

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

OA 2069/2017

Subedar Tila Ram	Applicant
Versus		
Union of India & Ors.	Respondents

For Applicant	:	Mr. V S Kadian, Advocate
For Respondents	:	Mr. Anil Gautam, Sr. CGSC

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE MS. RASIKA CHAUBE, MEMBER (A)

ORDER

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act 2007, the applicant seeks quashing of an order dated 03.11.2017 (Annexure A1) passed by the competent authority, whereby his claim for grant of promotion to the post of Subedar Major was rejected. The said impugned order was passed in compliance with the directions issued by a Coordinate Bench of this Tribunal on 08.09.2017 in OA No. 1516/2017. The applicant further prays that in the event he is not granted promotion, he may be considered for the grant of an honorary commission, which was also denied to him in the last year of his service.

2. The facts in brief indicate that the applicant was enrolled in the Indian Army on 29.12.1987 in the Kumaon Regiment.

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Subsequently he was transferred to the Intelligence Corps on 29.12.1992. He was promoted to the rank of Subedar after completion of the eligibility cadre. In November 2016 in accordance with the policies and circulars available for promotion to the post of Subedar Major a Departmental Promotion Committee (DPC) was convened in November 2016 to consider promotion of the rank of Subedar Major against 14 anticipated vacancies arising in 2017. The applicant duly completed the necessary cadre course and was considered by the DPC for promotion. In the meanwhile, as the applicant was to retire in the cadre of Subedar with effect from 31.12.2017 and as he was eligible for being considered for grant of Honorary Rank of Captain he submitted his papers for considering his claim for grant of honorary rank on 15.08.2017. It is the case of the applicant that on declaration of the vacancies of Subedar Major and after the DPC was constituted in 2016 the applicant underwent the cadre course and completed it successfully. But he was not granted promotion to the post of Subedar Major. It is the grievance of the applicant that in the list published for promotion to the rank of Subedar Major his name appeared at Sl. No. 11 in the merit list as per seniority and as there were 14 vacancies, he should have been appointed. But only ten appointments were made and on inquiry the applicant was informed that four vacancies of Subedar Major have been reduced without any advance notice and only ten promotions

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are being effected. Being aggrieved by the action of the respondents, the applicant invoked the jurisdiction of this Tribunal by filing OA No. 1516/2017. The said OA was disposed of on 08.09.2017 vide Annexure A3 and this Tribunal directed that the OA of the applicant be considered as a representation and a decision taken. By the impugned speaking order Annexure A1 dated 03.11.2017 as his claim has been rejected, he has invoked the jurisdiction of this Tribunal by filing the present OA.

3. Learned counsel for the applicant took us through the material available on record and argued that when the entire promotion exercise was conducted for filling up of the post and when the promotion exercise culminated on recommendation being made for filling up the 14 posts and in the said recommendation when the applicant's name was at Sl. No. 11 on merit he should have been appointed and the action of the respondents in reducing the vacancies by four and making it ten when the process of selection had culminated an illegality had been committed and the right which had accrued to the applicant by virtue of the recommendation made by the DPC had been arbitrarily and illegally taken away. In view of this the learned counsel for the applicant submits that the applicant is entitled for the benefit. It is further argued that when the applicant was not granted promotion to the rank of Subedar Major in the last year of his service just before his discharge he was

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entitled to be granted honorary commission and even this benefit has not been granted to him. Taking us through the documents and the material available on record Shri Virender Singh Kadian, learned counsel argued that the applicant has been denied both the benefits of promotion to the rank of Subedar Major and consideration of his claim for grant of honorary commission on the occasion of Independence Day and Republic Day of 2017 and therefore the said action amounts to illegality and the same should be interfered with.

4. The respondents have filed a detailed counter affidavit and admitted that during November 2016 a DPC was convened to select eligible Subedars for promotion to the rank of Subedar Major against the vacancies arising in the year 2017 and a select list of 14 eligible Subedar Majors (Intelligence General Duty) was drawn up. They also admit that in the said list the applicant's name was at Sl. No. 11 and the list brought on record also indicates and confirms the said position. However it is their contention that mere empanelment in the list for recommendation will not entitle an employee to claim promotion. The recommendation made is to be accepted by the competent authority and based on various circumstances the promotions are made and there may be reasons for not promoting the candidates recommended for promotion. It is the case of the respondents that mere inclusion in the select list will not give any right of promotion to the applicant. According to the respondents

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during December 2017 the Additional Director General of Manpower (Policy & Planning), Adjutant General's Branch vide letter dated 28.12.2016 conveyed sanction of the Ministry of Defence for conversion of 30 Minor Intelligence Corps Units to 11 Upgradated Major Intelligence Corps Units. It is the case of the respondents that this restructuring was a part of the modernization of the Corps and this action was taken based on the Kargil Review Committee's report to improve efficient functioning of the Armed Forces. It is the case of the respondents that after the Kargil War on account of various factors that came to light during the Kargil War a very High Level Committee known as Kargil Review Committee was constituted to make recommendations for improving the functional efficiency of the Army and based on this report, the Government of India (MoD) decided to implement the recommendations of the Committee and one of the recommendations of the Committee was for conversion of 30 Minor Intelligence Corps into 11 Upgradated Major Intelligence Corps. As a result of this restructuring, four vacancies of Subedar Majors were reduced in the Corps authorised strength of Subedar Majors against Intelligence General Duty category and these were migrated and given to the restructured Intelligence Corps of the Indian Army. The MoD in the integrated HQs communication dated 31.03.2017 instructed that completion report for implementation of the instructions contained therein and

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other formalities for implementing the recommendation of the High Power Committee should be undertaken. It is the case of the respondents that in the process of restructuring, four vacancies of Subedar Major (Intelligence General Duty) had to be reduced from the vacancies that were to arrive in the year 2017 to avoid excess holding strength of Subedar Major in the Corps and as per the Govt of India's direction the 14 anticipated vacancies of Sub Majors Intelligence General Duty were reduced to 10 and the remaining four vacancies were transferred to other restructured unit. The respondents have brought on record all these communications, policies and letters vide Annexure R2 and R3 and it is the case of the respondents that in the restructuring done based on the High Power Committee's report after the Kargil War action was taken and it is the case of the respondents that the applicant does not have any right to be granted promotion. He was only recommended and for justifiable reason as indicated in the counter affidavit, the respondents have taken action and in doing so there is no arbitrariness, illegality or irregularity which warrants interference.

5. Learned counsel for the respondents Shri Anil Gautam took us through the material available on record in this regard viz. the communications Annexure R2 and R3 and the reasons indicated in the impugned speaking order Annexure A1 to justify his claim. He invites our attention to the judgments of the Hon'ble Supreme Court

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in the case of *Shankarsan Dash v. UoI (1991) 3 SCC 47* and *Sudesh Kumar Goel v. State of Haryana and others* (2023) SCC Online SC 1201 to say that merely because a certain number of vacancies are notified for appointment and a selection process is conducted to fill those vacancies, a candidate whose name appears in the select list does not acquire an indefeasible right to appointment. If a decision is taken based on reasonable and justifiable grounds, and such a decision is not found to be arbitrary or whimsical, then interference under the scope of judicial review, as submitted by Shri Anil Gautam, is not permissible. In this regard, reliance is also placed on the judgment in *Sudesh Kumar Goel* (supra). Further, Shri Gautam draws our attention to the judgment of the Division Bench of the Himachal Pradesh High Court in *Robin Singh Mehta and Others v. State of HP and others*, CWP No. 3371/2019, 2020 SCC Online HP 2998, wherein the Hon'ble High Court, relying upon the judgments of the Hon'ble Supreme Court in *Shankarsan Dash* (supra) and *Sudesh Kumar Goel* (supra), followed the same principle. Accordingly, with respect to the reduction in the number of vacancies and the respondents' decision not to grant promotion to the rank of Subedar Major (Intelligence General Duty), Shri Gautam contends that no illegality has been committed.

6. As far as considering the case of the applicant for grant of honorary commission is concerned, it is the case of the respondents

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that eligible candidates are considered for grant of honorary commission during Republic Day and Independence Day. They were to be considered in the year 2017 also on the Republic Day and the Independence Day for which necessary documents were to be submitted by the Command HQs by 10.08.2016 and 10.02.2017. As per the policy, when a candidate is under consideration for promotion to a higher rank, his case for grant of an honorary commission is not taken up. Cases for grant of Honorary Commission are considered one year prior to the date of retirement or discharge. As the applicant was being considered for grant of promotion to the post of Sub Maj in the DPC to be held in the year 2016 his case was not recommended by the HQs on 10.08.2016 and 10.02.2017 as his case was considered and recommended for promotion. However, immediately when the four vacancies were reduced and the applicant was not granted promotion, necessary action was taken and in accordance with the policy laid down for grant of honorary commission the HQs forwarded all documents of the applicant for considering his case for honorary commission for the Independence Day 2017 and the appropriate Board considered the case of the applicant for grant of honorary commission, but he was not granted honorary commission as he did not come within the merit fixed for grant of the said commission and that as he was down below in the merit he was not granted the honorary

commission. The respondents have produced documents indicating the same and the policy with regard to grant of honorary commission and it is the case of the respondents that the applicant does not qualify for grant of honorary commission.

7. We have heard learned counsel for the parties at length and we find that the following issues are involved for our consideration:

- (a) Whether the applicant had a vested right to be promoted to the post of Subedar Major once empaneled.
- (b) Whether the reduction of vacancies from 14 to 10 was lawful.
- (c) Whether the applicant's claim for honorary commission as duly considered and lawfully rejected.

8. As far as promotion to the rank of Subedar Major is concerned a criterion for grant of promotion of JCOs and NCOs is laid down in the policy Annexure R7 dated 10.10.1997 issued by the Adjutant General's Branch and for promotion to the rank of Risaldar Maj and Sub Maj in Para 8 (d) it has been clearly indicated that merely qualifying for consideration by DPC does not entitle a Sub for promotion to the rank of Sub Maj. The selection is based on seniority cum merit depending upon the vacancies available. We find that in the said promotion exercise the applicant's name was included in

Appendix C as per the policy available at page 87 the list was prepared by the Record Office on 03.03.2016 and the applicant was at Sl. No. 16 of the said list. His case was considered for promotion and in the list of eligible candidates his name appears at Sl. No. 11 and the recommendation was made for promotion of 14 officers. However after the recommendation was made and the list was so pending records indicate that the HPC constituted viz. the Kargil Review Committee submitted its report to the Government of India in the Ministry of Defence and the MoD vide Annexure R2 dated 28.12.2016 issued the implementation instruction for conversion of existing military Intelligence Unit into 11 Upgraded and Re-signed Military Intelligence Unit. It was clearly indicated that this policy is to be effected from 01.01.2017 and the date of completion of the conversion was 31.03.2017. The procedure for implementation and other action was taken vide Annexure R3 dated 03.01.2017 and in the process of implementation of these recommendations, it is seen that various actions were taken primarily for converting the existing 30 Minor Intelligence Corps to 11 Upgraded Major Intelligence Corps and in the process the vacancies available in the cadre of Sub Majs in the Intelligence General Duty were reduced from 14 to 10 and as a consequence of this, only ten vacancies were filled up and the applicant whose name was at Sl. No. 11 could not appointed. All persons whose names appeared from Sl. Nos. 11 to 14 even though

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recommended were not promoted. From the aforesaid it is clear that reduction of vacancies from 14 to 10m and the consequential effect of non-granting promotion to the applicant was the result of an administrative decision taken by the Govt of India MoD based on the expert committee report of the Kargil Review Committee and it was implemented between 1.-01.2017 to 03.01.2017 and as a consequence of which the applicant was not granted promotion. This is the reason indicated by the respondents in the impugned speaking order Annexure A1. So also in the Counter affidavit filed by the respondents. And therefore the issue would as to whether this is permissible or not.

9. As already indicated herein above in the promotion policy it has been clearly stipulated that mere empanelment in the select list would not give any right for seeking promotion to the post. The same would depend upon various administrative and other considerations. The law with regard to the said issue has been considered by the Hon'ble Supreme Court in the case of Shankarsan Dash (supra) and in Para 7 of the said judgment, the Hon'ble Supreme Court lays down the following principles:

"7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidate to apply for recruitment and on their selection they do not acquire

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any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in State of Haryana, or Jatendra Kumar v. State of Punjab.

From the above it is clear that even if a number of vacancies are notified for appointment and adequate numbers of candidates were found fit and successful candidate does not acquire any indefeasible right to be appointed against the existing vacancy. The notice is only an invitation and if the State acts in a manner which cannot be termed as unreasonable or arbitrary appointment cannot be claimed as a matter of right. This principle laid down by the Hon. Supreme Court has been subsequently followed in the case of Sudesh Kumar Goyal (supra) and after considering Para 7 of the judgment as reproduced herein above, in Para 10 the Hon. Supreme Court in the case of Sudesh Kumar Goyal (supra) lays down the following principles of law:

“10. A simple reading of the above paragraph would reveal that though it is up to the employer or the State to fill up all the notified vacancies or to keep all of them or any of them vacant but it does not mean that the employer/State can act arbitrarily in not filling up those posts and the decision not to fill up the vacancies has to be a bona fide one supported by appropriate reasons.

From this it is clear that if the action of the employer of the State is neither arbitrary and the action is taken supported by bona fide appropriate reasons, the same need not be interfered with. Following these two judgments, the Hon'ble Himachal Pradesh High Court also in the case of Robin Singh Mehta and others Vs. State of H.P. and others (supra) has reiterated this principle and for doing so apart from considering the two judgments as are detailed herein above has also considered an earlier judgment of the Hon. Supreme Court in the case of Ms. Neelima Shangla v. State of Haryana (1986) 4 SCC 268. A complete reading of all these judgments go to show that merely because a candidate is enlisted for appointment on the basis of the selection process he does not have any legal right to seek appointment to the post. Reduction of vacancy can be a ground for denying appointment to a selected candidate and until and unless for the reasons for reduction of vacancies is not found to be arbitrary, unreasonable or bona fide, interference can be made but not otherwise.

10. If we analyze the facts and circumstances of the present case sin the backdrop of the aforesaid principle of law we find that after the Kargil War the Govt of India constituted a HP Expert Committee to make recommendations for improvement in the efficiency pertaining to working of the Armed Forces and based on the aforesaid recommendations made, restructuring of Military

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Intelligence Unit was undertaken as detailed herein above and by converting 30 Minor Intelligence Corps to 11 Upgraded Major Military Intelligence Corps four vacancies in the rank of Sub Majs in the Intelligence General Duty which were to arise in the year 2017 was reduced from 14 to 10 and in that process the applicant was not appointed and only the ten senior most empanelled candidates were appointed. In our considered view, this decisions taken by the respondents in the Govt of India MoD was based on requirement of the Nation, particularly in the interest of security and defence of the Nation and if it had been done for the aforesaid reasons based on an Expert Committee's report after undertaking the process of restructuring of the Corps, then in exercise of its limited scope of judicial review, this Tribunal cannot sit in appeal and review the aforesaid administrative or executive policy decisions. We do not find anything unreasonable, arbitrary or illegal in the same and therefore as the applicant does not have any right to seek promotion only because he had been empanelled, we do not find any merit in the first prayer made by the applicant. The same is rejected.

11. As far as the prayer for granting of honorary commission is concerned, we find from the record that initially when action was taken for considering cases of eligible candidates for grant of honorary commission as the applicant was to be considered for grant of promotion to the rank of Sub Maj in the selection process

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conducted for Independence Day of 2017 the applicant's case was not considered. However when the vacancies were reduced and when the applicant was not granted promotion to the rank of Sub Maj his case for grant of honorary commission in the Independence Day 2017 last chance was forwarded vide Annexure R5 on 20.07.2017 by the Chief Record Officer to the HQ Northern Command. It is clearly indicated that the applicant's case is being sent for consideration as a last chance as he is retiring on 31.12.2017 and his case for promotion to the rank of Sub Maj could not be considered on account of reduction of posts. From the documents available on record i.e. Annexure R5 and the policy for grant of honorary commission it is clear that the case of the applicant was considered for grant of the said benefit. However, the applicant was not granted the said benefit as his name was very much down below in the list as per merit. That being so, as far as consideration of the applicant's case for grant of honorary commission is concerned we find that his case has been considered as per the policy and as he did not come within the merit criteria fixed for grant of honorary commission of Captain he has been denied the said benefit. There is nothing available on record not canvassed or pleaded by the applicant to say as to why the said action can be termed as illegal or unsustainable in law.

12. Accordingly we find that both the in the matter of promotion to the rank of Sub Maj and for grant of honorary commission the applicant's case has been considered and he was found unfit for both in accordance with the rules after consideration and there is no illegality or irregularity in the action of the respondents warranting reconsideration.

13. The OA is therefore dismissed. No order as to costs.

14. Pronounced in open Court on this the 4th day of August, 2025.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[MS. RASIKA CHAUBE]
MEMBER (A)

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