

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

OA 325/2018

Sub Fauran Singh (Retd.) ... Applicant
Versus
Union of India and Ors. ... Respondents

For Applicant : Mr. Mohan Kumar, Advocate
For Respondents : Mr. Anil 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) To Quash and set aside the letter dated 02.07.2017 passed by the respondents No. 3.

(b) Direct the respondents for constitute a special board for grant of honorary rank/commission to the rank of Lt./Capt. With all the consequential benefits including enhanced salary.

(c) Any other order as may be deemed 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 Territorial Army (TA) on 25.07.1989 and retired on 30.11.2015 as Subedar on completion of terms of engagement. The applicant was awarded punishment of "Severe Reprimand" on 09.11.2001 being charged under Army Act Section 40(a) "USING CRIMINAL FORCE TO HIS

SUPERIOR OFFICER". While the applicant's name came up for selection panel for rank of Subedar Major (Sub Maj) and Honorary Rank in April 2014 Records the JAK LI Regiment prepared the Master Sheet dated 27.04.2014 and sent the same to the parent unit of the applicant i.e 106 Infantry Battalion (TA) PARA who published the Part II Order of the punishment of the applicant 13 years after the award of the same vide Order No 0/0569/2014 dated 08.08.2014.

3. Being thus aggrieved, the applicant filed a statutory complaint against the punishment and belated publication of same for which the competent authority i.e. General Officer Commanding Karnataka & Kerala Sub Area set aside the punishment awarded to the applicant from the date of award i.e. 09.11.2001 by Order dated 27.07.2016. The applicant filed a legal representation to Additional Directorate General (TA) AG's Branch, IHQ of MoD (Army) and Records Officer of JAK LI to constitute a Special Board for grant of Honorary Rank of Lieutenant/Captain on the occasion of Republic Day 2015 with all consequential benefits. However, the respondents rejected the appeal of the applicant with reasons to the effect that the applicant did not meet the disciplinary criteria and was in Low Medical Category P3(T-24) w.e.f. 16.05.2015 for

disabilities Primary Hypertension, Dyslipidaemia & Obesity.

Thus aggrieved, the applicant has filed this OA.

4. We have heard the Learned Counsel for parties and perused the records. It comes to us with utter surprise that the punishment awarded to the applicant remained unpublished in his service record for 13 years and only when his name featured in the panel for promotion that the publication was made by the authorities at much belated stage and therefore observing the same the competent authority has rightly set aside the said punishment from the date of punishment by Order dated 27.07.2016 which is extracted as under:

“3. After having considered the complaint in its entirety alongwith available documents on record and the technical infirmities in the punishment awarded to the JCO, I direct that full redress be granted by way of setting side of the punishment of TJ-4737M Sub Fauran Singh awarded to him by Col Raman T Nair, the then CO of 106 Inf Bn (TA) PARA on 09 November 2001 I, therefore direct that the said award of ‘Severe Reprimand’ be set aside from the date of award that is 09 November 2001.

4. I also direct that the relevant entries in the Record of Service of TJ-4737M Sub Fauran Singh be amended accordingly.”

5. It is obvious for us to notice that this punishment has not been taken into record for the intervening considerations of the applicant for promotion from rank of Naib Subedar to Subedar in Jun 2005 wherein the promotion board has been denied very important information by default or design. However, since the punishment has been set aside by the competent authority from the date of the award, it is not for us

to examine the cause and the effect of this serious omission on part of the concerned officials.

6. The respondents have submitted in the Counter Affidavit that "the applicant was not recommended for grant of Honorary Rank of Lieutenant as he was lacking disciplinary criteria by the Board of Officers". It is relevant to take note of Disciplinary Criteria for grant of Honorary Commission as per Para 177 & 179 of Regulation for the Army, Volume-I Revised Edition-1987 & Integrated HQ of MoD (Army)/CW-2 letter No B/43435/Policy/AG/CW-2 dated 16.05.2008 which stipulates that "for consideration for Honorary Rank a candidate should not have more than three red ink entries during their entire service of which none should be in the rank of a Junior Commissioned Officer (JCO)". It is therefore evident from above factum that consequent to setting aside the punishment w.e.f date of award which was awarded in the rank of Naib Subedar, the applicant is eligible for consideration for the Honorary Rank of Lieutenant/Captain.

7. It is also essential to take note of para 3 of JAK LI Record Office letter No TJ 4737/Case dated 02.07.2017 placed as Annexure A1 which indicates the medical category of the applicant as P3(T-24) w.e.f. 16.05.2015, while the medical

category recorded in the Data Sheet for Honorary Commission to JCOs on occasion of Republic Day 2015 dated 31.01.2014 was SHAPE-1 which clearly determines the down gradation of the medical category having been affected after submission of Data Sheet for consideration for Honorary Rank.

8. Therefore, in light of aforesaid discussion we direct the respondents to consider the applicant by appropriate board for award of Honorary Rank of Lieutenant/Captain for Republic Day 2015 as per his original seniority subject to meeting other criteria and if empanelled, the applicant shall be entitled to all other consequential benefits.

9. The above orders shall be implemented within three months from issuance of this order.

10. With the aforesaid directions, the present OA 325/2018 is disposed of.

11. No order as to costs.

Pronounced in the open Court on 23rd April, 2024.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

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

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