

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

OA 2219/2021

Sub (LMN) Manoranjan Pradhan (Retd) Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. Manoj Kr Gupta, Advocate
For Respondents : Mr. V Pattabhi Ram, Advocate

CORAM

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

ORDER

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the relief claimed by the applicant in Para 8 reads as follows:

- (a) *Set aside the ACR for the year 2015-2016 and direct respondents to consider the applicant by fresh DPC to grant notional promotion to the rank of Sub wef 01 Jan 2018, and further consider for promotion to the rank of Nb Sub as per merit after reviewing ACR of 2015-2016, considering the grading of his previous year ACRs towards recommendation to next promotion to the rank of Subedar Major and further grant of Hon Rank as per his seniority;*
- (b) *To direct the respondents to promote the applicant in the rank of Sub Maj by quashing his discharge and re-instatement in service with all consequential benefit as his ACR of year 2015-2016 already quashed by GoC 101 Area and ACR for year 2016-2017 not reflected in his record which cause promotion to the rank of Sub & Sub Major and further extension till Apr 2025, if he qualifies the merit of DPC.*

2. The applicant joined the Indian Army on 15.04.1991 and was discharged from service on 30.04.2021. He

had served in various Army units after completing his initial training. The applicant was promoted to the rank of Naik w.e.f. 01.11.2003, Havildar w.e.f. 09.06.2008 with ante date seniority from 01.04.2008, Nb Sub w.e.f. 01.04.2015 and Sub w.e.f. 03.03.2018 and ante date seniority from 01.01.2018.

3. The applicant contends that in May 2016, he was scheduled for posting to a new unit. Prior to proceeding on the posting, he submitted his Annual Confidential Report (ACR) for the year 2015–2016. He was assessed as "Average" by the Competent Authority, which according to the applicant, was far below his previous year's ACR assessments.

4. On 10.08.2016, he was posted to F Composite Sig Regt Shillong, while being so posted on 04.09.2016 the applicant got an information through the commanding officer (Col Hariharan) to either sign the page of the ACR before proceeding on leave or the ACR for the year 2015- 2016 will be cancelled and return back to the record un actioned due to the below assessment without warning, counseling or adverse report.

5. The applicant contends that before marking his ACR, the requirement of the policy to issue a warning, provide

counseling, and submit an adverse report to the applicant was not followed. In light of this, on 06.12.2016, the applicant reportedly submitted a personal application to the Reviewing Officer (RO) for the correction of his ACR for the period 2015-2016 after returning from leave. Meanwhile, in December 2017, the applicant successfully completed the promotion cadre for the rank of Sub. The applicant's personal application was processed and on 18.05.2017, the applicant filed a statutory complaint regarding the manner in which his ACR for the period 2015-2016 was written as he was due for promotion to the rank of Sub in January 2018.

6. Furthermore, the applicant contends that for the year 2016-2017, he submitted his ACR to the unit before moving on posting to Mizoram, CIGW School. The ACR was received in the record office in June 2017 but was not forwarded to the Competent Authority and was withheld without any reason. In January 2018, when the promotion panel for the post of Sub was published, the applicant was surprised to see that many persons junior to him were promoted, but he was not considered. This was because his CR for the period 2016-2017 was withheld at the unit level and his ACR for 2015-2016 was not revised despite being

quashed by the GoC of the area based on the applicant's complaint. However, in January 2018, following his complaint, his ACR for the period 2016-2017 was finally forwarded to the record office by the unit. The applicant submitted a representation and was promoted to the rank of Sub on 03.03.2018, albeit two months later than his coursemates and juniors and in between this period around 150 JCO were promoted to the rank of Sub.

7. In May 2018, he received a response to his statutory complaint, wherein the GoC set aside his ACR grading for the year 2015-2016, which had been assessed as 'Average.' Consequently, his promotion to the rank of Sub was antedated to January 2018, putting him at par with his juniors. However, when his junior was promoted to the next higher rank, Sub Maj, the applicant's case was not considered, as he did not meet the ACR criteria. The applicant, therefore, represented the matter and challenged the action of the respondents for not considering his case for promotion to the rank of Sub Maj and not granting him the rank of Honorary Commission based on the incorrect assessment.

8. The applicant's case is that his ACR for the period 2015-2016 was not properly considered, and he was denied promotion to the rank of Sub Maj at par with his junior, even after being granted a notional promotion to the rank of Sub retrospectively from 01.01.2018. Based on this, he has claimed the relief as indicated hereinabove.

9. The respondents have filed a counter affidavit and according to the respondents, the applicant was enrolled in the Indian Army in the Corps of Signals on 15.04.1991 and was discharged from service on 30.04.2021 (Afternoon) under Army Rule 13(3) item I (i) (a) upon completion of his service/age limit. At the time of his discharge, he had rendered 30 years and 16 days of service in the Indian Army and is receiving pension as per the rules. It is an admitted position from the counter affidavit of the respondents that the applicant was promoted to the rank of Naik with effect from 01.11.2003, Havildar with effect from 09.06.2008 with ante date seniority of 01.04.2008, Nb Sub with effect from 01.04.2015, and Sub with effect from 03.03.2018 with ante date seniority of 01.01.2018.

10. According to the respondents, in the policy formulated by the Integrated Headquarters of the Ministry of Defence,

Army, letter No. B/33513/AG/PS-2 (c) dated 10.10.1197 (Annexure R2), Para 8 clearly lays down that for promotion to the rank of Sub Maj, the last five years' reports in the rank of JCO must be considered, out of which at least three reports should be 'Above Average' and the remaining two should be 'High Average'. The respondents contend that the applicant was shortlisted and his case was placed before the Departmental Promotion Committee (DPC), which met in the year 2020 for promotion to the rank of Sub Maj. However, the DPC found the applicant not eligible for promotion to the rank of Sub Maj due to not meeting the ACR criteria, as the applicant had only four ACRs in the JCO rank, after his ACR for the year 2016 (Annexure R-3) was set aside by the Competent Authority. The respondents have submitted the photocopy of the DPC record as Annexure R3.

As far as the ACR of the applicant for the year 2016 is concerned, the respondents admit that it was received from the Records on 08.07.2016, with an 'Average' grading awarded by Brig Jagroop Singh, Commander Headquarters 614 (Independent) Mechanized Air Defence Brigade, (Reviewing Officer). The ACR was scrutinized by the record office according to the existing policy, and it was

observed that the applicant, a JCO, was graded 'High Average' by the IO against Para 17 (Coln 96) and 'Average' grading against Para 18 (Coln 97) by the RO. However, these were not communicated to the applicant in terms of Para 44 and Para 24 of Appendix D to AO 1/2002 MP. The applicant was also not recommended for the grant of an Honorary Commission/rank in light of the policy letter No. 2706/ACR JCo-16/Obsn dated 14.09.2016 (Annexure R4).

11. The matter was examined by the Competent Authority and a statutory complaint was submitted by the applicant. The GoC Headquarters 101 Area issued directions on 06.05.2018 regarding the statutory complaint filed by the applicant. It was held that, having gone through the overall ACR profile of the JCO, the reply of the IO, RO, and the OIC Signal Records, the ACR for the year 2016 in respect of the applicant should be set aside as it was inconsistent with the applicant's overall ACR profile. After the ACR was set aside, the applicant was granted the rank of Sub retrospectively with effect from January 2018. He was further considered for promotion to the rank of Sub Maj, but he was not promoted due to not meeting the ACR criteria.

12. We have heard learned counsel for the parties and have considered the rival contentions. The sole issue involved for consideration before us is whether the action of the respondents in not granting promotion to the applicant to the rank of Sub Maj with effect from the date it was granted to his immediate juniors is proper or not.

13. As per the promotion policy, Annexure R2 dated 10.10.1997, the criteria for promotion to the post of JCOs and NCOs is laid down, and Para 8 of the same reads as under:

"8. For Promotion to the rank of Rs Maj/Sub Maj. In view of the importance, job content and prestige attached to the rank of Sub Maj, an OAP based system of selection will be followed. The qualifying criteria for consideration by the DPC under OAP based system will be as follows:-

- (a) Last five reports in the rank of JCO will be counted. Out of which at least three reports should be 'Above Average' and remaining two 'High Average'.*
- (b) Two out of the last five reports should be on regimental duty/or as an instructor in an Army School of Instructions including IMA, NDA, OTA and ACC, one of these two reports must be 'Above Average'.*
- (c) The individual should have been recommended for promotion in the last five reports in the rank of JCO.*
- (d) Merely, qualifying for consideration by DPC does not entitle a Sub for promotion to the rank of Sub Maj. Selection will be based on seniority-cum merit depending upon the vacancies available. See Appendix 'C' for details."*

14. Regarding the statutory complaint of the applicant in the matter of the recording of his ACR for the period 2015- 2016, the order in the statutory complaint indicates that the ACR of 2015-2016 does not match as per the overall ACR profile of the applicant and, therefore, the ACR for the year 2016 was set aside. The direction of the GoC, as indicated in the order available at Page 95, reads as under:

CONFIDENTIAL

Directions of General Officer Commanding 101
Area on the Statutory complaint submitted by JC-
384370F Nb Sub (LMN) Manoranjan Pradharn of F
Comp sig Regt

1. *I have examined the Statutory Complaint submitted by JC- 384370F Nb Sub (LMN) Manoranjan Pradhan of F Comp Sig Regt and recommendations of OIC Records, Signals Records on the same.*
2. *Award of "Average" grading in ACR for the year 2016 with Adverse remarks/weak point by RO in respect of the above name JCO have not been found supported with the ACR as periodical warning (s)/performance counseling (s) given to the JCO which were required to be recorded in the ACR as per Para 45 of AO 1/2002/MP. The complaint has earned 13x ACRs as NCO and JCO and been assessed consistently "Above Average" by IOs and ROs in nine of his ACRs, "High Average" in three ACRs and "Outstanding" in one ACR except the ACR for year 2016.*
3. *In view of the above, having gone through the overall ACR profile of the JCO and comments of IO, RO and OIC Signals Records, ACR for the year 2016 in respect of the above named JCO be set aside being inconsistent to the JCOs overall ACR profile.*

15. Having gone through the ACR dossiers of the applicant and the proceedings of the DPC held on 27.10.2020 and 28.10.2020, we find that the case of the applicant, Sub (LMN) Manoranjan Pradhan (Retd) was placed for consideration before the appropriate Promotion Committee and in the category of deferred cases, on account of not having five ACRs (i.e. year 2016, 2017, 2018, 2019 and 2020) in the JCO rank, as per the Ministry of Defence, Integrated Headquarters Army Service Note dated 30.09.2014. The applicant's name appears at Serial No. 20 on the deferred list on the ground that the JCOs indicated in the list do not have five ACRs in the JCO rank.

16. The case of the applicant has been considered in the said proceedings, and he has not been recommended for promotion. In the proceedings of the Promotion Committee meeting, the case of the applicant was placed for consideration along with all other candidates. The ACRs of the applicant for the years 2015, 2016, 2017, 2018, 2019, and 2020 were placed before the Promotion Committee. The ACR of the applicant for the year 2015 was earned by him in the cadre of Havildar, and the ACRs from 2016 to 2020 were

earned by him in the cadre of Sub, i.e., in the cadre of JCO, as contemplated in Para 8(a) of the promotion policy.

17. However, since the ACR for the year 2016 was set aside, only four ACRs of the applicant (from 2017 to 2020) were placed before the DPC. The DPC noted that as the applicant had not earned five ACRs as required by the policy, he could not be recommended for promotion. The respondents have also indicated this fact in their counter affidavit at Para 9(c). In the matter of consideration of the applicant's case for promotion to the rank of Sub Maj, the respondents make the following averments:

9. In the instant case, the following points need merit considerations by the Hon'ble AFT:-

(a) The petitioner was timely promoted to the rank of Nb Sub with effect from 01.04.2015 on the basis of rank seniority alongwith his batchmates and there was no delay in promotion to the rank of Nb Sub.

(b) The petitioner was promoted to the rank of Subedar with effect from 03.03.2018 with ante date seniority from 01.01.2018. it is pertinent to mention here that promotion for the next higher rank is considered on the basis of seniority-cum-merit list and not from the physical assumption of promotion. Accordingly, the petitioner was considered for promotion to the rank of Subedar Major from the date of his seniority, i.e. 01.01.2018 but the petitioner could not be promoted due to not meeting the requisite ACR criteria.

(c) The petitioner was considered for promotion to the rank of Subedar Major by Departmental Promotion Committee held in the year 2020 and Promotion Board had considered last five ACRs (i.e. year 2016,

19. The issue, therefore, is whether the non-consideration or non-grant of promotion to the applicant to the rank of Sub Maj on this ground can be sustained in law.

20. The respondents' counter affidavit is silent on the issue regarding what should be done when an employee has discharged duties for a particular ACR year, the ACR is set aside due to being found unsustainable in law on technical ground by the competent authority. The respondents have not brought to our notice any rules, regulations, or circulars applicable in such situations where an ACR for a particular period is unavailable. In such cases, it is common practice to consider the available ACR for the previous period. However, in this case, the applicant's previous ACR is from the cadre of Havildar for the year 2015, and not from the cadre of Junior Commissioned Officer (JCO). Hence, as per the respondents, this cannot be considered for promotion to the rank of Sub Maj (Subedar Major).

21. In such a situation, the respondents should have taken note of the applicant's overall profile or at least the ACRs available from the last four years in the cadre of JCO. After evaluating the average performance of the applicant, a decision should have been made regarding his promotion.

The respondents' act of outright rejection of the applicant's claim on the grounds that he does not have five ACRs in the rank of JCO in our considered view, is illegal, arbitrary, and unsustainable. This process cannot be upheld.

22. The applicant, having discharged his duties and earned an ACR in the cadre of JCO, that was found to be unsustainable in law and subsequently set aside following his complaint, should have been treated as having earned five ACRs in his reckonable profile for the last five years as a JCO. The respondents were duty-bound to consider the applicant's case in accordance with applicable policies or circulars, or, at the very least, in a manner that follows the principles of natural justice or any process known to law. This would have allowed for a fair consideration of the applicant's case for promotion to the next higher rank, on par with his juniors.

23. The act of the respondents in rejecting the applicant's claim outright, without any such consideration, is illegal and contrary to the basic principles of natural justice and all norms of law, which require due consideration. The applicant cannot be blamed for the non-availability of the ACR for the year 2015-2016, he had worked as a JCO and earned an ACR, but it was not in accordance with the

law, the applicant made a complaint, which was accepted, and the ACR was set aside. Once the ACR was set aside, it should not stand in the way of his promotion.

24. In light of this, the respondents were duty bound to follow the relevant policies and procedures as applicable to ensure justice to the applicant, by considering his case for promotion in a manner that complies with the system of law. The respondents' outright rejection of the applicant's case, without any consideration or application of a known methodology for handling such cases, constitutes an arbitrary and illegal action, which cannot be upheld by this Tribunal.

25. Accordingly, we allow this OA and direct that the applicant's case for promotion to the rank of Sub Maj be reconsidered. The matter should be placed before the competent authority and subsequently before the appropriate Departmental Promotion Committee (DPC). The DPC shall reconsider the applicant's case retrospectively, as it existed on 27/28 October 2020. In doing so, the DPC should take note of all applicable policies and circulars or evolve an appropriate principle that aligns with the requirements of the law. The DPC should assess the applicant's case, treating him

as though he has earned five ACRs in the cadre of JCO, and evaluate his case in accordance with the relevant policies.

26. In the event the applicant is granted promotion and found fit for the same, he should be granted retrospective promotion without any consequential benefit, at par with his juniors who were promoted to the rank of Sub Maj based on the recommendation of the DPC that met on 27/28.10.2020.

27. In case the applicant is granted promotion to the rank of Sub Maj and still has service left, he should be reinstated in service and permitted to complete his tenure in the said promoted rank. In case he is promoted, the promotion shall be given effect retrospectively, without any consequential benefits, including back wages, etc. However, if he has already attained the age of superannuation or is due for discharge in the cadre of Sub Maj at the time of such promotion, he should be deemed to have retired in the rank of Sub Maj, after grant of notional promotion without arrears of wages but his pension shall be re-fixed for the rank of Sub Maj and post-retirement benefits should be recalculated and granted to the applicant accordingly treating him to have retired as a Sub Maj.

28. The entire exercise in pursuance of this order should be completed within a period of three months, and the benefits should be conferred to the applicant within this timeframe.

29. As far as the applicant's prayer regarding the ACRs for the year 2017 is concerned, since the same have already been reflected and is being considered for promotion, we see no reason to interfere with the complaint regarding the delayed initiation of the ACRs for the year 2017.

30. Regarding the benefit of granting an honorary rank, if, as a consequence of the promotion granted to the applicant to the rank of Sub Maj, and in accordance with the applicable policies, he is entitled to be considered for any honorary rank, the same should be taken note of and considered in accordance with the law.

31. With the aforesaid, the OA stands disposed of.

32. No order as to costs.

Pronounced in the open Court on ^H 25 day of March, 2025.


[JUSTICE RAJENDRA MENON]
CHAIRPERSON


[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

Ps