit on orders of Lt Col Ashit Ranjan, Officiating Commanding Officer which declared the applicant a 'Deserter'. The relevant extracts of said Court of Inquiry are reproduced: -

"OPINION OF THE COURT"

1. No 2598177W Hav/Clk Thakur Akhileshwar Singh Parmar of HQ Coy, 16 MADRAS (TRAVANCORE) is AWL wef 15 Sep 05 without sufficient cause and is still absent from duty.
2. No 2598177W Hav/Clk TAS Parmar is absent without leave for more than 30 days and hence as per existing orders be declared as deserter from service.
3. No 2598177W Hav/Clk TAS Parmar is in possession of his I Card bearing machine No E461680 and is without any arms and amn.

PRESIDING OFFICER : Sd/-xxxxxx  
(SS-41004I Capt Uday Bhaskar)  
MEMBERS : Sd/-xxxxxx  
(JC 439019H Sub KK Kutty)  
: Sd/-xxxxxx  
(JC-432464H Nb Sub D Devesdivas)

REMARKS OF THE COMMANDING OFFICER

1. I agree with the opinion of the court.

Station : C/o 56 APO  
Date : 26 Oct 05

Sd/-xxxxxx  
(LT COL ASHIT RANJAN)  
OFFG COMMANDING OFFICER  
16 MADRAS (TRAVANCORE)"

18. However, on return to unit, the applicant was taken on strength and awarded summary punishment of 'Severe Reprimand'. There is no evidence on record to establish that he proceeded on leave as averred on his behalf. It is also relevant in this context to record the comments of the applicant's CO, who is currently a serving, Lt Gen which reads as under:-

"Appx B  
(Ref to Para 2 of DGMI/MI-23  
letter No A/75138 dt 31 Jan 23)

RECOMMENDATIONS ON THE REDRESSAL SOUGHT BY JC-441111A  
SUB (CLK SD) THAKUR AKHILESHWAR SINGH PARMAR

1. I have perused the Personal Application dt 19 Feb 22 submitted by JC-441111A Subedar (Clerk SD) Thakur Akhileshwar Singh Parmar of Records the Madras Regt to OIC Records the Madras Regt.

2. As per the Court of Inquiry convened vide 16. MADRAS (TRAVANCORE) BRO No 200 dated 15 Oct 2005 Havildar (now Junior Commissioned Officer) Thakur Akhileshwar Singh Parmar absented himself from the place of Temporary Duty wef 15 Sep 2005 till he reported back to 255 Transit Camp on 29 Dec 2005. He was declared deserter wef. 15 Sep 2005. The total absence of the individual from the Unit was 106 days. The Unit was deployed in OP MEGHDOOT (HAA/Fd Area, Glacier) which is a very active operational area and the individual did not take any prior permission from any reporting channels. He was tried under Army Act Section 39 (a) under the summary power of the Commanding Officer. I am of the view that the punishment awarded to JC-41111A Subedar (Clerk Staff Duties) (then Non Commissioned Officer) Thakur Akhileshwar Singh Parmar of Records the Madras Regt (then 16 MADRAS (TRAVANCORE) should not be set aside and no redressal to be granted.

Case No: A/75138/MI-23

Sd/-xxxxx

Dte Gen of Mil Int/MI-23  
GS Branch, South Block  
IHQ of MoD (Army)  
New Delhi-110011  
30 Jan 2023"

(TK Aich)  
Lt Gen  
DGMI

19. Thus, on consideration of above Court of Inquiry and the document reproduced above we do not find any substance in the averments that the applicant sought permission to proceeded on leave. Noting that the absence of the applicant was beyond the limit of 30 days to declare him a deserter from field area, we have no reason to be convinced that the offence was minor and the punishment was harsh as submitted by the applicant. That apart, even if we have to accept the submissions of the applicant that it may have been caused due to a human error, his absence from duty without leave for 106 days is clearly well above his entitled leave

which is 60 days at a stretch. Therefore, there is no doubt about his intentional absence without leave from field area and being a responsible Non Commissioned Officer in rank of Hav, we have no hesitation in holding that he was guilty of the offence thus committed.

20. It is our essential to place reliance on section 442 of Regulations for the Army (Revised Edition 1987) which is reproduced as under :

*“442. Review of Summary Punishments awarded to persons subject to the Army Act. Provisions for the review of summary punishments awarded under AA Secs. 83, 84 and 85 are contained in AA Secs. 87 and 88. Punishments awarded under Army Act Sec. 80 may be reviewed by an officer superior in command to the officer who awarded the punishment, and if any such punishment appears to such officer to be illegal, unjust or excessive, such officer may cancel, vary or remit the punishment and make such direction as may be appropriate in the circumstances of the case:*

*Provided that where a punishment is wholly illegal, or is in excess of the punishment authorised by law, it may be cancelled or varied by an Officer-in Charge Records also.*

*Under AA Sec. 88(b), the COAS has specified the GOC-in-C of a Command as the superior military authority for the purpose of review of punishments awarded to Officers, JCOs and WOs under Army Act Secs. 33 and 84.*

*Powers conferred under Army Act Sec. 87 or under this paragraph shall normally be exercised within a period of two years from the date of award of the punishment.”*

21. We also place on record hereinunder the statement of case to Remit/Commute the punishment awarded to the applicant:-

**“STATEMENT OF CASE TO REMIT/COMMUTE THE  
PUNISHMENT AWARDED TO JC-441111A SUBEDAR (CLERK SD)  
THAKUR AKHILESHWAR SINGH PARMAR OF THE MADRAS  
REGIMENTAL CENTRE**

## INTRODUCTION

1. *JC-441111A Subedar (Clerk SD) Thakur Akhileshwar Singh Parmar was enrolled unto The Madras Regimental Centre on 24 Oct 1994 and has completed 27 years of service. The Junior Commissioned Officer is presently serving with The Madras Regimental Centre and performing the duties of QM Head Clerk at QM Branch since 13 Dec 2020. The Junior Commissioned Officer is coming up in the seniority for DPC for the year 2022. However, while he was serving with 16 MADRAS (TRAVANCORE) in the year 2006, he was awarded punishment, 'Severe Reprimand' when he was Havildar for a very minor offence as for absenting without leave under Army Act Sec 39 (a) by Col TK Aich, Commanding Officer, 16 MADRAS (TRAVANCORE) (Copy of Field Conduct sheet we attached). The said punishment was very harsh considering the nature of offence and will affect this promotion prospects during the time of calculation of points for Subedar Major/ Honorary rank.*

2. *JC-441111A Subedar (Clerk SD) Thakur Akhileshwar Singh Parmar is an exceptional Junior Commissioned Officer who is professionally competent and passionate towards his profession. The Junior Commissioned Officer has also been awarded "Vice Chief of Army Staff Commendation Card" for outstanding performance in active service. Keeping in mind the law of natural justice and the career prospects of the Junior Commissioned Officer the said punishment is required to be set aside.*

## PROPOSAL

3. *It is proposed that the punishment awarded to JC-441111A Subedar (Clerk SD) Thakur Akhileshwar Singh Parmar in the year 2006 be remitted/commuted by the competent authority as a special case of harsh punishment for a minor offence under Para 442 of Defence Service Regulations (Revised Edition) 1987 (copy att).*

## JUSTIFICATION

4. *JC-441111A Subedar (Clerk SD) Thakur Akhileshwar Singh Parmar is an outstanding Junior Commissioned Officer with an impeccable character, loyalty and commitment to the organisation. He is professionally competent and has a varied experience of serving in, all kinds with absolute dedication to the service. The Junior Commissioned Officer willingly accepts additional responsibilities and capable of single handedly executing the additional work entrusted by the higher Headquarters Commissioned Officer has exceptional management skills and his performance has been lauded by all his superiors under whom he has served. He was awarded "Vice Chief of Army Staff" Commendation Card for his exceptional and outstanding performance.*

5. The Junior Commissioned Officer is coming up in the seniority for DPC 20 Honorary rank. However, during scrutiny of his documents it has come to light that he was awarded punishment of 'Severe Reprimand' when he was Havildar for a very minor offence as for absenting without leave under Army Act Sec 39 (a) by Col TK Aich, Commanding Officer, 16 MADRAS (TRAVANCORE). Considering the seniority of the Junior Commissioned Officer at the time of Offence, the prevailing circumstances and the quantum of punishment, it is felt that the punishment awarded was too harsh and against the rules of natural justice.

6. Notwithstanding the said punishment, the Junior Commissioned Officer has always maintained very high standards of professionalism living upto the standards of the regiment and the battalion. He has shown exceptional leadership and professionalism during various field and peace tenures and worked tirelessly proving himself to be an asset to the organisation.

7. Now the Junior Commissioned Officer is coming up in the seniority for DPC for the year 2022 wherein this punishment is likely to affect his promotion prospects despite having performed his duties with exceptional zeal, dedication and devotion. Keeping in mind the career of the Junior Commissioned Officer the said-punishment is required to be set aside by the Officer-in-Charge, Records.

#### FINANCIAL EFFECT

8. There is no financial effect Involved in setting aside punishment in respect of JC-441111A Subedar (Clerk SD) Thakur Akhileshwar Singh Parmar of The Madras Regimental Centre

#### SUMMARY

9. JC-441111A Subedar (Clerk SD) Thakur Akhileshwar Singh Parmar is highly, motivated and disciplined Junior Commissioned Officer of the Battalion. He was awarded punishment when he was Havildar for a very minor offence as for absenting without leave under Army Act Sec 39 (a) by Col TK Alch, Commanding Officer, 16 MADRAS (TRAVANCORE) in the year 2006 which was an aberration considering the track record of the Junior Commissioned Officer. Also, the said punishment is found to be too harsh and against the law of natural justice and is affecting his career in terms of promotion to Subedar Major as well as the award of Honorary ranks. Keeping in view the 27 years of dedicated service and hard work done by the Junior Commissioned-Officer and the value addition by having such sincere Junior Commissioned Officer as part of our prestigious Regiment, the said punishment is proposed to be remitted/commuted by the Officer-In-Charge, Records.

Dated: 22 Feb 2022

Sd/-xxxxxxx  
(N Kumara Dhas)  
Colonel  
Dy Comdt"

22. It is clear from the above statement of case that having been initiated on 22 February 2022, it has been approved on 25 February 2022 by Brig Rajeshwar Singh, the Commandant & OIC Records of Madras Regimental Centre. The statement of case has nowhere noted the exact offence committed by the applicant and under what conditions; merely holding that the applicant was awarded a harsh punishment for a minor offence. We are unable to be convinced that 'Severe Reprimand' for absence from a Field Area for 106 days is a harsh punishment. Having observed many cases of similar nature placed in front of us, we consider the punishment rather mild. Approval of the statement of case under the provision of RA Para 442 within three days of its' initiation in our view is clearly a lack of application of mind by the competent authority and an exercise conducted with premediated aim of setting aside the punishment of one of his employees serving in the Regimental Centre who is due for consideration by DPC for promotion to rank of Sub Maj. Deliberate camouflaging of the nature and description of offence in the Statement of Case adequately substantiates our conclusion.

23. Moreover, it is essential for us to analyse the provision of Para 442 of RA (Revised Edition 1987) which allows review of summary punishments on grounds of being illegal,

unjust or excessive. In our opinion the punishment awarded by the Commanding Officer was in no way illegal or excessive. That apart, the above provisions are applicable to be exercised within a period of two years from the date of award of punishment. Therefore, setting aside the punishment after 16 years, merely based on an unsubstantiated opinion without going into the facts and circumstances is not only illegal but clearly misinterpretation and misuse of this statute.

24. We now proceeded to analyse the observation recorded by the DPC held in December 2022 wherein the relevant paras read as under:-

*"5. The following, obsns raised by BOO of DPC 2022 for Clk (SD) in respect of JC-441111A Sub/Clk (SD) Thakur Akhileshwar Singh Parmar are as under:*

*(a) JC-441111A Sub/Clk (SD) Thakur Akhileshwar Singh Parmar of 9 MADRAS presently posted in MRC wef 02 Dec 2020 was considered for DPC of Clk (SD) as his second attempt (chance) in Dec 2022*

*(b) JCO (Clk) has made in merit to No 1 after he was given redressal by Comdt, MRC, Brig Rajeshwar Singh, SC, SM for an offence committed in field in 2005 under Army Act 39 (a) on 27 Dec 2022 for which Indl was awarded Severe Reprimand by CO. 16 MADRAS.*

*(c) It is imp to note that JCO was screened for his first attempt in DPC in Dec 2021 where Comdt MRC, Brig Rajeshwar Singh, SC, SM was member rep of DPC being Comdt of MRC.*

*(d) Personal Application of the JCO signed on 18 Feb 2022 for redressal was moved on high priority and complete redressal was gtd on 25 Feb 2022 by setting aside the punishment by the Competent Authority under provision of DSR Para 442.*

*(e) The process of redressal followed by JCO and same gtd by Comdt MRC are correct. However, the bd for DPC 2022 feels that JCO has been unduly favoured granting him complete redressal for*

a serious offence thereby making him eligible for promotion to the rank of Sub Maj Clk (SD).

(f) Obsn of the BOO on Grant of Redressal

(i) Personal application of the JCO states that he had taken verbal sanction of the CO to proceed on Ive. Details of the same to incl date No of days, type of Ive and other detls are not mentioned, possibly the JCO is trying to deliberately hide the actual reason. JCO further slates that, I reported back to 255 TC on time and was awarded Severe Reprimand by CO as I had not followed the channel and proceeded on Ive, Again no details of date No of days Ive availed and type of Ive have been kept ambiguous for the sanctioning authority to not understand the gravity of offence.

(ii) Statement of Case is prepared by Dy Comdt, MRC based on the personal application of the JCO and complete redressal is sanctioned by the Comdt, MRC on 25 Feb 2022. Statement of Case justification given by MRC is that JCO is coming up in seniority for DPC 2022/Honorary rank. However, during scrutiny of his documents it has come to light that he was awarded punishment of Severe Reprimand when he was Hav for a very minor offence as AWL under Army Act 39 (a). Bal of the justification is based on the present competence and conduct of the JCO. Details of the offence committed by the JCO in 2005 has again been left out from the preview of the Statement of Case for reasons best known to the auth in the processing chain.

(g) Details of Offence Committed. At the time of offence JCO was posted as Hav/Clk (SD) with 16: MADRAS dply In OP MEGHDOOT. As NCO Clk, he was AWL for 106 days wef 15 Sep 2005 to 29 Dec 2005 and was declared deserter from active field area of OP MEGHDOOT. On re-joining from desertion, he was tried by CO and awarded Severe Reprimand for this grave offence. Chain of Command giving redressal has not given justification how this 108 days (AWL) from OP MEGHDOOT by NCO Clk is a minor offence and needs to be given complete redressal to allow JCO attain No 1 merit in his second chance in DPC 2022.

(h) Recommendation of the BOO for DPC 2022.

(i) Redressal granted by Brig Rajeshwar Singh, SC, SM on 25 Feb 2022 needs to be reviewed by his higher Competent Authority/Legal Advisor as it appears to be biased in favour of a particular JCO.

(ii) Considering the merit of 2017-2019 batch for DPC 2022 has recommended a reserve a JCO Clk (SD) in case the redressal granted to Sub Clk (SD) Thakur Akhileshwar Singh Parmar is overruled by the Competent Authority/Legal Opinion.

(iii) Provisions of grant of redressal as per DSR Para 442 by Competent Authority needs to be reviewed to avoid misuse by incl and chain of comd to benefit particular Incl.

(iv) Though the record of JCO was checked & compiled during DPC 2021. application for redressal in Feb 2022 and grant of same post conduct of DPC 2021 hints at misuse of power vested in Centre

*Comdt. Same needs to be investigated by MRC to ensure proper procedure in future.*

*6. A Regt select panel was drawn based on the cut off marks obtained by the 1<sup>st</sup> Subedar (Clk) in the merit panel to fill up vat occurring during the year 2023. Select cum placement panel is as per Appx G.*

*Sd/-xxxxxx*

*(IC-44065N Lt Gen Manjinder Singh, YSM. VSM)*

*Col of The Madras Regt*

*Chairman*

*Members*

*1. Sd/-xxxx*

*(IC-52048H B SK Yadav*

*OIC Records The Madras Regt*

*2. Sd/-xxxx*

*(IC-65022M Col Dinesh Singh Tanwar)*

*CO 110 Inf Bn (TA) MADRAS"*

25. The observation and the recommendations above are quite elaborate and reasoned in our considered opinion. Based on the observations of the DPC with respect to legality and bias in the process flowed, the DPC referred the application of the applicant for setting aside the punishment to next higher authority after taking due inputs from Lt Gen TK Aich, who was the Commanding Officer and a serving Lt Gen now vide his recommendations dated 30.01.2023 and placed the same for directions of Lt Gen A Arun, General Officer Commanding, Dakshin Bharat Area, who vide his orders dated 11.02.2023 directed the following :-

**"DIRECTIONS OF THE GENERAL OFFICER COMMANDING, DAKSHIN  
BHARAT AREA ON THE APPLICATION DT 19 SEP 2022 FOR  
REDRESSAL  
IN RESPECT OF JC-441111A SUBEDAR (CLERK STAFF DUTIES)  
THAKUR AKHILESHWAR SINGH PARMAR**

1. I agree with the recommendations of Lt Gen TK Aich, of DGMI, then Commanding Officer, 16 MADRAS and Commandant, The Madras Regimental Centre.

2. The punishment awarded to JC-441111A Subedar (Clerk Staff Duties) Thakur Akhileshwar Singh Parmar of Records, The Madras Regiment (then 16 MADRAS (TRAVANCORE)) is just and legal.

3. I therefore, direct that redressal sought by the Junior Commissioned Officer be rejected, being devoid of merit and substance.

Case No: 213007/Disco/DV  
Station: Chennai  
Dated: 11 February 2023

Sd/-xxxxx  
(A Arun)  
Lieutenant General  
General Officer Commanding  
Dakshin Bharat Area"

### Conclusive Summary

26. Having gone through the entire sequence of actions and records, we consider it pertinent to summarise this case placed before us for adjudication. The entire controversy emerges from the Army Headquarters Policy Letter No B/33513/AG/PS2(c) dated 10.10.1997 for conduct of DPC wherein as per the guidelines at Para 6(b), Minus 3 pts are awarded to a candidate for a punishment on record because of which the applicant's quantified total marks dropped to the extent that he was non-promotable to the rank of Sub Maj due to low merit. It was thus noticed that the negative marking of the punishment was the only cause of drop in order of merit.

27. The background of the cause of action goes back to 2006 when he absented himself from an operational field area in J&K in OP MEGHDOOT (High Altitude area in Glaciers) in the rank for Hav for a duration of 106 days

without proper leave. He was declared a deserter based on a Court of Inquiry (C of I) done by his unit 16 MADRAS. However, on reporting back to unit he was taken back on strength and awarded a punishment of Severe Reprimand by the Commanding Officer. Thereafter he continued to serve well and was awarded promotions of Hav, Nb Sub and Sub as the subject punishment did not come in his way. Due to his exceptional performance he has been awarded Vice Chief of Army Staff Commendation Card and his ACR records have been excellent.

28. When the applicant was placed before the DPC Conducted on 03-04 December 2021 for promotion to rank of Sub Maj as is observed by us from the proceedings of the DPC, he was placed at order of Merit 07 for 02 vacancies occurring in the category of clerks. It was also observed that if he did not have the negative marks on record, he would have been placed at 03<sup>rd</sup> in the order of merit. Since the Subedar placed at Order of Merit No 02 was to proceed on retirement before the occurrence of the vacancy, the applicant would have been promoted to rank of Sub Maj, having automatically become No 2 in merit. He was then posted at the Madras Regimental Centre.

29. Consequently, he submitted an application for setting aside the punishment of 'Severe Reprimand'. In exercise of

powers vested in Regimental Centre Commandant who is also the Officer-in-Charge (OIC) Records as per provision of par 442 of Regulations for Army (Revised Edition 1987) on 22.02.2022. Brig Rajeshwar Singh, OIC Records set aside the punishment vide his order dated 25.02.2022.

30. When his name came up for DPC-2022 conducted from 26-28 December 2022, the merit list did not contain any negative marking and resultantly he was placed at Order of Merit No 01 as against one vacancy; clearly rendering him promotable. Having observed the process undertaken in addressing the application of the applicant by OIC Record, the DPC chaired by Lt Gen Manjinder Singh, Col of the Madras Regiment took exception to the same and referred the applicant to the next higher competent authority i.e GOC, Dakshin Bharat Area after seeking comments from Lt Gen TK Aich, the then Commanding Officer of the applicant and now DGMI who upheld the punishment awarded by him in 2006 and consequently the application of the applicant seeking redressal for setting aside the punishment was rejected. The punishment of Severe Reprimand continued to remain on record and accordingly he was held unpromotable by DPC-2022.

31. The applicant was considered as a third look case by DPC-2023 held on 02-03 November 2023. The DPC

considered the applicant for O2 vacancies. We have observed that candidates at Order of Merit 01 and 02 have 95.92 and 94.79 marks respectively. The applicant has a total of 91.59 marks and we take note of the fact that even if his punishment was not on record he would still be unpromotable being lower than OOM 02 with an aggregate of 94.59. Therefore, the issue remains restricted to his considerations by DPC in 2021 and 2022.

32. Having analysed the entire process followed in setting aside the punishment of the applicant by Commandant, Madras Regimental Centre & OIC Records under the provision of para 442, we have no hesitation in observing that process is illegal and biased and without due application of mind merely with a purpose of favouring an employee serving under him. We have concluded that it is a violation of provision of para 442 of Regulations for Army which allows a review by OIC Records, only within period of two years for date of award of punishment whereas he has exercised his powers after 16 years and that too without considering the magnitude and circumstances of the offence and the punishment thus awarded. Merely holding an opinion without analysis of the details of the case that the punishment was illegal, unjust or excessive is clearly a misuse of his powers.

33. We do not wish to express any opinion in respect of redressals granted to Sub Sebastian Daniel, Sub S Ravi of 21 MADRAS or Sub K Raghu of setting aside their punishments by the respondents as submitted by the applicant in his OA and argued during the submissions as we are neither aware of the grounds on which the above individuals have been granted redressal nor have they been arrayed as parties in the instant OA. Suffice to mention here that even if all the above-named employees have been granted redressal under provision of Para 442 of RA, we univocally maintained that wrongs if at all, done in those cases cannot be quoted as precedence in the case under consideration which in our opinion is clearly in violation of the said powers. That apart, the above-mentioned individuals in no way affect the promotional prospects of the applicant as they are in category of General Duty JCOs and not competitors of the JCO in the DPCs under consideration. Thus, the submissions do not help the applicant in anyway.

34. We have taken into considerations the following judgments relied upon by Learned Counsel for applicant:

*“Kalabharati Advertising v. Hemant Vimalnath Narichania, (2010) 9 SCC 437: (2010) 3 SCC (Civ) 808 at page 445*

*Review in absence of statutory provisions*

*(a) It is settled legal proposition that unless the statute/rules so permit, the review application is not maintainable in case of judicial/quasi-judicial orders. In the absence of any provision in the*

*Act granting an express power of review, it is manifest that a review could not be made and the order in review, if passed, is ultra vires, illegal and without jurisdiction. (Vide Patel Chunibhai Dajibha v. Narayanrao Khanderao Jambekar [AIR 1965 SC 1457] and Harbhajan Singh v. Karam Singh [AIR 1966 SC 641].)*

*(b) In Patel Narshi Thakershi v. Pradyuman Singhji Arjunsinghji [(1971) 3 SCC 844: AIR 1970 SC 1273], Major ChandraBhan Singh v. Latafat Ullah Khan [(1979) 1 SCC 321], Kuntesh Gupta (Dr.) v. Hindu Kanya Mahavidyalaya [(1987) 4 SCC 525: 1987 SCC (L&S) 491: AIR 1987 SC 2186], State of Orissa v. Commr. of Land Records and Settlement [(1998) 7 SCC 162] and Sunita Jain v. Pawan Kumar Jain [(2008) 2 SCC 705: (2008) 1 SCC (Cri) 537] the Hon'ble Court held that the power to review is not an inherent power. It must be conferred by law either expressly/specifically or by necessary implication and in the absence of any provision in the Act/Rules, review of an earlier order is impermissible as review is a creation of statute. Jurisdiction of review can be derived only from the statute and thus, any order of review in the absence of any statutory provision for the same is a nullity, being without jurisdiction.*

*Kuntesh Gupta v. Hindu Kanya Mahavidyalaya, (1987) 4 SCC 525: 1987 SCC (L&S) 491 at page 528*

*(c) It is now well established that a quasi-judicial authority cannot review its own order, unless the power of review is expressly conferred on it by the statute under which it derives its jurisdiction. The Vice-Chancellor in considering the question of approval of an order of dismissal of the Principal, acts as a quasi-judicial authority. It is not disputed that the provisions of the U.P. State Universities Act, 1973 or of the Statutes of the University do not confer any power of review on the Vice-Chancellor. In the circumstances, it must be held that the Vice-Chancellor acted wholly without jurisdiction in reviewing her order dated 24-1-1987 by her order dated 7-3-1987. The said order of the Vice-Chancellor dated 7-3-1987 was a nullity.*

*Harbhajan Singh v. Karam Singh, (1966) 1 SCR 817: AIR 1966 SC 6410*

*(d) The question of law presented for determination in the appeal is whether the Director, Consolidation of Holdings, had power to review his previous order dated 3rd April, 1958 dismissing Harbhajan Singh's application, and whether his subsequent order made under Section 42 of the Act dated 29th August, 1958 is legally valid?*

*(e) There is no provision in the Act granting express power of review to the State Government with regard to an order made under Section 42 of the Act. In the absence of any such express power, it is manifest that the Director, Consolidation of Holdings, cannot review his previous order of 3rd April, 1958 dismissing the application of Harbhajan Singh under Section 42 of the Act. It follows therefore that the order of the Director dated 29th August, 1958 is ultra vires and without jurisdiction and the High Court was right in quashing that order by the grant of a writ under Article 226 of the Constitution."*

35. In consideration of the facts of the case under considerations the judgments quoted above in fact go against the case of the applicant as the OIC Records himself has reviewed the legally tenable and bonafide punishments awarded to the applicant in illegal exercise of authority and thus, the OA is bereft of merit.

36. In light of above considerations, we dispose off the OA as dismissed.

37. No order as to costs.

38. Pending miscellaneous application(s), if any, stand disposed of accordingly.

Pronounced in the open Court on 4 day of October, 2024.

(JUSTICE RAJENDRA MENON)  
CHAIRPERSON

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

/Akc/