

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

OA 2190/2022 with MA 1856/2025

Hav Dheeraj Sharma	Applicant
Versus		
Union of India & Ors.	Respondents
For Applicant	:	Mr. Manoj Kr Gupta, Advocate
For Respondents	:	Mr. R S Chillar, Advocate

CORAM :

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

ORDER

Challenging the action of the respondents in denying promotion to the applicant in the next higher rank of Niab Subedar against a vacancy which accrued on 01.07.2022, applicant has filed this Original Application.

2. Facts in brief indicate that the applicant was enrolled in Indian Army on 01.10.2002. It is the grievance of the applicant that since 01.07.2022, he was awaiting promotion to the rank of Nb Subedar against the vacancy that was to arise on 30.06.2022 on account of retirement/promotion of Subedar or Niab Subedar. It is stated that the applicant had undergone the cadre course of Niab Subedar w.e.f. 04.04.2022 to 12.06.2022 and according to the applicant, he secured the highest marks in every weekly test. According to the applicant, apart from average performance in the Physical Proficiency Test(PPT) where he could do 4 Chin ups in the PPT, which is considered as poor performance, in all other parameters he

performed well in the promotion cadre course. It is the grievance of the applicant that except for the poor performance in the Chin up test, he performed excellent in the promotion cadre course.

3. According to learned counsel for the applicant, as per the policy for promotion (Annexure A-3) an individual in the age group of 30-40, if he does 3-4 in Chin ups in PPT, he is qualified for the cadre course. However, despite performing excellent in every other test during cadre course and having secured highest marks in the written test the applicant was not promoted to the rank of Nb Subedar, as a result, he was discharged/superannuated at the young age of 40 on 30.09.2022.

4. According to the applicant, in the Battle Physical Efficiency Test (BPET) as well as PPT, he had done exceedingly well during cadre course of Nb. Sub. and in terms of the relevant policy, anyone who performs satisfactorily is entitled for promotion. The applicant submitted that two other soldiers, namely, Hav. Joginder Singh No.10136265 and Junior Hav Mahesh Singh No.10136404 also participated in the same cadre course in 2018. In terms of their engagement, they were sent for medical examination and have been promoted prior to the discharge on 30.09.2022. That apart, applicant scored more than 150 marks out of 350 marks in the cadre course

whereas the passing marks were approximately 137. However, on account of his poor performance during the cadre course in PPT/Chin up wherein he did only 4 chin ups in the PPT Test, the applicant has not been granted promotion but in the earlier promotion exercises Hav. Rajinder Singh Yadav and Hav. Jitender Singh in the cadre conducted in the year 2018, were granted promotion in spite of the fact that they also earned poor performance marks in the PPT (Chin Ups).

5. It is the grievance of the applicant that only because of poor grading in the chin up test, the applicant has been denied promotion whereas persons similarly situated, namely, Hav. Rajinder Singh Yadav and Hav. Jitender Singh have been granted promotion. Applicant claims the benefit of promotion on the basis of the aforesaid and invites our attention to the counter affidavit filed by the respondents in support of his contention. The applicant while inviting our attention to Annexure R-2/colly i.e. the result of the promotion board conducted from 27.11.2018 to 09.12.2018, pointed out that in the case of Hav. Rajinder Singh Yadav, whose name appears at Sl. No.7, in spite his poor performance i.e. even after obtaining 4 marks only, the said individual has been promoted. Similarly, reference is made to the performance of Hav Jitender Singh in the same examination who has also passed in the chin up test in spite of four marks (poor grading).

6. Further, drawing our attention to Appendix-A to the promotion policy and the evaluation of marks for chin ups test PPT for the age group 30-40, it is argued that in this age group a person who performs 3-4 chin ups is categorized as 'poor' and persons who have been categorized as 'poor' in this test have been granted promotion in the past and therefore, the applicant should also be granted promotion.

7. The respondents have refuted the aforesaid contention and submitted that during the final test of Physical Proficiency Test (PPT), the applicant could do only four chin ups whereas Chapter-VIII, Para 1 to 5 and Appendix 'H' of Physical Training Manual for Indian Army (Part-I) 2017 clearly indicates that for passing in the PPT, a candidate has to perform minimum five chin ups in the PPT. The respondents rely upon Annexure R-9 in this regard and submit that on account of the aforesaid bad performance of the applicant, he has not been granted promotion. Respondents further contend that the contention of the applicant that he had scored higher marks in the written test is correct but in accordance with the policy in vogue, even if a candidate secures average marks in the written examination, he should pass all the tests to earn promotion and in the case of the applicant as he performed poorly in the PPT, he could not be promoted as he retired on attaining the age of superannuation on 30.09.2022 after completing his term of

engagement in accordance with the provisions of Rule 11 of the Territorial Army Regulations, 1948.

8. The matter was heard by a Bench on 14.01.2020 and after taking note of the arguments advanced with regard to the contention of the applicant in the matter of his poor performance in the chin ups (PPT) and grant of promotion to Hav. Jitender Singh and Hav. Rajinder Singh Yadav, in spite of their poor performance in the Physical Proficiency Test for chin ups, we passed a detailed order and directed the respondents to specify the reasons as to how and under what circumstances promotions have been granted to these two soldiers who are identically situated like the applicant and why in the case of the applicant a different procedure was followed. The respondents were directed to file an additional affidavit explaining this position. The respondents have accordingly filed the additional affidavit on 25.04.2025 and on a perusal of the same, it is seen that the applicant was enrolled in the service on 01.10.2002 and has been discharged from service on 30.09.2022 after completing his term of engagement i.e. 20 years. It is also a fact that the applicant was not granted the promotion on account of his poor performance in the Physical Proficiency Test(PPT) in accordance with the requirement of the policy. It is the contention of the respondents that in the promotion cadre conducted between 04.04.2022 to 12.06.2022, the applicant could do only four Chin ups during

the PPT and according to Chapter VIII para 1 to 5 of Appendix 'H' of the Physical Training Manual for Indian Army, a candidate to pass in the Physical Proficiency Test has to perform minimum five Chin Ups. The respondents have produced the documents in question in this regard as Annexure R-9 (Page 72 and 74) which clearly show that in the Physical Proficiency Test under Clause 3 as per Appendix 'H', a candidate in the age group of the applicant has to do five chin ups in the PPT to come in the category of satisfactory performance and earn promotion.

9. As far as grant of benefit to the other two persons who have been granted promotion, namely, Hav Jitender Singh and Hav. Rajinder Singh Yadav is concerned, it is the case of the respondents that as per the old promotion policy of 1991 and as per the Training Manual Appendix 'A' to the same which has been referred to by the applicant, a person who is of a particular age i.e. 30-40 and performs four chin ups is considered to be poor but they are granted promotion in accordance to the earlier policy of 1991. It is the case of the respondents that this Policy of 1991 was superseded by the Directorate General Military Training (DGMT) letter dated 14.08.2000 vide Annexure R-9, wherein only three categories have been mentioned, namely, Excellent, Good and Satisfactory and candidates who performed satisfactorily with five chin ups were eligible for promotion. The earlier policy of 1991

providing for 3 to 4 chin ups with poor category being eligible for promotion has been done away with in the promotion exercise and, therefore, as per the policy applicable at the time when the applicant's case was considered for promotion, he did not qualify in the promotion board as he did not attain the bench mark fixed by the policy of DGMT dated 14.08.2000.

10. The respondents also referred to the Addl. Directorate Gen. Territorial Army letter dated 28.10.2014 (Annexure R-7) and letter dated 16.09.2014 (Annexure R-6) to say that passing the promotion cadre in the manner prescribed in the promotion policy is a mandatory condition for claiming promotion.

11. As far as the two cases of Hav. Rajinder Singh Yadav and Hav. Jitender Singh who were granted promotion in spite of their being in the poor category, are concerned, in para 8 the respondents explained the same in the additional affidavit filed in the following manner:-

"8. That the contention of the applicant about 2 previous cases wherein 'Poor' category candidates, namely Hav Rajendra Singh Yadav and Hav Jitender Singh, were declared pass has been verified as per OA. The applicant is trying to mislead this Hon'ble Court by only citing the appendices, without specifying that these belong to the policy of 1991. In this regard, it is submitted that the promotion cadre of Hav Jitender Singh and Hav Rajinder Singh Yadav was conducted in the year 2018 during which the old policy was followed by the Board members of promotion cadre. In that Board,

Hav Rajinder Singh Yadav was declared pass in promotion cadre and at that time his age was 47 years and 11 months, however, Hav Jitender Singh was declared fail and his age was 39 years and 03 months."

12. As far as comparison with the case of Hav Mahesh Singh in the pleadings is concerned, the same is also explained in para 9 of the additional affidavit in the following manner:-

"9. That No.10136404 Hav Mahesh Singh passed the Hav to Nb/Sub promotion cadre on 15 Sep 2022. However, he could not earn 5 x ACRs in the rank of Hav and Nk combined, thus, the NCO could not be considered for the promotion to the rank of Nb/Sub. The details of ACRs earned by the NCO in the rank of Hav and Nk are as given below:-

No.	ACR earned in the rank		Period
aa.	01	-	22 Jul to 18 Dec 2019
ab.	01	-	01 Jan to 31 Dec 2020
ac.	01	-	01 Jan to 31 Dec 2021
Ad.	-	01	12 Jan to 30 Sep 2022
Total	03	01	
G/Total	04		

From the aforesaid, it is clear that in the case of the applicant he did not qualify in the promotion cadre on account of his poor performance in the Physical Proficiency Test and in the Cadre examination conducted in the case of Hav Jitender Singh and Hav. Rajinder Singh Yadav in the year 2018, they were granted promotion because the concerned promotion board was not aware of the new policy which came into force and erroneously considered their case as per the old policy, as a result of which, improper promotion was granted to them and now they have already retired based on the said improper promotion. It is the case of the respondents that negative

equality cannot be claimed by the applicant and a mistake committed in granting promotion incorrectly to Hav Jitender Singh and Hav Rajinder Singh Yadav cannot be claimed as a matter of parity.

13. We have heard learned counsel for the parties at length and have also perused the additional affidavit submitted by the respondents on 25.04.2025 in pursuance to the directions issued by this Tribunal on 14.01.2025. From the facts as are narrated hereinabove, it is clear that in the promotion exercise undertaken in accordance with the policy applicable i.e. as per Chapter VIII para 1 to 5 of Appendix 'H' to the Physical Training Manual of the Indian Army as is available on record as Annexure A-9, in the PPT a candidate has to do a minimum 5 Chin ups in the PPT and a person who does not do five chin ups is not eligible for promotion. However, in the earlier policy that was applicable prior to 14.08.2000, a candidate in the age group of 32-40 with poor performance having done four chin ups in the PPT was eligible for promotion and in the promotion exercise conducted in the year 2018-2019 inadvertently by mistake of the promotion board, Hav Rajinder Singh Yadav and Hav Jitender Singh were incorrectly granted promotion due to application of a wrong policy. The applicant has neither challenged the promotion of these two persons nor is their promotion under consideration before this Tribunal. The

applicant is required to fulfil the criteria laid down in Appendix 'A' to the promotion policy which came into force w.e.f. 14.08.2000 and admittedly as the applicant did not qualify in the aforesaid promotion cadre in the Physical Proficiency Test as he has done less than 5 chin ups in the said test, no relief can be granted to the applicant in violation to or in breach of the promotion policy. The comparison of the case of the applicant with that of Hav Jitender Singh and Hav Rajinder Singh Yadav would amount to perpetuating an illegality already committed by the respondents' department and this will fall in the category of granting negative equality in the matter of promotion to an individual who is not qualified to get promotion. That being so, in our considered view, the respondents have clearly demonstrated before us by facts that the promotion policy as applicable to show that the applicant is not qualified, and, therefore, promotion was rightly denied to him and in the case of Hav Rajinder Singh Yadav and Hav Jitender Singh even though the promotion has been incorrectly granted to them in contravention of the policy as the said persons are not before us, nor is there any prayer made to challenge their promotion, we do not deem it appropriate to interfere into the same but on the facts that the applicant was not eligible for promotion and negative equality cannot be claimed as a matter of right nor does the law permit perpetuation of an illegality, we are not inclined to interfere.

into the matter. The applicant's legal right to be considered for promotion in accordance with the promotion policy having been complied with, and the applicant having not qualified on such consideration, no relief or indulgence can be made with regard to the grievance of the applicant. Accordingly, finding no merit in the matter the OA is dismissed.

14. There is no order as to costs.

15. Pronounced in open Court on this the 20 day of May, 2025.

[Rear Admiral Dhiren Vigi]
Member(A)

[Justice Rajendra Menon]
Chairman

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