

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

RA 57/2016 with MA 889/2016 & MA 5006/2023
IN OA 365/2010

In the matter of :

Nb Ris Vijay Kumar Singh

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Shri K. Ramesh, Advocate

For Respondents : Shri Y.P. Singh, Advocate

WITH

RA 60/2016 with MA 903/2016 IN OA 384/2012

In the matter of :

Nb Ris Lakhan Singh Bhadoria

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Shri K. Ramesh, Advocate

For Respondents : Shri Y.P. Singh, Advocate

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

These review applications have been filed by the applicants under Section 14(4)(f) of the Armed Forces Tribunal Act, 2007 read in conjunction with Rule 18(1) of the

Armed Forces Tribunal (Procedure) Rules, 2008 seeking review and recall of the judgment dated 27.08.2014 passed by this Tribunal (AFT, PB) in OA 365/2010 and OA 384/2012 and issue notice for hearing the matter *de novo*.

2. The Tribunal vide order dated 27.08.2014, after due consideration, opined that two of three vacancies were filled up correctly, allowed the OA 365/2010 filed by Nb Ris Vijay Kumar Singh (Review applicant in RA 57/2016) in part granting him notional promotion with effect from the date of occurrence of the third vacancy i.e. 01.05.2009 against which Nb Risaldar Shamsheer Singh was promoted within the 2nd Lancers, along with pay and allowances and all consequential benefits. However, the OA 384/2012 filed by Nb Risaldar Lakhan Singh Bhadoria (Review applicant in RA 60/2016) was dismissed as the third vacancy was filled-up by Nb Ris Vijay Kumar Singh, being senior to Nb Ris Lakhan Singh Bhadoria.

3. Now the instant review applications have been filed by the applicants stating that because of information gathered after filing an RTI application dated 10.06.2016 as well as information obtained from the Unit Part II order dated

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15.10.2009 in respect of Ris Gopal Singh along with additional affidavits submitted by the respondents, the facts of the cases decided in OA 365/2010 change completely and hence there is a mistake apparent in the face of the judgment passed by the AFT, PB, New Delhi vide its order dated 27.08.2014 in OA 365/2010.

4. It is the contention of the applicants that in the entire order dated 27.08.2014, the focus would be only on Paras 19-21 and 25 as the entire case is circumscribed only on availability of vacancies and if all the three vacancies existed on the dates mentioned by the applicant, then both the applicants, Nb Ris Vijay Kumar Singh and Nb Ris Lakhan Singh Bhadoria should be promoted; however, the Tribunal allowed the OA in respect of Nb Ris Vijay Kumar Singh and disallowed the OA in respect of Nb Ris Lakhan Singh Bhadoria on the ground of availability of only one vacancy and Nb Ris Vijay Kumar Singh being admittedly the senior of the two, got the relief. It is further submitted by the learned counsel for the applicants that their emphasis by way of these review applications would be to prove existence of three vacancies at that point of time and the respondents had

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misrepresented and misdirected the Tribunal which tantamount to fraud, *per se* and accordingly, there being three vacancies, both the OAs be allowed with the third vacancy to be given to one Nb Ris Nande Singh (Non-Applicant) who is next in the line of seniority and the remarks shown in all the three vacancies in Para 19 of the order dated 27.08.2014 is incorrect.

5. Although the learned counsel for the applicants, by way of these review applications, submitted the various details about the alleged anomaly in the promotion process done, however, in view of the information obtained through the RTI application and additional affidavit dated 27.09.2023 filed in OA 365/2010, the applicants now seek modification in the tabulations of vacancies and utilization given in Para 19 of the order dated 27.08.2014 stating the reasons therefor as under :

Sl. No.	Date of occurrence of vacancy	Name & caste of the person who retired/promoted	Name & caste of the person by whom the vacancy was filled up	Relationship to the petitioner
1.	31.03.2009	Ris Om Pal Singh of Rajput Caste	<u>Note</u> : Internally adjusted	
<u>Applicants submission</u> :				
Correct in all aspects and they have no objection or				

	representation in respect of the above.			
2.	30.04.2009	Ris Jagdish Bahadur Singh or Rajput Caste	Nb Ris Gopal Singh of Rajput Caste	Senior to the petitioner
	<u>Applicants submission :</u> - This is erroneous. Ris Jagdish Bahadur Singh retired on 30.04.2009, the date when the vacancy occurred and Nb Ris Gopal Singh was unfit for promotion being in low medical category S1H1A1P3 (T-24) w.e.f. 26.11.2008 to 12.05.2009 and thus he should not be promoted on 01.05.2009. Vide Part II order (Annexure A-3), it is provided that Nb Ris Gopal Singh was promoted actually on 26.06.2009 (with seniority w.e.f. 01.03.2008) cancelling the earlier Part II orders. - Thus on 30.04.2009, the vacancy for promotion i.e. second vacancy, should have gone to Nb Ris Vijay Kumar Singh, the next available JCO in seniority who meets all the criteria.			
3.	01.05.2009	Ris Raj Kumar Singh of Rajput Caste	Nb Ris Shamshah Bahadur Singh of Jat Caste	<u>Note :</u> Transfer out of caste.
	<u>Applicants submission :</u> As Nb Ris Vijay Kumar Singh should have been promoted against the second vacancy, Nb Ris Lakhan Singh Bhadoria (RA 60/2016) should be promoted to Risaldar w.e.f. 01.05.2009 <i>qua</i> the third vacancy as he has colour service of 28 years of service till 30.06.2011 and with 2 years of extension as a SHAPE-1 JCO he has service till 30.06.2013.			

With these justifications, the learned counsel prays that the review applications be allowed and thus in the larger interest

of ensuring that both the applicants get a fair deal, the matter may be heard *de novo* to meet the ends of equity, justice and fair play and that the order dated 27.08.2014 passed in OA 365/2010 and OA 384/2012 may be reviewed/modified as prayed for.

6. *Per contra*, the learned counsel for the respondents justified the promotion exercise stating that Ris Gopal Singh, who was senior to both the applicants, Nb Ris Vijay Kumar Singh (Review applicant in RA 57/2016) and Nb Ris Lakhan Singh Bhadoria (Review applicant in RA 60/2016) and, therefore, was promoted correctly to the rank of Risaldar as per Para 4(b) of AG Branch, ADG (PS), IHQ letter No. B/33513/AG/PS 2(c) dated 10.10.1997 consequent to upgradation of his medical category. It is further submitted that as Nb Ris Shamsheer Singh was not involved in any legal case, the sanction for his promotion was destroyed in terms of provisions contained in Para 592 to 596 of the Regulations for the Army (Revised) 1987 and that the file containing promotion correspondences of 2 LANCERS and other files of Regiments of Armoured Corps had also been weeded out. It is further contended that detailed justification in this regard

along with related documents have been forwarded to Legal Cell, AFT (PB) HQ Delhi area and thus no other relevant documents or proceedings are available with the department. The learned counsel for the respondents prays that the applications lacks merit and thus deserve to be dismissed.

ANALYSIS

7. We have heard the learned counsel for the parties and have perused the record.

8. From the documents produced both by the applicant and the respondents, the following has emerged :

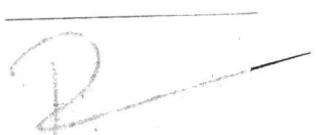
(a) There existed three (03) vacancies w.e.f. 31.03.2009. The first vacancy, which occurred on 31.03.2009, was internally adjusted to Ris Om Pal Singh of Rajput Caste for which there is no dispute.

(b) Nb Ris Gopal Singh who was promoted on 2nd vacancy on 30.04.2009 by the respondents was actually in the Low Medical Category (LMC) S1H1A1P3 (T-24) w.e.f. 26.11.2008 to 12.05.2009. It is also ascertained that Nb Ris Gopal Singh was actually promoted to the rank of Risaldar on 26.06.2009 and not on 30.04.2009 as he was in LMC as on 30.04.2009. Therefore, his



promotion on 30.04.2009 as shown in Para 19 of the order dated 27.08.2014 is incorrect.

- (c) The third vacancy was transferred from Rajput Community to Jat Community by the respondents, however, the respondents on specific query of the Court during the hearing of OA 365/2010, submitted that there is no record which exists or could be found, related to the rationale for the third vacancy being utilised by another community, as also there was no record of the necessary sanction for transferring a vacancy from Rajput Community to Jat Community within 2nd Lancer. The respondents thereafter promoted Nb Ris Shamsheer Singh to the rank of Risaldar against the third vacancy, a personnel from the Jat Community, which has been adversely commented upon in the order dated 27.08.2014, especially with regard to the non-availability of the documents with respect to the transfer of vacancy from Rajput Community to Jat Community.



(d) It is also ascertained that the next senior personnel after Nb Ris Vijay Kumar Singh was Nb Ris Lakhan Singh Bhadoria in the Rajput Community.

8. The Tribunal, vide order dated 27.08.2014 passed in OA 365/2010 and OA 384/2012, ordered the grant of notional promotion to Nb Ris Vijay Kumar Singh (Review Applicant in RA 57/2016) w.e.f. 01.05.2009 i.e. the date of occurrence of third vacancy against which Nb Risaldar Shamsheer Singh was promoted, along with all pay and allowances and consequential benefits. However, the OA 384/2012 filed by Nb Ris Lakhan Singh Bhadoria (Review Applicant in RA 60/2016) was dismissed, there being no vacancy available after Nb Ris Vijay Kumar Singh was granted notional promotion against the third vacancy, against which order, the present review applications have been filed.

9. In view of the aforesaid facts emerged through the additional affidavit of the respondents dated 27.09.2023 and the Part II order dated 15.10.2009, as detailed hereinabove, we are of the considered view that there appears apparent error in the order dated 27.08.2014 in respect of the

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vacancies available. Therefore, we allow both the review applications and accordingly, the order dated 27.08.2014 is modified and direct as under :

RA 57/2016 in OA 365/2010

- (i) Nb Ris Vijay Kumar Singh be granted notional promotion w.e.f. 30.04.2009, the date of occurrence of the second vacancy against which Nb Ris Gopal Singh was promoted. Nb Ris Gopal Singh could not have been promoted on 30.04.2009 as he was in low medical category on the date of the occurrence of the second vacancy i.e. 30.04.2009, and rightfully the second vacancy should go to Nb Ris Vijay Kumar Singh, who was next in seniority who meets all the criteria.
- (ii) It is deemed that Nb Ris Vijay Kumar Singh has completed his normal course of service as Risaldar. He will be entitled to all pay and allowances and consequential benefits, having retired in the rank of Risaldar on the date of his legitimate superannuation.

RA 60/2016 in OA 384/2012

- (iii) The manner in which the third vacancy was transferred from Rajput Community to Jat Community by the respondents is without transparency and in the absence of any records produced by the respondents for such a transfer, benefit of doubt should be given to the personnel from the Community who has suffered injustice in this case and hence it is directed that the third vacancy be restored to Rajput Community and not be transferred to Jat Community.
- (iv) As Nb Ris Vijay Kumar Singh has been granted notional promotion w.e.f. 30.04.2009 against the second vacancy, the applicant, Nb Ris Lakhan Singh Bhadoria be granted notional promotion w.e.f. 01.05.2009, the date of occurrence of third vacancy, being the next senior most personnel of the Rajput community.
- (v) It is deemed that Nb Ris Lakhan Singh Bhadoria has completed his normal course of service as Risaldar. He will be entitled to all pay and allowances and

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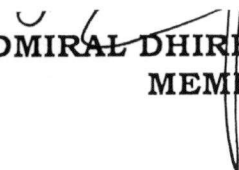
consequential benefits, having retired in the rank of Risaldar on the date of his legitimate superannuation.

10. The respondents are directed to comply with the above directions within three months from the date of receipt of copy of this order, *failing which*, the applicants are entitled to interest @ 6% per annum till the date of actual payment.

11. In view of the above, all pending miscellaneous applications stand closed.

Pronounced in open Court on this 22 day of September, 2024.


[JUSTICE RAJENDRA MENON]
CHAIRPERSON


[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

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