



**B. To direct the Respondent to mitigate/modify his sentence to the extent that it will not debar his promotion, considering nature of offence and medical condition wherein he obtained prior consent of SM to remain absent from PT; and/or**

**C. To Call for the daily parade state from Jan to June 2022 and other related documents based on which no (including 23 Apr 2022) no action was initiated wherein HAV/PA frequently remain absent from PT but no action was initiated; and/or**

**D. Any other just and equitable order in the interest of justice may kindly be passed.**

**9. Interim relief if any: Ad interim, ex parte directions to the respondents to withhold further promotions in applicant trade to the rank of Nb Sub till pendency of instant case.”**

### **BRIEF FACTS**

2. The applicant was enrolled in Indian Army on 21.09.2000. Thereafter, he earned various promotions upto the level of Havildar on 01.06.2017 and was appointed as

Battery Havildar Major (BHM) on 06.05.2021. It is the case of the applicant that the Annual Unit Promotion Board for promotion from the rank of Havildar to Naib Subedar (Nb Sub) of the Unit for the year 2021-22 was held on 18.11.2021 and being the senior most eligible person in the trade, the case of the applicant was placed before the promotion Board. However, no vacancy in the trade was available upto 30.11.2022. Subsequently, a vacancy in operator trade occurred consequent upon posting order of one Nb Sub (Operator Radio) of the Unit to Artillery Centre Hyderabad was issued. The applicant became ineligible for further promotion on the basis of a tentative charge sheet read out to the applicant on 04.05.2022 for an incident that took place on 16.04.2022, that the applicant remained absent from morning Physical Training (PT) parade. However, learned counsel for the applicant stated that the applicant obtained prior consent of Sub Maj and accordingly, remained absent from morning PT parade as he was not well and reported sick.

3. It is stated that the applicant was awarded 'Severe Reprimand' (SR) by the CO on 06.05.2022 for the aforesaid

offence under Section 39(d) of the Army Act, '*Without Sufficient Cause Failing to Appear at the Time Fixed at the place Appointed for Duty*' for his absence during physical training parade at 0615 hours on 16.04.2022 which is considered as a *bonafide* military duty without any valid reason. It is submitted that the signature of the applicant was obtained with an advice that after a warning, the matter will be closed. It is further stated that as per general practice, lenient view is being taken against the personnel who are unable to join PT parade etc. for few hours if prior consent is taken.

4. The learned counsel for the applicant submitted that the respondents under the influence of the then CO of the applicant awarded him a 'Red ink entry' for a very brief absence from PT ignoring the fact that prior oral consent was given by the Sub Maj of the Unit. It is alleged that the Sub Maj of the Unit, in conspiracy with the PA to the CO successfully executed a plan which benefitted another Hav in getting unfair chance of promotion.

5. The learned counsel added that the applicant successfully completed cadre course and was eligible for

promotion to the rank of Nb Sub till March, 2022 consequent upon the occurrence of next vacancy in his trade but due to conspiracy against him, the applicant had been debarred for further promotion till May, 2023 and his immediate junior, involved in getting him debarred, by convincing CO, Sub Maj and 2IC to punish the applicant for remaining absent from PT; was promoted despite remaining absent repeatedly from PT.

6. Aggrieved by his debarment for promotion even after his being the senior most eligible candidate in the feeder cadre, the applicant has filed the present OA.

7. The respondents have filed a detailed Counter Affidavit admitting to the extent that the applicant being the senior most Hav was next in the line to be promoted to the rank of Nb Sub consequent upon occurrence of a vacancy in the said grade. However, the applicant became ineligible for promotion as he was awarded punishment of 'Severe Reprimand' by the then CO of the Unit on 06.05.2022 for an offence under Section 39(d) of the Army Act and failed to appear at the time fixed at the place appointed for duty (absence during Physical Training parade) on 16.04.2022.

Hence, as per the existing policy at Para 1933(c) of Artillery Records Instructions 2019, Havildar (Operator Radio) Pawan Kumar, who was next senior in the line, became eligible for further promotion to the rank of Nb Sub.

8. The learned counsel for the respondents further submitted that the applicant remained absent from physical training parade without obtaining prior consent from any of his Battery Appointments (i.e. his Senior JCO/Battery Commander) or from the Sub Maj of the Unit. It is stated that the applicant signed the tentative charge sheet voluntarily; that he neither gave any statement nor produced any witness/evidence for his absence from PT parade; and moreover, he pleaded 'Guilty' to the charge before the CO; and for such an offence he was awarded punishment of 'Severe Reprimand' by the CO on 06.05.2022. Therefore, he became ineligible for promotion for the next one year as per Para 1925(a)(v) of Artillery Records Instructions 2019 and the next person in seniority in Operator Trade, Hav Pawan Kumar became eligible for promotion.

9. It has been further submitted that the applicant has leveled allegation against Hav Pawan Kumar but he has not been impleaded as a party respondent to the instant OA and the matter should be dismissed for non-joinder of appropriate parties.

10. It is further submitted on behalf of the respondents that the applicant himself denied to cross-examine the prosecution witness and due procedures as enumerated under the Army Act and Rules were followed. In view of the submissions made, the learned counsel for the respondents prayed that the OA deserves to be dismissed.

11. The applicant has filed a rejoinder refuting the submissions made by the respondents stating therein that the applicant was tried for 40 minutes AWL and punished with severe reprimand, i.e. Red ink entry, to deprive him from his chance of promotion. However, on various other occasions people are given liberty to remain absent for few minutes during working hours to the satisfaction of the authority on the ground of treatment of wards/parent and applicant remained absent from PT on 16.04.2022 with prior oral permission of PT In-charge but he was given maximum

punishment of severe reprimand just to debar him from promotion. With regard to the averment made that the applicant pleading 'Guilty' and did not examine any prosecution witness, it has been submitted by the learned counsel that the applicant was not heard despite his request.

12. The applicant placed reliance upon the order dated 17.05.2022 passed by AFT Regional Bench, Lucknow in the case of **Nb Sub Dharmendra Kumar Singh Vs. Union of India and Ors. [O.A. No. 330/221]** wherein this Tribunal granted retrospective promotion to the applicant therein as the applicant was debarred from promotion for no fault of his.

### **ANALYSIS**

13. We have heard the submissions made on behalf of both the parties and have also gone through the record produced before us.

14. It is undisputed that the applicant, being the senior-most Hav eligible for promotion to the rank of Nb Sub, was duly considered by the Annual Unit Promotion Board

convened on 18.11.2021. However, due to the non-availability of a vacancy in the trade at that time, he was not promoted. Subsequently, the applicant was awarded a 'Severe Reprimand' for remaining absent from the morning PT parade on 16.04.2022, which is regarded as a *bonafide* military duty. As a consequence, he was debarred from promotion until 05.05.2023. It was only upon the occurrence of the next vacancy that the Promotion Board reconvened and the applicant was once again considered and was promoted to the rank of Naib Subedar with effect from 01.01.2024 (21.02.2024 as informed by the counsel for the applicant).

15. Now we have perused the provisions of the promotion policy along with other relevant documents. The applicant was awarded 'Severe Reprimand' on 06.05.2022 under Section 39(d) of the Army Act and became ineligible for further promotion and, therefore, the next senior in the Trade, Hav (OpR) Pawan Kumar, was granted promotion to the rank of Nb Sub. The applicant was debarred from further promotion for a period of one year and thus he was to become eligible for promotion on 06.05.2023. However,

there was no vacancy available in the trade. Thereafter, on creation of a vacancy in OpR trade for the purpose of granting promotion to the applicant, he was promoted to the rank of Nb Sub (OpR) with effect from 01.01.2024. In this regard, on behalf of the respondents, a letter No. 301701/10/A dated 27.03.2025 of 110 Med Regiment written to HQ Delhi Area (Legal Cell) giving brief of case of the applicant, was submitted and taken on record. The relevant part of the letter reads as under :

(a)	Date of occurrence of next vac in respect of applicant	02 Jun 22	The indl was awarded Severe Reprimand under AA Sec 39(d) on 06 May 2022 and became ineligible for further promotion. No. 14435252P Hav (OpR) Pawan Kumar (The next senior of OpR trade) was promoted to the rank of Nb Sub. On creation of vac in OpR trade, the indl was promoted to the rank of Nb Sub (OpR) wef 01 Jan 24.
(b)	Date of Being Eligible for promotion	06 May 23	
(c)	Date of next bd after 2022	29 Nov 23	

16. The applicant has now made a grievance regarding his seniority and prayed that he be granted ante date seniority or other consequential benefit of promotion at par with his batchmates who were promoted earlier. It was the contention of the applicant that despite Hav Pawan Kumar also remained absent from physical training but no action

was initiated against him and, therefore, he got the promotion to the rank of Nb Sub and thus it shows that the applicant was awarded punishment with 'Severe Reprimand' just to debar him from promotion.

17. We have perused the record submitted in original regarding the concerned period of consideration in respect the said Hav Pawan Kumar and other juniors who were promoted earlier than the applicant along with their date of promotion and justification explaining the reasons for their promotion prior to the applicant. We do not find any anomaly in the said process of promotion of the juniors promoted prior to the applicant.

18. So far as the issue regarding grant of seniority to the applicant at par with his batchmates of the applicant were promoted is concerned, we find it appropriate to refer to Para 3(f) of the promotion policy dated 10.10.1997, which reads as follows :

**"3. DISP CRITERIA**

**xxx**

**xxx**

**(f) An individual will not be considered for promotion within one year of the award of**

***red ink entry/recordable censure, as the case may be.”***

It is evidenced from the record that the applicant remained absent from morning PT parade on 16.04.2022 and he was unable to prove his own statement that he had obtained prior consent/permission from the Sub Maj of his Unit for the absence and thus the respondents awarded him punishment of 'Severe Reprimand' i.e. Red ink entry' and having perused the provisions of the aforesaid promotion policy dated 10.10.1997, we find that the applicant was debarred for a period one year as per the relevant provision of the extant promotion policy. The applicant then became eligible for promotion to the rank of Nb Sub with effect from 06.05.2023. However, as no vacancy in the trade was available at that time and subsequently the applicant was granted promotion to the rank of Nb Sub (OpR trade) with effect from 01.01.2024, we do not find it appropriate to pass any order on the question of grant of ante date seniority or consequential benefits of promotion from 14.06.2022.

19. Further, the order dated 17.05.2022 passed by the AFT, RB Lucknow in the case of *Nb Sub Dharmendra Kumar*

*Singh (supra)* on which the applicant placed reliance with regard to grant of retrospective seniority is of no help to the present applicant as in the aforesaid case, firstly there was no disciplinary proceeding or any award of punishment whatsoever and secondly, the applicant in the cited case was deputed to United Nations Mission by the respondents for a certain period and therefore he could not undergo the SCC course mandatory for promotion during that period. The respondents did not consider and his name was not included in the detailment letter, however, his juniors underwent the SCC courses immediately after de-induction from UN Mission due to timely detailment. Thus, the applicant therein was superseded in promotion to the rank of Nb Sub without any fault of his and although he was promoted later, he lost his seniority and, therefore, the Tribunal found it fit to grant ante date seniority to the applicant in that case. However, here in the present case, disciplinary action was initiated against the applicant for his lapse, which consequently led to delay in his promotion and during the currency of the applicant's punishment, the next individual in the order of seniority was promoted to the rank of Nb Sub on 22.07.2022. The applicant was denied

promotion on the ground of punishment awarded to him of 'Severe Reprimand' and as per the relevant provision of the promotion policy i.e. 3(f) of the policy dated 10.10.1997, he was debarred from promotion for a period of one year and thereafter he was granted promotion on 01.01.2024 on creation of a vacancy in the trade as explained hereinabove. In the facts and circumstances, we are not inclined to pass any order on the issue of grant of ante date seniority.

20. Accordingly, O.A. No. 1354 of 2022 stands disposed of in terms of the above. There is no order as to costs.

Pronounced in the open Court on 30<sup>th</sup> day of October, 2025.



**[JUSTICE RAJENDRA MENON]**  
**CHAIRPERSON**



**[REAR ADMIRAL DHIREN VIG]**  
**MEMBER (A)**

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